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

Review report

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Introduction

On 20 August 2009, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, released a public discussion paper—*Sport on Television: A review of the anti-siphoning scheme in the contemporary digital environment.*

The discussion paper sought public comment on a range of matters relevant to the operation and effectiveness of the anti-siphoning scheme, including the purpose of the scheme, the composition of the anti-siphoning list, coverage of listed events, the use of digital television multi-channels and sport on new media platforms.

The submission period closed on 16 October 2009. A total of 337 submissions were received from a variety of stakeholders and interested parties, including the free-to-air television industry, pay television industry, sporting organisations, government agencies and members of the public. All publishable submissions are available on the Department of Broadband, Communications and the Digital Economy website at *www.dbcde.gov.au*

Legislation

The *Broadcasting Services Act 1992* ('the Act') required the Minister for Broadband, Communications and the Digital Economy to cause to be conducted a review of the following aspects of the anti-siphoning scheme:

- the operation of the anti-siphoning scheme and whether it should be amended or repealed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operators restricting access to anti-siphoning listed events (listed events) and whether it should be amended or repealed and
- 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to listed events on standard definition and high definition multi-channels and whether these should be amended or repealed.

Background

The anti-siphoning scheme is enabled by subsection 115(1) of the Act which empowers the Minister, by Notice published in the *Gazette*, to 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. This notice is the anti-siphoning list. The anti-siphoning provisions were originally introduced in 1992 as part of the *Broadcasting Services (Subscription Television Broadcasting) Amendment Act 1992, No.171* which received royal assent on 11 December 1992.

The anti-siphoning scheme was officially introduced with the first list in 1994 to ensure that television coverage of events of national importance and cultural significance were not siphoned off exclusively to pay television. 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.

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.

How the anti-siphoning scheme operates

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 list before free-to-air television broadcasters have purchased the rights. For events not on the 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 list. However, events are automatically de-listed 12 weeks before they commence. The Minister can override automatic de-listing if 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 pay television broadcasters from acquiring the rights to televise events on the anti-siphoning list before the free-to-air broadcasters.

Further information on the operation of the scheme can be found in the 2009 discussion paper *Sport on Television: A review of the anti-siphoning scheme in the contemporary digital environment* which is available at www.dbcde.gov.au.

Anti-siphoning schemes overseas

A number of overseas countries operate schemes that are similar to Australia's anti-siphoning scheme. These countries include 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. Further information about anti-siphoning regimes in foreign countries can be found in the 2009 discussion paper *Sport on Television: A review of the anti-siphoning scheme in the contemporary digital environment* which is available at www.dbcde.gov.au.

Past reviews of the anti-siphoning scheme

Since its inception the anti-siphoning scheme has been examined as part of various reviews and reports. These include: the Productivity Commission's March 2000 *Broadcasting Report* (Inquiry Report No. 11 of March 2000); the then Australian Broadcasting Authority's August 2001 report *Investigation into events on the anti-siphoning list*; the Australian Competition and Consumer Commission's 2003 report *Emerging Market Structures in the Communications Sector*; the Productivity Commission's August 2009 report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*; and the report of the Independent Sport Panel, chaired by Mr David Crawford and released in October 2009 titled *The Future of Sport in Australia*. Where relevant, the findings and recommendations of these reports are discussed in latter sections of this report.

The anti-siphoning scheme in a contemporary media environment

> *The cultural significance of sporting events is well understood and broadly accepted in Australia. It is now more important than ever that all Australians, of all backgrounds and means, have the potential to participate in these events by watching them on television. [Submission to the review]*

As noted in the Explanatory Memorandum to the original legislative provisions for the anti-siphoning scheme, the purpose of the scheme 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.*

In the 16 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 76 per cent of households having converted their main television to digital by the June quarter 2010. On 30 June 2010, the Mildura/Sunraysia licence area became the digital-only free-to-air television licence area, and other areas across Australia will be progressively converted to digital by December 2013.

Pay television has also grown substantially since the first services began in 1995, with close to 2.4 million households as at the June quarter 2010 subscribing to a pay television service. Pay television has also successfully completed its own transition to digital. More recently, a new range of television-like services have begun to emerge in the form of Internet Protocol television (IPTV) and internet video services.

The review sought comment on the purpose of the scheme in this contemporary media environment, whether it remains an appropriate mechanism to ensure significant sporting events are shown on free-to-air television and the impacts of the scheme on stakeholder groups.

Sports broadcasting in Australia

Sport remains popular for the majority of Australians who continue to value the coverage of major sporting events on television. This can be seen in the audiences for top rating sports programs on free-to-air and pay television in 2009 represented in Table 1 (below).

