

The Senate

---

Environment and Communications  
Legislation Committee

---

Broadcasting Services Amendment  
(Anti-siphoning) Bill 2012

May 2012

© Commonwealth of Australia 2012

ISBN 978-1-74229-626-5

This document was printed by the Senate Printing Unit, Parliament House, Canberra

## Committee membership

### *Committee members*

Senator Doug Cameron (ALP, NSW) (Chair)  
Senator Mary Jo Fisher (LP, SA) (Deputy Chair)  
Senator Catryna Bilyk (ALP, TAS)  
Senator Bridget McKenzie (NATS, VIC)  
Senator the Hon. Lisa Singh (ALP, TAS)  
Senator Larissa Waters (AG, QLD)

### *Substitute members for this inquiry*

Senator Scott Ludlam (AG, WA) to replace Senator Larissa Waters (AG, QLD)

### *Committee secretariat*

Ms Sophie Dunstone, Acting Secretary  
Mr Chris Lawley, Senior Research Officer  
Ms Jacque Hawkins, Research Officer  
Mrs Dianne Warhurst, Administrative Officer

### *Committee address*

PO Box 6100  
Parliament House  
Canberra ACT 2600  
*Tel:* 02 6277 3526  
*Fax:* 02 6277 5818  
*Email:* ec.sen@aph.gov.au  
*Internet:*

[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=ec\\_ctte/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ec_ctte/index.htm)



# Table of Contents

<b>Committee membership .....</b>	<b>iii</b>
<b>Acronyms and abbreviations .....</b>	<b>vii</b>
<b>Chapter 1 - Introduction .....</b>	<b>1</b>
Conduct of the inquiry .....	1
Background.....	1
Overview of the bill.....	3
Issues regarding the bill.....	9
<b>Chapter 2 - Key issues regarding the bill .....</b>	<b>11</b>
Listing and de-listing .....	11
Coverage obligations .....	18
Right to televise an anti-siphoning event in part (highlights packages) .....	21
Application of the scheme to content service providers.....	23
Notification requirements .....	25
Ministerial discretion.....	26
Review of the new anti-siphoning regime.....	28
<b>Appendix 1 - Submissions and answers to questions taken on notice .....</b>	<b>31</b>
Submissions .....	31
Answers to questions taken on notice .....	32
<b>Appendix 2 - Public hearings .....</b>	<b>33</b>
<b>Appendix 3 - Draft anti-siphoning list .....</b>	<b>35</b>
<b>Draft determination of Category B quota groups.....</b>	<b>46</b>



## Acronyms and abbreviations

<b>ABC</b>	Australian Broadcasting Corporation
<b>ACMA</b>	Australian Communications and Media Authority
<b>AFL</b>	Australian Football League
<b>CEO</b>	Chief Executive Officer
<b>DBCDE</b>	Department of Broadband, Communications and the Digital Economy
<b>FTA</b>	free-to-air
<b>IOC</b>	International Olympic Committee
<b>IPTV</b>	internet protocol television
<b>NBN</b>	National Broadband Network
<b>NRL</b>	National Rugby League
<b>SBS</b>	Special Broadcasting Service
<b>the Act</b>	<i>Broadcasting Services Act 1992</i>
<b>the bill</b>	Broadcasting Services Amendment (Anti-siphoning) Bill 2012
<b>the Committee</b>	Senate Environment and Communications Legislation Committee





# 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.

# Chapter 2

## Key issues regarding the bill

2.1 As mentioned in Chapter 1, numerous submitters voiced their opposition to the anti-siphoning scheme because it is, in their view, anti-competitive but at the same time acknowledged the need for such a scheme.<sup>1</sup> During the course of the inquiry, various stakeholders raised issues about some aspects of the bill, including:

- 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;
- 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.

2.2 These issues are discussed in the following sections.

### Listing and de-listing

2.3 Some submitters to the inquiry expressed concerns about the treatment of designated group and quota group events, as well as the de-listing of some anti-siphoning events. These issues are discussed below.

#### *Designated groups*

2.4 The bill would enable the minister 'to determine the circumstances in which multiple simultaneously and consecutively occurring Tier B anti-siphoning events would be broadcast on free-to-air television'.<sup>2</sup> As outlined in Chapter 1, this is the "designated group mechanism" and is intended to deal with events such as the Olympic and Commonwealth Games where each day of the event can exceed 12 hours

---

1 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; Fox Sports, *Submission 14*, p. 3 and Australian Rugby League Commission (NRL), *Submission 19*, p. 1.

2 Explanatory Memorandum, p. 18.

duration or involves multiple simultaneously occurring contests and it would be impractical for a broadcaster to televise the event in full in order to fulfil their coverage obligations.<sup>3</sup>

2.5 The International Olympic Committee (IOC) and FOXTEL raised concerns about the designated group mechanism. The IOC noted that the explanatory memorandum specifically identifies the Summer and Winter Olympic Games as examples of events that may be determined to be a designated event.<sup>4</sup> The IOC was concerned, however, that there was no certainty that the Olympic Games would be declared a designated group:

The IOC assumes the Minister intends to declare the Summer and Winter Olympics after the 2012 Olympic Games to be a designated group. If this does not occur, the capacity constraints will mean that the Bill is simply unworkable in respect of the Olympic Games. However, there is presently no certainty for the IOC that a declaration will actually be made.<sup>5</sup>

2.6 FOXTEL was similarly concerned about which events would be declared designated group events as well as the total minimum number of hours free-to-air broadcasters would be required to televise of each designated event.<sup>6</sup> FOXTEL opined that the minimum number of hours for multi-round events such as the Olympic Games 'should not be too high':

In FOXTEL's view it is critical that in calculating the number of hours in each designated group the Government use the actual number of hours of original content broadcast—and excludes from its calculation advertising, recaps and news breaks always contained in any one hour of such multi-round broadcasts.

If this is not done it will lead to the unintended consequence of [free-to-air] broadcasters having to broadcast events on their second channel, in order to comply with the 'must broadcast' obligation, that they would not otherwise broadcast. This will have flow-on effects for [subscription television] in terms of how the broadcast rights would be typically split for such events.<sup>7</sup>

### *Quota groups*

2.7 The bill proposes to enable the minister to determine that certain Tier B events comprise a quota group, and subsequently whether that quota group is a Category A quota group or a Category B quota group.<sup>8</sup> Category A quota groups would comprise solely of a numerical quota—the 'quota number' (that is, the number

---

3 Explanatory Memorandum, pp 18–19.

4 IOC, *Submission 9*, p. 8.

5 IOC, *Submission 9*, p. 8.

6 FOXTEL, *Submission 11*, p. 11.

7 FOXTEL, *Submission 11*, p. 13.

8 Explanatory Memorandum, p. 20.

of events that must be made available on free-to-air television)—while Category B quota groups would comprise a quota number and qualitative conditions known as 'associated set conditions'.<sup>9</sup>

2.8 The bill would require a quota number not greater than four for a quota group containing matches in the AFL Premiership competition and not greater than three for matches in the NRL Premiership competition.<sup>10</sup>

2.9 The quota group mechanism '...is designed to deal with, and is limited to, the multi-round inter-state competitions of the AFL Premiership and NRL Premiership'.<sup>11</sup>

2.10 The Australian Football League (AFL) was concerned about the application of the Category B quota group mechanism to certain rounds of the AFL Premiership competition. The AFL suggested that a quota number of four was inappropriate in cases where there was a split round or a round where fewer than nine games are played:

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.

