



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

**Sport on television:
A review of the anti-siphoning scheme
in the contemporary digital environment**

Discussion paper

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Introduction

Sport is an important part of Australian culture. Almost two-thirds of the population (66 per cent or 10.5 million people) aged 15 years and over participate in sport or recreational activities each year, and of this proportion, around one-third (29 per cent or 4.7 million people) participate in sport twice per week.¹ At a grassroots level, there are around 26 000 local sporting clubs across the country.²

Australians are keen followers of sport on television. As the following table shows, the 10 most popular programs on free-to-air television in 2008 were all sporting events. The audience for every event below was greater than the audience for the most popular non-sports program in 2008.

Table 1: 10 most popular sports programs on free-to-air television in 2008

Rank	Program	Audience (million viewers)
1	Olympic Games Opening Ceremony	2.824
2	AFL Grand Final	2.491
3	AFL Grand Final Presentations	2.468
4	Australian Open tennis—men's final	2.447
5	The Melbourne Cup	2.272
6	Olympic Games Day 9—prime-time	2.226
7	Olympic Games Day 1—prime-time	2.215
8	Australian Open tennis—Final Presentation	2.207
9	NRL State of Origin III	2.145
10	Olympic Games Day 5—prime-time	2.131

Source: OzTAM

Sports coverage on pay television is also very popular among Australian audiences and, hence, a major subscription driver. Table 2 on page 3 shows the 10 most popular programs on pay television in 2008, nine of which were sports-related.

¹ Australian Bureau of Statistics and Department of Health and Ageing data for 2007.

² Ibid.

Table 2: 10 most popular programs on pay television in 2008

Rank	Program	Audience (thousand viewers)
1	Rugby Union Bledisloe Cup	350
2	World Cup Qualifier: Australia v Qatar	345
3	NRL: Cowboys v. Panthers	338
4	Super 14 final: Crusaders v. Waratahs	333
5	World Cup Qualifier: Australia v. Iraq	330
6	NRL: Cowboys v. Storm	328
7	NRL: Raiders v. Storm	322
8	NRL: Dragons v. Cowboys	320
9	Australia's Next Top Model	320
10	NRL: Sharks v. Sea Eagles	314

Source: OzTAM

The pay television sector in Australia offers subscribers access to a range of dedicated sports channels which are provided through various channel packages. Sports channels include Fox Sports 1, Fox Sports 2, Fox Sports 3, Fox Sports News, ESPN, TVN, Fuel TV, Nat Geo Adventure, Sky Racing and Euro Sport. Subscribers can also choose to pay to watch particular one-off sports events on pay-per-view channels such as Main Event.

The anti-siphoning scheme was introduced in 1994 to ensure that television coverage of events of national importance and cultural significance was not siphoned off exclusively to pay television. In the 15 years since the scheme was introduced, the scope and nature of television broadcasting in Australia has changed substantially.

Australia's transition to free-to-air digital television is well advanced, with 91 per cent of Australian households now able to access all the national and commercial digital services licensed for their area. As at first quarter 2009, 47 per cent of households have converted their main television to digital. The full conversion to digital by December 2013 and the closure of analog broadcasts is a policy priority for the Australian Government.

Pay television has also grown substantially since the first services began in 1995, with 2.2 million households as at first quarter 2009 subscribing to a pay television service. Pay television has also successfully completed its own transition to digital.

The *Broadcasting Services Act 1992* (the Act) requires the Minister for Broadband, Communications and the Digital Economy to conduct a review of the following aspects of the anti-siphoning scheme before 31 December 2009:

- the operation of the anti-siphoning scheme and whether it should be amended or repealed
- the operation of the licence condition on pay television operators restricting access to anti-siphoning listed events (listed events) and whether it should be amended or repealed
- the operation of the restrictions on commercial television broadcasters in relation to listed events on standard definition and high definition multi-channels and whether these should be amended or repealed.

The anti-siphoning scheme was previously reviewed in 2001 by the then Australian Broadcasting Authority (ABA). In December 2000, the then Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, directed the ABA to investigate which

events should be removed or added to the anti-siphoning list and the dates on which protection should expire for events on the list. In conducting its investigation, the ABA was to have regard to the policy that an event should be included on the anti-siphoning list if the event has been consistently broadcast by free-to-air television broadcasters in the previous five years.

The ABA report of its investigation, *Investigation into Events on the Anti-Siphoning List: Report to the Minister for Communications, Information Technology and the Arts*, was publicly released in August 2001. The ABA recommended, among other things, that a number of events be removed from the anti-siphoning list on the basis of their not being broadcast consistently in the previous five years, and recommended certain other events that had grown in popularity be added to the list. The ABA also recommended that the list not run longer than five years. In addition, the ABA suggested the anti-siphoning scheme be reviewed in the context of digital television arrangements.

The Productivity Commission reviewed the anti-siphoning scheme as part of its March 2000 *Broadcasting Inquiry Report*, and also more recently as part of its June 2009 draft research report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*.

This discussion paper

The Australian Government is committed to ensuring that sporting events of cultural significance and national importance can be made freely available to the Australian public.

The Department of Broadband, Communications and the Digital Economy is releasing this paper as part of the anti-siphoning review. The paper is intended to stimulate public debate about the scheme and inform the Minister's considerations of the effectiveness and appropriateness of the anti-siphoning scheme in the contemporary digital television and sports rights environment. The paper is not intended to indicate a preference by the Australian Government for any particular aspect of the scheme or any particular change. This paper is in seven parts.

Part one outlines the regulatory framework for the scheme. This includes the process for listing an event on the anti-siphoning list, removing an event from the list (de-listing), the licence condition on pay television providers, the prohibition on premiering listed events on digital free-to-air multi-channels, and the role of the anti-hoarding arrangements.

Part two considers what sporting events are currently on the anti-siphoning list and the rationale for adding or removing an event from the list.

Part three looks at other countries with schemes similar to Australia's anti-siphoning scheme. This includes schemes in Europe such as those of the United Kingdom, France, Germany, Denmark and Finland. Part three also looks at overseas countries that do not have schemes that are similar to Australia's anti-siphoning scheme, including the United States and New Zealand.

Part four of the paper summarises current levels of free-to-air television coverage of sports, including live coverage and delayed coverage.

Part five considers digital free-to-air multi-channels in the context of the anti-siphoning scheme, particularly the current prohibition on premiering events on the anti-siphoning list on digital free-to-air multi-channels.

Part six of the paper explores the anti-siphoning scheme in the context of new media, such as the internet and internet-enabled mobile phones, and the way the owners of rights to televise sporting events are increasingly turning to new media platforms to provide sports coverage and content.

Part seven outlines issues relating to the anti-siphoning scheme on which comment is sought.

Part One: How the anti-siphoning scheme operates

The *Broadcasting Services Act 1992* (the Act) provides the legislative basis for the anti-siphoning scheme. The scheme was established in 1994 to ensure that with the emergence of pay television, Australians could continue to have access to important events on free-to-air television and that these events would not be siphoned away exclusively to pay television. The Explanatory Memorandum to the original legislative provisions for the anti-siphoning scheme explains that the purpose of the anti-siphoning provisions was to ensure that:

'...events of national importance and cultural significance... be received by the public free of charge... This process should ensure, on equity grounds, that Australians continue to have free access to important events. It will, however, also allow subscription television broadcasters to negotiate subsequent rights to complementary, or more detailed, coverage of events.'

Over time, the scheme has focused on major sporting events which have traditionally been available on free-to-air television. While the scheme is not limited to sporting events, non-sporting events of national and cultural significance have not been listed.

Regulation

The anti-siphoning scheme operates via a licence condition on pay television broadcasters that prevents them from buying the rights to televise events on the anti-siphoning list before free-to-air television broadcasters have purchased the rights. For events not on the anti-siphoning list, free-to-air and pay television broadcasters can purchase the rights to televise those events based on their own commercial interests.

The Minister specifies the events that appear on the anti-siphoning list. However, events are automatically de-listed 12 weeks before they commence. This provision was introduced in 2005 to improve the operation of the scheme by streamlining pay television access to listed events where free-to-air broadcasters do not intend to purchase the broadcasting rights. The Minister can override automatic de-listing if he or she is satisfied that free-to-air broadcasters have not had a reasonable opportunity to purchase rights to a listed event.

