



4 April 2012

Senate Environment and Communications
Legislation Committee
Parliament House
CANBERRA ACT 2600

Attention: Sophie Dunstone
Acting Committee Secretary

By email: ec.sen@aph.gov.au

Dear Chairman Cameron, Deputy Chairman Fisher and members of the Senate Environment and Communications Legislation Committee,

Broadcasting Legislation Amendment (Anti-Siphoning) Bill 2012 (*the Bill*)

The Australian Football League (AFL) appreciates the opportunity to make a submission to the Senate Committee in relation to the Bill.

Background

Australian Football League

The AFL is a not for profit company that conducts the eighteen team AFL Competition throughout Australia. The AFL Competition currently includes 198 Premiership Season matches and the Finals Series matches, culminating with the AFL Grand Final and the award of the AFL premiership to the winning team.

In addition to conducting the AFL Competition, the AFL is the national body for Australian football, Australia's only indigenously created national game. The sport is popular throughout Australia, in terms of participation, attendances at matches and events and media audiences.

The major income sources for the AFL are media rights, corporate sponsorships, the AFL Finals Series and AFL membership. After meeting operational costs, the AFL allocates its operating surplus as follows:

Australian Football League



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- ◆ distributions to AFL Clubs, of which there were almost 650,373 registered members in 2011 and many more supporters;
- ◆ grants for game and facility development, throughout Australia and overseas;
- ◆ payments to the AFL Players' Association; and
- ◆ ground improvements – to assist the upgrade and development of various stadia around Australia where AFL matches are played.

AFL media rights

The AFL licences media rights in connection with the AFL Competition on free-to-air television, subscription television, radio, internet and mobile platforms. The revenue from licensing of the AFL's media rights is AFL's largest single source of revenue: comprising 47% of AFL consolidated revenue in 2011 and expected to make up approximately 50% of AFL consolidated revenue in 2012.

The AFL's current media partners are:

- ◆ the Seven network for free-to-air television;
- ◆ FOXTEL for subscription television;
- ◆ Telstra for new media, comprising internet and mobile rights; and
- ◆ various radio stations across Australia.

In granting its audio-visual media rights AFL has always taken into account the balance between free and 'user pay' television exposure for the AFL Competition and the sport of Australian football.

Reform to anti-siphoning laws

The AFL has consistently argued that the anti-competitive anti-siphoning regime is not necessary to 'protect' the interests of the Australian public, at least not in the context of matches in the AFL Competition. The AFL believes the cost to sporting bodies and others of the anti-siphoning laws far outweighs the benefit, and that the application of the anti-siphoning regime to AFL matches is misconceived because the concern that the AFL will exclusively licence all of its content to subscription television is unrealistic. The AFL is committed to continuing to provide exposure for AFL matches via free-to-air television.

However, in that context, the AFL believes that the significant reforms to the anti-siphoning regime announced by Senator Conroy in late 2010 are a considerable improvement on the current laws. Those announcements assisted the AFL in negotiating and entering into its historic broadcasting arrangements with Seven and FOXTEL in April 2011. The AFL supports reforms to the anti-siphoning law that allow the exclusive licensing of certain AFL content to subscription television.

AFL television arrangements 2012 – 2016

The AFL's arrangements with Seven and FOXTEL apply for the period 2012 to 2016 (inclusive) and involve all matches in the AFL Competition being broadcast live on television¹, with a guaranteed commitment of free-to-air television coverage of a certain number of

¹ AFL matches will also be broadcast live by Telstra via online and mobile technology

matches each week during the Premiership Season and all Finals matches. A summary of the television coverage of AFL matches in each state and territory of Australia under the AFL's current broadcast arrangements can be viewed via the AFL's website.²

The AFL agrees with the Government's position that the AFL, Seven and FOXTEL arrangements for the period 2012 – 2016 are consistent with Government policy.³ In those circumstances, the Government has appropriately taken the position that there is no need for further regulatory intervention in respect of AFL matches for the period 2012 – 2016, other than the listing of the AFL Grand Final as a Tier A anti-siphoning event that must be covered live on free-to-air television. As part of its contractual arrangements with Seven, the AFL had already required the AFL Grand Final to be broadcast live on free-to-air television, as has been the case for many years.

Submissions in relation to the Bill

The Bill is highly relevant to the AFL's future broadcast arrangements for the period 2017 and beyond. These arrangements will be very significant to the AFL, in terms of revenue and promoting the AFL Competition and the sport of Australian football.

The AFL needs to ensure that the Bill and associated materials do not unfairly or unreasonably restrict the AFL's ability to control its scheduling and appropriately commercialise its media rights to AFL matches from 2017.

The AFL wishes to raise with the Senate Committee the following outstanding issues and concerns with the Bill and associated documents:

1. *Proposed Category B quota group instrument for certain AFL matches*

Under the new anti-siphoning regime:

- all AFL Premiership Season and Final Series matches from 2017 will be Tier B anti-siphoning events;
- all AFL Premiership Season matches will be included in a Category B quota group instrument which will specify the number of matches that must be shown on free-to-air television (4 matches in each regularly scheduled round) and any associated set conditions.

The AFL understands a legislative instrument will be moved immediately upon passage of the Bill.

