



INTERNATIONAL  
OLYMPIC  
COMMITTEE

IOC Television & Marketing Services SA

By e-mail only

**Senate Standing Committee on  
Environment and Communications  
S1.57  
Parliament House  
CANBERRA ACT 2600**

Lausanne, 4 April 2012

**Inquiry into the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012***

Dear Chairman Cameron (*Chair*), Deputy Chairman Fisher (*Deputy Chair*) and members of the Senate Environment and Communications Legislation Committee,

The following submission is presented on behalf of the International Olympic Committee (*IOC*) in response to an invitation from the Senate Environment and Communications Legislation Committee to address issues of relevance to the IOC in relation to the *Broadcasting Services Amendment (Anti-siphoning) Bill 2012 (the Bill)*.

The IOC thanks the Committee for the opportunity to make a submission in the current inquiry.

This submission is directed to matters relating to the future licensing of the IOC's television broadcast rights in Australia. The IOC has previously allocated the broadcast rights for the forthcoming 2012 London Olympic Games, and proceeds on the basis that nothing in the Bill impacts those arrangements.<sup>1</sup>

**1. Background**

**1.1 Broadcasting Rights for the Olympic Games**

The Olympic Games take place every two years, preceded by the opening ceremony and ending with the closing ceremony.

---

<sup>1</sup> Under the Bill, events in the 2012 Summer Olympic Games are proposed to be declared to be 'Tier A anti-siphoning events'. The IOC understands this is being done for administrative reasons, that events in future Summer and Winter Olympics will be 'Tier B anti-siphoning events' and that nothing in the Bill adversely impacts the existing agreements for Nine Network and FOXTEL to provide free-to-air and subscription television coverage of the London 2012 Olympic Games in accordance with existing contractual arrangements. If this is not the case, the IOC requests notification as a matter of urgency.

The IOC is the sole owner of the global broadcast rights for the Summer and Winter Olympic Games – including broadcasts on television, radio, mobile and internet platforms – and is responsible for allocating Olympic broadcast rights throughout the world through rights agreements with media companies.

Broadcast coverage is the principal means for people around the world to experience the magic of the Olympic Games. Broadcasts of the Olympic Games are very popular.<sup>2</sup>

Broadcasts of the Olympic Games have been the principal driver of the:

- ◆ funding of the Olympic Movement and the Olympic Games;
- ◆ growth of the global popularity of the Olympic Games;
- ◆ global representation and promotion of the Olympic Games and the Olympic values.

The IOC pools the revenue it earns from broadcasting around the world before distributing it among the organisations it supports. In the case of funding to the Olympic Movement, this includes to the Australian Olympic Committee (AOC). Information regarding the IOC's sources of revenue and the distribution of its revenue is available in the 2012 edition of the

---

<sup>2</sup> The broadcast of the Beijing 2008 Olympic Games drew the largest ever global television audience. Host nation China led the viewing with 94% of Chinese viewers tuning in to the Olympic TV coverage. In the U.S., the Beijing Olympics ranked as the most-viewed TV event ever, with a total audience of 211 million and an average daily audience of 27 million people. More than two billion people – almost one-third of the world's population – watched the Opening Ceremony on 8 August 2008. (Source: Neilsen) In addition, in Australia about 400 hours of television coverage was made available, with 285 hours on Channel Seven and the rest on SBS. As per available audience data, 18 million Australian watched broadcast over the period of the Beijing 2008 Games. (Source: IOC Research - mandated audience data analysis based on available market audience panel data.) The Vancouver 2010 Olympic Winter Games was watched by 1.8 billion global television audience. In the host territory of Canada 98.3% of the population (32.9 million viewers) saw at least some coverage on television. In Australia, 108 hours broadcast on Nine Network was watched by 14.9 million viewers over the period of the Vancouver 2010 Games.  
Source:[http://www.olympic.org/Documents/IOC\\_Marketing/Broadcasting/Vancouver2010OlympicWinterGames-BroadcastCoverageAudienceOverview.pdf](http://www.olympic.org/Documents/IOC_Marketing/Broadcasting/Vancouver2010OlympicWinterGames-BroadcastCoverageAudienceOverview.pdf)

