

**AUSTRALIAN DEMOCRATS  
SENATOR VICKI BOURNE**

**ADDITIONAL COMMENTS ON THE BROADCASTING  
LEGISLATION AMENDMENT BILL (NO. 2) 2001**

The Broadcasting Legislation Amendment Bill (No. 2) 2001 makes several amendments to the Broadcasting Services Act.

*Anti-siphoning*

The anti-siphoning list commenced operation in 1994, and was designed to limit the migration of major sporting events, on an exclusive basis, from the free-to-air to the subscription television sector. The list does not guarantee exclusive rights to the free-to-air sector, nor does it compel them to broadcast the event even if they require the rights to that event.

The Democrats support the anti-siphoning list and the public policy objective of ensuring that sporting events of significant interest are broadcast free-to-air.

The amendments in the Broadcasting Legislation Amendment Bill (No. 2) 2001 seek to provide a more efficient administrative process for the removal of events from the anti-siphoning list which would allow the subscription television sector to obtain the rights to sporting programs which were not required by the free-to-air television sector.

The bill provides for this automatic delisting of events from the anti-siphoning list six weeks before the start of the event, in circumstances where the free-to-air sector has not acquired the rights to the event in question. ASTRA, on behalf of the subscription television sector, has requested that the period of automatic de-listing should be a period of ten weeks rather than six weeks in order to provide the sector additional time to effectively market the event and to advise their subscribers that the event will be broadcast.

The Democrats note ASTRA's request for the additional period of notification. Given that the broadcast rights to events on the anti-siphoning list are negotiated several months and even years from the date of broadcast, the Democrats understand ASTRA's requirement for an extended period of notification. However, the Democrats are still considering the need for this additional period to be enshrined in legislation.

The Democrats support the anti-siphoning list and believe that major sporting events should be made available to the majority of the population via free-to-air television. However, we also note that there have been instances where the free-to-air networks have not exercised their rights, once acquired, to broadcast these events as originally intended. The Democrats believe that in these circumstances, the subscription television sector should be given the earliest opportunity to broadcast major sporting events, from the anti-siphoning list, which are unwanted by the free-to-air sector. However, in these circumstances, the Democrats would not support the subscription television sector having exclusive rights to these events,

but would prefer a dual-rights system to operate. We do not believe the broadcast of events across the free-to-air system should be jeopardised.

The Democrats note that the Australian Broadcasting Authority is also undertaking a review of the anti-siphoning list and is due to report on 30 June 2001. The committee heard evidence from DCITA that it did not believe that these two issues were related as the ABA is reporting on events to be included on the anti-siphoning list, rather than the operation of the list itself.

#### *Time-Shifted High Definition Programs*

The bill provides for the time-shifting of programs broadcast in high definition television format so that these programs do not have to be simulcast with standard digital television or analogue television format, as currently required under the Act.

There has been a great deal of discussion about this amendment – which has come to be known as the ‘*Harvey Norman*’ amendment. The amendment is designed to allow retailers to show demonstration tapes (on a 30 or 60 minute loop-tape) in high definition format in order to demonstrate the benefits of high definition programming. The Democrats do not believe that the amendment, as currently drafted in the bill, appropriately addresses the issue of a demonstration tape.

When the issue of time-shifting was discussed during the debate on digital television at this time last year, the definition of time-shifting had a different meaning. Although not resolved at the time, the Democrats understood ‘time shifting’ to mean that broadcasters could continue coverage of a major event, while also broadcasting programs according to their schedule. For example, if a cricket match or golfing tournament ran over time, the broadcaster could continue to broadcast that event, while also broadcasting the news, or whatever, as scheduled.

The bill, as drafted, does not adequately define time-shifting and it appears to have a different meaning from that discussed last year. The Democrats require a definition of time-shifting to appear on both the bill and the explanatory memorandum.

If the free-to-air television sector requires clarification in the BSA to allow them to provide an HDTV demonstration tape which would not be defined as a program, then the amendment should more adequately reflect this requirement. We do not believe there was an adequate explanation provided to the committee on this amendment. In subsequent discussions since the committee hearing, the Democrats understand that the amendment does not reflect FACTS’ needs for material on a demonstration tape to be defined as a non-program. Material on a demonstration tape would never be broadcast on analogue or standard definition television. The amendment should better reflect this.

Further, the Democrats do not support multichanneling by the free-to-air sector. We would not support amendments to the BSA which might provide back-door multichanneling. We remain to be convinced that this amendment, as drafted, would not permit the free-to-air broadcasters from multichanneling, contrary to the provisions in the BSA.

The Democrats recommend that the government revisit this amendment.

In terms of the exemption relating to advertising or sponsorship on regional stations, the Democrats are concerned that this issue arose late in the committee's consideration of this bill. This issue remains one for further consideration.

*Allocation of licences in remote areas*

The Democrats have no additional comment to make on this matter, and support this amendment.

*Exclusion from datacasting genre conditions*

The Democrats support a model of datacasting which would prevent de facto broadcasting. However, we believe there is a better way of achieving this outcome, and have moved amendments in the Senate previously to reflect this position.

The Democrats are concerned that the exemptions for foreign language news and current affairs will apply equally to the national broadcasters as they will to the commercial broadcasting sector. The Democrats support the independence of the national broadcasters and therefore support the national broadcasters determining their own datacasting services, outside the genre restrictions to be imposed by the ABA. Therefore, we will not support this amendment applying to the national broadcasters' datacasting services.

*Issuing of apparatus licence*

The Democrats have not further comment on this issue (which appears to be a technical amendment) and support the bill in this regard.

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**Senator Vicki Bourne (AD, NSW)**

