

2024 AVIA Regulating for Growth – Pay TV Matrix for **Australia**

Questions	Pay TV	Foreshadowed changes?
1. How regulated? <i>Details of regulator/s</i>	<ul style="list-style-type: none"> The Australian Communications and Media Authority (ACMA) is an impartial and independent regulator, but key policy decisions are made by the federal Ministry. The ACMA is responsible for regulating telecommunications, broadcasting, radio communications and online content. However, while it has one converged administrative structure, it continues to implement different legislative frameworks for broadcasting and telecoms. The ACMA's decisions can be appealed, including to the Administrative Appeals Tribunal (and subsequently, through the Federal Courts). 	
2. Copyright protection?	<ul style="list-style-type: none"> Unauthorised access or use of pay TV broadcasts is an offence under the Copyright Act, as is the making, selling, importing, hiring, trade or distribution of an unauthorised decoder, the unauthorised use of a decoder, unauthorised distribution of a subscription broadcast to another premises or making an unauthorised decoder available online. The maximum penalty for such offences is five years imprisonment, or substantial fines, or both. The subscription media industry works with state and federal police to prosecute those who are involved in enabling unauthorised access to content. Numerous site blocking injunctions have been granted in Australia, including in relation to applications brought by pay TV providers. Recent surveys suggest a decline in the rate of Australians downloading copyright protected content. In 2018, Australia's site blocking regime was expanded to make it easier for copyright owners to obtain injunctions to block infringing sites overseas. 	<ul style="list-style-type: none"> In late 2022 and early 2023, the Attorney-General conducted a review into Australia's copyright enforcement regime and accepted submissions from interested stakeholders during the course of that review in relation to the operation and effectiveness of Australia's existing copyright enforcement regime. As part of its submission, Foxtel Group (the sole pay TV operator in Australia) indicated that the then-existing website blocking scheme was highly effective, but that due to the nature of live sport (as opposed to movies and TV pirate sites), it recommended implementing a 'live blocking' scheme similar to that of the UK, whereby the location of the stream is notified to Internet Service Providers (ISPs) on a rolling basis to be blocked without the requirement for any formal involvement of the Court. There has been no indication by the Attorney-General of whether the outcomes of the aforementioned review will result in any amendment to the existing copyright enforcement regime in Australia.

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		<ul style="list-style-type: none"> Separately, in February 2024, the Federal Attorney-General convened the first meeting of a Copyright and Artificial Intelligence Reference Group (CAIRG), which engaged with stakeholders across a wide range of sectors (including pay TV providers such as Foxtel) to better prepare for future copyright challenges emerging from AI. The initial focus of the Attorney-General’s consultation with the CAIRG was in relation to the use of copyright material as inputs for AI systems. The Attorney-General has signalled that topics that could be explored by the CAIRG later in 2024 include issues such as potential copyright infringement in AI outputs, and the copyright status of AI outputs.
3. Convergence and new technologies	<ul style="list-style-type: none"> Delivery platforms based on different technologies do not operate on an even playing field. For example, online platforms are not governed by the complex co-regulatory system of legislative restrictions, licensing conditions, standards and codes of practice that regulate broadcasters. Nor are they required to meet the minimum content quotas for Australian or local or children's content. Alternative “convergence” distribution platforms can be authorised under a subscription TV licence. However, programming is also being provided by Internet providers under telecom licences. 	<ul style="list-style-type: none"> Following the completion of the Australian Competition and Consumer Commission’s (ACCC) review into Digital Platforms in 2019, and in particular, its identification of the inconsistent operation of Australia’s overarching broadcast regulatory framework – which captures traditional commercial and subscription broadcast television licensees, but does not apply to services that make available programs using the internet (such as video-on-demand services) - the ACCC recommended that a platform-neutral and harmonised media regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms. Rather than a comprehensive reform to the <i>Broadcasting Services Act 1992</i> (Cth) though, the Australian Government appears to be addressing areas of concern on an issue-by-issue basis (as discussed further below).