Olympic Marketing Fact File<sup>3</sup> and the IOC's reports on the Beijing 2008 Olympic Games<sup>4</sup> and Vancouver 2010 Olympic Games.<sup>5</sup>

## 1.2 Olympic Charter and Allocation of Broadcast Rights

The IOC's broadcast policy is based on the Olympic Charter, which states, in part:

*'The IOC takes all necessary steps in order to ensure the fullest coverage by the different media and the widest possible audience in the world for the Olympic Games.'*<sup>6</sup>

The IOC bases its decision to allocate broadcast rights on a long-term broadcast strategy aimed at ensuring broadcast of the Olympic Games of the highest quality, maximising exposure across all available media platforms, and securing the financial future of the Olympic Games and the Olympic Movement.

The IOC's broadcast policy recognises that the IOC has an obligation to seek to maximise the revenue from the sale of its media rights on behalf of the entire Olympic Movement.

Within Australia the AOC and Australian Sports Commission (ASC) have a similar interest in the widest possible audience of Australians having access to the Olympic Games as a means of engaging greater participation by all Australians in sport. In the lead up to the 2012 London Olympics the AOC and ASC are using those Games to promote increased sporting participation in schools through their joint Prime Minister's Olympic Challenge.

---

<sup>3</sup> [http://www.olympic.org/Documents/IOC\\_Marketing/OLYMPIC-MARKETING-FACT-FILE-2012.pdf](http://www.olympic.org/Documents/IOC_Marketing/OLYMPIC-MARKETING-FACT-FILE-2012.pdf)

<sup>4</sup> [http://www.olympic.org/Documents/Reports/EN/en\\_report\\_1428.pdf](http://www.olympic.org/Documents/Reports/EN/en_report_1428.pdf)

<sup>5</sup> [http://www.olympic.org/Documents/IOC\\_Marketing/Marketing\\_Report\\_Vancouver\\_2010\\_eng.pdf](http://www.olympic.org/Documents/IOC_Marketing/Marketing_Report_Vancouver_2010_eng.pdf)

<sup>6</sup> Olympic Charter, Rule 49;  
[http://www.olympic.org/Documents/olympic\\_charter\\_en.pdf](http://www.olympic.org/Documents/olympic_charter_en.pdf)

### 1.3 Television Broadcasting of the Olympic Games in Australia

The Summer Olympic Games have been broadcast on television in Australia since 1956.

Since 2004 the Olympic Games have been broadcast on television in Australia as follows:

Olympic Games	Free to air television broadcaster	Subscription television broadcaster
Athens 2004	Seven Network and SBS	-
Torino 2006	Seven Network	-
Beijing 2008	Seven Network and SBS	-
Vancouver 2010	Nine Network	FOXTEL

Nine Network holds the television and other media rights to the London 2012 Olympic Games. FOXTEL is Nine Network's permitted sub-licensee for subscription television broadcasting of the London Olympic Games.

The IOC has not yet licensed the Australian television rights for the 2014 Winter Games and 2016 Summer Games.

## 2. General Comments

Before making submissions directly relating to the Bill, the IOC wishes to record to the Committee its position on some related matters:

### 2.1 *Anti-siphoning laws are anti-competitive*

Anti-siphoning laws of the kind currently included in the *Broadcasting Services Act 1992* and as proposed under the Bill are inherently and self-evidently anti-competitive.

By effectively appointing the free-to-air television broadcasters to the powerful position as 'gatekeeper' of the television rights to listed sporting events, laws such as these operate to the commercial detriment of sporting organisations and other stakeholders.

The IOC submits that it should be free to give effect to the Charter when contracting to sell its rights to free-to-air television coverage of the Olympic Games in Australia, without the distorting constraints of an anti-siphoning regime.

While the IOC will always respect and comply with Australian broadcasting laws, the IOC urges the Committee and the Government to ensure that any anti-siphoning laws that are part of the Australian legal framework are not unduly and inappropriately restrictive, do no more than is necessary to achieve their stated objectives and do not unfairly or unnecessarily change the competitive process for the selling and buying of rights to sporting events.