Table 1—Top 10 Sports Programs on free-to-air and pay television 2009

Rank	Free-to-air programs	Pay television programs
1	AFL Grand Final (2,878,000)	Football World Cup Qualifier Socceroos v Uzbekistan (431,000)
2	Melbourne Cup Race (2,673,000)	Football World Cup Qualifier Socceroos v Japan (378,000)
3	Rugby League Grand Final (2,528,000)	NRL Premiership Round match (357,000)
4	Rugby League State of Origin 1st match NSW v QLD (2,322,000)	NRL Premiership Round match (339,000)
5	Tennis Australian Open Final (2,316,000)	NRL Premiership Round match (336,000)
6	Rugby League State of Origin 2nd match NSW v QLD (2,134,000)	NRL Premiership Round match (335,000)
7	Twenty/20 Cricket Australia v RSA (2,123,000)	Football World Cup Qualifier Socceroos v Bahrain (326,000)
8	Rugby League State of Origin 3rd match NSW v QLD (1,907,000)	NRL Premiership Round match (317,000)
9	Twenty/20 Cricket Australia v NZ (1,626,000)	NRL Premiership Round match (316,000)
10	Cricket—ODI Australia v NZ Game 3 Session 2 (1,567,000)	NRL Premiership Round match (315,000)

Note: List does not include pre or post match entertainment or presentation programs
Source: OzTAM ratings data 2009, pay television data only includes wk 7—48 of 2009 ratings calendar

In addition, of the Top 100 rating programs in 2009, sporting programs account for 34 per cent. Sporting programs also accounted for 26 per cent of the Top 200 programs of 2009.

Many submissions to the review emphasised the importance of televised sport in their day-to-day lives.

> *Watching sport on television is certainly an Australian cultural activity. I treasure [...] memories of watching Australian athletes achieve sporting feats in various Olympic Games, of lazing about on a Boxing Day of January 2 watching the Australian cricket team of being gripped by a Wimbledon tennis match late into a winter night. [Submission to the review]*

> *Sport is part of the Australian culture, watching NRL and AFL grand finals and weekly matches are a tradition. The Ashes, Wimbledon, world cup rugby and soccer not to mention Olympic and commonwealth games have been the inspiration for many a sporting hero. [Submission to the review]*

The popular appeal of sports broadcasting was underscored by research and petitions commissioned by the television industry's major representative bodies. A survey

commissioned by the Australian Subscription Television and Radio Association (ASTRA) and conducted by Auspoll found that 57 per cent of Australians were 'sports fans' (either 'keen' or just a 'sports fan'), with 61 per cent of respondents expressing the view that the amount of sport on free-to-air television was about right, or that there should be more shown. In their submission to the review, Free TV Australia cited a petition signed by over 60,000 individuals as part of a *Keep Sport Free* campaign which supported the principle that Australians should be able to see major sports events for free.

Sport broadcasting is also is pivotal in the business models of free-to-air and pay television. Broadcasters are willing to pay significant sums to secure the rights to popular sports, as is shown in Table 1.1 below.

Table 1.1—Broadcast rights agreements		
AFL	*2007-11 broadcast rights*	*$780 million*
NRL	*2007-12 broadcast rights*	*$500 million (approx)*
Olympics	*2010 Winter Olympics and 2012 Olympic Games, Australian broadcast rights*	*$113 million (est)*
Rugby	*Super 14 Rugby Union and Tri-Nations competition 2011-2015, South Africa, Australia and New Zealand rights*	*$437 million ($US dollars)*
Soccer	*A-League and Socceroos matches (excluding the FIFA World Cup Finals), 2006-13*	*$120 million (approx)*

Source: Press Releases and Newspaper Articles

Revenues from broadcast rights are an also an important component of sports organisations' total revenues. Submissions from Australia's major sports bodies indicated the sale of media rights is the largest source of funding for these organisations. For the 2008-09 period, 23 per cent of Tennis Australia's revenue was derived from the sale of broadcast rights. For the 2009 calendar year, broadcast revenue accounted for 34.2 per cent of the total income of the Australian Rugby Union.

These revenues enable sports bodies to invest in the development of their particular sport, particularly at the grass roots level. This point was noted in submission to the review by Federation Francaise de Tennis, the Premier League, Cricket Australia, South Sydney Rabbitohs, Brisbane Broncos, Sydney Roosters, Wests Tigers, National Rugby League and Australian Rugby League.

The contribution of broadcast revenues to the revenues of sporting bodies was also highlighted in the Independent Advisory Panel's November 2009 report into the Listed Events Scheme in the United Kingdom.[1] The report noted, for example, that domestic broadcast revenues in the United Kingdom contributed around 57 per cent of the England and Wales Cricket Board's revenues in 2008 and that these revenues were set to expand further over the coming years. The report also noted the importance of long-term broadcasting contracts in mitigating revenue fluctuations for sporting bodies.