...

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.<sup>12</sup>

---

9 Explanatory Memorandum, p. 20 and Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsection 145G(2).

10 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsection 145G(11).

11 Explanatory Memorandum, p. 20.

12 AFL, *Submission 3*, p. 4.

2.11 The AFL also raised the associated set conditions which may be applied to Category B quota groups, as did Free TV Australia.<sup>13</sup> The AFL was of the view that it was best placed to decide which AFL games are "quality" games:

We have an equalised competition which is cyclical and what are the best matches—a term used regularly in the context of these negotiations—is best determined by us. What is the best game depends on where you live. If you live in Western Australia, you will have a different view as opposed to those living in South Australia or Melbourne. You would also have a different view if you are a coach of a club as opposed to CEO of a club—football versus commercial interests. You would also have a different view if you are a player about what you would want out of your fixture. We maintain—and I think we have a track record over the last 10 years—a clear view of what are appropriate games to put on free-to-air television. We are [a] mass-market code and there are a series of things which need to be considered in determining which games are shown in which slots and on what platform. We certainly think we are in the best position to do that and to balance the needs of players, travel loads, club issues commercial issues and football issues.<sup>14</sup>

2.12 Free TV Australia was concerned that the bill did 'not provide sufficient guarantees to ensure that the best games are not siphoned [to] pay TV'.<sup>15</sup> Ms Julie Flynn, Chief Executive Officer of Free TV Australia, noted statements by the minister that "blockbuster" games, such as Friday and Saturday night games, would remain on free-to-air television. However, Free TV Australia wanted this explicitly in the bill:

When the minister first announced these changes in November 2010, he said, for instance:

"However, the Government will put in place a mechanism to:

Protect the quality of games on free-to-air television, ensure that Friday and Saturday night games remain 'blockbuster games' in the round..."

Then he went on to say:

"We've got commitments from the AFL that the Friday night game is the best game, the Saturday night game is the second-best game."

There is no evidence of that that we can see in the drafting.

...

So our concern is that these rules need to be in place to ensure that those games do not suddenly get siphoned off. Bear in mind that we have access

---

13 AFL, *Submission 3*, p. 4 and Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 16.

14 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 5.

15 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 16.

---

to only four games in every round; we do not have access to all games in every round.<sup>16</sup>

2.13 Tennis Australia raised a different concern about the quota group mechanism, questioning why it was limited to competitions of the AFL and NRL. Tennis Australia proposed that the quota group mechanism be extended to the Australian Open so that the new anti-siphoning scheme did not result in a perverse outcome where less, rather than more, tennis would be shown on television.<sup>17</sup>

The proposed bill creates an exception for the AFL and the NRL. The exception is called the 'quota group' and it is set out in section 145G. Tennis Australia submits that this exception should be applied to the Australian Open and other applicable sporting events because there is simply more Australian Open match content available than can be possibly broadcast by a free-to-air broadcaster. To confirm, Tennis Australia believes that the introduction of the quota group mechanism is an important and sensible legislative initiative. However, we do not believe that it is equitable to permit this mechanism to be applied to only two sports and we cannot identify any objective criteria or compelling policy rationale for doing so. Tennis Australia is prepared, like the other sports, to commit to guaranteeing free-to-air coverage of parts of the Australian Open to ensure that the most important matches remain on free-to-air television. However, the remainder of the Australian Open should be removed from the list and excluded using the same exceptions afforded to the AFL and the NRL.<sup>18</sup>

2.14 To address some of the concerns raised about the content of the anti-siphoning list and the quota groups, the Department of Broadband, Communications and the Digital Economy (DBCDE) provided the Committee with a draft of the anti-siphoning list comprising Tier A and Tier B events as well as a draft of the Category B quota groups determination, including the associated set conditions for each AFL premiership quota group. These are attached at Appendix 3.

### *De-listing*

2.15 As outlined in Chapter 1, the bill would provide for the de-listing of anti-siphoning events 4368 (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 premiership competitions, 4368 hours (182 days) before the start of the first event in the competition, for the purposes of the acquisition of broadcast rights by subscription television broadcasters and the conferral of rights on content service providers.<sup>19</sup> The bill would also enable the

---

16 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 17.

17 Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, pp 3–4.

18 Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 4.

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

minister to further extend this period to 8736 hours (364 days) for AFL and NRL competitions.<sup>20</sup>

2.16 Sporting organisations and broadcasters alike raised the de-listing provisions during the course of the inquiry. The AFL and NRL were supportive of their events being delisted 364 days (52 weeks) rather than 182 days prior to their commencement.<sup>21</sup> The AFL stated its preference to have the '52-week delisting period...hard-wired into the bill, not left to ministerial discretion in a legislative instrument'.<sup>22</sup>

2.17 With respect to the de-listing of anti-siphoning events that are not AFL or NRL games, the SBS felt that the proposed timing of 26 weeks prior to an event 'leaves a very small window of opportunity, and for some matches no opportunity at all, to acquire the rights'.<sup>23</sup> The SBS indicated its desire 'to acquire the rights to televise the Socceroos qualifiers' but suggested that the de-listing period as proposed in the bill would hamper its efforts to do so.<sup>24</sup> Further, the SBS was concerned that if the de-listing period remained at 26 weeks it would '...have to rely on the Minister to determine an appropriate delisting time under section 145E(d) or determining an alternative delisting time under section 145E(f)'.<sup>25</sup>

2.18 As an alternative, the SBS recommended that:

A better way of dealing with these situations would be to specify an appropriate delisting period which allows for a reasonable opportunity to acquire the rights to the event counting back from the date on which the rights holders are known.<sup>26</sup>

2.19 In response to the AFL's concerns, DBCDE stated:

The AFL appears to be seeking an outcome whereby the automatic delisting of a particular AFL Premiership season applies to additional seasons occurring in the future. This is not how the delisting provisions will operate, or are intended to operate.

...

---

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

21 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 8 and Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 7.

22 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 2.

23 Special Broadcasting Service (SBS), *Submission 5*, p. 1.

24 SBS, *Submission 5*, p. 1.

25 SBS, *Submission 5*, p. 2.

26 SBS, *Submission 5*, p. 2.



---

The anti-siphoning scheme does not restrict the acquisition of rights to events not on the anti-siphoning list. This includes events removed from the list, provided acquisition takes place after their removal. Based on the above expectations about the composition of the future anti-siphoning list, it would be open to the AFL to negotiate its next rights deal in the period in 2016 after the 2017 competition had been delisted (under the automatic delisting provisions). This would mean the AFL would not be restricted by the operations of the anti-siphoning scheme for the matches in 2017. However, the anti-siphoning scheme would still apply to the 2018 competition and beyond.

It should be emphasised that these conditions are less restrictive than those under which the current AFL rights deal was negotiated in 2011. Nonetheless, it would be open to the AFL to request in 2016 that the Minister remove all matches in all years covered by its proposed next rights agreement from the anti-siphoning list. In considering that request, it could be expected that the Minister would consider whether the proposed agreement met expectations about the quality of free-to-air coverage of AFL matches. If matches were removed from the anti-siphoning list in this manner, the Minister would not be obliged to make a category A or B quota group instrument covering the period in which those matches were played as such an instrument would no longer be necessary.<sup>27</sup>

### *Committee view*

2.20 In regards to the quota group mechanism, the Committee accepts Tennis Australia's concern that the new anti-siphoning scheme may unintentionally prevent more live tennis being seen on television in Australia, albeit subscription television.