The AFL has been provided with a draft of the legislative instrument. The AFL has identified some matters in that document that need to be amended before the instrument is moved to ensure the instrument accords with the AFL's broadcast and scheduling arrangements:

² <http://www.afl.com.au/2012-2016%20broadcast%20rights/tabid/17734/default.aspx>

³ Paragraph 286 of the Explanatory Memorandum

(a) *Schedule 1, item 1*

(i) *One round split over weekends*

From time to time, AFL will conduct a round over a period of two weeks (for example, round 1 of the 2012 Season). The legislative instrument needs to accommodate this situation and avoid fettering the AFL's ability to schedule its matches and provide for broadcast of 4 matches on free-to-air television during a split round.

(ii) *Rounds of less than 9 matches*

In a season the AFL may schedule some Premiership Season rounds of less than 9 matches. For example, rounds 11, 12 and 13 in 2012 will each feature 6 matches. These rounds contain less than 9 matches because it enables the AFL Clubs competing in the AFL Competition to enjoy a bye (a week without a match) without the AFL schedule requiring a full week without any matches being played. In effect, 2 rounds of 9 matches are spread across 3 rounds, with each of the 18 Clubs playing 2 matches across the 3 rounds.

In these rounds, less than 4 matches in each round will be broadcast on free-to-air television (however 8 matches of the 18 across those 3 rounds will be broadcast on free-to-air television). Accordingly, the legislative instrument needs to be amended to recognise this broadcasting and scheduling reality.

For the avoidance of doubt, the AFL accepts and agrees that in a regularly scheduled round of the Premiership Season (i.e. - a 9 match round), 4 matches will be broadcast on free-to-air television.

(b) *Schedule 2, general conditions 1.1 and 1.2*

At certain times during each AFL Season matches will not be broadcast on free-to-air television on Saturday evenings in non-Victorian markets. This is because a match or matches involving a local team or local teams have already been broadcast into those markets earlier in the day (along with a Friday night match and a Sunday afternoon match). This does not impact the AFL's requirement that 4 matches be broadcast on free-to-air television in that market in each regularly scheduled round.

We understand the Department understands and agrees with AFL's concerns with the proposed legislative instrument, and that each of these concerns can be dealt with by revised drafting.

2. *Removal of events from list 52 weeks before event*

The Bill allows for the de-listing of AFL matches if the AFL is unable to agree on terms with free-to-air television broadcasters for the arrangements to broadcast the matches on free-to-air television. De-listing would allow AFL to enter into agreements with subscription television providers and content service providers on an exclusive basis. From the AFL's perspective, if a situation warranting de-listing arose, the earlier AFL events are removed from the list and the AFL is free to go to market, the better.

The AFL's clear preference is that AFL matches will be removed from the anti-siphoning list 52 weeks prior to the start of the relevant AFL Season. This change should be included in the Bill rather than leaving the extension of time to a legislative instrument. This amendment involves changes to section 145E(6) of the Bill.

3. *Duration of rights agreements if AFL matches removed from the list*

If AFL matches are removed from the anti-siphoning list, the AFL should be able to enter into agreements with subscription television and content service providers for any period it chooses. For the past three AFL broadcasting agreements, the AFL has contracted for a term of 5 years and wishes to be free to enter agreements of similar duration in the future. There is nothing in the Bill or Explanatory Memorandum restricting the duration of the AFL's agreements in this situation. However, to make it clear, the AFL requests this position be acknowledged in the Bill or, at the least, in the Explanatory Memorandum.

4. *Process for acquisition and conferral of rights by subscription television and online and mobile providers*

The Bill currently provides to the effect that Tier B AFL matches that are in a Category A or Category B quota group can be licensed by the AFL to subscription television and content service providers at any time, provided that any acquisition by a subscription television licensee or a conferral of rights to a content service provider does not prevent, or is part of a scheme that would prevent, the licensing of those matches to a free-to-air television licensee.⁴

However, these provisions do not extend to AFL related anti-siphoning events that are not in a Category A or Category B quota group, being the AFL Finals Series matches.

The AFL has always licensed its rights on particular platforms as a whole, and not sought to have separate arrangements or licensees for Premiership Season matches and Finals Series. The AFL wishes to continue to be able to deal with its rights as a whole.

The AFL requests that the provisions of section 145ZN and 145ZO of the Bill be amended to apply the same restrictions to AFL Finals that apply to AFL matches in a Category A or Category B quota group, such that the AFL would be able to license rights to those matches without the need for a free-to-air television broadcaster to have acquired the rights first, provided that any acquisition or conferral of the rights does not prevent, or is part of a scheme that would prevent, the licensing of those matches to a free-to-air television licensee.

5. *Increased Ministerial discretions*

Under the current anti-siphoning law the Minister has a limited number of discretions. The Bill significantly increases the number of instances of Ministerial discretionary power. Under the new regime these discretions are exercised through

⁴ Section 145ZN(2) and (3); 145ZO(2) and (3)

legislative instruments, which are subject to Parliamentary scrutiny and disallowance.

The increased discretions under the new regime give the AFL less certainty when negotiating future commercial arrangements and, in our view, the discretions are much broader than required.

The AFL seeks that the provisions allowing for Ministerial discretion are as limited as possible.

Yours faithfully

Andrew Demetriou
Chief Executive Officer
Australian Football League