Events on the anti-siphoning list can be shown on free-to-air digital multi-channels at the same time as, or after, they are shown on the broadcaster's main channel—but not before.

The anti-siphoning scheme does not require free-to-air broadcasters to buy the rights, show listed events live or prevent those broadcasters from on-selling some or all of the rights they have acquired to pay television broadcasters. Nor does the anti-siphoning scheme prevent parties other than subscription television broadcasters from acquiring the rights to televise events on the anti-siphoning list before the free-to-air broadcasters.

In effect, the scheme provides the opportunity for major sporting events to be shown on free-to-air television ahead of pay television. It is recognised that this affects the commercial opportunities of pay television broadcasters. Premium sports content is one of the major drivers of subscriber numbers for pay television. The anti-siphoning scheme prevents pay television licensees from acquiring the broadcasting rights to a listed event prior to the event being automatically de-listed 12 weeks before it is due to commence. Nonetheless, this has not prevented free-to-air and pay television broadcasters from forming partnerships to acquire the rights to listed sporting events, such as the Nine Network and Foxtel's broadcast agreement for the 2010 Vancouver Winter Olympics and 2012 London Summer Olympics.

It is also recognised that the scheme restricts the rights holders' choice of purchasers for the broadcast rights to listed events before the automatic de-listing period. Before that time, the owners of the broadcast rights to listed sporting events are effectively required to make them available to free-to-air broadcasters, with pay television operators excluded from negotiations. This

can be expected to affect the price and the nature of those broadcast rights to some degree, and subsequently the type of public exposure the listed sports receive.

The current anti-siphoning list came into effect on 1 January 2006 and expires on 31 December 2010. The list currently consists of domestic and international sporting events in twelve categories, including cricket, tennis, golf, motor sports, football, rugby union, rugby league, horse racing, the Olympic Games, the Commonwealth Games, Australian Football League (AFL) and netball. The full list is at Appendix A.

Exclusivity

The anti-siphoning scheme does not prevent sports rights holders from deciding to sell, for example, only the free-to-air broadcasting rights to a listed event, and not the subscription broadcasting rights, or vice versa, although a pay television broadcaster cannot acquire the rights 12 weeks before the event commences. Also, rights can be sold to an intermediary provided that, ultimately, pay television does not acquire the rights before a free-to-air broadcaster more than 12 weeks before that event commences.

The exclusive acquisition of broadcast rights to events is a major incentive for both free-to-air and pay television broadcasters when considering purchasing rights to events. Sports bodies that offer the rights to listed events to broadcasters on an exclusive basis are likely to gain a premium price for their content as neither television sector is interested in growing an audience for, or sharing it with, their competitor.

On-selling

As noted above, the anti-siphoning scheme does not prevent an organisation from acquiring the broadcast rights to a listed event and then selling those rights to another party.

The AFL's 2007–2011 broadcast rights agreement is an example of an on-selling agreement between free-to-air television and pay television broadcasters. The rights holder (the AFL) initially sold the broadcast rights package, including all AFL Premiership matches and finals, to a Seven Network and Network Ten consortium. Seven and Ten subsequently negotiated with the AFL and Foxtel to on-sell the exclusive telecast rights to four Premiership matches per week (along with non-exclusive replay rights) to Foxtel.

As a result of this commercial agreement, four AFL Premiership matches per week, which are otherwise covered by the anti-siphoning provisions, are broadcast exclusively on pay television.

Third party access to rights

Currently, the anti-siphoning scheme does not prevent a company other than a subscription television broadcaster from being able to acquire the rights to broadcast an anti-siphoning listed event before a commercial or national free-to-air television broadcaster. This includes a company that is associated with a pay television licensee, such as Fox Sports, and any other third party.

However, the prohibition against a pay television broadcaster acquiring the right to televise an event before a free-to-air broadcaster (which operates as a condition on their licence) means that a third party organisation still could not on-sell these rights to a pay television broadcaster unless the rights had been acquired by a free-to-air television broadcaster or the relevant event was de-listed.

Free-to-air television broadcasters are free to compete with third parties to acquire the rights to televise listed events. Where a free-to-air television broadcaster considers it has not had a reasonable opportunity to acquire the rights to televise a listed event, they may seek a declaration from the Minister for an event to be retained on the anti-siphoning list. Such a declaration would restrict pay television broadcasters' ability to acquire the broadcast rights to that event and would also affect the rights holders' choice of purchasers.

ACMA monitoring and ‘use it or lose it’ guidelines

From 1 January 2006 to 3 September 2008, the Australian Communications and Media Authority (ACMA) actively monitored free-to-air television coverage of events on the anti-siphoning list and reported to the then Minister for Communications, Information Technology and the Arts and from November 2007 the Minister for Broadband, Communications and the Digital Economy. This included providing reports to the Minister on free-to-air broadcasters’ acquisition and use of broadcast rights to listed events based, in part, on a quantitative assessment against the seven criteria of the ‘use it or lose it’ guidelines introduced in January 2007 by the former government. ACMA has provided seven reports which are available from its website at www.acma.gov.au.

The ‘use it or lose it’ guidelines had no statutory force but were designed to provide a set of criteria to assist the former government in determining which events to include on the anti-siphoning list by reflecting the practical realities of providing free-to-air television coverage of sports events and informing free-to-air television broadcasters about appropriate levels of coverage.

ACMA considered free-to-air television broadcasters’ coverage of events on the anti-siphoning list against the guidelines as a whole. Listed events that did not receive adequate coverage, or which were not purchased by free-to-air broadcasters, could be considered by the Minister for removal from the anti-siphoning list. No event has been removed from the anti-siphoning list as a result of the ‘use it or lose it’ guidelines. The former government indicated that failing one element of the ‘use it or lose it’ guidelines would not necessarily mean an event would be de-listed.

In general, ACMA’s monitoring and reporting found that free-to-air broadcasters were providing adequate coverage of events to which they had the rights. Further information on this is in part four of this paper.

Anti-hoarding

The anti-hoarding rules are set out in the Act separately to the anti-siphoning scheme and operate independently of the anti-siphoning scheme. The anti-hoarding rules are intended to encourage free-to-air television broadcasters to provide live and complete television coverage of listed events.

Where the Minister designates an event to be subject to the anti-hoarding rules, commercial free-to-air television broadcasters that acquire the rights to televise such an event live but do not propose to fully use the rights must offer the unused portion of those rights to the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) for a nominal charge. If the ABC or SBS acquire the rights to the event but do not propose to fully use the rights, they must offer the unused portion to each other. The offer must be made 30 days or more before the start of the event, unless the Minister is satisfied that it should occur closer to the start of the event, and must remain open for at least seven days.

The 2002 and 2006 Fédération Internationale de Football Association (FIFA) World Cup tournaments are the only events to have been designated under the anti-hoarding rules. The free-to-air broadcast rights for the 2002 tournament were shared by the Nine Network and SBS, while the broadcast rights for the 2006 tournament were purchased by SBS which provided free-to-air television coverage of the event.

Part two: Events on the anti-siphoning list

The anti-siphoning scheme has remained largely unchanged since it was introduced. However, the events on the anti-siphoning list itself have varied over time. The Minister may alter, amend, extend or replace the anti-siphoning list at any time. The list currently consists of domestic and international sporting events in twelve categories, including cricket, tennis, golf, motor sports, football, rugby union, rugby league, horse racing, the Olympic Games, the Commonwealth Games, AFL and netball. The full list is at Appendix A.

Rationale for listing events

As outlined in part one, the policy intent of the anti-siphoning scheme is to enable events of national importance and cultural significance to remain available on free-to-air television. Over time, the scheme has focused on major sporting events which have traditionally been available on free-to-air television.