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		<ul style="list-style-type: none"> For completeness and following the outcome of the ACCC's Digital Platform Services Inquiry, the Treasurer directed the ACCC to conduct a 5-year inquiry into markets for the supply of digital platform services, with interim reports to be delivered each March and September. To date, the Digital Platform Services Inquiry reports have not focused on OCC or pay TV platforms, though it remains to be seen whether they may be a topic of concern for future reports.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> No restrictions on retransmission of foreign channels. No meaningful restrictions on uplink/downlink; licences readily granted. 	
5. Licence fees and taxation	<ul style="list-style-type: none"> Minimal. There is one holder of a subscription TV licence in Australia (Foxtel). 	
6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on eg. Basic tier</i>	<ul style="list-style-type: none"> None, other than under general competition law. 	
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> No restrictions. 	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> Subscription fees must be pay TV's predominant source of revenue. No more than 50% of pay TV operators' total revenues can come from advertising. Ad minutage unlimited by government. Ad content is governed by industry Codes of Practice. Broadcasters are not permitted to broadcast tobacco advertisements. 	In late 2022 and 2023, the Australian Government conducted an inquiry into online gambling and its impacts on those experiencing gambling harm. In response to that inquiry, the Social Policy and Legal Affairs Committee - which was responsible for conducting the inquiry - made a number of recommendations in relation to the regulation of online gambling in Australia, including a comprehensive ban on all forms of advertising for online gambling to be implemented

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		<p>by the Australian Government in four phases over a three-year period between 2023 - 2026:</p> <ul style="list-style-type: none"> • <u>Phase One</u>: a ban of all online gambling inducements, such as the offer of credits, rewards or vouchers, a ban on all advertising of online gambling on social media and online platforms and a ban on advertising online gambling on commercial radio between 8.30-9am and 3.30-4pm (school drop off and pick up); • <u>Phase Two</u>: a ban on all online gambling advertising and commentary on odds, during an hour either side of a sports broadcast. The ban would also extend to all advertising inside stadiums, including logos on players' uniforms; • <u>Phase Three</u>: a ban on all broadcast online gambling advertising between the hours of 6am and 10pm; and • <u>Phase Four</u>: all advertising and sponsorship of online gambling to be banned by the end of year three (i.e. 2026). <p>The Australian Government is still in the process of considering its response to the Committee's recommendations, including the recommendation relating to the advertising of online gambling outlined above.</p> <p>Since then, the Australian Government has been involved in consultations with a number of stakeholders from the sports and media industry in Australia as it considers its response to the Committee's recommendations. A number of key stakeholders from the industry, including, in particular, sporting codes, major media companies and wagering operators, have been engaged in significant lobbying efforts to persuade the Government not to implement a complete ban on gambling advertising, citing concerns relating to the likely impact of the reforms on their revenue and, in turn,</p>

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		<p>their ability to invest in, and promote, Australian sports. On the other hand, supporters of the Committee's recommendations continue to argue that a complete ban on gambling advertising is the only way to protect those individuals that are experiencing harm from online gambling.</p> <p>It is currently unclear how the Australian Government will respond to the Committee's recommendations, but there are reports that it is considering making changes to gambling advertising laws which fall short of the complete ban on online gambling advertising and which include, for example, limiting gambling advertising to two spots per hour on TV until 10pm, banning gambling advertisements on social media and banning gambling advertisements on TV an hour before, during and after live sporting programmes. It has already been 15 months since the Committee published its report, but it looks like we will need to further await the Government's response.</p>
9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i>	<ul style="list-style-type: none"> Subscription television broadcast licensees must spend 10% of total program expenditure on drama channels on new Australian/New Zealand dramas. Flexibly administered; a shortfall in one year can be made up during the next year. Otherwise, there are no direct content controls on either subscription or free-to-air channel providers. Self-regulation according to respective Codes of Practice for subscription and free-to-air channel providers are devised and published by the industry association. Note that the above requirements do not apply to streaming service providers. 	<ul style="list-style-type: none"> As part of the new National Cultural Policy titled 'Revive', the Federal Government announced they will implement local content quotas for international streaming services (i.e. OCC providers), and will be negotiating the details in a consultation process. However, Revive did not indicate any amendments to content regulation for subscription TV providers. The Federal Government has committed to introducing such legislation by July 2024 but at the time of writing, it has not happened.
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> Prescribed annual captioning targets apply to pay TV services under broadcasting legislation. Targets vary according to category of service (e.g. movies, news, sports, music). Each year, the targets increase by 5% until the target reaches 100%. 	<ul style="list-style-type: none"> In 2021, the Australian Government conducted a review in relation to the captioning rules for subscription television in order to deliver more effective and efficient captioning on subscription television.

