



2024 AVIA Regulating for Growth – Pay TV Matrix for Australia

Questions	Pay TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> The Australian Communications and Media Authority (ACMA) is an impartial and independent regulator, but key policy decisions are made by the federal Ministry. <input type="checkbox"/> 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. <input type="checkbox"/> The ACMA's decisions can be appealed, including to the Administrative Appeals Tribunal (and subsequently, through the Federal Courts). 	
<p>2. Copyright protection?</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 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. <input type="checkbox"/> The subscription media industry works with state and federal police to prosecute those who are involved in enabling unauthorised access to content. <input type="checkbox"/> 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. <input type="checkbox"/> 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"> <input type="checkbox"/> 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. <input type="checkbox"/> 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.

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		<ul style="list-style-type: none"> <li data-bbox="1391 213 1998 384">❑ 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. <li data-bbox="1391 395 1998 671">❑ 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. <li data-bbox="1391 683 1998 959">❑ 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.
<p data-bbox="107 989 427 1050">3. Convergence and new technologies</p>	<ul style="list-style-type: none"> <li data-bbox="483 989 1364 1198">❑ 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. <li data-bbox="483 1209 1364 1270">❑ Alternative “convergence” distribution platforms can be authorised under a subscription TV licence. <li data-bbox="483 1281 1364 1342">❑ However, programming is also being provided by Internet providers under telecom licences. 	<ul style="list-style-type: none"> <li data-bbox="1391 989 2002 1412">❑ 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

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		<p>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.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 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). <input type="checkbox"/> 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.
<p>4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions on retransmission of foreign channels. <input type="checkbox"/> No meaningful restrictions on uplink/downlink; licences readily granted. 	
<p>5. Licence fees and taxation</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Minimal. <input type="checkbox"/> There is one holder of a subscription TV licence in Australia (Foxtel). 	
<p>6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> None, other than under general competition law. 	

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<i>price controls on eg. Basic tier</i>		
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<input type="checkbox"/> No restrictions.	
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<input type="checkbox"/> 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. <input type="checkbox"/> Ad minutage unlimited by government. <input type="checkbox"/> Ad content is governed by industry Codes of Practice. <input type="checkbox"/> Broadcasters are not permitted to broadcast tobacco advertisements.	<p>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 by the Australian Government in four phases over a three-year period between 2023 - 2026:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <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); <input type="checkbox"/> <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;

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		<ul style="list-style-type: none"> <li data-bbox="1435 212 2002 312">☐ <u>Phase Three</u>: a ban on all broadcast online gambling advertising between the hours of 6am and 10pm; and <li data-bbox="1435 320 2002 421">☐ <u>Phase Four</u>: all advertising and sponsorship of online gambling to be banned by the end of year three (i.e. 2026). <p data-bbox="1391 445 2002 616">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 data-bbox="1391 639 2002 1283">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, 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 data-bbox="1391 1307 2002 1406">It is currently unclear how the Australian Government will respond to the Committee’s recommendations, but there are reports that it is</p>

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		<p>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>
<p>9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> Note that the above requirements do not apply to streaming service providers. 	<ul style="list-style-type: none"> <input type="checkbox"/> 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. <input type="checkbox"/> However, Revive did not indicate any amendments to content regulation for subscription TV providers. <input type="checkbox"/> The Federal Government has committed to introducing such legislation by July 2024 but at the time of writing, it has not happened.
<p>9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> 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%. <input type="checkbox"/> There are regulations in relation to the readability, accuracy and comprehensible of captions which apply to subscription TV providers under the Broadcasting Services (Television Captioning) Standard 2023 (Cth). 	<ul style="list-style-type: none"> <input type="checkbox"/> 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. <input type="checkbox"/> Following the review, the ACMA introduced a new standard which is designed to assist viewers who are deaf or hard of hearing, by

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	<input type="checkbox"/> There are no regulations on languages.	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>	<input type="checkbox"/> No general restraints on exclusivity. <input type="checkbox"/> 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 <input type="checkbox"/> Anti-siphoning scheme currently only applies to subscription television broadcasters in Australia and not, for example, international streaming service providers. <input type="checkbox"/> 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. <input type="checkbox"/> 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	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.

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	<p>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).</p>	
<p>11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> A foreign person with company interests of 10% must also register his/her interest on the Register of Foreign Ownership of Australian Assets. <input type="checkbox"/> 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). <input type="checkbox"/> No specific restrictions on content providers other than general competition laws. 	<ul style="list-style-type: none"> <input type="checkbox"/> 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). <input type="checkbox"/> 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.
<p>12. Retransmission arrangements <i>Including must carry and remuneration</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> No government must-carry rule. <input type="checkbox"/> 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. 	<p>NA</p>
<p>13. Consumer protection <i>Including cooling-off period, termination</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> 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"> <input type="checkbox"/> 'plain English; agreements with subscribers; 	<ul style="list-style-type: none"> <input type="checkbox"/> ASTRA, the industry body representing subscription TV licensees, has indicated that it will give specific consideration to a review of

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<p><i>rights and payment mechanism</i></p>	<ul style="list-style-type: none"> ○ 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. <p><input type="checkbox"/> General consumer protection laws also apply (including unfair contract terms provisions which regulate, for example, subscription terms and conditions entered into with consumers).</p> <p><input type="checkbox"/> 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:</p> <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). 	<p>its ‘Subscriber Code’ when it reviews its Subscription Code of Practice.</p> <p><input type="checkbox"/> ASTRA has been working with ACMA to finalise a new Code of Practice, though it is unclear when this will be complete.</p>
<p>14. Entering a new market: FAST TV</p>	<p><input type="checkbox"/> 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.</p> <p><input type="checkbox"/> 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 (Cth)</i> to actually establish FAST TV channels under Australian law. As per our answer under point 8 -</p>	

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	<p>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.</p>	
15. Data handling	<ul style="list-style-type: none"> <input type="checkbox"/> No data localisation obligation in Australia, although there are obligations regarding transfers of personal data overseas. <input type="checkbox"/> 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"> <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> The Federal Government has committed to introducing legislation to amend the Privacy Act in 2024.
Other country-specific information not already covered		