Currently, the concepts of ‘national importance’, ‘cultural significance’ and ‘traditional availability’ of events on free-to-air television are not defined and selecting an event for listing is a matter for the Minister. The Minister has discretion in forming an opinion about whether or not to include an event on the anti-siphoning list. The Minister may also decide whether an event should be fully listed (for example, the Olympic Games) or partially listed (for example, the French Open, where only the finals are listed). The Act gives no guidance and does not specify any criteria for listing an event nor does it precisely define ‘event’. This contrasts with countries in Europe where specific criteria for determining the significance and cultural importance of events are set out to determine when an event warrants some assurance of free-to-air television coverage.

In its *Broadcasting Inquiry Report* of 3 March 2000, the Productivity Commission made a number of suggestions. These included, among others, a suggestion that the criteria for a new and much shorter anti-siphoning list take into account:

- demonstrated national significance, such as Australian involvement
- events that have been consistently broadcast by free-to-air television broadcasters in the past five years
- events that have received a high level of viewing by Australian audiences, as determined by ratings.

The Productivity Commission reiterated its recommendation for a reduction in the length of the anti-siphoning list as part of its draft research report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, dated June 2009.

It is not clear how often an event needs to be shown on free-to-air television before it is regarded as ‘traditionally available free-to-air’ or from what point in time to base any such assessment on. Additionally, while the popularity of an event may be a factor in an event being traditionally available on free-to-air television, it is not a factor that the Minister is required to consider in forming an opinion about whether or not to add an event to the anti-siphoning list. The popularity of sports also varies. For example, NRL and AFL grand finals and the NRL State of Origin series on average attract a much larger audience compared to regular NRL and AFL premiership season matches.

Ratings for events will be affected by a number of factors, including whether or not the event occurs during prime-time, whether or not the broadcaster chooses to show the event in prime-time, the grassroots level of interest in the sport, the quality of the spectacle in terms of competitiveness and participants, and, in the case of an international event, whether an Australian is involved.

The fact that an event or competition has not traditionally been shown on free-to-air television could be considered in relation to whether an event should be listed or not. The Super 14 Rugby Union and A-League football competitions, since their inception, have been shown on pay

television with little or no coverage on free-to-air television. The ANZ Netball Championship was shown on pay television in 2008 but is being broadcast on commercial free-to-air television in 2009.

Duration of the list and de-listing period

The term of the current list is five years, expiring in 2010. The previous list had a 10-year term. The duration of a list can be extended, as was the case with the original list which was extended in 2004 by one year from 31 December 2004 to 31 December 2005. However, the maximum duration for any list is 10 years due to the automatic sunset arrangements in the *Legislative Instruments Act 2003*.

An important factor in considering the duration of the anti-siphoning list is the duration of the contracts for televising events that sports bodies agree to sign. Press reports suggest that sports rights contracts can generally range from one to eight years.

Table 3: Broadcast rights to major sporting events recently acquired by broadcasters

Event	Broadcaster	Rights held until
Melbourne Cup	Seven	2012
AFL Premiership and finals	Seven, Ten and Foxtel	2007–11
NRL Premiership and finals	Nine and Foxtel	2012
Rugby Union Test matches	Foxtel (all southern hemisphere rugby until 2010) and Seven (non-exclusive, Test matches involving Australia, played in Australia until 2010).	2010
Rugby World Cup	Nine and Foxtel	2011 and 2015 tournaments
English FA Cup final	SBS	2010
FIFA World Cup	SBS	2010 and 2014 World Cup finals
Australian Open tennis	Seven	2014
Davis Cup tennis	Seven	2014
Netball Test matches	Ten	2012
Formula 1 Grand Prix	Ten	2010
V8 Supercar Championship	Seven	'Long term'
Champ Car World Series (Indycar)	Seven	'Long term'
Olympic Games (Summer)	Nine and Foxtel	2012 Games (London)
Olympic Games (Winter)	Nine and Foxtel	2010 Games (Vancouver)
Commonwealth Games	Ten and Foxtel	2010 Games (New Delhi)

Part three: Anti-siphoning regimes overseas

A number of overseas countries operate schemes that are similar to Australia's anti-siphoning scheme. This includes countries in Europe such as the United Kingdom, France, Germany, Denmark and Finland. While these schemes are similar in purpose to Australia's, the composition and rationale for listing certain events and the type of coverage expected on free-to-air television is different. Other countries, such as the United States and New Zealand, do not operate comparable schemes. A table summarising a selection of schemes that are similar to Australia's anti-siphoning scheme is provided at the end of part two.

Europe

In 1989 the Council of European Communities issued the Television Without Frontiers Directive. Article 3a of the Directive was concerned with protecting free access of television coverage for citizens in each Member State for sporting or cultural events of major importance to individual Member States. As a result, Member States are able to lodge a list of designated events that are considered of major importance and that should be available via free access television either wholly or partially live, or wholly or partially delayed. The list is then submitted to the Commission of European Communities for approval.

The Commission of the European Communities must be satisfied that the events listed by Member States have met at least two of the following criteria considered to be reliable indicators of the importance of events for society:

- (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned
- (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity
- (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance
- (iv) the fact that the event has traditionally been broadcast on free-to-air television and has commanded large television audiences.³

The following countries currently have a designated list of events: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy and the United Kingdom. Most of the lists identify events that must be shown on free-to-air television live or delayed (completely or partly) if the broadcast rights are held exclusively.

The events listed are generally in relation to the national team's participation in an international tournament including the semi-final and final of that tournament (for example, the Fédération Internationale de Football Association (FIFA) World Cup), a one-off domestic competition final (e.g. the Football Association Challenge Cup (FA Cup) final), a world tournament (for example, the Olympic Games or World Ice Hockey Championships), a club team's participation in an international tournament as that country's representative including the semi-final and final of that tournament (for example, the Union of European Football Associations (UEFA) Cup and UEFA Champions League), a one-off event (for example, the Tour de France or a major domestic horse race) and some iconic cultural events (for example, the Vienna Philharmonic Orchestra's New Year's Concert).

³ Official Journal of the European Union, Committee Decision regarding Austria's list of designated events, L 180/11, 10 July 2007

United Kingdom

The United Kingdom's 'listed events' scheme is legislated in the *Broadcasting Act 1996* and empowers the United Kingdom Secretary of State to add or remove key sporting events as 'listed events'. An event may be listed if it is deemed to be of national interest within England, Scotland, Wales or Northern Ireland separately. The scheme is administered by the Office of Communications (Ofcom). It operates in line with the Television Without Frontiers Directive outlined in the Europe section on page 10.

The 'listed events' scheme splits listed events into Group A and Group B (see below) and divides broadcasters into 'qualifying broadcaster', who provide channels that are available without payment to at least 95 per cent of the United Kingdom population (for instance, Channel 3, Channel 4 and the BBC), and all other broadcasters providing a service in the United Kingdom.

The United Kingdom Government announced a review of the 'listed events' scheme in April 2009.

Operation of the scheme for Group A events

Live coverage rights for Group A events should be made available to broadcasters on all platforms.

Group A events may not be covered live on an exclusive basis unless consent has been given by Ofcom for exclusivity.

To provide consent for exclusive live coverage to a Group A event, Ofcom must be satisfied that:

- i) the availability of the rights was generally known
- ii) all broadcasters had a genuine opportunity to acquire the rights on fair and reasonable terms at a price that was non-discriminatory between categories
- iii) a non-qualifying broadcaster had not bid for, or expressed an interest in, the acquisition of the rights. For example, if the BBC acquired the rights to a Group A event, and no subscription broadcaster expressed an interest or bid for the rights, the BBC could receive Ofcom's consent to exclusive coverage of the event.

Operation of the scheme for Group B events

Group B events may not be broadcast live on an exclusive basis unless adequate provision has been made for secondary coverage by a qualifying broadcaster. Secondary coverage includes edited highlights or delayed coverage of at least 10 per cent of the event, or 10 per cent of the day's play where the event takes place over several days.

Live radio commentary of the event must also have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national (or near national) network.

Where no qualifying broadcaster is interested in providing adequate secondary coverage, Ofcom can give its consent to exclusive live coverage, without secondary coverage to the other broadcaster, using the same exclusivity criteria as Group A events.