The popularity and prominence of sports broadcasting can be seen as a natural extension of the place of sport in Australian society and culture. A report released by the Australian Bureau of Statistics in 2009 found that 66 per cent of Australian adults participate in physical activities for recreation, exercise or sport, with 28 per cent of the population participating

[1] Review of Free-to-air Listed Events, Report by the Independent Advisory Panel to the Secretary of State for Culture, Media and Sport, November 2009.

organised sport (i.e. through a club or association).[2] In 2003-04, 1.8 per cent of all household expenditure, or $6.3 billion, was spent on sports and physical recreation products[3]
Sport and physical recreation are important in supporting health outcomes and enhancing physical and mental wellbeing.[4] Sport can also provide opportunities for social interaction, sharing common interests and enhancing community. A 2006 survey by the Australian Bureau of Statistics found that the sport participation rate was highest amongst those with daily contact with family and friends, and that social group participation rates were highest amongst those with an active involvement in a sport or recreation group.[5]

Sport and physical education is also vital to childhood development. As noted in the report by the Commonwealth Government's Independent Sport Panel, *The Future of Sport in Australia*, the exposure to sport and physical activity is crucial in the transition from early development to formal education, with physical activity found to improve academic outcomes, self-esteem, mental health and create a sense of inclusion.

Support and criticism of the scheme

While the popularity and prominence of sport broadcasting in Australia was generally confirmed through submissions to the review, the anti-siphoning scheme itself elicited both strong support and criticism. Thirty four per cent of submissions explicitly stated that the scheme should remain in some form, while over 60,000 individuals were cited in a petition as part of Free TV Australia's submission to the review advocating the retention of the scheme.

> *The anti-siphoning scheme is critical to ensuring that as many Australians as possible are able to participate in sporting events of cultural significance by watching them on television [Submission to the review].*

> *[...], the main purpose of the anti siphoning scheme should be to ensure that all Australians have viewing access to major sporting events. This is of particular importance for young Australians. [Submission to the review, School Sport Western Australia]*

Amongst industry groups, Free TV Australia, the Australian Broadcasting Corporation (the ABC), the Special Broadcasting Service (the SBS) and the Professional Golfers Association of Australia all generally supported the continuation of the scheme.

Only a minority of submissions (4.4 per cent) called for the abolition of the scheme. However, 42 per cent of respondents suggested the scheme is anti-competitive and has a detrimental impact on pay television providers and sporting bodies, the bulk of which were submissions forming part of the *Fair Go Sport* campaign organised by ASTRA.

The pay television sector was particularly critical of the scheme and its impact on their operations. In its submission to the review, ASTRA argued that the scheme creates an

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[2] Australian Bureau of Statistics 2009, *Sport and Physical Recreation: A Statistical Overview, Australia, 2009*, cat. no. 4156.0, released 23 October 2009, ABS, Canberra.
[3] Ibid.
[4] Australian Institute of Health and Welfare 2006, *Australia's Health 2006*, AIHW, cat. no. AUS 73, AIHW, Canberra.
[5] Australian Bureau of Statistics 2009, *Sport and Social Capital, Australia, 2006*, cat. no. 4917.0, released 20 March 2009, ABS, Canberra.

anti-competitive environment in the market for sports rights and elevates free-to-air broadcasters as the indirect gatekeepers for the broadcast of the majority of sporting events. Submissions by individual pay television operators were equally critical.

> *[...] the list undermines the subscription television sector's ability to obtain sports rights, to have certainty over rights it will acquire and to be able to market effectively to our customers on sporting events we hold the rights to. [Submission to the review, Foxtel, p. 23].*

A number of submissions commented on the impact of the scheme on the rights holders' choice of purchasers for the broadcast rights to listed events before the automatic de-listing period. Before de-listing, 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.

This point was noted in submissions to the review by major sporting associations. Cricket Australia expressed the view that the scheme restricts the ability of sporting associations to negotiate in an unfettered manner and achieve a fair market value from the sale of broadcast rights, which in turn restricts their ability to invest in the development of their sport. Submissions to the review by Basketball Australia, Federation Francaise de Tennis, the Premier League, Tennis Australia, South Sydney Rabbitohs, Brisbane Broncos, Sydney Roosters, Wests Tigers, National Rugby League and Australian Rugby League all commented on the negative impact the anti-siphoning scheme has on potential broadcast revenues.

The concerns of the pay television industry and the sporting associations have also been noted in past reviews and reports. In its August 2009 report, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, the Productivity Commission noted the anti-competitive impacts of the scheme and recommended the anti siphoning list be substantially reduced. The Australian Competition and Consumer Commission's June 2003 report, *Inquiry into Emerging Market Structure in the Communications Section*, submitted the scheme distorted the market for sports rights and increased barriers to entry for pay television. The Commission reiterated these and criticisms in its submission to this review.

These and other concerns regarding the anti-siphoning scheme need to be balanced with the policy objective of ensuring free access to key sporting events. This issue of access to televised sport was prominent in the views expressed by members of the general public through the consultation process. Thirty nine per cent of submissions asserted that major sporting events should be freely available for all Australians to watch on television, with 27 per cent of submissions specifically identifying equity of access as an important issue. Many of these submissions noted concern about the costs of pay television.