## **2.2 *There is no basis for concern about the migration of Olympic Games coverage away from Australian free-to-air television***

The inclusion of the Olympic Games in the Australian anti-siphoning regime is founded on a misconceived assumption that, in the absence of regulation, coverage of the Olympic Games will migrate away from free-to-air television to subscription television, therefore depriving the Australian viewing public of 'free' coverage of the event.

This assumption is flawed for a number of reasons.

Firstly, the Olympic Charter requires the IOC to ensure free-to-air television coverage in as many jurisdictions as possible. The IOC gives effect to this charter throughout world, not just in Australia.

In some developed countries, the IOC has granted television rights to the Olympic Games to a subscription television broadcaster. However, this has always been done with an express obligation on the rights acquirer to ensure the IOC's exposure requirements are met (including by way of sublicensing the relevant content to a free-to-air broadcaster). By way of example, the Senate Committee's attention is drawn to the IOC's current television arrangements in New Zealand and Italy.

Secondly, the Olympic Games have been broadcast extensively on Australian free-to-air television for many years. It is simplistic and wrong to believe that this occurs because of the existence of the anti-siphoning laws.

The unique popularity of the Olympic Games, together with the IOC's commitment to exposure through free-to-air television, means it is completely unrealistic to assume the coverage of the Olympic Games would migrate away from Australian free-to-air television

to subscription television or other platforms without the protection of the anti-siphoning laws.<sup>7</sup>

Regardless of the existence of the anti-siphoning regime in Australia, the IOC will continue to pursue the objectives of the Olympic Charter and license its rights in Australia in such a manner as to achieve the widest possible access to the Olympic Games, including by way of free-to-air television broadcasts.

**2.3 *IOC has no desire to see a decrease in the level of 'live' or 'near live' free-to-air television coverage of the Games in Australia, compared with recent historical levels.***

In addition to its commitment to free-to-air television coverage of the Olympic Games in Australia, the IOC has no intention to reduce the number of hours of Olympic coverage in Australia, when compared with coverage during recent Olympic Games. The appropriate minimum hourly level of coverage should, however, be set by, or at least with the approval of, the IOC.

**3. Submissions in relation to the Bill**

**3.1 The criteria for listing should be clear**

The Bill provides that certain events may be declared, by way of legislative instrument, to be a Tier A or Tier B anti-siphoning event if, in the opinion of the Minister, the event should be available to the general public.<sup>8</sup> The Bill does not specify what sort of matters the Minister should be taking into account in determining that an event should be available to the general public, however the Explanatory Memorandum refers to an '*intention*' that Tier B anti-siphoning events will include '*nationally significant*' events.<sup>9</sup>

To promote certainty for all stakeholders, the criteria for declaring events to be anti-siphoning events should expressly be included in the Bill, rather than leaving the listing of a sporting event to be determined by the Minister, by way of a declaration in a readily

---

<sup>7</sup> The IOC notes the Bill seeks to introduce provisions restricting the conferral of rights to anti-siphoning events to content service providers. This restriction does not apply to events conducted outside Australia. The presently scheduled Olympics Games are being conducted outside Australia. Accordingly, these restrictions have no current application to the Olympic Games and the IOC makes no submission on this aspect of the Bill.

<sup>8</sup> Section 145E(1), (2) and (3) of the Bill.

<sup>9</sup> Second recording speech in the Senate for the Bill, 22 March 2012, Hansard, page 27

changeable legislative instrument, on the discretionary and potentially arbitrary grounds of 'the opinion of the Minister'.

### 3.2 **All events in the Olympic Games should not be listed**

It is proposed that every event of Summer and Winter Olympics after the 2012 Olympic Games will be a 'Tier B anti-siphoning event'.

The IOC does not support the blanket inclusion of all events in the Olympic Games in the anti-siphoning list. It is wrong to include all events in an Olympic Games for a number of reasons:

#### 1. ***Nationally significant Olympic events only***

Australia has a well known reputation as a nation that loves sport. However, it is incontrovertible that not all events in the Olympic Games are nationally significant or will attract material public interest in Australia. There are certain sports, and qualifying rounds, in an Olympic Games that will not command a material audience on Australian free-to-air television. For example, handball is not a popular participation or viewing sport in Australia and Australia will not participate in the men's or women's handball competition at the London 2012 Olympic Games.