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	<ul style="list-style-type: none"> There are regulations in relation to the readability, accuracy and comprehensibility of captions which apply to subscription TV providers under the Broadcasting Services (Television Captioning) Standard 2023 (Cth). There are no regulations on languages. 	<ul style="list-style-type: none"> Following the review, the ACMA introduced a new standard which is designed to assist viewers who are deaf or hard of hearing, by setting requirements for Australian free-to-air TV and subscription TV broadcasters to provide programme captioning that is readable, accurate and comprehensible.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> No general restraints on exclusivity. Restrictive “anti-siphoning” provisions require many sporting events to be offered first to FTA TV. These events include: <ul style="list-style-type: none"> Olympic Games Commonwealth Games Horse Racing Australian Rules Football Rugby League Football Rugby Union Football Cricket Soccer Tennis Netball Motor Sports Anti-siphoning scheme currently only applies to subscription television broadcasters in Australia and not, for example, international streaming service providers. The Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024 (Cth) was passed in July 2024, amending the operation of the anti-siphoning scheme under the Broadcasting Services Act 1992 (Cth). The Act expands coverage of the anti-siphoning scheme to prevent ‘media content services’ (including, but not limited to, online streaming service providers) from acquiring a right to provide coverage of an event that is listed on the anti-siphoning scheme (a ‘Listed Event’) until a free-to-air broadcaster has acquired a right to televise the event. 	<p>As noted in the adjoining column, the Australian Government introduced some important changes to modernise the operation of Australia’s anti-siphoning regime in July 2024. However, because the reforms do not amend the operation of the prohibition in relation to the acquisition of BVOD (or other online) rights by media content service providers, some have argued that the reforms do not go far enough in ensuring that the important national sporting events which are listed on the anti-siphoning scheme will remain accessible to all Australians given that many Australians now consume sports via online streaming services, rather than a televised (i.e. aerial) service.</p>

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	<ul style="list-style-type: none"> Importantly though, a free-to-air broadcaster does not need to have acquired a right to provide coverage of the relevant event on a content service (such as BVOD) before another party can acquire a right. This means that, once a right to televise a Listed Event has been acquired by a free-to-air broadcaster, there is relatively unimpeded access to BVOD (or other online) rights by media content service providers (and a free-to-air broadcaster will not receive any preferential treatment in relation to the acquisition of these BVOD or other online services (i.e. non-broadcasting services). 	
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> Specific foreign acquisitions of media assets are reviewable under general foreign investment policy. Media sector (including television and internet sites that broadcast or represent television) is categorised as a "sensitive sector", meaning that all foreign investments of 5% or more are subject to approval. A foreign person with company interests of 2.5% or more in an Australian media company must notify the ACMA, with any such interests to be listed on the relevant register. A foreign person with company interests of 10% must also register his/her interest on the Register of Foreign Ownership of Australian Assets. There are also limits on the number of different types of media one person or company can control in a particular licence area (e.g. one person cannot control more than one commercial TV licence, or more than two commercial radio licences in the same licence area). No specific restrictions on content providers other than general competition laws. 	<ul style="list-style-type: none"> In March 2023, the Federal Minister for Communications tabled a report in relation to the ACMA's review of the operation of the legislation for the Register of Foreign Owners of Media Assets (RFOMA). This report recommended consolidating the multiple reporting and disclosure requirements that apply to foreign persons who invest in Australia's media sector, and potentially increasing the foreign stakeholder notification for the ACMA register from 2.5% to 10% in line with the new RFOMA. It is unclear whether the government intends to implement these recommendations by way of law reform.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> No government must-carry rule. Retransmission of free-to-air broadcasts subject to payment of equitable remuneration to underlying rights holders pursuant to a statutory licence. Where the parties are unable to agree, the equitable remuneration can be determined by the Copyright Tribunal, a division of the Federal Court. 	NA