2.21 As such, the Committee sees merit in Tennis Australia's suggestion that the quota group mechanism be expanded to include the Australian Open so that certain content from this tournament is available to subscription television broadcasters, whilst ensuring that key matches remain on the Tier A anti-siphoning event list and available on free-to-air television. The Committee therefore recommends that the Commonwealth Government consider amending the bill so that, if and where appropriate, the quota group mechanism can be applied to specified sporting events in addition to the AFL and NRL premiership competitions.

### **Recommendation 1**

**2.22 The Committee recommends that the Commonwealth Government consider amending the bill so that, if and where appropriate, the quota group mechanism can be applied to specified sporting events in addition to the AFL and NRL premiership competitions.**

---

27 Department of Broadband, Communications and the Digital Economy (DBCDE), *Answer to question on notice*, 13 April 2012 (received 20 April 2012).

## Coverage obligations

2.23 Some of the coverage obligations proposed in the bill were the subject of debate during the inquiry. These are discussed in the following sections.

### *Definition of live*

2.24 The bill defines 'live' coverage for Tier A anti-siphoning events as 'with no delay' or 'with as short a delay as is technically feasible'.<sup>28</sup> For Tier B events, live is defined as 'with no delay' or 'with a delayed starting time of not more than 24 hours'.<sup>29</sup>

2.25 For Tier B events that are not in designated a group, the bill would accommodate televising 'live' with a delay in coverage of up to four hours, depending on the type of event.<sup>30</sup>

2.26 During the course of the inquiry, sporting organisations expressed different views about the definitions of live proposed in the bill. The AFL was supportive of the flexibility provided in the bill to enable AFL games to be broadcast with up to four hours delay, as this would assist the AFL to obtain the 'maximum television audience'.<sup>31</sup> The NRL shared this view.<sup>32</sup> Cricket Australia voiced its support for the definition of live for Tier A events but was concerned by some of the exemptions to the coverage obligations:

Cricket is always broadcast live and substantially in full and we want to see that continue. We like the definition of live as it stands for tier A events and we acknowledge that it also includes or extends to an in-full concept is well. The issue we have, which we would like some clarity around, is that there is an ability for the Australian Communications and Media Authority to prospectively say that a free-to-air broadcaster has broadcast an event live and in full when in fact there have been interruptions or other breaks in their coverage. To our mind, we would like the guiding principles in the act to be for the ACMA to take into consideration where those events occurred to be tightened up. We think if the event is good enough to be on tier A and the principles are that it is live and in full, that there should not be broad exceptions or a broad discretion for the regulatory body to prospectively deem something to be live and in full. It should be live and in full—it is as simple as that.<sup>33</sup>

---

28 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsection 145B(1).

29 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, subsection 145B(2).

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

31 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 11.

32 Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 11.

33 Ms Libby Owens, Broadcast Rights and Regulatory Manager, Cricket Australia, *Proof Committee Transcript*, 13 April 2012, p. 11.

2.27 As a result, Cricket Australia submitted that exemptions from the coverage obligations applicable to Tier A events should not be left to ministerial discretion but rather '[i]f the exceptions are retained in the Bill, a full replay should immediately follow the News Bulletin or other listed events with no exceptions'.<sup>34</sup>

2.28 Tennis Australia indicated that sporting organisations have differing views about what constitutes live coverage and remarked that the inherent value in sporting events was that 'people want to see events live'.<sup>35</sup>

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

2.29 Some submitters expressed concerns about the provisions in the bill that would require free-to-air broadcasters to offer to other free-to-air broadcasters, and subsequently subscription television broadcasters, rights they had acquired but are unable to meet the relevant coverage obligations for a nominal consideration of \$1.<sup>36</sup>

2.30 Free TV Australia opposed the must offer arrangements, stating:

The \$1 must offer scheme is just impractical and does not understand the nature of sporting rights and how they are located. I am sure there was not anyone sitting at this table who would have been prepared to do a deal with a free-to-air broadcaster on the understanding that you could then pass on the rights to anyone you chose for a dollar.<sup>37</sup>

2.31 Free TV Australia outlined a number of reasons why it believed these provisions would be 'unworkable', including that broadcasters do not own the rights they acquire and therefore do not have an unfettered right to deal with the rights in any manner they so choose and that broadcasters are 'subject at all times to the requirements of upstream licensors and the scope of the licence granted to the broadcaster by the principal licensor to whom the broadcaster is contractually bound'.<sup>38</sup> Free TV Australia proffered that anti-hoarding could instead be prevented:

...if section 145H(3) simply provided that a free-to-air broadcaster would not be in breach of its coverage obligations where it arranged for another free-to-air broadcaster to televise the event. The provision does not need to lay out the terms of supply because failure by a broadcaster to transfer coverage rights would lead to a breach of its licence condition. This can

---

34 Cricket Australia, *Submission 13*, p. 3.

35 Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 12.

36 See Cricket Australia, *Submission 13*; Free TV Australia, *Submission 12*, p. 7; Tennis Australia, *Submission 17*, p. 8; IMG Pty Ltd, *Submission 10*, pp 5–6; FOXTEL, *Submission 11*, p. 13 and Fox Sports, *Submission 14*, p. 8.

37 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 16.

38 Free TV Australia, *Submission 12*, p. 7.

result in a range of sanctions including a substantial penalty of up to \$220,000.<sup>39</sup>

2.32 Tennis Australia and Cricket Australia agreed with Free TV Australia's assertion that the must offer arrangements would undermine sporting organisations' ability to control their broadcast rights.<sup>40</sup> Tennis Australia stated:

Tennis Australia does not object to the principle underpinning the "must offer" scheme, but we do maintain that the sporting organisations themselves (not FTA broadcasters) should retain control of, or be meaningfully involved in, the process of granting broadcast rights to their sporting events. In the event that a FTA broadcaster elects not to televise a listed event, the sporting organisation that owns that event should have the opportunity to deal directly with Pay TV and FTA providers to ensure that, given the possible short timeframe, their event is televised and available to Australian television audiences. This "must-offer" scheme is also potentially inconsistent with the contracts agreed between sporting organisations and FTA broadcasters (including assignment and subcontracting clauses).<sup>41</sup>

2.33 Subscription television broadcasters were supportive of measures to prevent hoarding by free-to-air broadcasters<sup>42</sup> but argued the must offer provisions could have an adverse impact on commercial negotiations and may be susceptible to "gaming" by free-to-air broadcasters.<sup>43</sup> Fox Sports claimed that the must offer provisions would entrench:

...the opportunity for free-to-air broadcasters to manipulate the acquisition process to ensure their exclusive access to the rights to broadcast anti-siphoning events, at the expense of sporting bodies who may wish to secure coverage of their events via other media.

