CRICKET AUSTRALIA

4 April 2012

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

Dear Secretary

CRICKET AUSTRALIA SUBMISSION TO THE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE INQUIRY INTO THE BROADCASTING SERVICES AMENDMENT (ANTI-SIPHONING) BILL 2012

Cricket Australia (CA) thanks the Environment and Communications Legislation Committee (the Committee) for the invitation to provide a submission to its inquiry into the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012* (the Bill).

CA appreciates the efforts of Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, and the Department on what appear to be attempts to address concerns raised by CA in respect to the second exposure draft to the *Broadcasting Service Amendment (Anti-siphoning) Bill 2011* (Draft Bill).

CA's submission raises specific comments on the operation of provisions of the Bill as well as issues relevant to the broader application of the Bill including:

1. the need for the legislation to meet the public interest rationale behind anti-siphoning policy, which is given effect by the Bill; and,
2. the Bill's effectiveness in delivering against its public interest purpose.

CA is hopeful the Committee's recommendation to Senate on the Bill will provide CA with the assurances it seeks and thanks the Committee again for the invitation to provide a submission to the Committee's inquiry and the invitation to discuss its submission to the Bill and anti-siphoning more broadly at the Committee's public hearing later this month.

Yours faithfully

STEPHANIE BELTRAME
GENERAL MANAGER MEDIA RIGHTS

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CA acknowledges the principles that underpin anti-siphoning policy. Notwithstanding this, CA has consistently argued against the existence of the anti-siphoning scheme since its inception. CA's view has not changed with the introduction of the Bill and CA raises the following comments and observations relevant to the Bill for the Committee's consideration:

1. Anti-siphoning is anti-competitive and an example of over-regulation and should be abolished.
2. It restricts CA's ability to negotiate fair market value from the sale of broadcast rights, which in turn restricts CA's ability to maximise investment in the development of cricket within the community.
3. It fails to recognise the role, responsibility and expertise of CA to manage the sport of cricket on behalf of cricket fans, a role CA has successfully fulfilled since before the anti-siphoning legislation's inception. Sport governing bodies are best placed to deliver on the public interest the policy seeks to address.
4. Not all cricket events listed are appropriate and the list does not reflect CA's expert view on, or the public's demands for and feedback on, the cricket events that should be listed and televised on free-to-air television (FTA).
5. The addition of Coverage Obligations for listed events is a step towards meeting the public interest rationale for anti-siphoning but, with the inclusion of broad and discretionary exceptions, the Bill does not fully acquit itself of its failure to ensure live and in-full coverage of listed events for Australian viewers as is their want or to encourage true innovation in sports coverage by the FTA industry.

CA's submission does not specifically comment on Tier B or the Category Quota Group arrangements or Designated Events that fall under Tier B. This is on the basis of the intention made explicit in the Bill, its Explanatory Memorandum and the Bills associated legislative instrument that no cricket event will be listed on Tier B and that Category B Quota Group arrangements will apply only to the AFL and NRL and that any Designated Events are not subject to the Category B Quota Group arrangements.

CA's submission does not comment in detail on the notification requirements contained in the Bill for Commercial and National FTA broadcasters and Program Suppliers other than to state its view that any information provided under the notification provisions of a confidential nature should be treated accordingly by the Australian Communications and Media Authority (ACMA) and the Government. The intention to do so should be made explicit in the Bill or otherwise an explicit reference made in the Explanatory Memorandum.

CA makes no comment in this submission on the transitional arrangements contained in the Bill.

Specific issues related to the operation of the Bill CA respectively requests the Committee consider are:

1. The Bill creates Commercial Uncertainty

The Bill gives the Minister of the day a discretion that is unnecessarily broad. The Bill gives the Minister discretion to list, delist, categorise events, impose Associated Set Conditions and exempt from or vary the application of Coverage Obligations on a broad and subjective principle, that is, that events 'should be available free to the public'.

This creates uncertainty for sport governing bodies, which in turn impacts the ability of these bodies to optimise commercial rights, which represent the primary revenue source sustaining the business of sports and funding grass root, community and fan focused initiatives.

Events should be identified for listing as anti-siphoning events in consultation with sport governing bodies, including any application of Coverage Obligations, and by a public interest test using industry recognised and objective criteria.

2. Exceptions to Coverage Obligations

The Coverage Obligations imposed for Tier A listed events requiring live and in-full coverage based on rights held is the strongest demonstration of the public interest that underlies anti-siphoning policy. It is therefore against the public's interest to enable exceptions to these Coverage Obligations that are not specific and strict and which are not minimised to the fullest extent. This is particularly true within the current FTA framework where multiple channels are operated by a single broadcaster providing them with greater programming flexibility for non-listed programs and events. Further, 82% of households in Australia have converted their main set to digital television; this provides ample potential viewership for non-listed programs and events on those digital channels.

The exceptions to the Coverage Obligations for Tier A listed events and the condition for a full replay on the core / primary channel applicable to these exceptions i.e. where two Tier A events overlap and where a Tier A event overlaps with a News Bulletin, should not be subject to the exercise of the ACMA or Minister's discretion, whether guiding principles apply or not. If the exceptions are retained in the Bill, a full replay should immediately follow the News Bulletin or other listed event with no exceptions.

3. Must Offer provisions

The Must Offer provisions in the Bill fail to recognise the role, responsibility and expertise of CA to manage the coverage of cricket on behalf of the Australian public. The provisions create a risk that CA's commercial rights may be dealt with in a manner inconsistent with agreements concerning those commercial rights and associated third party agreements.

There is also a significant risk to the quality of the coverage of cricket as a result of the Must Offer provisions.

The Bill must be amended to ensure the transfer of rights under the Must Offer provisions ensures associated contractual coverage obligations, in particular those including quality and production and commercial content stipulations (i.e. sponsor protection), carry through to the licensee granted rights under the Must Offer provisions.

The policy is defeated if coverage of a listed event on FTA fails to meet consumers' expectations in terms of quality or is less than what it would be but for the Must Offer provisions.

A relevant amendment should be made to the Bill ensuring contractual provisions applicable to the rights to telecast listed events pass through to a licensee taking rights under the Must Offer provisions or otherwise an explicit reference is required acknowledging this intention in the Explanatory Memorandum.

4. Extension of the legislation to Content Service Providers

CA reiterates its view there is no requirement for Government to extend the application of anti-siphoning to Content Services Providers. There is no risk to the public interest that underpins anti-siphoning from Content Services Providers. The digital and new media content carriage services available to sports governing bodies are not supported by infrastructure advanced enough to justify, nor is the way the public consumes content via these services such, that it justifies sport governing bodies risking the long term sustainability of their respective sport and alienating fans by placing premium content exclusively on these services.

The extension of the legislative framework to Content Service Providers contained in the Bill artificially hinders convergence and innovation via unnecessary regulatory interference and should therefore by removed from the Bill.