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<p>13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i></p>	<ul style="list-style-type: none"> Subscription Broadcast Television Codes of Practice registered with the ACMA (which may compel compliance as a condition of licence) require: <ul style="list-style-type: none"> ‘plain English’; agreements with subscribers; rental agreements for domestic reception to allow for customer to terminate on one month’s notice; a high-quality service to be available to subscribers, including timely response to reported service faults; and referral of subscribers to state consumer advisory services if subscriber not satisfied with disputes about fault repairs, credit management or billing. General consumer protection laws also apply (including unfair contract terms provisions which regulate, for example, subscription terms and conditions entered into with consumers). In November 2023, the unfair contract terms regime under the <i>Australian Consumer Law (ACL)</i> was amended in order to introduce a new prohibition in relation to the use of unfair contract terms in standard form consumer and small business contracts (which can include, for example, unilateral variation rights, unilateral termination rights and one-sided liability and indemnity provisions). Importantly, the reforms introduced include significant new pecuniary penalties in relation to the use, or proposed use, of unfair contract terms. These penalties (in the most serious cases) can be up to the greater of: <ul style="list-style-type: none"> \$50 million; or three times the value of the benefit of the unfair contract term; or 30% of the annual turnover of the body corporate in the preceding 12-month period (if the value of the benefit cannot be determined by a court). 	<ul style="list-style-type: none"> Australian Subscription Television and Radio Association (ASTRA), the industry body representing subscription TV licensees, has indicated that it will give specific consideration to a review of its ‘Subscriber Code’ when it reviews its Subscription Code of Practice. ASTRA has been working with ACMA to finalise a new Code of Practice, though it is unclear when this will be complete.
<p>14. Entering a new market: FAST TV</p>	<ul style="list-style-type: none"> It is open for subscription television licensees to establish new FAST TV channels; FAST TV is not explicitly regulated under Australia’s existing broadcast regulatory framework. 	

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	<ul style="list-style-type: none"> However, given the nature of the pay TV model, it is unclear whether it would be feasible for pay TV operators that are licensed under the <i>Broadcasting Services Act 1992</i> (Cth) to actually establish FAST TV channels under Australian law. As per our answer under point 8 - restrictions of advertising above, subscription fees must be the predominant source of a pay TV licensee's revenue. Generating further advertising revenue from FAST TV without charging subscription fees may endanger the balance of this revenue split which is required to remain compliant with the Act. 	
15. Data handling	<ul style="list-style-type: none"> No data localisation obligation in Australia, although there are obligations regarding transfers of personal data overseas. There is an exemption for media organisations in relation to certain privacy obligations, where the relevant activity is done "<i>in the course of journalism</i>" and the media organisation is publicly committed to observe standards that deal with privacy in the context of the activities of a media organisation. 	<ul style="list-style-type: none"> In February 2023, the Federal Attorney-General publicly released a report following the review of Australia's Privacy Act. The Federal Government then released its response to the Privacy Act Review Report in September 2023. As part of the response, the Federal Government has agreed that the journalism exemption should continue and agrees-in-principle that the Office of the Australia Information Commissioner (OAIC) should develop a template privacy standard. The Federal Government also agreed-in-principle that notwithstanding the operation of the journalism exemption, that media organisations should be required to keep personal information secure, destroy it when it is no longer needed, and report eligible data breaches to the OAIC. The Federal Government has committed to introducing legislation to amend the Privacy Act in 2024.
Other country-specific information not already covered		