The declaration of all events in the Olympic Games as anti-siphoning events is overbroad and excessive. Only some Olympic Games content should be included on any list of anti-siphoning events.

The list should be tailored to reflect nationally significant events forming part of the Olympic Games. The events should be identified in advance with the input of the IOC and the AOC. The determination of the content need not be complex, but it should be clear. The relevant events would include internationally prominent events such as the opening and closing ceremonies and the 100 metres final, as well as events in which Australia has a clear national interest such as medal rounds involving Australian athletes and events where Australia has traditionally had a strong success and interest, such as swimming and cycling.

#### 2. ***Capacity constraints***

The Olympic Games is one of a few broadcast events that generate much more content than can actually be aired: the events comprising each Summer and Winter Olympics comprise thousands of hours of live audio-visual coverage. The

Summer Games generate up to 3000 hours of live broadcasting content (including Ceremonies and all sports competitions) and the Winter Games up to 750 hours of live broadcasting content (including the Ceremonies and all sports competitions), based on the London 2012 and Vancouver 2012 Games schedules. It is patently inappropriate and unworkable for a free-to-air television network to broadcast all events, or even highlights of each event, in an Olympic Games either within 4 hours or 24 hours of the event.<sup>10</sup>

Further, the listing of all events, coupled with a 'must show' broadcast obligation, reflects neither the status quo from free-to-air television coverage of the Olympic Games or the expectations of the Australian public.

A reduction in the scope of the list of Olympic events on the anti-siphoning list would also allow the IOC to sell some Olympic content to other television platforms, subject to the terms and conditions of its own choosing.

By tailoring the list of anti-siphoning events in the Olympic Games the IOC is confident that an appropriate balance could be achieved between the interests of the IOC, the International Federations and the Australian viewing public.

### **3.3 'Designated group' concept**

In an attempt to overcome the capacity constraint issue identified above, the drafters of the Bill have allowed the Minister to declare, by way of legislative instrument, that certain events form a 'designated group'. The coverage obligations for events forming part of a designated group will be more flexible, such that a free-to-air broadcaster must provide or exceed coverage of a minimum number of hours for the group or a minimum number of hours for the event.

The Explanatory Memorandum for the Bill refers to the designated group concept being appropriate for long-form, multi-round tournaments, such as the Olympic Games.

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>10</sup> The 'must show' provisions of the Bill require Tier B events to be broadcast live or within 4 hours of the event (sections 145H(1)(e) and 145(3)(a),(b)) or, if the event is in a designated group, within 24 hours of the event (sections 145H(1)(e) and 145B(2))



The IOC proposes the Bill be amended to insert an event specific provision expressly recording that the Summer and Winter Olympics after the 2012 Olympic Games will be a designated group. To promote certainty, it is preferable to do this now and in the Bill itself, rather than leave it to another time as part of a readily changeable legislative instrument.

There are already instances in the Bill of event specific provisions. Although the body of the Bill attempts to give the appearance of being sporting-body neutral, with references to terms such as Tier A and Tier B anti-siphoning events, designated groups, quota groups and Category A and Category B instruments, the Bill does contain specific clauses referring to the Australian Football League and National Rugby League competitions. There is no reason why the status of the Olympic Games as a designated group should not be expressly provided for in the Bill.

### **3.4 Minimum hours restrictions inappropriate**

Under the Bill the Minister has power to specify, by way of legislative instrument, the following coverage requirements for a designated group:

- (a) a total minimum number of hours to be broadcast for the designated group<sup>11</sup>;  
or
- (b) a daily minimum number of hours to be broadcast for the designated group.<sup>12</sup>

The exercise of the Minister's discretion under either of these powers is potentially problematic for the IOC.

The Explanatory Memorandum refers to the Minister specifying a total minimum of hours for the Summer Olympic Games of 259 hours.<sup>13</sup> There is also reference in the Explanatory Memorandum to the Minister possibly specifying a daily minimum number of hours for each of the 14 days of competition of the 2016 Olympic Games of 16 hours per day.<sup>14</sup> The IOC understands the Minister proposes to specify 111 hours as the total minimum of hours for coverage on free-to-air television for the Winter Games.