Listed sporting events

Group A: the Olympic Games, the FIFA World Cup finals tournament, the FA Cup final, the Scottish FA Cup final (in Scotland), the Grand National, the Derby, the Wimbledon tennis finals, the European Football Championship finals tournament, the Rugby League Challenge Cup final and the Rugby World Cup final.

Group B: Cricket Test matches played in England, non-finals play in the Wimbledon Tournament, all other matches in the Rugby World Cup finals tournament, Six Nations Rugby tournament matches involving home countries, the Commonwealth Games, the World Athletics

Championship, the Cricket World Cup (the final, semi-finals and matches involving home nations' teams), the Ryder Cup and the Open Golf Championship.

United States

The United States does not operate a scheme akin to Australia's anti-siphoning scheme. In 1994, the United States Federal Communications Commission investigated sports programming in the United States and concluded that there was no significant migration of sporting events from free-to-air to pay television. Further, the Commission found that government intervention to promote free access to sporting events of national significance was not warranted. However, the Commission did state that it would monitor the availability of sporting events via free-to-air television and take action consistent with the Commission's remit if any significant threat arose.

New Zealand

New Zealand does not currently operate an anti-siphoning scheme. However, the issue of protecting potential free-to-air television coverage of sport of national significance was raised in New Zealand's 2008 *Digital Broadcasting: Review of Regulation*. The submissions to the review on this aspect were varied in their opinion of whether regulation should be introduced. The report of the review recommended that a study be undertaken which would include examining the issue of access to premium content (for instance, events of national significance). In addition, the report further recommended that potential options should be investigated for ensuring greater free-to-air access to sporting events provided such measures had only a minor impact on the commercial revenue available to sporting bodies and enhanced future participation in sport.

Belgium

Belgium operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 25 June 2007 (this scheme is outlined in the Europe section on page 10). The list covers a range of events including domestic and international football events and matches, tennis, cycling, the Olympic Games, athletics, the Belgian Formula 1 Grand Prix and the final of the Queen Elisabeth Music Competition. The list has three parts with events listed that are significant to the Belgian population, the French community in Belgium and the Flemish community in Belgium.

France

France operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 25 June 2007 (this scheme is outlined in the Europe section above). The list covers a range of events including domestic and international football events and matches, domestic and international rugby union events and matches, tennis, cycling, the Olympic Games, the French Formula 1 Grand Prix, basketball, athletics and European handball.

Finland

Finland operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 25 June 2007 (this scheme is outlined in the Europe section above). The list covers a range of events including international football events and matches, the Olympic Games, athletics, the Nordic World Ski Championships and ice hockey.

Germany

Germany operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 20 September 2000 (this scheme is

outlined in the Europe section above). The list covers a range of domestic and international football events and matches.

Ireland

Ireland operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 25 June 2007 (this scheme is outlined in the Europe section above). The list covers a range of events including international football events and matches, international rugby union events and matches, the Summer Olympic Games and several domestic horse races.

Italy

Italy operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 9 March 1999 (this scheme is outlined in the Europe section above). The list covers a range of events including domestic and international football events and matches, cycling, the Olympic Games, the Italian Formula 1 Grand Prix, and the San Remo Italian music festival.

Austria

Austria operates a designated list of events under the Television Without Frontiers Directive as approved by the Commission of European Communities on 25 June 2007 (this scheme is outlined in the Europe section above). The list covers a range of events including domestic and international football events and matches, the Olympic Games, FIS World Alpine skiing championships, World Nordic skiing championships, Vienna Philharmonic Orchestra's New Year's concert and the Vienna Opera Ball.

Table 4, on pages 15 to 17, provides a summary of European schemes that are similar to Australia's anti-siphoning scheme. These schemes are all designed to promote the coverage of culturally significant events on free-to-air television. Each country has its own unique selection of events, some of which are not sports-related.

Table 4: Australia’s anti-siphoning scheme compared with selected similar schemes overseas

Australia	United Kingdom	Belgium	France
<ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • Commonwealth Games • Melbourne Cup • each match in the AFL Premiership and AFL finals • each match in the NRL Premiership and NRL finals • each Rugby League State-of-Origin match • each Rugby League test match involving Australia • each Rugby Union test match involving Australia • Rugby World Cup • each test match involving the Australian cricket team, played in Australia or the UK • each one-day international involving Australian cricket team, played in Australia, the UK or any series where at least one of the matches is played in Australia • each match in the Cricket World Cup • English FA Cup final • FIFA World Cup finals tournament • tennis: Australian Open and Wimbledon—each match, French Open and US Open—each singles quarter finals, semi-finals and finals match • Davis Cup—matches involving Australia • each international netball match involving the senior Australian representative team • golf—Australian Masters, Australian Open, US Masters, British Open • each race held in the FIA Formula 1 Grand Prix held in Australia • each race in the Moto GP held in Australia • each race in the V8 Supercar 	<p><i>Live and in full (List A)</i></p> <ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • FIFA World Cup finals tournament • European Football Championship finals tournament • FA Cup final • Scottish FA Cup final (in Scotland) • Grand National Steeplechase • the Derby • Wimbledon tennis finals • Rugby League Challenge Cup final • Rugby World Cup final. <p><i>Adequate secondary coverage (List B)</i></p> <ul style="list-style-type: none"> • cricket test matches played in England • non-finals played in the Wimbledon tournament • all other matches in the Rugby World Cup finals tournament • Six Nations Rugby tournament matches involving the United Kingdom's national teams (England, Scotland, Wales, Northern Ireland) • Commonwealth Games • World Athletics Championship • Cricket World Cup—the finals, semi-finals and matches involving the United Kingdom's national teams (England, Scotland, Wales, Northern Ireland). • Ryder Cup • Open Golf Championships. 	<p><i>Live and in full</i></p> <ul style="list-style-type: none"> • Belgian Football Cup final (men) and all matches involving Belgian men's football team • FIFA World Cup finals tournament (men) • European Football Championship finals (men) • Champion's League matches involving Belgian clubs • UEFA Cup matches involving Belgian clubs • Ivo Van Damme Memorial • Belgian Formula 1 Grand Prix • Roland Garros and Wimbledon—quarter finals, semi-finals and finals involving a Belgian player • Davis Cup and Fed Cup—quarter finals, semi-finals and finals involving the Belgian team • Queen Elisabeth Music Competition final. <p><i>Live and with excerpts</i></p> <ul style="list-style-type: none"> • Summer Olympic Games • men's cycling events—Tour de France, Liège-Bastogne-Liège, Amstel Gold Race, Tour of Flanders, Paris-Roubaix, Milan-San Remo, Belgian Road Cycling Championships, World Road Cycling Championships. <p>Events specific to the French Community list</p>	<p><i>Live and in full*</i></p> <ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • official matches of the French national football team in the FIFA calendar • FIFA World Cup (men)—opening match, semi-finals and final • European Championship Football (men)—opening match, semi-finals and final • UEFA Cup final where a French club is involved • UEFA Champions League final • French Football Cup final • Six Nations rugby tournament • Rugby World Cup—semi-finals and final • French Rugby Championship final • European Rugby Cup final, where a French club is involved • Roland Garros tennis—finals of the men's and women's singles events • Davis Cup and Fed Cup semi-finals and finals involving the French team • French Formula 1 Grand Prix • Men's cycling events—Tour de France and Paris-Roubaix • men's and women's finals of the European Basketball Championship, where the French national team is playing • men's and women's finals of World Basketball Championship, where the French national team is playing • men's and women's finals of the European Handball Championship, where the French national team is playing • men's and women's finals of World Handball Championship, where the French national team is playing

Table 4: Australia’s anti-siphoning scheme compared with selected similar schemes overseas (continued)