This is because the proposed framework operates to provide free-to-air broadcasters with not only two opportunities to acquire rights before subscription television and content service providers are able to acquire any rights to the event, but also the opportunity to acquire the rights for a token \$1.<sup>44</sup>

2.34 With respect to the must offer for \$1 arrangement, the department explained that this was '[o]ne of the central tenets of the anti-siphoning regime as it is proposed

---

39 Free TV Australia, *Submission 12*, p. 7.

40 Cricket Australia, *Submission 13*, p. 3 and Tennis Australia, *Submission 17*, p. 8.

41 Tennis Australia, *Submission 17*, p. 8.

42 See for example Mr Richard Freudenstein, Chief Executive Officer, FOXTEL, *Proof Committee Hansard*, 13 April 2012, p. 26.

43 See IMG Pty Ltd, *Submission 10*, pp 5–6; FOXTEL, *Submission 11*, p. 13 and Fox Sports, *Submission 14*, p. 8.

44 Fox Sports, *Submission 14*, p. 8.

---

in the bill' and would be such a disincentive to hoard that the provision would not be used.<sup>45</sup> Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE continued:

We would assume that when people buy rights they buy them to show them. That would be the normal course of business. But there may be circumstances where somebody acquires the right to televise but then for various reasons cannot show it...what happens once you reach the 120 days is some fairly tough provisions kick in that say you have to do something with those rights now. The whole objective is to make sure that those rights are available to the public or to maximise the opportunity for those rights to be available to the public, so you have to put it on the table for a peppercorn rent and give other free-to-air broadcasters the chance to do that.

That is done quite deliberately because what you do not want is to have any barriers in the way such as financial barriers. You do not want people to game the system and say, "Oh, nobody took it up because we offered it for an enormous price." Having said that, of course, nothing stops a broadcaster negotiating in advance of the 120 days to sell the rights on normal commercial terms with anybody, including a subscription broadcaster. So, if well before the event they knew they were not going to be able to show it, they could go negotiate with other free-to-air broadcasters or a subscription broadcaster and say: "Here's a package of rights. Can we work out a deal and a price for those rights?" Why a subscription broadcaster would do that might be because they have said: "This is a very valuable set of rights. We'd like to get it. If we wait till it comes to us at the end of the peppercorn rent period then there is a good chance we might not ever get those rights because somebody else may have taken it up".<sup>46</sup>

### *Committee view*

2.35 In regard to the must offer arrangements, the Committee agrees with the department's position that these provisions will be a sufficient disincentive so as to deter free-to-air broadcasters from deliberately hoarding broadcast rights. If this proves not to be the case, the proposed statutory review of the anti-siphoning regime before 31 December 2014 will provide an opportunity to critically examine this aspect of the scheme.

### **Right to televise an anti-siphoning event in part (highlights packages)**

2.36 Section 145ZN of the bill proposes to limit the circumstances in which subscription television broadcasters can acquire the right to televise anti-siphoning events. In particular, subscription television broadcasters would be prevented from

---

45 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, p. 42.

46 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, pp 42–43.

acquiring the rights to televise an anti-siphoning event unless a national or free-to-air television broadcaster has the right to televise 'the whole or a part' of that event.<sup>47</sup>

2.37 The ability of subscription television broadcasters to acquire rights for an anti-siphoning event when free-to-air broadcasters had only acquired the right to televise that event in part was of concern to Free TV Australia. Ms Julie Flynn of Free TV Australia remarked:

The determination that a highlights package qualifies as free-to-air coverage in our view undermines the intent of the act. Viewers expect that free-to-air coverage means more than a highlights package and previous court rulings also support this position.<sup>48</sup>

2.38 Free TV Australia claimed international experience demonstrated 'that major sporting events move to pay TV once regulatory protections are removed or relaxed':

The experience in the UK serves as a powerful example of the detrimental effects of allowing a highlights package to qualify as coverage of a significant sporting event. Any relaxation of the regulatory protections will inevitably result in the migration of sport to pay TV and a significant overall reduction in Australians seeing these events.

Limited highlights coverage of a listed event on free-to-air should not remove the prohibition on pay TV acquiring rights to that listed event. If enacted in its current form, section 145ZN may result in less rather than more free-to-air coverage of listed events, as seen in the UK.

This can be remedied by amending the relevant provision so that the prohibition on acquisition of rights to the event applies, unless a national or commercial free-to-air television broadcaster has acquired "a substantial proportion" of the event. The amendment should replace "in whole or part" in sections 145ZN(1)(a) and (b) with the words "a substantial proportion". The wording "a substantial proportion" will also encompass the whole of the event. A similar approach should be taken in sections 145ZN(2) and (3), and 145ZO (in relation to content service providers).<sup>49</sup>

2.39 Sporting organisations, such as the AFL, NRL and Tennis Australia, emphasised the importance of free-to-air television to their sports and rejected the claim that less of their sports would be shown on free-to-air television in the future.<sup>50</sup> Mr Gillon McLachlan of the AFL and Mr Tim Browne of Tennis Australia summarised these views:

---

47 Broadcasting Services Amendment (Anti-siphoning) Bill 2012, section 145ZN.

48 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 16.

49 Free TV Australia, *Submission 12*, pp 5–6.

50 See Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 2; Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 14 and Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 14.

**Mr McLachlan:** ...I think it would be an extraordinary day when our sport in that context would ever sell all of our games to pay television. [All I] can say is that we are on record as saying that we have a position that we would always see four games of football on free-to-air television.

**Mr Browne:** If I could just confirm that we are in the same position. Free-to-air is essential. Our free-to-air broadcaster, it should be noted, does a fantastic job of showcasing our event to Australia and around the world.<sup>51</sup>

2.40 The department explained that the provisions in the bill allowing a broadcaster to televise an anti-siphoning event in whole or in part were intended to provide flexibility and enable rights holders and broadcasters to freely negotiate packages of broadcasting rights:

Generally speaking, there is a great deal of flexibility for people to decide how they want to package their rights. It does not say that you have to package it in a particular way. Essentially, what the bill does is talk about rights being made available. It allows for people to have the whole of or part of a right. That would certainly include what might be called a highlights package, although I imagine that there are different ways you could do a highlights package, and that is not inconsistent with the provisions of the bill. Basically it means that, if a free-to-air broadcaster and a rights holder are able to come to an agreement about how a particular set of rights is packaged and the agreement is that the free-to-air broadcaster wants this particular set of highlights or key points in the game or whatever, then that is a perfectly legitimate thing for them to do. Having done that, that means that the right to televise is acquired, which then releases the rights in terms of the things that the subscription broadcasters can do to them. So certainly a package of rights can be dealt with in this way.<sup>52</sup>

### **Application of the scheme to content service providers**

2.41 As mentioned in Chapter 1, the bill would, for the first time, extend the anti-siphoning regime to content service providers, for use online or on mobile devices such as mobile phones. Telstra and Cricket Australia opposed the application of the anti-siphoning scheme to content service providers on the basis this was unnecessary<sup>53</sup> and, in Testra's opinion, 'there is no evidence that deleterious siphoning to new media has occurred or will occur in the foreseeable future'.<sup>54</sup> Cricket Australia claimed that extending the anti-siphoning regime to new media would 'artificially [hinder]

---

51 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 14 and Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 14.

52 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, p. 41.