> *There are social equity issues as well, programming should not be out of reach of those who can not afford to pay high monthly subscription prices." [Submission to the review]*

> *The anti-siphoning scheme ensures subscription television operators do not deny some members of the public the ability to participate in sporting events ... by*

> *watching them on television. [...] to deny many of these people the ability to watch such sports at the highest level would be unjust. It would amount to privatisation of the benefits of a good that has been created by the broader community. [Submission to the review]*

Free TV Australia argued that although pay television penetration has risen in recently years, the majority of Australians have not adopted the platform. At present, approximately 34 per cent of the Australian households subscribe to a pay television service. This compares with free-to-air services where 91 per cent of Australian households are able to access all national and commercial digital services licensed for their area and 76 per cent of households have converted their main television to digital.

Conclusion

Submissions to the review emphasised the importance of sports broadcasting in Australia and affirmed the view that ensuring events of national significance are able to be received by the public free of charge remains a relevant public policy objective. However, it was also stressed that the anti-siphoning scheme can adversely affect the pay television industry and sporting bodies and that its effectiveness in ensuring free-to-air coverage of significant sporting events could be improved. Some of the key areas for proposed reform relate to the length of the list, the coverage of major sports and the use of rights to anti-siphoning listed events and the use of digital multi-channels. These issues are further explored in the following sections.

Events on the anti-siphoning list

> *The only criteria that should apply to the list is that of significance. [Submission to the review]*

The anti-siphoning scheme has remained largely unchanged since it was introduced in 1994. However, the events on the anti-siphoning list—which is a legislative instrument made by the Minister—have varied over time.

The current anti-siphoning list is in place until 31 December 2010 and covers a broad range of sports from 12 categories, including cricket, tennis, golf, motor sports, football, rugby union, rugby league, horse racing, the Olympic Games, the Commonwealth Games, AFL and netball.

The review sought comment on which events should be included on the anti-siphoning list today and whether any particular criteria should be applied to their inclusion.

Length of the list

There was strong support from submissions to the review for the length of the anti-siphoning list to be reduced. Some 40 per cent of submissions called for the list to be shortened.

> *If there has to be a list exclusive to FTA it should be very short. [Submission to the review.]*

> *The anti siphoning scheme should protect a minimal number of sporting events such Olympic opening and closing ceremonies and event days at the Olympics with Australian athletes competing, the AFL Grand Final and NRL Grand Final. The current scheme covers far too many sporting events and does not provide Pay TV with the opportunity to compete on equal terms with the free to air networks. [Submission to the review]*

The anti-siphoning list is certainly long by international standards. The current anti-siphoning list covers over 1,800 events in a given year (excluding four yearly tournaments such as the Olympics).[6] In contrast, most European countries cover fewer than 100 events per year (excluding four yearly tournaments such as the Olympics). The United Kingdom covers around 45 events on its A-list and over 600 events on its B-list in a given year (although the B-List only seeks to protect 'highlights' of listed events). However, it should be noted that Australia's anti-siphoning list includes all matches of the Australian Open and Wimbledon tennis tournaments, which account for over 1,300 of the approximately 1,800 events.

The views of the industry on the length of the list were mixed. The free-to-air television industry supported the current listings under the anti-siphoning scheme.

> *The current list now reflects only those sports consistently broadcast by free to air broadcasters and that are genuinely events of national importance. [Submission to the review, Free TV Australia]*

[6] Event described as an individual match or contest. For example, a single tennis match, an AFL match or a round of golf.

In contrast, the pay television industry and the majority of sports bodies sought a reduction of the list, arguing that its length was unjustifiable given the level of coverage of events by free to-air television and the impact of the listings on their ability to openly negotiate in relation to broadcast rights.

Previous reviews and reports of the anti-siphoning scheme have also called for a shortening in the list. The Productivity Commission's August 2009 report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services,* recommended that the list be substantially reduced. The Productivity Commission's March 2000 *Broadcasting Inquiry Report* made a similar recommendation. The then Australian Broadcasting Authority's (ABA) 2001 report, *Investigation into events on the anti-siphoning list,* also commented on the anti-siphoning list's composition and length recommending the removal of nine events and the addition of three events.

Sports on the list

Relatively few submissions from members of the public identified particular sports that should be included on the anti-siphoning list. However, of those that did, the most frequently mentioned sports for inclusion were the following.

Sport	Event
AFL	AFL Finals; AFL Grand Final
NRL	NRL Finals; NRL Grand Final
Cricket	Test matches involving the Australian cricket team; Test matches involving the Australian cricket team in Australia; Test matches involving the Australian cricket team in the UK; Twenty20 matches involving the Australian cricket team
Football	Socceroos matches, including international friendlies; FIFA World Cup qualifying matches involving the Socceroos; FIFA World Cup Finals matches involving the Socceroos

A small number of submissions advocated the inclusion on the list of *cultural* rather than direct sporting contests, such as the ANZAC Day March and awards nights such as the Brownlow Medal.

The majority of sports bodies sought a full or partial de-listing of their sport on the grounds that the listing restricts their ability to negotiate in a free market and achieve the true value of broadcast revenue. These sporting bodies included Cricket Australia, the NRL and ARL and the Federation Francaise de Tennis.