Australia		Belgium	France
<p>Championship Series (including the Bathurst 1000)</p> <ul style="list-style-type: none"> • each race in the Champ Car World Series (IndyCar) held in Australia. 		<p><i>Live and in full</i></p> <ul style="list-style-type: none"> • World Athletics Championships, involving Belgian athletes. <p><i>Live and with excerpts</i></p> <ul style="list-style-type: none"> • La Flèche Wallonne (men’s cycling) • Winter Olympic Games. <p>Events specific to the Flemish Community list</p> <p><i>Live and in full</i></p> <ul style="list-style-type: none"> • Champion’s League—final and semi-finals • UEFA Cup—final and semi-finals. • Belgian and World Cyclo-cross Championships (men’s) • tennis—Australian Open and US Open, quarter finals, semi-finals and finals involving a Belgian player. <p><i>Live and with excerpts</i></p> <ul style="list-style-type: none"> • cycling—Paris-Tours and Tour of Lombardy. 	<ul style="list-style-type: none"> • World Athletics Championships. <p><i>* Broadcasting of the Tour de France may be limited to highlights, in accordance with the broadcasting tradition for this event. Broadcasting of the Olympic Games and World Athletics Championships may be limited to representative moments reflecting the diversity of sporting disciplines and participating countries and may include recorded material when events take place at the same time. Events of major importance may also be broadcast in pre-recorded form where they take place between midnight and 6 am French time, on the condition that the broadcast in France starts before 10.00 am.</i></p>

Table 4: Australia’s anti-siphoning scheme compared with selected similar schemes overseas (continued)

Finland	Germany	Ireland	Italy	Austria
<ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • FIFA World Cup (men’s)—Finnish national team matches, opening match, quarter finals, semi-finals and final • European Championship Football (men’s)—Finnish national team matches, opening match, qtr finals, semi-finals and final • Ice Hockey World Championships (men’s) • Nordic World Ski Championships • World Championship in athletics • European Athletics Championship. <p><i>The opening match, semi-finals and final of the Football World Cup, and the matches of the Finnish team, the opening match, semi-finals and final of the men’s Ice Hockey World Championship, and the matches of the Finnish team must be broadcast wholly live.</i></p>	<ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • FIFA World Cup (men’s)—German national team matches, opening match, semi-finals and final • European Championship Football (men’s)—German national team matches, opening match, semi-finals and final • German FA Cup—semi-finals and final • German national football team’s home and away matches • UEFA Cup final where a German club is involved • UEFA Champions League final where a German club is involved. 	<p><i>Live broadcasting</i></p> <ul style="list-style-type: none"> • Summer Olympic Games • All-Ireland Senior Inter-County Football and hurling finals • Ireland’s home and away qualifying games in the European Football Championship and the FIFA World Cup tournaments • FIFA World Cup (men’s)—Irish national team matches, opening match, semi-finals and final • European Championship Football (men’s)—Irish national team matches, opening match, semi-finals and the final. • Rugby World Cup finals tournament—Ireland’s matches • Horse racing—Irish Grand National, Irish Derby and Nations Cup at the Dublin Horse Show. <p><i>Coverage on a deferred basis</i></p> <ul style="list-style-type: none"> • Six Nations Rugby Tournament—Ireland’s matches. 	<ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • FIFA World Cup—Italian national team matches and the final • European Football Championships—Italian national team matches and the final • all matches involving the Italian national football team, at home and away, in official competitions • UEFA Cup semi-finals and final where an Italian club is involved • UEFA Champions League semi-final and final where an Italian club is involved • Tour of Italy (Giro d’Italia) cycling competition • Formula One Italian Grand Prix • San Remo Italian music festival. 	<ul style="list-style-type: none"> • Olympic Games (Summer/Winter) • FIFA World Cup (men)—Austrian national team matches, opening match, semi-finals and final • European Championship Football (men)—Austrian national team matches, opening match, semi-finals and the final • Austrian Football Cup final • FIS World Alpine skiing championships • Nordic World skiing championships • Vienna Philharmonic Orchestra’s New Year’s concert • the Vienna Opera Ball.

Part four: Current levels of sports coverage on free-to-air television

The amount of coverage given by free-to-air broadcasters to sport on television is a topic often discussed and debated in the media and among the general public. Free-to-air broadcasters are regularly scrutinised for the levels and type of coverage they provide for events on the anti-siphoning list and also for events not on the list.

For example, there was widespread public criticism of free-to-air television coverage of the 2008 Rugby League World Cup, which is not an event on the anti-siphoning list. Similarly, free-to-air television coverage of the 2008 Olympic Games, which is on the anti-siphoning list, also received significant public criticism. The broadcasters for both of these events were mainly criticised for providing delayed as opposed to live coverage.

Live coverage is a complex issue. Factors such as state time-zones and the varying popularity of different sports across Australia complicate decisions about broadcasting events live in any particular area. Additionally, events such as the Olympic Games and major tennis tournaments cannot be broadcast live and in full. The nature of these multi-part, simultaneous events effectively prevents comprehensive coverage being provided by a broadcaster operating a single broadcast channel.

The current anti-siphoning scheme does not ensure free-to-air television coverage, whether live or delayed, of listed sporting events. This is an aspect of the scheme that has drawn particular criticism from the pay television sector, who have argued that events on the list should be shown live nationally or should be de-listed (a 'use it or lose it' approach). At present, the scheme only provides free-to-air broadcasters with the first opportunity to acquire the free-to-air broadcast rights to listed events, but does not specify any particular kind of coverage. Requiring free-to-air broadcasters to show events live or at particular times would effectively add an additional condition to the rights to televise events. This may make those rights less commercially attractive to broadcasters and thereby potentially reduce the amount of sport shown on free-to-air television.

After a free-to-air broadcaster has acquired the broadcast rights to an event, the coverage and scheduling of the event is a commercial decision for the broadcaster, driven primarily by the potential to earn advertising revenue. Free-to-air broadcasters are most likely to broadcast events or programs they believe will attract the largest viewing audience and therefore increase the potential financial return from advertisers. This motivation results in the scheduling of events in certain cities or regions on delay, based on what the relevant free-to-air broadcaster considers will rate highest in that specific market. For example, free-to-air television coverage of rugby league varies significantly between New South Wales and Queensland and the rest of Australia.

As a general rule, a system where broadcasters are encouraged to respond to the preferences of the viewing audience is likely to be superior to one where viewing times are determined by a central authority.

ACMA monitoring

As noted earlier, between November 2006 and August 2008, the Australian Communications and Media Authority (ACMA) monitored free-to-air broadcasters' acquisition of broadcast rights and coverage of events on the anti-siphoning list and reported its findings to the Minister.

ACMA found that the majority of rights acquired to listed events by free-to-air broadcasters received widespread free-to-air coverage during the monitoring period. For example, the Melbourne Cup, most motor sport events and most cricket events were available live and in full to the majority of the Australian population. However, certain events such as the Wimbledon

Championship and Australian Open tennis tournaments, the ICC Cricket World Cup and the State of Origin rugby league series were not broadcast in their entirety or received delayed coverage in some states. The French Open tennis tournament and a Davis Cup tie between Australia and Chinese Taipei did not receive any free-to-air coverage.

Free-to-air television coverage of events on the anti-siphoning list varies significantly throughout Australia. Levels of coverage differ between states and territories, between cities within states and territories and between metropolitan and regional areas. For example, under the current AFL Premiership broadcast arrangements, there are at least three different start times for coverage of the Friday night match on free-to-air television in New South Wales. The start times and coverage for this fixture also vary in other states and territories.

The table below broadly summarises free-to-air television coverage of events on the anti-siphoning list based on ACMA's monitoring activities. ACMA's monitoring reports are available on its website at www.acma.gov.au.

Table 5: Indicative overview of free-to-air television coverage of events on the anti-siphoning list

Sport	Event	Level of free-to-air coverage
Horse racing	2007 Melbourne Cup	Live and in full.
AFL	2007 AFL Premiership	Majority of matches were broadcast in full and received some live coverage into one or more of the five major capital cities.
Rugby League	2007 NRL Premiership	Around 40 per cent of matches were broadcast in full, with the majority receiving some live coverage.
	2007 State of Origin Series	Live and in full in the ACT, NSW, QLD and NT. Delayed coverage in other states.
	2007 Test Matches	Live and in full by the majority of broadcasters that televised the matches. Delayed or no coverage in some states.
Rugby Union	2006 Rugby Spring Tour	Live and in full by the majority of broadcasters that televised the event.
	2007 Bundaberg Rum Rugby Series (includes Bledisloe Cup)	Live and in full in the ACT, NSW and QLD. Some live coverage in TAS, VIC and WA.
	2007 Rugby World Cup	20 pool matches and finals received live and in full coverage by the majority of broadcasters that televised the matches.
Soccer	English Football Association Cup final	Live and in full.
Cricket	2007 ICC Cricket World Cup	10 matches (including finals) were broadcast in full, of which eight were broadcast live, by all broadcasters that televised these matches.
	2007–08 3 Mobile Test Series	Live and in full.
	2007–08 Chappell-Hadlee Trophy	Live and in full.