53 Telstra, *Submission 8*, p. 2 and Cricket Australia, *Submission 13*, p. 4.

54 Telstra, *Submission 8*, p. 2.

convergence and innovation via unnecessary regulatory interference and should therefore be removed from the Bill'.<sup>55</sup>

2.42 Other submitters, however, were supportive of the anti-siphoning regime being applied to content service providers and wanted to see these provisions strengthened.<sup>56</sup> Both SBS and Free TV Australia wanted the provisions extended so that they captured events that occur outside Australia.<sup>57</sup> SBS explained:

The requirement that the event occur "in Australia" is too limited and introduces a further tier of lesser protection for events occurring outside Australia. In SBS's view, if an event has qualified for the list, it should qualify to ensure that it cannot be siphoned by either a subscription television broadcasting licensee or a content service provider. For example the current drafting would mean that a Socceroos match in Australia would be potentially protected from siphoning by an IPTV provider but not one played overseas, even if a World Cup match – a distinction unlikely to be appreciated by SBS's viewers.<sup>58</sup>

2.43 Despite opposing the application of the anti-siphoning scheme to content service providers, and in contrast to SBS' position, Telstra was:

...encouraged to see that the unique position of online broadcasters has been recognised in the proposed legislation by limiting the application of the anti-siphoning rules for content service providers to events held in Australia. The advent of online broadcasting has caused a paradigm-shift in the effect of domestic regulation which has not so far been widely reflected in policy solutions. Imposing regulation on domestic online broadcasters that cannot be enforced against offshore broadcasters places them at a competitive disadvantage without delivering any real benefits for consumers. The proposed legislation avoids this pitfall for events occurring outside Australia and in that regard has Telstra's strong support.<sup>59</sup>

### ***Committee view***

2.44 Given the burgeoning use of new media the Committee believes it is appropriate for the anti-siphoning regime to take account of content service providers. The Committee is also aware that the rapidly evolving media landscape will likely impact on the new anti-siphoning regime and its application to new media platforms. The proposed statutory review of the anti-siphoning scheme is an appropriate process during which the relevance and effectiveness of the regime in this regard can be assessed.

---

55 Cricket Australia, *Submission 13*, p. 4.

56 See the Australian Broadcasting Corporation (ABC), *Submission 2*; SBS, *Submission 5* and Free TV Australia, *Submission 12*.

57 SBS, *Submission 5*, p. 2 and Free TV Australia, *Submission 12*, p. 9.

58 SBS, *Submission 5*, p. 2.

59 Telstra, *Submission 8*, pp 2–3.



---

## Notification requirements

2.45 As discussed in Chapter 1, the bill would impose notification requirements on commercial television broadcasting licensees, national broadcasters and program suppliers.<sup>60</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>61</sup>

2.46 Free TV Australia was critical of the requirement of broadcasters to notify the ACMA of rights no longer held within 10 days and described the notification requirements as 'cumbersome and unnecessary'.<sup>62</sup> As an alternative, Free TV Australia recommended that broadcasters be given 30 days to notify the regulator of rights no longer held or advise at the time rights are acquired when those particular rights will cease:

An extension of 30 days is not an unreasonable ask. Our issue about not having to notify is: what is the point of notifying when you no longer have them? Let us just say that, at the end of five years, if the AFL were covered and Channel 7 decided not to pursue them and another network took them, they would have to notify you that they have them. What is the point of that? There would be serious financial payments and penalties if you did not, yet you have only 10 days. It is not really going to be of any concern to anyone at the network, presumably, if they are no longer doing it...In the way it is drafted at the moment, you have to notify within 10 days of the cessation of the rights, so if someone makes a five-year deal and they know the end date when they make the deal they cannot tell ACMA then. They have to wait until the end of the deal and then they have this short 10-day window in which to notify ACMA. If they do not do it within that 10-day window, they can be fined \$55,000 a day. That is just silly, really. Why should we not be able to notify the end date of the deal at the time we acquire the rights? That would make sense, otherwise it is just unnecessary red tape.<sup>63</sup>

### *Committee view*

2.47 The Committee considers the proposal in the bill that would require broadcasters to notify the ACMA of rights the broadcaster has acquired within 10 days is a reasonable requirement and understands this would comprise a simple form to complete. That said, the Committee sees merit in allowing broadcasters to inform

---

60 Explanatory Memorandum, pp 43–44.

61 Explanatory Memorandum, p. 44.

62 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 16.

63 Ms Julie Flynn, Chief Executive Officer, and Ms Clare O'Neil, Director of Legal and Broadcasting Policy, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, pp 17–18.

the ACMA of the expiration date of broadcast rights at the time those rights are acquired (noting that further notification by broadcasters would be required if there was any change to this expiration date). The Committee therefore recommends that the bill be amended accordingly.

## **Recommendation 2**

**2.48 The Committee recommends that the bill is amended to enable broadcasters to notify the Australian Communications and Media Authority (ACMA) of the expiration date of broadcast rights at the time those rights are acquired and / or upon any change to the expiration date.**

## **Ministerial discretion**

2.49 Throughout the inquiry, various submitters expressed concern about the discretion afforded to the minister to make decisions under the proposed legislation.<sup>64</sup> Telstra's view was indicative of these concerns:

The revised regime delivers a great deal of discretion to the Minister to set important parameters by determination once the legislation is passed. The effect will be to introduce unnecessary commercial uncertainty into rights negotiations and further distort the basis on which rights are acquired...Some degree of discretion may be necessary to accommodate future changes in the commercial environment, but this need is closely limited by the mandatory review to be undertaken by the end of 2014. On that basis most outstanding parameters should either be fixed in a schedule to the legislation, or made by determinations which cannot be varied before the regime is reviewed.<sup>65</sup>

2.50 FOXTEL emphasised subscription broadcasters' desire for certainty:

I think what rights holders and broadcasters are looking for here is certainty. I think certainty is a pretty important issue. Discretions, and this number of discretions, create uncertainty which potentially undermines the amount subscription broadcasters are willing to pay for rights, which ultimately reduces the funding which might otherwise flow back to the sporting codes. It also means that sports codes lose control of their rights, as the bill gives the minister the power to determine which events are broadcast on free-to-air television. So, in our view, the minister should have far fewer discretionary powers to choose what is shown and when. Broadcasters of sporting codes really require more certainty to plan their

---

64 See AFL, *Submission 3*, pp 5–6; ASTRA, *Submission 6*, pp 6–7; ESPN, *Submission 7*, Attachment 1, p. 2; Telstra, *Submission 8*, p. 2; FOXTEL, *Submission 11*, pp 10–11; Cricket Australia, *Submission 13*, pp 2–3; Fox Sports, *Submission 14*, pp 6–7; Viacom International Media Networks Australia and New Zealand, *Submission 15*, p. 3; BBC Worldwide, *Submission 16*, p. 2 and Mr Ian Flatley, *Submission 18*, p. 2.