> *Ashes Test cricket is the only cricket event of truly national importance and cultural significance…the only cricket event that truly captures the undivided attention, interest and imagination of the viewing public. [Submission to the review, Cricket Australia]*

> *If any regular season NRL Premiership matches are to be retained, the number should be no more than three matches per week … [Submission to the review, Rugby League]*

> *Current anti-siphoning legislation in Australia…exceeds even the protection accorded to our tournament within France…affects the ability of responsible sports bodies to licence their rights freely. [Submission to the review, Federation Francaise de Tennis]*

However, there were a few sporting organisations including the Professional Golfers Association Australia that supported the continued listing of their sports.

The free-to-air television industry supported the current listings under the anti-siphoning scheme and argued that the scheme is working well.

> *The current scheme works well and there is no identifiable need to change the listing criteria." [Submission to the review, Free TV Australia]*

The ABC and the SBS recommended the inclusion of additional events of national importance and cultural significance to the list

> *…the Corporation believes there is benefit in adding the Paralympic Games to the anti-siphoning list. …Similarly, the development of women's sport such as the Women's Football World Cup and matches played Australian National Women's Football team, the "Matildas," are further example of the need for flexibility in considering events for inclusion on the anti-siphoning list. [Submission to the review, ABC]*
>
> *The following events should be included in the list:*
>
> - *Each international match involving the men's national football team, including FIFA World Cup qualifying matches.*
> - *Coverage of the A-League football competition. (one or two games per week plus highlights)*
> - *Each stage of the Tour Down Under road cycling race.*
> - *Each stage of the Tour de France road cycling race.*
>
> *[Submission to the review, SBS]*

However, it is noted that the original Parliamentary intent of the anti-siphoning scheme was to ensure free public access to events of national importance and cultural significance, rather than provide a means to enhance the profile of sports through increasing or initiating free-to-air coverage.

Rationale for listing events

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. Currently the concepts of 'national importance' and 'cultural significance' are not defined and selecting an event for listing is a matter for this Minister.

Relatively few submissions from members of the public made any direct comment about the rationale or use of criteria for the inclusion of events on the list. Those that did emphasised the use of the two established principles (national importance and cultural significance) or put forward other suggested criteria that included:

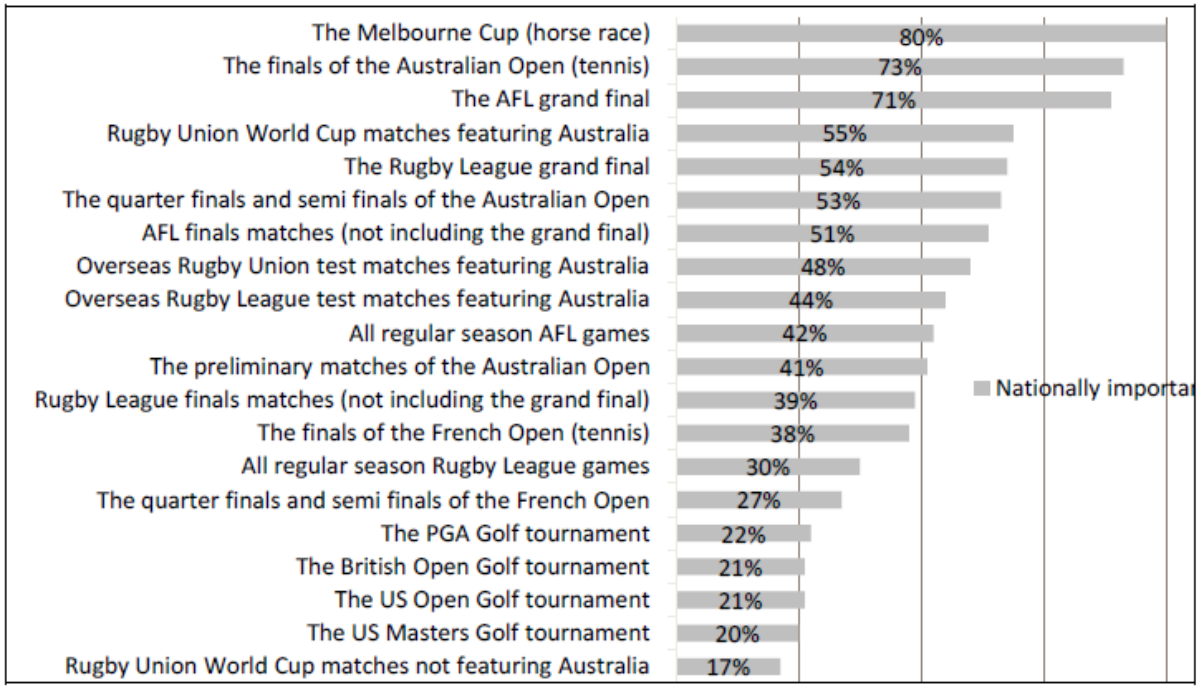
- sports that involve an Australian team or Australia's national team;

- events that are popular in mainstream Australia, which may be based on ratings data; sports that have traditionally been shown on free-to-air television ; and
- sports that involve Australian sports people.