	2007–08 Commonwealth Bank Series	Live and in full.
Tennis	2007 Davis Cup tie, Australia v. Belgium	Live and in full.
	2007 Davis Cup tie, Australia v. Serbia	Delayed coverage provided.
	2008 Davis Cup Tie, Australia v. Chinese Taipei	No coverage. Broadcast rights returned to Tennis Australia by free-to-air broadcasters.
	2007 French Open	No coverage. Broadcast rights not acquired by a free-to-air broadcaster.
	2007 US Open	Eight finals matches were broadcast live by the majority of broadcasters that televised the event.
	2007 Wimbledon Championship	61 matches (including 12 finals matches) were broadcast and received both live and delayed coverage by the majority of broadcasters that televised the event.
	2008 Australian Open	78 matches (including finals matches) were broadcast and received mostly live coverage. The majority of matches broadcast were men's and women's singles events.
Netball	2007 Holden Netball Test Series	Delayed coverage provided.
	2007 Fisher and Paykel Netball Test	Delayed coverage provided.
	2007 Netball World Championships	The six matches involving Australia were broadcast in full. Four matches received live coverage. Two matches (including the final) were delayed.
Golf	2007 US Masters	Less than half of each round broadcast live.
	2007 British Open	Less than half of each round broadcast live.
	2007 Australian Masters	Three rounds received half or more live coverage.
	2007 Australian Open	Two rounds received half or more live coverage.
Motor sport	2007 Australian Formula 1 Grand Prix	Live and in full.
	2007 Australian Moto GP	Live and in full.
	2007 Australian Champ Car World Series	Live and in full.
	2007 V8 Supercar Championship Series	Around 75 per cent of races received live coverage.

Part five: Digital multi-channels

Digital television transmission enables broadcasters to provide more than one channel of television programming at the same time. This is known as multi-channeling and channels can be broadcast on television in standard definition or high definition.

In relation to sports coverage, this means a free-to-air broadcaster could potentially show an event on a digital multi-channel at a time it may not otherwise show it on its main channel, due to the event's relatively low ratings and advertising earnings potential.

For example, a rugby league match that receives live coverage on the free-to-air broadcaster's main channel in New South Wales and Queensland could be shown live simultaneously in other states on the broadcaster's digital multi-channel without disrupting programming on that broadcaster's main channel. Additionally, free-to-air broadcasters could provide increased live coverage of major multi-round events such as tennis tournaments and the Olympic and Commonwealth Games, including multiple channels for a given event.

The anti-siphoning scheme currently prohibits free-to-air broadcasters from premiering events on the anti-siphoning list on multi-channels unless the event has already been shown, or is simultaneously shown, on the broadcaster's main channel.

The restriction for premiering on multi-channels was introduced in the early stages of digital television in Australia. As digital television take-up in Australia increases towards 50 per cent of households, it is an appropriate time to consider the value of this restriction.⁴

It is recognised that the full removal of this restriction would constitute a major change to the operation of the anti-siphoning scheme, providing free-to-air broadcasters with the discretion to determine whether to show anti-siphoning listed events on their main channels (ahead of analog switch-off), or on their digital multi-channels. It is also recognised that this change would have implications for sports rights holders and for the pay television sector, whose subscription revenues are supported by the provision of dedicated sports channels.

It is also worth noting that while all digital television tuners receive standard definition signals, only high definition digital tuners are able to receive high definition signals. Thus, programs that are broadcast on a broadcaster's high definition multi-channel are not available to households that only have a standard definition digital tuner. Recent retail trends suggest that consumers can obtain high definition digital tuners (set top boxes) from around \$99 and entry-level televisions with in-built high definition tuners from around \$300.

Broadcasters' multi-channel requirements

Digital television transmissions commenced on 1 January 2001 in metropolitan areas, and 1 January 2004 in non-remote regional areas.

Broadcasters have progressively extended the coverage of digital television in metropolitan and non-remote regional areas since digital services started. Digital television services for the ABC and SBS have begun in remote areas, and arrangements for the start of commercial digital services in the Remote Central and Eastern licence area are being finalised.

ACMA has determined 30 June 2009 as the date on which existing commercial broadcasters will begin rolling out digital simulcasts of their services in remote and regional Western Australia.⁵

⁴ This compares with the current penetration of analog free-to-air television of 99 per cent of Australian households and pay television penetration of approximately 33 per cent.

Broadcasters will be expected to extend coverage of digital television services in these remote areas as soon as practicable after those services begin.

In addition to the digital simulcasts of their analog channels, the ABC provides ABC2, the SBS provides SBS TWO and the commercial broadcasters provide high definition channels, Seven HD, Nine HD and ONE HD (previously Ten HD), with some programming that is not available on their simulcast channels. Since 1 January 2009, the commercial broadcasters have also been able to provide a new standard definition channel with distinct programming. Network Ten provides a standard definition version of ONE HD in metropolitan licence areas. The Nine Network commenced a new standard definition digital channel GO on 9 August 2009.

Restrictions on the number of multi-channels permitted by commercial broadcasters will end after digital switchover.

Multi-channels in regional areas

The major metropolitan commercial broadcasters have in place affiliation agreements with regional commercial broadcasters, enabling them to broadcast similar programming to metropolitan stations. The major networks' regional affiliates include, but are not limited to:

- Prime—carrying primarily Seven Network programming
- WIN and NBN—carrying primarily Nine Network programming
- Macquarie Southern Cross Media—carrying primarily Network Ten programming.

While regional affiliates provide similar programming to these metropolitan networks, the availability of free-to-air commercial multi-channels in regional areas has not always been consistent with that in the state capitals.

This situation is, however, changing for some areas. Macquarie Southern Cross Media has made the ONE HD service available to viewers who also receive the Southern Cross Ten high definition television service in regional New South Wales, regional Queensland, regional Victoria and the Australian Capital Territory from 2 July 2009. Tasmanian Digital Television commenced the ONE HD service in Tasmania on 30 July 2009. However, as a high definition service, the channel will not be available to viewers with standard definition television reception equipment.

Since 9 August 2009, NBN Television and WIN have made GO generally available to viewers in regional New South Wales, regional Queensland, regional Victoria, Tasmania and the ACT.

The Seven Network's affiliate Prime provides a high definition multi-channel service in the regional licence areas in which it operates (excluding non-metropolitan areas of Western Australia). Prime HD provides similar programming to Seven HD.

⁵ Australian Communications and Media Authority, 'ACMA paves the way for new commercial TV services in regional and remote Western Australia', media release, 18 June 2009.

Part six: New media and the anti-siphoning scheme

The current anti-siphoning scheme regulates sports rights negotiations of listed sports by free-to-air and pay television broadcasters by imposing a licence condition on pay television broadcasters. The anti-siphoning scheme was introduced in 1994, when concern was raised about the impact of the then emerging pay television services on free-to-air television services. As a result, the scheme affects television broadcasters only and does not affect sports coverage on any other media platform.

Recent developments

Sporting bodies have begun to use new media as an additional revenue stream for the coverage of their sport. For example, the internet and mobile television have been used by niche sports seeking wider public exposure and overseas events which are unable to attract major media coverage in Australia. New media platforms have also been used to supplement free-to-air or subscription broadcast coverage. However, television has remained the major media platform for advertisers to reach large audiences and the traditional television broadcast rights remain the major source of media rights income for sporting bodies.

The emergence of new media rights in the coverage of sporting events and the announcement of the Australian Government's \$43 billion National Broadband Network has prompted discussion as to whether the anti-siphoning scheme should be extended to include new media platforms.