65 Telstra, *Submission 8*, p. 3.

---

businesses. So I implore the committee to recommend a much more certain path forward...<sup>66</sup>

2.51 Whilst concerned about the extent of ministerial discretion proposed by the bill, sporting organisations were keen to ensure that they had flexibility. The AFL wanted flexibility around broadcasting games live;<sup>67</sup> Tennis Australia wanted the flexibility afforded by the quota group mechanism to be applied to tennis;<sup>68</sup> the NRL wanted 'flexibility to be able to negotiate on commercial terms and not have government interference in those broadcast negotiations'<sup>69</sup> and Cricket Australia believed it 'should have the flexibility and the freedom to make sensible decisions' about packaging its broadcast rights.<sup>70</sup>

2.52 The DBCDE acknowledged the need for flexibility in the anti-siphoning regime and indicated the government's intention for this flexibility to create an iterative regulatory process in which industry would be involved.<sup>71</sup> Dr Pelling remarked:

...ministerial discretion is at the heart of this, and that basically reflects the fact that it is in the interests of all the parties concerned to have a degree of flexibility around these things. There are a number of provisions in there, all of which deal with fairly specific things about ministerial discretion in other areas, and those are always there to increase flexibility in what is really, as you would be aware from having looked at this, a very complicated regime which deals with a large range of sports events, all of which have different characteristics and so on. The more you put stuff into black-leather legislation—specifically about what people should and should not do—the more you risk coming up against something which you did not anticipate or some future situation about the way a sport is handled or the rights surrounding something...there is always a balance in these things, and all the instruments here will be subject to parliamentary scrutiny.<sup>72</sup>

---

66 Mr Richard Freudenstein, Chief Executive Officer, FOXTEL, *Proof Committee Hansard*, 13 April 2012, p. 26–27.

67 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 11.

68 Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 4.

69 Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 5.

70 Mrs Stephanie Beltrame, General Manager, Media Rights, Cricket Australia, *Proof Committee Hansard*, 13 April 2012, p. 6.

71 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, p. 39.

72 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, p. 39.

### *Committee view*

2.53 The Committee acknowledges that while ministerial discretion to make determinations under the bill introduces uncertainty it also affords flexibility, and that flexibility in the anti-siphoning regime was sought by various stakeholders during the course of the inquiry.

2.54 The Committee welcomes statements by the department that it is the government's intention that stakeholders will be involved in the development of legislative instruments to the bill. The Committee urges the government, sporting organisations, broadcasters and program suppliers to engage in these processes in a meaningful and collaborative fashion.

### **Review of the new anti-siphoning regime**

2.55 Submitters were supportive of the proposed statutory review of the new anti-siphoning scheme although there was some debate about the proposed timing of this review.

2.56 Sporting organisations, such as the NRL, AFL and Tennis Australia, were supportive of the new anti-siphoning scheme being reviewed by no later than 31 December 2014.<sup>73</sup> Mr McLachlan of the AFL stated:

We certainly would not want to see it any later than 2014. The discussion started in 2009, roughly, and, given the pace of the evolution of the digital environment, we do not think it should be any later than 2014.<sup>74</sup>

2.57 Ms Nicky Seaby of the NRL commented:

I think the review needs to be considered in the context of other changes, such as the convergence review. It may be that this legislation is almost redundant, depending on what the outcome of the convergence review is and changes to that legislation. From our perspective, we would not like to see that review date pushed out too far. We would want to be relooking at this legislation in the context of any broader changes to broadcasting legislation that might be implemented in the coming years.<sup>75</sup>

---

73 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 13; Mr Tim Browne, Advisor—Office of the Chief Executive Officer, Tennis Australia, *Proof Committee Hansard*, 13 April 2012, p. 13 and Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 12.

74 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 13 April 2012, p. 13.

75 Ms Nicky Seaby, Strategy and Government Relations Manager, NRL, *Proof Committee Hansard*, 13 April 2012, p. 12.

2.58 Similarly, subscription television broadcasters offered their firm support for the proposed review of the scheme by 31 December 2014<sup>76</sup> and shared the NRL's view that the review could include consideration of 'other factors in the market place' for example the National Broadband Network (NBN).<sup>77</sup>

2.59 Free TV Australia had a different view and wanted to see the new anti-siphoning regime reviewed later. Ms Flynn argued:

Some of us are a little bit exhausted by this constant reviewing, reviewing, reviewing. It has taken us two years—I agree with the previous people who gave evidence, the sporting bodies. But what is the point of introducing something and reviewing it 12 months later? The basic structures are not going to change. Yes, there will be different ways of delivering content—we are all aware of that—but, as I said earlier, the relevance of the list remains the same today.<sup>78</sup>

2.60 In response to the debate about the timing of the proposed review of the new anti-siphoning scheme, DBCDE offered the following explanation:

When the policy was being developed a date was chosen which allowed the legislation to operate for a reasonable period and that allowed us to, within a reasonable period after its operation, assess whether the things that we had done had any unintended consequences or caused the industry any particular difficulties. There is no particular magic in the date that I am aware of. It is not tied to any particular set of events or anything like that. It is just that it is...a suitable period for deciding whether the bill is doing its job.<sup>79</sup>

### ***Committee view***

2.61 The Committee shares DBCDE's view that the timing of the statutory review proposed to occur before 31 December 2014 offers an appropriate length of time for the new anti-siphoning regime to operate so that its impact and effectiveness can be assessed.

2.62 Overall, the Committee supports the new anti-siphoning regime proposed in the bill which will continue to enable the Australian television-viewing public to enjoy important sporting events on free-to-air television.

---

76 Ms Petra Buchanan, Chief Executive Officer, ASTRA, *Proof Committee Hansard*, 13 April 2012, p. 25.

77 Ms Petra Buchanan, Chief Executive Officer, ASTRA, *Proof Committee Hansard*, 13 April 2012, p. 29.

78 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Proof Committee Hansard*, 13 April 2012, p. 19.

79 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group, DBCDE, *Proof Committee Hansard*, 13 April 2012, p. 43.

**Recommendation 3**

**2.63 The Committee recommends, subject to the preceding recommendations, that the bill be passed.**

**Senator Doug Cameron  
Chair**

# **Appendix 1**

## **Submissions and answers to questions taken on notice**

### **Submissions**

- 1** Australian Womensport and Recreation Association
- 2** Australian Broadcasting Corporation
- 3** Australian Football League
- 4** Football Federation Australia
- 5** SBS
- 6** ASTRA
- 7** ESPN Inc.
- 8** Telstra
- 9** International Olympic Committee
- 10** IMG
- 11** FOXTEL
- 12** Free TV Australia
- 13** Cricket Australia
- 14** Fox Sports
- 15** Viacom International Media Networks Australia and New Zealand
- 16** BBC Worldwide Australasia
- 17** Tennis Australia
- 18** Mr Ian Flatley

**19** National Rugby League Limited**Answers to questions taken on notice**

Free TV Australia – Answers to questions taken on notice (from public hearing, 13 April 2012)

Department of Broadband, Communications and the Digital Economy – Answers to questions taken on notice (from public hearing, 13 April 2012)

Australian Subscription Television & Radio Association (ASTRA) – Answers to questions taken on notice (from public hearing, 13 April 2012)

Tennis Australia – Answers to questions taken on notice (from public hearing, 13 April 2012)



