

# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 On 22 March 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the Broadcasting Services Amendment (Anti-siphoning) Bill 2012 to the Environment and Communications Legislation Committee (the Committee) for inquiry and report by 4 May 2012.

1.2 In accordance with usual practice, the Committee advertised the inquiry on its website. It also wrote to various organisations inviting submissions. The Committee received 19 submissions (listed at Appendix 1) and held a public hearing in Canberra on 13 April 2012 (see Appendix 2).

1.3 The Committee notes the short period of time between referral of the bill to the Committee and lodgement of submissions. The Committee appreciates the effort required to meet this timeframe, and thanks those organisations and individuals that made contributions to the inquiry.

### Background

#### *The anti-siphoning regime*

1.4 The "anti-siphoning list" is a list of sporting events that the Commonwealth Government has determined should be available to the Australian viewing public via free-to-air television. It is referred to as the anti-siphoning list because it seeks to prevent listed events being "siphoned off" to subscription television broadcasters thus preventing many Australians from viewing them.<sup>1</sup> Events on the current anti-siphoning list include:

- the opening and closing ceremonies of the Summer and Winter Olympic Games;
- the Melbourne Cup;
- the National Rugby League (NRL) State of Origin Series;
- the quarter-finals, semi-finals and the final of the Rugby World Cup tournament;
- cricket test matches involving the senior Australian representative team played in Australia;

---

1 Australian Communications and Media Authority (ACMA), *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

- the final of the Netball World Championships if it involves the senior Australian representative team; and
- each match in the Australian Football League (AFL) premiership competition, including the finals series.<sup>2</sup>

1.5 Under the existing anti-siphoning scheme, subscription television licensees are prohibited from acquiring the right to televise an event that is on the anti-siphoning list. However, in certain circumstances a subscription television licensee may acquire these rights:

- if free-to-air television broadcasters have not obtained these rights by 12 weeks before the start of the anti-siphoning event; or
- the right to televise an event is held by commercial television licensees who have the right to televise the event to more than 50 per cent of the Australian population; or
- the right to televise is held by either the Australian Broadcasting Corporation (ABC) or the Special Broadcasting Service (SBS).<sup>3</sup>

1.6 The current scheme requires free-to-air broadcasters to premiere anti-siphoning events on their analog channel and core digital channels. Events on the anti-siphoning list may be simulcast or repeated on a broadcaster's digital multichannels but cannot be shown first on a multichannel.<sup>4</sup>

1.7 The current anti-siphoning scheme does not:

- reserve listed events solely for free-to-air broadcasters;
- oblige free-to-air broadcasters to buy the rights to events on the list;
- guarantee free-to-air broadcasters exclusive rights to events on the list; or
- compel free-to-air broadcasters that acquire the rights to events on the list to broadcast the events live or in full.<sup>5</sup>

1.8 The anti-siphoning scheme is administered by the Australian Communications and Media Authority (ACMA).<sup>6</sup>

---

2 *Broadcasting Services Act 1992*, Broadcasting Services (Events) Notice (No. 1) 2010, available: <http://www.comlaw.gov.au/Details/F2012C00195> (accessed 11 April 2012).

3 ACMA, *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

4 ACMA, *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

5 ACMA, *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

6 ACMA, *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

---

## ***Reform to the anti-siphoning regime***

1.9 On 25 November 2010, the Minister for Broadband, Communications and the Digital Economy announced proposed reforms to the anti-siphoning scheme<sup>7</sup> 'to enhance television coverage of key sporting events in Australia'.<sup>8</sup>

1.10 The bill seeks to implement these reforms.<sup>9</sup>

### **Overview of the bill**

1.11 The Broadcasting Services Amendment (Anti-siphoning) Bill 2012 (the bill) seeks to amend the *Broadcasting Services Act 1992* (the Act) with respect to the anti-siphoning scheme and anti-hoarding rules.<sup>10</sup>

1.12 The proposed changes to the existing anti-siphoning regime are intended to 'enhance television coverage of key sporting events in Australia'.<sup>11</sup> The bill seeks to preserve the existing arrangement whereby subscription television broadcasters are prevented from acquiring the rights to events on the anti-siphoning list before free-to-air television broadcasters have had the opportunity to acquire these rights.<sup>12</sup> The bill also seeks to introduce coverage obligations for free-to-air broadcasters intended to ensure that all Australians have access to the best possible television coverage of significant sporting events.<sup>13</sup> In addition, the bill would bring the 'anti-siphoning scheme up-to-date with the modern television broadcasting environment' by taking into account the adoption of digital television and the use of digital multichannels.<sup>14</sup>

1.13 If enacted, the bill would also implement rules governing the acquisition of events on the anti-siphoning list by new media services such as online coverage rights by content service providers.<sup>15</sup>

---

7 ACMA, *Sport on television*, available: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91821](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91821) (accessed 4 April 2012).