The sale of sports rights for new media platforms are not currently covered by the anti-siphoning scheme. At present, Internet Protocol television and internet video content of sporting events are not considered a 'broadcasting service' under the *Broadcasting Services Act 1992* and as such are not regulated by the Act. Sporting content carried on mobile phones is also not specifically regulated by the Act. Further, the provision of sporting content via internet video hosted on international websites is not regulated by Australian law.

Recent examples of new media rights being used for sport coverage through an agreement with the sports right holder, or an on-selling arrangement with a free-to-air television or pay television provider, include:

- Telstra's Bigpond Sport website offers consumers delayed highlights coverage of the AFL and NRL Premierships (broadcast on free-to-air and pay television) and the V8 Supercars Championship (broadcast on free-to-air television)
- Telstra's Next G Mobile network coverage of the Seven Network and SBS coverage of the Beijing Olympic Games
- Three Mobile's 3G Network coverage of the Nine Network cricket broadcasts to its mobile phone customers
- Optus' 3G Network coverage of the Seven Network broadcasts of the Australian Open tennis
- internet subscriptions to Fox Sports' English Premier League coverage
- Foxtel's acquisition of the internet and mobile phone coverage rights for the 2010 Commonwealth Games as part of the overall broadcast agreement with Network Ten.

Impact on sports coverage

The establishment of the National Broadband Network will enable Australians to view high quality, live streaming video over the internet. This may prompt telecommunications companies and internet service providers to enter the market with a subscription Internet Protocol television

service in a similar manner to that of pay television and attempt to secure exclusive coverage to events.

The entry of telephony and internet service providers into the multimedia space may have benefits for consumers by increasing access to content on a wider variety of platforms and technologies. However, there may also be a downside if premium content is exclusively acquired for use on these networks.

To date, there is little evidence that sporting events are being exclusively 'siphoned' to new technology platforms. Sports rights holders have a strong incentive to ensure exposure of their sport to the largest audiences, and at present this can only be achieved through the existing free-to-air and pay television platforms. At this time, the vast majority of online or mobile sports rights continue to be made available to complement traditional television broadcast rights, allowing delayed or concurrent coverage of events.

The potential for non-broadcasting platforms to be used to take exclusive rights to sporting events hinges on the technical capability of the relevant platforms. The Government's National Broadband Network will deliver the bandwidth and download speeds necessary for the successful development of Internet Protocol television or internet video in Australia (described below). The National Broadband Network will be rolled out progressively over the next eight years.

Forms of new media sports coverage

Some of the major forms of new media sports coverage are explained briefly below. Currently, all of them involve costs relating to accessing the platform itself (e.g. subscription costs for internet or mobile phone access), and accessing the content available on that platform (e.g. data download costs). There may also be costs involved in accessing exclusive content, such as sports content that is not available elsewhere.

The following are examples of new types of services.

Internet Protocol television (IPTV)

IPTV is a service provided to a subscriber via a set-top box connected to a television which provides broadcast quality content over an internet based network. The IPTV signal is streamed to the subscriber via the broadband network. TPG Soul provides an IPTV service in Australia.

Internet video

Internet video is content accessed by individuals over the public internet from websites hosted by content providers, internet companies and individuals. Internet video can be accessed via computers, internet enabled mobile phones and televisions that are internet enabled or in some way linked to a device (such as a computer) that can access the internet. It may be live but more generally is in discrete 'clips' of a few minutes. Examples of internet video include the ABC's i-View, YouTube, and highlights packages that appear on Telstra Bigpond's sport website, SBS's www.theworldgame.com.au and www.foxsports.com.au.

Sport coverage on mobile phones

Video in a mobile network environment is transmitted on an 'on demand' basis. From their handset, a mobile phone user can access a hosted website and choose to either stream or download a video. Streamed or downloaded video for mobile phones are generally in IP format and are broadcast or sent on a one-to-one (unicast) basis. Examples of sport content on mobile phones in Australia include Telstra's Next G Mobile Network coverage of the Beijing Olympic Games, Three Mobile's 3G Network coverage of the cricket and Optus' 3G Network coverage of the Australian Open tennis.

Importantly, these services represent new opportunities for consumers and sports bodies, including the availability of 'snack sized' bites of content, replays, instantaneous access to results, and mobility.

Part seven: Issues for comment and the submissions process

Submissions are sought in relation to the issues below, and any other issues that are considered to be relevant to the investigation.

Key issues

1. The purpose of the anti-siphoning scheme and its impacts

What purpose should the anti-siphoning scheme have?

What is the best way to ensure that nationally important and culturally significant sports are shown on free-to-air television?

What impacts does the anti-siphoning scheme have on sports rights holders and the business models of free-to-air and subscription television?

2. The appropriateness of the events on the anti-siphoning list and their rationale for inclusion

Which events should be included on the anti-siphoning list and why?

What criteria, if any, should there be for including an event on the anti-siphoning list?

3. The duration of the anti-siphoning list

What is an appropriate duration for the anti-siphoning list? Five years, 10 years or other?

4. The appropriateness of the current automatic de-listing arrangements.

Is the current 12 week automatic de-listing period for events on the anti-siphoning list appropriate?

5. Scheduling and coverage of events on the anti-siphoning list

What scheduling and or coverage ('use') requirements should apply to free-to-air broadcasters with broadcast rights to events on the anti-siphoning list?

6. The restriction on free-to-air television broadcasters being able to show an event on the anti-siphoning list exclusively on their digital multi-channels

Should commercial free-to-air television broadcasters continue to be prevented from being able to show an event or part of a listed event on the anti-siphoning list on their digital multi-channels if the event is not simultaneously shown, or has not already been shown, on their simulcast channel?

What requirements, if any, should be placed on free-to-air digital multi-channels, if listed sports should be shown on these channels, to maximise coverage of sports in metropolitan and non-metropolitan areas?

7. Coverage of sports on new media platforms

Does sport accessed through new media platforms replace or supplement consumers' television viewing?

What effect, if any, will the provision of sports programming on new media platforms have on the anti-siphoning scheme?

Submissions process

Submissions are invited in writing by Friday, 16 October at 4.00 pm (Australian Eastern Standard Time).

The preferred method for the receipt of submissions is via the online form at www.dbcde.gov.au/sportontvreview.

Submissions can also be made in one of the following ways:

1. by fax to 1800 018 281
2. by post to the following address:
Anti-siphoning Review
Commercial Broadcasting Section
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601, or
3. by email attachment to sportontvreview@dbcde.gov.au

Submissions should be made using only one of the available options.

Please note that comments on the anti-siphoning scheme made in response to the discussion paper *National Broadband Network: Regulatory Reform for 21st Century Broadband* will be considered in the context of this review and do not need to be re-submitted, unless the submitter wishes to do so.

Submissions cover sheet

All submissions made via fax, post or email must have a submission cover sheet attached.

You can request a hard copy of the cover sheet by calling 1800 069 450 (free call).

Email formats

All email submissions must adhere to the following requirements:

1. All submission material, including the coversheet, submission and any appendixes must be attached to the email. Submission material should not be included in the body of the email. This will aid in publishing submissions and ensure that your submission is published as provided.
2. The total combined file size for any email (including the coversheet, submission and any appendixes to a submission) should not exceed 3MB.
3. All files must be labelled in the following form:
'Main Submission_Individual/Organisation Name.(file format)' or
'Submission Attachment_#x_Individual/Organisation Name.(file format)' or
'Cover Sheet_Individual/Organisation Name.(file format)'.
4. Files should be in any one of the following types:
 - .doc
 - .rtf
 - .gif

- .tif
- .jpg
- .txt
- .pdf
- .zip

Publication of submissions

Submissions will be made public unless otherwise specified. Submissions will be published on the Department's website after the public submissions period has closed.

The Department will not acknowledge receipt of submissions. Please note that there may be some delay in publishing submissions if a large number is received. If a submission is made by a person or organisation more than once it will only be published in one format.

Submissions will not be published if they breach applicable laws, promote a product or a service, contain offensive language, or express sentiments that are liable to offend or vilify sections of the community.

Please note that the Department reserves the right not to publish submissions it deems inappropriate for reasons other than those outlined above. For example, the Department may choose to only publish one of a series of identical or near-identical 'campaign-type' responses.