The submission to the review from ASTRA argued that the appropriate criterion for inclusion on the list should be whether free-to-air television network have consistently shown the event live or near live, while Foxtel's submission suggested that consideration could be given to the criteria specified by the Council of European Communities issued in the Television without Frontiers Directive (these criteria are reproduced in the 2009 discussion paper *Sport on Television: A review of the anti-siphoning scheme in the contemporary digital environment* which is available at www.dbcde.gov.au.

The ASTRA submission also provided some information on the views of Australians on the national significance of events on the anti-siphoning list drawn from a survey commissioned by the industry from Auspoll. This is reproduced in the following chart.

Table: National significance of sporting events listed by the anti-siphoning scheme



Source: Research Findings—Attitudes to Sport on TV and anti-siphoning law, www.astra.org.au, 29 October 2009

Most sporting bodies suggested that there should be very specific criteria introduced to determine which events should be included on any future anti-siphoning list. The suggested criteria included ideas such as public survey, ratings information and general event attendance, high level of community participation and interest and discussion with the affected sports body regarding an events inclusion.

Conclusion

Many submissions to the review provided support for a reduction in the length of the anti-siphoning list, suggesting that the current listing is too broad and the operation of the scheme may benefit from certain events being partially or fully removed. The current listing on the basis of national importance and cultural significance was generally seen to be appropriate,

although there were calls for such criteria to be more clearly defined. The duration of the list was not an issue of particular importance in submissions.

Coverage of events on the anti-siphoning list

> *If a sporting event has such national importance and cultural significance to be listed on the anti-siphoning scheme, then such event should be shown live nationally or be de-listed ... [Submission to the review]*

The anti-siphoning scheme effectively provides free-to-air broadcasters with the first opportunity to acquire the broadcast rights events on the anti-siphoning list. However, the scheme does not specify any particular kind of coverage. Free-to-air broadcasters may chose to provide live and full coverage of an event, although they are not obliged to do so under the scheme. The form and frequency of coverage of anti-siphoning listed events is a scheduling matter for the broadcaster determined primarily by commercial considerations and often in negotiation with the sports body that is making the rights to the event available.

The 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, and free-to-air broadcasters are regularly scrutinised for their sports coverage. The review examined the coverage and scheduling of events on the anti-siphoning list and sought comment on whether usage requirements should apply to free-to-air broadcasters with broadcast rights to these events.

Views on coverage

The review brought to the fore a range of opinions and concerns regarding the coverage and scheduling of anti-siphoning listed events by free-to-air broadcasters. Indeed, this issue received the highest level of response across all of the issues canvassed by the review.

Fifty-seven per cent of respondents to the consultation process argued that sport should be televised live, with 52 per cent of submissions suggesting that free-to-air broadcasters be *required* to show all listed events live.

> *...events on the anti-siphoning list should be broadcast live, or as near to live as practical, and should be in full. [Submission to the review, Australian Sports Commission]*

> *To ensure the integrity of the list and the benefits that it provides to the free-to-air broadcasters in their ability to acquire sports rights, we believe the quid pro quo is that broadcasters should show these sports live. [Submission to the review, Sports Supporters Australia]*

The absence of a coverage obligation also drew criticism from the pay television sector, which has suggested that events on the anti-siphoning list must be shown by free-to-air broadcasters live or within one hour of their commencement on a national basis. These submissions cited research commissioned by ASTRA and undertaken by Auspoll found that keen sports fans are strongly dissatisfied with the amount of live sport on free-to-air television and the delays in coverage.

Sporting bodies generally expressed concerns regarding coverage, with Cricket Australia, Tennis Australia and Basketball Australia calling for live broadcasting.

> *FTA broadcasters must be required to show listed events live and in full on their primary channel. [Submission to the review, Tennis Australia]*

> *Events on the List must be broadcast live and in-full ... [I]f a free-to-air television network whose business is based on achieving ratings does not broadcast an event live and in-full because other programming will rate more highly, then the event is not truly of national importance and cultural significance and should therefore not be on the List in the first place. [Submission to the review, Cricket Australia].*

Free TV Australia was one of the small number of submitters to provide a contrary view, arguing that scheduling requirements would lack the flexibility to deal with complex sports rights negotiations and would result in events being wrongly delisted from the anti-siphoning list.

> *While some proposals for 'use' criteria or scheduling requirements may sound attractive in theory, they ignore the reality of sports broadcasting. [Submission to the review, Free TV Australia]*

Free TV Australia argue that it is not possible to develop a simple test that fairly assess every scenario because of the complexities of sports rights negotiations and contracts and the difficulties of providing national, live coverage across time zones and for sports such as tennis and the Olympic Games.