8 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

9 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

10 Explanatory Memorandum, p. 1.

11 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

12 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

13 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

14 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

15 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570 and Explanatory Memorandum, p. 3.

### ***Listing and de-listing events***

1.14 The bill seeks to restructure the anti-siphoning list by allowing the minister to declare an anti-siphoning event as either 'Tier A' or 'Tier B' thereby applying different coverage obligations to each tier.

1.15 Tier A anti-siphoning events would include nationally iconic events, for example the Melbourne Cup and the AFL and NRL grand finals.<sup>16</sup> Tier B events would include regionally iconic and nationally significant events such as "home and away" matches in the AFL and NRL premierships competitions, the rugby league State of Origin series and the Olympic Games.<sup>17</sup> The bill would enable the minister to assign Tier B events to a designated group and specify the total minimum number of hours to be broadcast for a designated group.<sup>18</sup>

1.16 An event declared to be a Tier A or Tier B event would cease to be an anti-siphoning event (that is de-listed) 24 hours after the end of the event unless otherwise determined by the minister.<sup>19</sup>

1.17 For the purposes of the acquisition of broadcast rights by subscription television broadcasters and the conferral of rights on content service providers, an event would cease to be an anti-siphoning event 4368 hours (182 days) before the start of the event, where the event is in a designated group, or in the case of the AFL and NRL premierships competitions, 4368 hours (182 days) before the start of the first event in the competition.<sup>20</sup> The bill would also enable the minister to further extend this period to 8736 hours (364 days) for AFL and NRL competitions.<sup>21</sup> These changes to the de-listing periods are intended to provide greater opportunity for sporting bodies to negotiate openly with subscription television broadcasters for the rights to listed events that free-to-air broadcasters have chosen not to acquire.<sup>22</sup>

### ***Coverage obligations***

1.18 Free-to-air broadcasters that acquire the broadcast rights to Tier A events would be required to televise the event live with no delay or with as short a delay as is technically feasible.<sup>23</sup>

---

16 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

17 Explanatory Memorandum, pp 14–15.

18 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145F.

19 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145E.

20 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145E.

21 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

22 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2570.

23 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145B.

1.19 Free-to-air broadcasters that acquire the broadcast rights to Tier B events in a designated group would be required to televise the event with no delay or with a delayed starting time of not more than 24 hours.<sup>24</sup> Tier B events not in a designated group would be required to be televised with no delay or with a delayed starting time of not more than four hours, depending on the type of event.<sup>25</sup>

### ***Multichannelling***

1.20 The existing anti-siphoning scheme requires that all listed events are shown first or exclusively on a primary or main channel. The bill would allow free-to-air broadcasters to premiere Tier B events on digital multichannels.<sup>26</sup>

1.21 Tier A events would be required to be premiered on a free-to-air broadcaster's primary channel, with limited exceptions for Tier A events that overlap with regularly-scheduled news coverage or with other Tier A events to be televised on a multi-channel.<sup>27</sup> The bill would also allow the minister, by legislative instrument, to exempt broadcasters from the obligation to show Tier A events on a primary channel.<sup>28</sup>

### ***"Must offer" arrangements***

1.22 The bill provides for revised "anti-hoarding" measures (coverage obligations) that would apply to the broadcast of anti-siphoning events on free-to-air television.

1.23 Section 145H of the bill would require a commercial television broadcasting licensee to televise anti-siphoning events unless that licensee offers 'to transfer to each other commercial television broadcasting licensee and each national broadcaster...the right to televise live' the event and none of those offers was accepted.<sup>29</sup> By legislative instrument, the ACMA may grant exemptions to the requirement to televise anti-siphoning events.<sup>30</sup>

1.24 The bill would also require program suppliers to confer the right to televise an anti-siphoning event to a licensee except where the program supplier offers 'to transfer to each other commercial television broadcasting licensee and each national broadcaster...the right to televise live' the event and none of those offers was accepted.<sup>31</sup>

---

24 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145B.

