



Australian
Broadcasting
Corporation

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Committee Secretary
Senate Standing Committees on Environment and
Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Corporate Affairs

ABC Ultimo Centre
700 Harris Street
Ultimo NSW 2007
GPO Box 9994
Sydney NSW 2001
Tel. +61 2 8333 5261
abc.net.au

Dear Sir/Madam

The ABC welcomes the opportunity to comment on the Broadcasting Services Amendment (Anti-siphoning) Bill 2012.

The ABC strongly supports the policy principles underlying the Bill, which seeks 'to ensure that opportunities for free-to-air television coverage of anti-siphoning events are maximised.'¹ In announcing the reforms, the Minister stated that the Government's intention is to ensure 'Australian sports fans [can] see major sporting events for free as they have always done.'²

The free availability of significant sporting events remains a key public interest objective. In a period of significant structural change in the media industry globally, government intervention to support this objective remains relevant given that most new and emerging media platforms are likely to be subscription-based. Shared experience of significant sporting events contributes strongly to a sense of national and cultural identity. Audience numbers demonstrate the continued popularity of sports coverage in the Australian community.

The ABC's resources mean that it is unlikely to be a competitive bidder for the majority of listed sports, given the intense commercial interest in these events. The Corporation places strategic priority on providing widespread coverage of women's sport and the Paralympics. No such events are included in the proposed list of events released by the Government in 2010. However, the Bill includes a number of mechanisms and obligations which have the potential to impact on the national broadcasters and hence the Corporation wishes to make a number of observations.

For the ABC, the most likely point of interaction with the Bill will be as a potential recipient of rights under the proposed 'must offer' provisions (proposed new sections 145K, 145L and 145N). As drafted, the Bill provides that if a free-to-air television broadcaster has acquired rights to a listed event, but judges that it will not be able to meet the relevant coverage obligations, it must offer those rights to another free-to-air broadcaster (in the first instance), or subsequent to that, a subscription television broadcaster (refer to proposed new sections 145H, 145R and 145S) in order to avoid penalty.

¹ Explanatory Memorandum to the Bill, p3.

² Senator the Hon Stephen Conroy, Media Release, 'Reforms to the Anti-siphoning Scheme Announced', 25 November 2010.

The ABC supports the policy objectives underlying these provisions, which seek to ensure free-to-air coverage (in the first instance) is maximised. However, it is important to note that this will not necessarily mean that listed events will achieve free-to-air coverage on the ABC. Before accepting rights through the 'must-offer' provisions, the Corporation would carefully assess the impact of the 'must-show' obligations that would attach to the rights. In line with the independence provided in its Charter, the ABC would carefully assess the needs of its audiences and the potential impact on regularly scheduled programming before making a decision to accept an offer of rights (as was the ABC's approach under the anti-hoarding scheme). This would particularly be the case for Tier A events, which under the Bill will be required to be screened live on the ABC's primary channel. As the majority of the Corporation's television audiences are for its primary channel, ABC1, the potential impact of scheduling changes is greatest as regards this service. It is also important to note that the ABC is unlikely to have adequate resources to fund the production of extensive sport coverage and this will play a key factor for the Corporation in responding to an offer of rights.

The ABC would also like to make the following, brief observations:

- The notification requirements (in proposed new sections 115B, 115C, 145ZQ, 145ZR, 145ZS and 145ZT) of the Bill would only apply to free-to-air broadcasters. If the Australian Communications and Media Authority (ACMA) is to be able to properly monitor the entirety of the market for sports coverage, it should have access to coverage information for all affected platforms, including subscription television and new media operators.
- The ABC supports those provisions of the Bill which seek to bring the scheme into line with the current state of digital television take-up in the community, allowing Tier B events to be premiered on multi-channels (refer to proposed new Division 4). The original justification for limiting multi-channel coverage (limited digital television take-up) has fallen away and the proposed reforms will provide more opportunities for free-to-air sport coverage. The flexibility the reforms will provide will assist broadcasters in balancing the full variety of audience needs. It is not clear, however, what the policy rationale is for extending the restriction on multi-channel coverage of Tier A events after the end of the simulcast period scheduled for December 2013 (refer to 145ZF).
- The ABC supports the provisions of the Bill which extend the scheme to new media operators (see proposed new section 145ZO). The potential for sports rights to be exclusively acquired by a subscription-based non-broadcast media provider clearly has the potential to undermine the objectives of the scheme.
- Some further clarity regarding the exemption powers in proposed new sections 145H and 145N should be provided. Whilst the explanatory memorandum to the Bill stipulates that the ACMA's powers are prospective only and are intended to deal with circumstances in a general way, it is not clear whether the ACMA or the Minister (under 145D(2)) could deal with interruptions to coverage retrospectively. In this respect, the drafting of any ACMA legislative instrument under 145H and 145N providing exemptions in certain circumstances, becomes vital. Given the importance of this instrument, it may be appropriate to include more specific guidance in the primary legislative scheme.

Yours sincerely

Michael Millett
Director, Corporate Affairs