Current levels of coverage

Detailed information on the coverage and scheduling of events on the anti-siphoning list is limited. However, it is the case that free-to-air coverage of anti-siphoning listed events varies significantly throughout Australia. Levels of coverage differ between states and territories, between cities within states and territories, and between metropolitan and regional areas. The level and type of coverage also vary depending on the sport concerned.

The Australian Communications and Media Authority monitored free-to-air broadcasters' coverage of events on the anti-siphoning list between January 2006 and September 2008. The Authority's monitoring reports found that the majority of rights acquired to listed events by free-to-air broadcasters received free-to-air coverage during the monitoring period. 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 state. More information on the ACMA monitoring reports is provided in box 4.1.

More recently, the 2009 French Open tennis tournament and the 2009 British Open golf received no full or live coverage on free-to-air television. The 2009 Wimbledon Championships received delayed coverage, while there was no coverage of Australia's international netball test matches against England and Jamaica, and delayed coverage of the test match against New Zealand.

Over recent years, viewers have also expressed concerns to the Government (separate to this review) regarding the state-based coverage of the Australian Football League (AFL) and the National Rugby League (NRL). These comments indicate dissatisfaction with delayed coverage of games into certain states (the NRL in Victoria, for example) and the

non-coverage of some games (the AFL in New South Wales and NRL in Tasmania, for example).

Practicalities and impact of a coverage obligation

Live coverage is a complex issue. There are five time zones in Australia depending on the time of year, and a live coverage obligation for an event in one time zone may result in a lower audience for that event in other time zones if no telecast delay is permitted. For example, a live coverage obligation for the AFL Premiership would see the Friday night game played in Melbourne and commencing at 7.30 pm Australian Eastern Standard Time being telecast in Perth at 5.30 pm Australian Western Standard Time, or as early as 4.30 pm Australian Western Standard Time for the early rounds of the season.

There are also restrictions on live coverage imposed by sporting bodies in order to protect crowd attendance. The AFL, for example, has in the past required a delay in the telecast of certain matches of between 30 and 60 minutes. The imposition of a mandatory live coverage requirement in all states and territories would also disregard the fact that particular sports have different levels of popularity across the country. The live broadcast of NRL fixtures into Melbourne or Adelaide on a Sunday afternoon or event may, for example, result in a reduced audience for the broadcaster concerned.

Full and complete coverage is also not feasible for many multi-round, simultaneous events. For example, the Wimbledon and Australian Open tennis tournaments each involve around 650 matches (singles, doubles and junior titles) and any one free-to-air broadcaster could not physically televise all matches, particularly given the current restriction on premiering events on digital multi-channels. In addition, there are restrictions imposed by sports rights holders on what a broadcaster can televise. For example, Augusta National Inc (rights holder for the US Masters golf tournament) only makes between 3 and 4.5 hours of each day's play available to broadcasters around the world, including free-to-air broadcasters in Australia. These are the only free-to-air rights available for purchase.

Conclusion

The balance of opinion appears to be that coverage of listed events is falling short of public expectation. Submissions to the review and the volume of representations to the Government regarding the anti-siphoning scheme over many years highlight that the coverage of certain events and the lack of live coverage in particular, are key concerns. The imposition of a live coverage requirement is complex and would, as noted above, constitute an additional condition on the right to televise events. However, this consideration needs to be weighed against the intent of the scheme. Submissions to the review emphasised the view that if a sporting event is significant enough to be included on the list, and the free-to-air sector is given preferential rights to televise that event, it should receive a reasonable level of coverage. However, a coverage obligation would need to accommodate the fact that the rights to an entire event are not necessarily made available by sports bodies, allow for time zone differences in Australia and provide some flexibility for the broadcast of multi-round, simultaneous events.

Use of rights to anti-siphoning listed events

The anti-siphoning scheme does not require free-to-air broadcasters to buy the rights to events that are on the anti-siphoning list. The scheme also allows broadcasters to on-sell rights that they do not intend to use, although it places no obligation on them to do so. Free-to-air broadcasters may also retain the rights to events without providing any coverage of such events.

The review sought comment on whether usage requirements should apply to anti-siphoning listed events. This discussion elicited comment on the ways in which free-to-air broadcasters are able to control and use the rights to these events.

Views on the control and use of rights

Submissions to the review from the general public indicated strong views on way rights to anti-siphoning listed events are utilised by broadcasters. Some 41 per cent of submissions commented that free-to-air television should not be able to hoard events, while 46 per cent of submissions argued that if a free-to-air broadcaster is not going to show an event live, they should be forced to make the rights available to other broadcasters.

> *If an event is on an anti siphoning list then the broadcaster must guarantee a live broadcast to all states, if not then they must on-sell the event to another broadcaster. [Submission to the review]*

Submissions from the pay television sector supported this view, arguing that the anti-siphoning list empowers free-to-air networks to obtain the rights to sporting events which they then do not broadcast live or even at all.