25 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145B.

26 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

27 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, sections 145ZB and 145ZC.

28 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

29 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145H(1)–(3).

30 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145H(7)–(10).

31 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145J(1)–(6).

1.25 Sections 145K and 145L of the bill outline what would constitute an offer to transfer rights to televise live events. For the purposes of section 145L, an offer must be made in writing, must be made not less than 2880 hours (120 days) before the start of the event and must be open for acceptance by the offeree for 14 days from when the offer was made.<sup>32</sup> In these circumstances, the rights to an anti-siphoning event must be offered for a nominal consideration of \$1.<sup>33</sup>

1.26 If no free-to-air broadcaster takes up the right to televise live an anti-siphoning event offered by a licensee or program supplier, the rights must be offered to subscription television broadcasting licensees.<sup>34</sup>

1.27 These "must offer" obligations are intended to prevent a broadcaster from striking an agreement for the on-selling of unwanted rights on commercial terms and to prevent unwanted rights 'lying fallow'.<sup>35</sup>

### ***Designated groups***

1.28 The bill would enable the minister to declare that certain Tier B events form a 'designated group'.<sup>36</sup> This aspect of the bill is intended to provide flexibility to cover long-form, multi-round tournaments for example the Olympic Games, the Australian Open tennis tournament and golf tournaments.<sup>37</sup>

1.29 A broadcaster televising a designated group would be required to provide coverage of the group's events for a period of time equal to or greater than the 'total minimum number of hours', as specified by the minister.<sup>38</sup>

1.30 The bill would also allow the minister to determine a 'daily minimum number of hours', in addition to the total minimum number of hours, for a designated group.<sup>39</sup> This would address the risk that a broadcaster might provide an unreasonably low level of coverage on any particular day of a designated group.<sup>40</sup>

1.31 The designated group mechanism is not intended to cover weekly games of the AFL and NRL. A separate mechanism—the quota group mechanism—would be used in this instance.

---

32 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145L(2)–(5).

33 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

34 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

35 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

36 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145F.

37 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

38 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571..

39 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsection 145F(2).

40 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2571.

---

### *Quota groups*

1.32 Section 145G of the bill would empower the minister to determine that specified Tier B events comprise a 'quota group'.<sup>41</sup> These arrangements would be used for dealing with, and would be limited to, the AFL and NRL.

1.33 The bill would require the minister to declare that weekly matches of the AFL and NRL are quota groups for the purposes of the anti-siphoning scheme. The minister would be required to specify a 'quota number', which indicates the number of events in a group that must be shown on free-to-air television.<sup>42</sup> The maximum of quota number for each round of the AFL Premiership would be 4, while the maximum quota number for each round of the NRL Premiership would be 3.<sup>43</sup>

1.34 With respect to quota groups, the bill would enable the minister to specify 'associated set conditions'.<sup>44</sup> Associated set conditions would enable the minister to determine the types of matches to be protected as part of the quota number and 'ensure that the highest quality events in a quota group will be matches shown on free-to-air television'.<sup>45</sup> For example, the minister could specify associated set conditions for the television licence areas in Western Australia regarding AFL matches involving the West Coast Eagles or Fremantle Dockers. Matches involving these clubs would have to be included in the quota number in these licence areas and therefore could not be exclusively acquired by a subscription television broadcaster.<sup>46</sup>

### *New media providers*

1.35 The bill would restrict the extent to which the rights to anti-siphoning events could be conferred on content service providers, with the intention of preventing the rights to an anti-siphoning event being siphoned off to new media and no longer being freely available to Australian viewers.<sup>47</sup>

### *Application of the bill to existing broadcast rights*

1.36 If enacted, the coverage obligations in the bill would apply to all listed events acquired since 25 November 2010, the date on which the minister announced the reforms to the anti-siphoning scheme implemented by the bill.<sup>48</sup>

---

41 Explanatory Memorandum, p. 20.

42 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2572.

43 Explanatory Memorandum, p. 21.

44 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145G(2)–(5).

45 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2572.

46 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2572.

47 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2572.

48 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, pp 2572–2573.