Discussion paper—alternative formats

If you would like to receive a copy of the discussion paper by post, in Braille format or as audio files, please phone the Department of Broadband, Communications and the Digital Economy on 1800 069 450 (freecall).

Please note that MP3 format audio files of the discussion paper will be made available on the Department's website at www.dbcde.gov.au/sportontvreview.

Confidential information

Persons providing a submission should indicate clearly whether the submission should not be made public. Any submission that is confidential or sensitive must be clearly marked as such on the front cover to ensure that it is not published.

Submissions marked 'Confidential' or containing sensitive material will be considered in the review but will not be published. However, you may choose to provide a version that can be publicly released.

Despite a submission being identified as confidential or sensitive, submitters should be aware that submissions may be released where authorised or required by law or for the purpose of parliamentary processes.

While the Department seeks to consult submitters of confidential information before that information is provided to another body or agency, the Department cannot guarantee that confidential information will not be released through these or other legal means.

Privacy

The Department is subject to the *Privacy Act 1988*. Any personal information you provide to the Department through your response to this discussion paper will only be used for the purposes of the Australian Government's review of the anti-siphoning scheme.

Contact information

If you would like a copy of the discussion paper or any other information sent out to you, please call the Department on 1800 069 450 (free call).

If you are deaf or have a hearing or speech impairment, please contact the Department through the National Relay Service:

- TTY users phone 1800 555 677 then ask for 1800 069 450
- Speak and Listen (speech-to-speech relay) users phone 1800 555 727 then ask for 1800 069 450
- internet relay users connect to www.relayservice.com.au and then ask for 1800 069 450.

Appendix A: Current anti-siphoning list

Broadcasting Services (Events) Notice (No 1) 2004

Schedule 2

The events listed below conducted during the period commencing on 1 January 2006 and ending on 31 December 2010 are specified.

1 Olympic Games

1.1 Each event held as part of the Olympic Games.

2 Commonwealth Games

2.1 Each event held as part of the Commonwealth Games.

3 Horse Racing

3.1 Each running of the Melbourne Cup organised by the Victoria Racing Club.

4 Australian Rules Football

4.1 Each match in the Australian Football League Premiership competition, including the Finals Series.

5 Rugby League Football

5.1 Each match in the National Rugby League Premiership competition, including the Finals Series.

5.2 Each match in the National Rugby League State of Origin Series.

5.3 Each international rugby league “test” match involving the senior Australian representative team selected by the Australian Rugby League, whether played in Australia or overseas.

6 Rugby Union Football

6.1 Each international “test” match involving the senior Australian representative team selected by the Australian Rugby Union, whether played in Australia or overseas.

6.2 Each match in the Rugby World Cup tournament.

7 Cricket

7.1 Each “test” match involving the senior Australian representative team selected by Cricket Australia played in either Australia or the United Kingdom.

7.2 Each one day cricket match involving the senior Australian representative team selected by Cricket Australia played in Australia or the United Kingdom.

7.3 Each one day cricket match involving the senior Australian representative team selected by Cricket Australia played as part of a series in which at least one match of the series is played in Australia.

7.4 Each World Cup one day cricket match.

8 Soccer

- 8.1 The English Football Association Cup final.
- 8.2 Each match in the Fédération Internationale de Football Association World Cup tournament held in 2006.
- 8.3 Each match in the Fédération Internationale de Football Association World Cup tournament held in 2010.

9 Tennis

- 9.1 Each match in the Australian Open tennis tournament.
- 9.2 Each match in the Wimbledon (the Lawn Tennis Championships) tournament.
- 9.3 Each match in the men's and women's singles quarter-finals, semi-finals and finals of the French Open tennis tournament.
- 9.4 Each match in the men's and women's singles quarter-finals, semi-finals and finals of the United States Open tennis tournament.
- 9.5 Each match in each tie in the Davis Cup tennis tournament when an Australian representative team is involved.

10 Netball

- 10.1 Each international netball match involving the senior Australian representative team selected by the All Australian Netball Association, whether played in Australia or overseas.

11 Golf

- 11.1 Each round of the Australian Masters tournament.
- 11.2 Each round of the Australian Open tournament.
- 11.3 Each round of the United States Masters tournament.
- 11.4 Each round of the British Open tournament.

12 Motor Sports

- 12.1 Each race in the Fédération Internationale de l'Automobile Formula 1 World Championship (Grand Prix) held in Australia.
- 12.2 Each race in the Moto GP held in Australia.
- 12.3 Each race in the V8 Supercar Championship Series (including the Bathurst 1000).
- 12.4 Each race in the Champ Car World Series (IndyCar) held in Australia.

Appendix B: Legislative materials

The anti-siphoning list provision, Broadcasting Services Act 1992

Section 115—Minister may protect the free availability of certain types of programs

- (1) The Minister may, by notice published in the *Gazette*, specify an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.
- (1A) The Minister may, by notice published in the *Gazette*, amend a notice under subsection (1) to specify an additional event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the public.
- (1AA) Subject to subsection (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 2016 hours before the start of the event, unless the Minister publishes in the *Gazette* before that time a declaration that the event continues to be specified in the notice after that time.
- (1AB) The Minister may publish a declaration under subsection (1AA) only if the Minister is satisfied that at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the right to televise the event concerned.
- (1B) Subject to subsections (1AA) and (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 168 hours after the end of the event, unless the Minister publishes in the *Gazette* before that time a declaration that the event continues to be specified in the notice after that time.
- (2) The Minister may, by notice published in the *Gazette*, amend a notice under subsection (1) to remove an event from the notice.

Note: The following are examples of situations in which the Minister might exercise the power to remove an event from a notice:

Example 1

The national broadcasters and commercial television broadcasting licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. The Minister is of the opinion that removing the event from the notice is likely to have the effect that the event will be televised to a greater extent than if it remained on the notice.

Example 2

A commercial television broadcasting licensee has acquired the right to televise an event, but has failed to televise the event or has televised only an unreasonably small proportion of the event. The Minister is of the opinion that removing that event, or another event, from the notice is likely to have the effect that the removed event will be televised to a greater extent than it would be if it remained on the notice.

- (3) Notices and declarations under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

***Licence condition on free-to-air broadcasters on multi-channels,
Broadcasting Services Act 1992***

Schedule 2, Part 3—Commercial television broadcasting licences

7 Conditions of commercial television broadcasting licences

(1) Each commercial television broadcasting licence is subject to the following conditions:

- (ob) if a clause of Division 1 of Part 4A of Schedule 4 (which imposes restrictions on the televising of anti-siphoning events) applies to the licensee—the licensee will comply with that clause;

***Licence condition on pay television providers, Broadcasting Services
Act 1992***

**Schedule 2, Part 6, Clause 10—Conditions applicable to subscription
television broadcasting licences**

(1) (e) the licensee will not acquire the right to televise, on a subscription television broadcasting service, an event that is specified in a notice under subsection 115(1) unless:

- (i) a national broadcaster has the right to televise the event on any of its broadcasting services; or
- (ii) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under subsection 40(1)) who have the right to televise the event cover a total of more than 50% of the Australian population.

Appendix C – Legislative requirement for a review in 2009

Broadcasting Legislation Amendment (Digital Television) Act 2006

Schedule 3—Amendments commencing 1 January 2009

115A Review of anti-siphoning provisions

- (1) Before 31 December 2009, the Minister must cause to be conducted a review of the following matters:
 - (a) the operation of section 115
 - (b) the operation of paragraph 7(1)(ob) of Schedule 2;
 - (c) the operation of paragraph 10(1)(e) and subclauses 10(1A) and (1B) of Schedule 2;
 - (d) the operation of Part 4A of Schedule 4;
 - (e) whether section 115 should be amended or repealed;
 - (f) whether paragraph 7(1)(ob) of Schedule 2 should be amended or repealed;
 - (g) whether paragraph 10(1)(e) and subclauses 10(1A) and (1B) of Schedule 2 should be amended or repealed;
 - (h) whether Part 4A of Schedule 4 should be amended or repealed.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.