

**Senate Standing Committee on Environment and Communications
Inquiry into the Broadcasting Service Amendment (Anti-siphoning) Bill 2012**

Answers to Questions on Notice

Public Hearing – 13 April 2012

Broadband, Communications and the Digital Economy Portfolio

Department of Broadband, Communications and the Digital Economy

The department provides the following responses to questions taken on notice by officials appearing before the Committee on 13 April 2012. The department would be willing to provide additional information in response to further questions from the Committee as appropriate.

Topic: Anti-siphoning – provision of draft legislative instruments to the Committee
Senator Fisher asked:

Thank you. Perhaps I did not ask the question the right way. Can you please provide the committee with the latest draft of that instrument [quota group instrument]? (p. 36)

Can you provide the committee with a copy of the draft [anti-siphoning list]? (p. 37)

Answer:

The Minister has agreed to release copies of the draft *Broadcasting Services (Anti-siphoning events) Declaration (No.) 2012* (the draft anti-siphoning list) and the draft *Broadcasting Services (Category B quota groups) Determination (No.) 2012* (the draft quota group instrument) to the Committee. These instruments remain in draft form and may be subject to change. For example, in relation to the FIFA World Cup, the government has indicated that it will negotiate further with rights holders and broadcasters over the manner in which the qualification tournament matches will be included in the anti-siphoning list and the obligations associated with that listing.

The Government expects the instruments (with any amendments) will come into force on the commencement day for Part 2 of Schedule 1 to the Bill, as enacted: see item 3 of the table in clause 2 of the Bill, and paragraphs 4 and 5 of the explanatory memorandum. The department will provide copies of these draft instruments to the Committee Secretariat.

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Topic: Anti-siphoning – provision of the draft anti-siphoning list to other parties

Senator Fisher asked: Thank you. Has the department provided any party with a copy of the draft future antisiphoning list? (p. 36)

Answer:

The department has not provided any party with a copy of the draft *Broadcasting Services (Anti-siphoning events) Declaration (No.) 2012* (the draft anti-siphoning list). However, it should be noted that information on the Minister's proposed future anti-siphoning list was publicly released on 25 November 2010 as part of the Government's announcement of its intended reforms to the anti-siphoning scheme. The information has therefore been in the public domain since that time and used by the department to respond to public enquiries about the Government's reforms. It has also been available since that time from the department's website.

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Topic: Anti-siphoning – automatic delisting
Senator Fisher asked:

As I understand it, it is more that they want to be free to enter into agreements of, for example, five years duration, as they have done in the past. My understanding of how it works is that they are concerned that, if the matches are removed from the anti-siphoning list, they will not necessarily be able to enter into agreements for any period they choose; it will be somehow restricted in duration. That is how I read their submission. But gosh, you guys should know more about this than I do. ... They note that, but they are suggesting it should be made explicit that there is no restriction on the duration—even if it be in the explanatory memorandum, as opposed to the bill. (p. 38)

Answer:

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.

All AFL matches on the anti-siphoning list played in the same Premiership season will be automatically removed 26 weeks (or up to 52 weeks, if the Minister extends the period) before the first of those events is played. This means all 2017 matches on the list will be removed in 2016 unless the Minister intervenes, but not any matches in 2018 or beyond, even if those matches were to be covered by a multi-year AFL rights deal beginning in 2017.

It is anticipated that the anti-siphoning list made once the Bill passes will not include any AFL matches, other than Grand Finals, played before 2017. This is because the Government considers that the current AFL agreement satisfies its expectations in regard to the quality of games on free-to-air television.

With respect to matches played after 1 January 2017, it is anticipated that the list will include all matches of the AFL Premiership competition, including the finals. These matches will remain on the list until they are automatically delisted prior to each annual competition (or are otherwise retained or removed from the list by the Minister). In addition, the Bill requires the Minister to take all reasonable steps to make a quota group instrument for the AFL that will regulate all non-finals matches for any AFL Premiership competition included on the anti-siphoning list (i.e. the AFL Premiership competitions from 2017 onwards). The quota group mechanism is simply a means to ensure that these round-by-round matches are protected under the scheme in a manner consistent with the traditional levels of coverage on free-to-air television.

The Bill requires that the Minister make either a category A quota group instrument or a category B quota group instrument (but not both) where the AFL Premiership is included on Tier B of the anti-siphoning list. A category A quota group instrument would specify a 'quota number', and subscription broadcasters would be able to acquire any rights to round-by-round AFL matches

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provided this acquisition did not prevent free-to-air broadcasters from being able to acquire rights to the quota number of matches for each round. A category B quota group instrument would operate in a similar manner, but would also specify ‘associated set conditions’ applying to the matches forming part of the quota number. For example, these associated set conditions might include that the matches comprising a quota number include a Friday night or Saturday night match, or that they include certain matches involving local teams. The Bill provides that the quota number for a quota group instrument involving the AFL can be ‘not greater than four’ (matches per round).

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.

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

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

DRAFT

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.

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.

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