The proposed minimum hourly requirement is greater than the IOC's contractual requirements for free-to-air television exposure, both in Australia and other countries. The IOC routinely obliges a rights-holding broadcaster by contract to broadcast a minimum of

---

<sup>11</sup> Section 145F(1)

<sup>12</sup> Section 145F(2)

<sup>13</sup> Paragraphs 104 and 111 of the Explanatory Memorandum.

<sup>14</sup> Paragraphs 106 and 111 of the Explanatory Memorandum.

200 hours of free-to-air coverage in respect of Summer Games and 100 hours of free-to-air coverage in respect of Winter Games.

In the case of the Winter Games, a declaration that there must be a minimum of 111 hours of coverage on free-to-air television is inappropriate as it sets the minimum requirement at a level greater than what the IOC requires in its contracts with broadcasts. It is also a greater amount of coverage than has ever occurred for the Winter Games in Australia.

Any increase in the minimum hourly requirements across the Games that exceeds the minimum number required by the IOC has the potential to adversely impact negotiations with free-to-air television broadcasters. A requirement that increases the number of hours on free-to-air television, will also decrease the incentive for subscription television to acquire the rights to the Olympic Games.

The IOC does not object to a philosophy of setting a minimum number of hours for coverage of Olympic Games events on the list (noting the IOC's comments above about the appropriate composition of the list). As noted, the IOC already sets a minimum number of free-to-air television hours by way of contract with its free-to-air television broadcaster.

Further, the nature of the minimum hourly coverage requirements for free-to-air television broadcasters needs to be clear. Is it intended that the minimum daily or hourly coverage comprises original Olympic programming, or could the coverage include promotional material, news reports, magazine style programs and advertising?

The IOC would be very concerned if the minimum number of free-to-air television hours proposed to be declared by a Minister was greater than the IOC's requirement. Further, the IOC would also be concerned if the Bill allowed the Minister to exercise his or her discretion under this power at any time after the IOC had allocated the Australian television rights in any way that was inconsistent with how the rights had been allocated.

A minimum hourly requirement that constrains in any way the IOC's ability to commercialise its media rights in Australia is vigorously opposed by the IOC.

### **3.4 Consultation**

Until the recent invitation to submit to the Senate Committee as part of the current inquiry, the IOC had not been consulted about the proposed Bill or any proposed legislative instruments arising under the Bill.

The Bill and relevant legislative instruments have a significant impact on the IOC's valuable Australian television rights, and the future negotiation for the sale of those rights.

The IOC requests it be kept informed of any developments in respect of the Bill, including any proposed changes to the Bill or proposed legislative instruments.

In the event the Bill is passed into law, the IOC expects to be consulted in a meaningful way about any exercise of legislative powers that may impact the IOC. In particular, the IOC wishes to be heard on the extent of events in the Olympic Games that are to be included on the anti-siphoning list and the minimum number of hours that are expected to be broadcast on free-to-air television.

#### **4. Summation**

The licensing of Olympic Games content in the Australian market is very important to the IOC, associated sporting organisations, Australian broadcasters and the Australian public. The IOC reassures the Australian Government that, in furtherance of the objectives of the Olympic Charter, the IOC is committed to ensuring coverage of the Olympic Games on free-to-air television in Australia.

However, the IOC's concerns about the Bill identified above have the real risk of adversely impacting the process for, and commercial value obtained from, the licensing in Australia of television rights to future Olympic Games.

In considering the Bill the IOC urges the Senate Committee to consider the matters raised in this submission and to ensure that to the extent the Bill relates to the Olympic Games, it reflects the practical realities of the Games and does not inappropriately or excessively impact on the IOC's licensing of its media rights.

-----

Representatives of the IOC are available to address any questions or comments the Senate Committee may have about the IOC's submissions, or any other relevant matters concerning the Olympic Games.

Mr. Howard M. Stupp, IOC Director of Legal Affairs

Mr. Timo Lumme, IOC Director, IOC Television and Marketing Services

Contacts:

Mr. John Coates AC, President of AOC and Member of the Executive Board, IOC

Mr. Kevan Gosper AO, IOC Member

Mr. Anthony Edgar, Head of Media Operations, IOC