1.37 Licensees who acquired rights to televise anti-siphoning events between 25 November 2010 and the commencement date of the bill would not be subject to the new coverage obligations for an event that takes place after the first 150 days following the commencement date (for example, the Nine Network's coverage of the 2012 Olympic Games in London).<sup>49</sup>

1.38 By way of further example, the rights to televise the 2012–2016 AFL Premiership competitions that were acquired by the Seven Network in 2011 will not be subject to the coverage obligations in section 145H.<sup>50</sup> The only exception would be AFL Grand Finals in the 2012–2016 seasons where it is the government's intention to include these events in the anti-siphoning list as Tier A events.<sup>51</sup>

### ***Enforcement and notification***

1.39 As is presently the case, the ACMA would be responsible for administering and enforcing the anti-siphoning scheme.

1.40 The bill would impose notification requirements on commercial television broadcasting licensees, national broadcasters and program suppliers.<sup>52</sup> The notification requirements imposed on broadcasters would require a broadcaster to notify the ACMA in writing within 10 business days about any rights to televise an anti-siphoning event that the broadcaster has acquired, or of any rights the broadcaster ceases to hold.<sup>53</sup>

1.41 The notification requirements imposed on program suppliers would also require the ACMA to be notified about any rights to televise an anti-siphoning event that a program supplier has acquired, or of any rights they cease to hold.<sup>54</sup> Program suppliers would also have to notify the ACMA of an entitlement to confer on a commercial television broadcasting licensee or a national broadcaster the right to televise the whole or part of an anti-siphoning event.<sup>55</sup>

1.42 Under the bill, and as is currently the case for the existing anti-siphoning regime, broadcasters would:

...be subject to the full range of enforcement provisions available under the *Broadcasting Services Act 1992*. These include criminal and civil penalties, the issuing of remedial directions, acceptance of enforceable undertakings,

---

49 Explanatory Memorandum, p. 49.

50 Explanatory Memorandum, p. 49.

51 Explanatory Memorandum, p. 49.

52 Explanatory Memorandum, pp 43–44.

53 Explanatory Memorandum, p. 44.

54 Explanatory Memorandum, p. 44.

55 Explanatory Memorandum, p. 44.

---

the imposition of additional licence conditions and possible suspension or cancellation of a broadcasting licence.<sup>56</sup>

1.43 Parties that have not traditionally been affected by broadcasting legislation (for example program suppliers and those conferring rights onto new media providers) may be subject to civil penalties for contravening certain elements of the new anti-siphoning scheme.<sup>57</sup>

### ***Review of the anti-siphoning provisions***

1.44 The bill would require a statutory review of the anti-siphoning scheme to be conducted before 31 December 2014.<sup>58</sup> The minister would be required to prepare a report of the review and present this report to the federal parliament within 15 sitting days after completion of the report.<sup>59</sup>

### ***Financial impact***

1.45 The bill is not expected to have any direct financial impact on the federal government.<sup>60</sup>

### **Issues regarding the bill**

1.46 Whilst numerous submitters voiced their opposition to the anti-siphoning scheme because it is 'inherently anti-competitive',<sup>61</sup> most submitters acknowledged the need for such a scheme and on this basis were broadly supportive of the bill.<sup>62</sup> During the course of the inquiry, however, various stakeholders raised concerns about some aspects of the bill. Key issues included:

- designated groups and the quota group mechanism;
- de-listing of events, in particular AFL and NRL games;
- the definition of 'live' and exemptions from the coverage obligations;

---

56 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2573.

57 Senator Jacinta Collins, *Second reading speech*, 22 March 2012, p. 2573.

58 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145ZV.

59 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsections 145ZV(2)–(3).

60 Explanatory Memorandum, p. 2.

61 See for example Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 3; Australian Football League (AFL), *Submission 3*, p. 2; ASTRA, *Submission 6*, p. 2; International Olympic Committee (IOC), *Submission 6*, pp 4–5 and Fox Sports, *Submission 14*, p. 3.

62 See for example Australian Rugby League Commission (NRL), *Submission 19*, p. 1; Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 6; Mrs Stephanie Beltrame, General Manager, Media Rights, Cricket Australia, *Proof Committee Hansard*, 13 April 2012, p. 7; FOXTEL, *Submission 11*, p. 2 and Fox Sports, *Submission 14*, p. 2.

- the must offer provisions and their impact on commercial negotiations;
- the right to televise an anti-siphoning event in part (highlight packages);
- the application of the anti-siphoning scheme to content service (new media) providers;
- the notification requirements, in particular the requirement to notify of rights no longer held;
- ministerial discretion; and
- the timing of the proposed statutory review.

1.47 These matters are discussed in Chapter 2.