# **Appendix 2**

## **Public hearings**

*Friday, 13 April 2012 – Canberra*

### **Australian Football League**

Mr Gillon McLachlan, Chief Operating Officer

### **National Rugby League**

Ms Nicky Seaby, Strategy and Government Relations Manager

### **Cricket Australia**

Ms Stephanie Beltrame, General Manager, Media Rights

Ms Libby Owens, Broadcast Rights and Regulatory Manager, Media Rights

### **Tennis Australia**

Mr Tim Browne, Adviser, Office of the Chief Executive Officer

### **Free TV Australia**

Ms Julie Flynn, Chief Executive Officer

Ms Clare O'Neil, Director of Legal & Broadcasting Policy

### **Seven Network Limited**

Mr Nicholas O'Donnell, Legal Counsel, Regulatory and Business Affairs

### **Nine Network Australia Pty Ltd**

Mr Scott Briggs, Director, Commercial and Regulatory Affairs

### **Network Ten**

Mr Ian Wilson, Manager, Regulatory Affairs

### **Australian Subscription Television and Radio Association**

Ms Petra Buchanan, Chief Executive Officer

**Foxtel**

Mr Richard Freudenstein, Chief Executive Officer

Ms Lynette Ireland, Chief General Counsel, Foxtel Management Pty Limited

**Fox Sports Pty Limited**

Mr Patrick Delany, Chief Executive Officer

Ms Christina Allen, General Counsel

**Department of Broadband, Communications and the Digital Economy**

Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Group

Ms Ann Campton, Assistant Secretary, Broadcasting and Switchover Policy Branch

**Australian Communications and Media Authority**

Ms Jennifer McNeill, Acting General Manager, Content, Consumer and Citizen Division

Ms Sue Gabor, Acting Manager, Broadcasting Standards Section

Ms Kristy Eulenstein, Senior Policy Officer, Broadcasting Standards Section

# **Appendix 3**

## **Draft anti-siphoning list**

**Commonwealth of Australia**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Anti-siphoning events) Declaration (No. [insert]) 2012**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, having formed the opinion that the events specified in the following Declaration should be available free to the general public, make the Declaration under subsections 145E(1) and 145E(2) of the *Broadcasting Services Act 1992*.

Dated [insert] 2012

**[DRAFT - NOT FOR SIGNATURE]**

STEPHEN MICHAEL CONROY

Minister for Broadband, Communications and the Digital Economy

---

## 1. Name of Declaration

This Declaration is the Broadcasting Services (Anti-siphoning events) Declaration (No. [insert]) 2012.

## 2. Commencement

This Declaration commences immediately after the commencement of Part 2 of Schedule 1 to the *Broadcasting Services Amendment (Anti-siphoning) Act 2012*.

## 3. Interpretation

(1) In this Declaration:

*Act* means the *Broadcasting Services Act 1992*.

*AFL Premiership competition* means the multi-round competition known in the community as the Australian Football League Premiership or the AFL Premiership (including, if there is a change in the name by which that competition is known in the community, the competition known in the community by the changed name).

*NRL Premiership competition* means the multi-round competition known in the community as the National Rugby League Premiership or the NRL Premiership (including, if there is a change in the name by which that competition is known in the community, the competition known in the community by the changed name).

(2) Unless the contrary intention appears, a word or phrase in this Declaration has the same meaning as it has in the Act.

#### **4. Tier A anti-siphoning events**

Each event, and each event in a class of events, specified in Schedule 1 is declared to be a *Tier A anti-siphoning event* for the purposes of the Act.

#### **5. Tier B anti-siphoning events**

Each event, and each event in a class of events, specified in Schedule 2 is declared to be a *Tier B anti-siphoning event* for the purposes of the Act.

**SCHEDULE 1****TIER A ANTI-SIPHONING EVENTS****Olympic Games**

- 1.1 Each event held as part of the 2012 Summer Olympic Games, including the Opening Ceremony and the Closing Ceremony.

**Horse Racing**

- 2.1 *Each running of the Melbourne Cup organised by the Victoria Racing Club.*

**Australian Football**

- 3.1 *The Grand Final of the AFL Premiership competition.*

**Rugby League Football**

- 4.1 *The Grand Final of the NRL Premiership competition.*

**Rugby Union Football**

- 5.1 *The final of the Rugby World Cup tournament.*

---

## Cricket

*6.1 Each "test" match involving the senior Australian representative team selected by Cricket Australia played in Australia.*

*6.2 Each "test" match between the senior Australian representative team selected by Cricket Australia and the senior English representative team played in the United Kingdom.*

*6.3 Each one-day cricket match involving the senior Australian representative team selected by Cricket Australia played in Australia.*

*6.4 Each Twenty20 cricket match involving the senior Australian representative team selected by Cricket Australia played in Australia.*

*6.5 Each match in the semi-finals and the final of the International Cricket Council One Day International World Cup.*

*6.6 Each match of the International Cricket Council One Day International World Cup involving the senior Australian representative team selected by Cricket Australia.*

*6.7 The final of the International Cricket Council Twenty20 World Cup.*

**6.8** *Each match of the International Cricket Council Twenty20 World Cup involving the senior Australian representative team selected by Cricket Australia.*

## **Soccer**

**7.1** *Each match of the Fédération Internationale de Football Association World Cup tournament involving the senior Australian representative team selected by the Football Federation Australia.*

**7.2** *Each match in the quarter-finals, semi-finals and the final of the Fédération Internationale de Football Association World Cup tournament.*

## **Tennis**

**8.1** *The men's singles final and the women's singles final of the Australian Open tennis tournament.*

**8.2** *Each match in a final round tie of the International Tennis Federation Davis Cup World Group tennis tournament involving an Australian representative team.*



## **Motor Sports**

- 9.1** *Each race in the Fédération Internationale de l'Automobile Formula 1 World Championship (Grand Prix) held in Australia.*
  
- 9.2** *Each race in the Fédération Internationale de Motocyclisme Moto GP held in Australia.*
  
- 9.3** *The Bathurst 1000 race in the V8 Supercar Championship Series.*

## SCHEDULE 2

### TIER B ANTI-SIPHONING EVENTS

#### Olympic Games

- 1.1 Each event held as part of the Summer Olympic Games, including the Opening Ceremony and the Closing Ceremony, *except any event* declared to be a Tier A anti-siphoning event for the purposes of the Act.
- 1.2 Each event held as part of the Winter Olympic Games, including the Opening Ceremony and the Closing Ceremony.

#### Commonwealth Games

- 2.1 Each event held as part of the Commonwealth Games, including the Opening Ceremony and the Closing Ceremony.

#### Australian Football

- 3.1 Each match of the AFL Premiership competition, including the Finals Series, that is played after 1 January 2017, *except any match* declared to be a Tier A anti-siphoning event for the purposes of the Act.

#### Rugby League Football

- 4.1 *Each match of the NRL Premiership competition, including the Finals Series, except any match* declared to be a Tier A anti-siphoning event for the purposes of the Act.

**4.2** *Each match in the National Rugby League State of Origin Series.*

**4.3** *Each international rugby league "test" match involving the senior Australian representative team, played in Australia, New Zealand or the United Kingdom.*

**4.4** *Each match of the Rugby League World Cup involving the senior Australian representative team.*

## **Rugby Union Football**

**5.1** *Each match in the quarter-finals and semi-finals of the Rugby World Cup tournament.*

**5.2** *Each match of the Rugby World Cup tournament involving the senior Australian representative team selected by the Australian Rugby Union, except any match declared to be a Tier A anti-siphoning event for the purposes of the Act.*

**5.3** *Each international "test" match involving the senior Australian representative team selected by the Australian Rugby Union, played in Australia, New Zealand or South Africa, or as part of the team's "Spring Tour".*

## *Tennis*

**6.1** *Each match in the Australian Open tennis tournament, except any match declared to be a Tier A anti-siphoning event for the purposes of the Act.*

- 6.2 *Each match in the men's and women's singles quarter-finals, semi-finals and finals of the Wimbledon (the Lawn Tennis Championships) tournament.*
- 6.3 *Each match in the men's and women's singles quarter-finals, semi-finals and finals of the United States Open tennis tournament.*
- 6.4 *Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament involving an Australian representative team, except any match declared to be a Tier A anti-siphoning event for the purposes of the Act.*

## **Golf**

- 7.1 *Each round of the Australian Open tournament, played as part of the Professional Golfers Association Tour of Australasia.*
- 7.2 *Each round of the Australian Masters tournament, played as part of the Professional Golfers Association Tour of Australasia.*
- 7.3 *Each round of the United States Masters tournament, played as part of the Professional Golfers Association Tour.*

## **Netball**

- 8.1 *Each international netball match involving the senior Australian representative team selected by the All Australian Netball Association, played in Australia or New Zealand.*

---

**8.2** *Each match in the semi-finals and finals of the International Federation of Netball Associations World Championships involving the senior Australian representative team selected by the All Australian Netball Association.*

*Soccer*

**9.1** *Each match of the Fédération Internationale de Football Association World Cup tournament, except any match declared to be a Tier A anti-siphoning event for the purposes of the Act.*

**9.2** *Each match in the Fédération Internationale de Football Association World Cup Qualification tournament involving the senior Australian representative team selected by the Football Federation Australia.*

**9.3** *The English Football Association Challenge Cup final.*

*Motor Sports*

**10.1** *Each race in the V8 Supercar Championship Series, except any race declared to be a Tier A anti-siphoning event for the purposes of the Act.*

## **Draft determination of Category B quota groups**

**Commonwealth of Australia**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Category B quota groups) Determination (No. [insert]) 2012**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Determination under subsection 145G(2) of the *Broadcasting Services Act 1992*.

Dated [insert] 2012

**[DRAFT - NOT FOR SIGNATURE]**

STEPHEN MICHAEL CONROY

Minister for Broadband, Communications and the Digital Economy

---

---

## 1. Name of Determination

This Determination is the Broadcasting Services (Category B quota groups) Determination (No. [*insert*]) 2012.

## 2. Commencement

This Determination commences immediately after the commencement of Part 2 of Schedule 1 to the *Broadcasting Services Amendment (Anti-siphoning) Act 2012*.

## 3. Interpretation

- (1) In this Determination:

*Act* means the *Broadcasting Services Act 1992*.

*AFL Premiership competition* means the multi-round competition known in the community as the Australian Football League Premiership or the AFL Premiership (including, if there is a change in the name by which that competition is known in the community, the competition known in the community by the changed name).

*AFL Premiership quota group* means a *Category B quota group listed in column 2 at item 1 of the table in Schedule 1*.

*licence area* has the same meaning as in Part 10A of the Act.

- (2) In this Determination, an anti-siphoning event is *included in the set* in relation to a licence area if, for the purposes of each of the following provisions of the

Act, the event is included in the set of anti-siphoning events described in the provisions:

- (a) subsection 145ZN(3);
  - (b) subsection 145ZO(3).
- (3) In this Determination, a match is taken to be played in the *evening* on a day if the match commences at or after 6:00pm AEST/AEDT on the day.
- (4) Unless the contrary intention appears, a word or phrase in this Determination has the same meaning as it has in the Act.

#### **4. Category B quota groups**

Each group of Tier B anti-siphoning events specified in column 2 of the table in Schedule 1 is determined to be a *Category B quota group* for the purposes of the Act, in relation to the licence area or licence areas specified in column 3 at the same item of the table in Schedule 1.

#### **5. Quota numbers**

The *quota number* for each Category B quota group listed in column 2 of the table in Schedule 1 is determined to be the number specified in column 4 at the same item of the table in Schedule 1, in relation to the licence area or licence areas specified in column 3 at the same item of the table in Schedule 1.

#### **6. Associated set conditions**

The *associated set conditions* for each AFL Premiership quota group, in relation to the licence area or licence areas specified in Schedule 2, are determined to be the conditions specified in Schedule 2.



---

**SCHEDULE 1**

**CATEGORY B QUOTA GROUPS, LICENCE AREAS AND QUOTA NUMBERS**

<b>Column 1 1 (Item)</b>	<b>Column 2 (Category B quota group)</b>	<b>Column 3 (Licence area)</b>	<b>Column 4 (Quota number)</b>
<i>1</i>	<i>Each group of matches that makes up a round of the AFL Premiership competition, played after 1 January 2017, excluding the Finals Series</i>	<i>Each licence area in Australia</i>	<i>4</i>

**SCHEDULE 2****ASSOCIATED SET CONDITIONS FOR EACH AFL PREMIERSHIP QUOTA GROUP****General Conditions**

- 1.1** *If the quota group includes one or more matches that are played on a Friday evening, then at least one of those matches must be included in the set in relation to each licence area in Australia.*
- 1.2** *If the quota group includes one or more matches that are played on a Saturday evening, then at least one of those matches must be included in the set in relation to each licence area in Australia.*

**Specific Conditions**

- 2.1** *If the team known as the West Coast Eagles is playing in a match in the quota group, then the match must be included in the set in relation to each of the following licence areas:*
- (a)** *Perth TV1;*
  - (b)** *Geraldton TV1;*
  - (c)** *Kalgoorlie TV1;*
  - (d)** *Remote and Regional WA TV1;*
  - (e)** *South West and Great Southern TV1;*
  - (f)** *Western Zone TV1.*
- 2.2** *If the team known as the Fremantle Dockers is playing in a match in the quota group, then the match must be included in the set in relation to each of the following licence areas:*

- 
- (a) *Perth TV1;*
  - (b) *Geraldton TV1;*
  - (c) *Kalgoorlie TV1;*
  - (d) *Remote and Regional WA TV1;*
  - (e) *South West and Great Southern TV1;*
  - (f) *Western Zone TV1.*

**2.3** *If the team known as the Adelaide Crows is playing in a match in the quota group, then the match must be included in the set in relation to each of the following licence areas:*

- (a) *Adelaide TV1;*
- (b) *Mount Gambier/South East TV1;*
- (c) *Riverland TV1;*
- (d) *Spencer Gulf TV1.*

**2.4** *If the team known as the Port Adelaide Power is playing in a match in the quota group, then the match must be included in the set in relation to each of the following licence areas:*

- (a) *Adelaide TV1;*
- (b) *Mount Gambier/South East TV1;*
- (c) *Riverland TV1;*
- (d) *Spencer Gulf TV1.*

**2.5** *If the quota group includes one or more matches that are played in Melbourne on April 25 (ANZAC Day), then at least one of those matches must be included in the set in relation to each of the following licence areas:*

- (a) *Melbourne TV1;*
- (b) *Eastern Victoria TV1;*
- (c) *Mildura/Sunraysia TV1;*

- (d) *Regional Victoria TV1;*
- (e) *Western Victoria TV1.*

**2.6** *If the quota group includes one or more matches that are played in Melbourne on the second Monday in June (the Queen's birthday public holiday), then at least one of those matches must be included in the set in relation to each of the following licence areas:*

- (a) *Melbourne TV1;*
- (b) *Eastern Victoria TV1;*
- (c) *Mildura/Sunraysia TV1;*
- (d) *Regional Victoria TV1;*
- (e) *Western Victoria TV1.*