> *The scheme by its nature means that the old television networks become the indirect gatekeepers for the broadcast of the great majority of sporting events. ... The perverse effect of this is that in the absence of competitive pressure from subscription TV, far less sport is available to viewers. [Submission to the review, ASTRA]*

Submissions from various sporting bodies and the Australian Sports Commission emphasised this point.

> *The current anti-siphoning regulations allow FTA channels, either inadvertently or by design, to in effect lock out competition by Pay TV providers. The ultimate result in such cases is that an event is not aired live on either FTA or Pay TV, and both the sport, and the Australian public lose out. [Submission to the review, Tennis Australia]*

> *As the netball experience has shown, however, listing events is no guarantee of the live, prime time coverage necessary to grow reach in a developing sport. [Submission to the review, Basketball Australia]*

Free TV Australia's submission to the review put forward a contrary position. The free-to-air industry argues they do not hoard the rights to events and that they show the majority of events they acquire.

Contrary to pay TV's claims, independent monitoring by the broadcasting regulator has confirmed there is no hoarding of sport on free to air television. Free to air broadcasters show the majority of the events they acquire and anything else is available to pay TV. [Submission to the review, Free TV Australia]

Citing monitoring reports prepared by the ACMA for the calendar year 2007 (discussed in Box 4.1 below), Free TV Australia claim that commercial free-to-air broadcasters show 86 per cent of the events to which they held exclusive rights. In contrast, submissions to the review from Foxtel, Austar and ASTRA cite analysis by Ernst and Young that only 23 per cent of events on the anti-siphoning list are shown by free-to-air broadcasters.

The divergent figures presented by the free-to-air and pay television sectors can, in part, be explained by the fact that free-to-air broadcasters do not acquire the rights to all events included on the anti-siphoning list. As noted in section 2 of this report, there are around 1,800 events on the current anti-siphoning list in any one year, of which around 1,300 are accounted for by the Australian Open and Wimbledon tennis tournaments. Free-to-air broadcasters do not acquire rights to all 1,800 events on the list, nor are such rights typically available. For example, the ACMA's 2008 half yearly monitoring report for the six months from November 2007 to March 2008 indicated that rights were only available for 234 of a possible 655 matches of the 2008 Australian Open.

Box 4.1—ACMA monitoring

From 1 January 2006 to 3 September 2008, the ACMA monitored free-to-air television coverage of events on the anti-siphoning list and reported to the then Minister for Communications, Information Technology 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 'use it or lose it' guidelines introduced by the former government in January 2007.

These guidelines informed the monitoring of usage of the rights to anti-siphoning listed events conducted by the ACMA between January 2006 and September 2008. The guidelines had no statutory force but were designed to provide a set of criteria to assess the adequacy of free-to-air coverage, taking into account the practical realities of providing such coverage. The criteria contained in the guidelines included whether the event had been shown to more than 50 per cent of the Australian population, whether more than half the event had been broadcast, and whether the event had been shown live or near-live, and whether any delay in coverage was intended to provide greater audience access to the event. No events were delisted by the former government as a result of the 'use it or lose it' guidelines.

Use of the anti-hoarding rules

The Act provides a mechanism to address the potential for hoarding of the rights to sporting events. Operating independently of the anti-siphoning scheme, these anti-hoarding rules require commercial television licensees who acquire the rights to a designated event but who do not propose to fully use that right, to offer the unused portion to the ABC and the SBS for a nominal charge within a specified offer time. The national broadcasters must also offer unused portions of rights to each other.

There has been limited use of the anti-hoarding provisions since their inception in 1999. To date, only the 2002 and 2006 FIFA World Cup finds tournaments have been designated under the provisions. The rights to the 2002 tournament were shared by the Nine Network and the SBS, while the rights to the 2006 tournament were purchased by the SBS. The anti-hoarding provisions were not triggered for either acquisition.

A number of submissions to the review called for the anti-hoarding rules and anti-siphoning scheme to be more closely aligned, including by designating all events on the anti-siphoning list under the anti-hoarding provisions.

> *... the ASC is of the view that the anti-hoarding list should contain exactly the same events as the anti-siphoning list, hence requiring rights purchases to broadcast the sports. The ASC is also of the view that the minimum notice period should be extended, say to at least 6 months (or whatever is deemed reasonable) to enable the national broadcasters to give the ABC and the SBS a greater window of opportunity to make necessary scheduling changes. [Submission to the review, Australian Sports Commission]*

The submission to the review from the Australian Digital Suppliers Industry Forum also called for the anti-hoarding rules to be expanded to allow a 'second round' offer to pay television where unused rights were not taken up by a free-to-air broadcasters.

> *The anti-hoarding rules should also be expanded to include a requirement on commercial broadcasters to offer unused rights to a subscription TV broadcaster, if those unused rights are not acquired at a nominal charge by a national broadcaster. [Submission to the review, Australian Digital Suppliers Industry Forum]*

The Productivity Commissions' August 2009 report titled *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* also acknowledged the potential for greater use of the anti-hoarding rules, although this was not the Commission's preferred reform option.

> *The protracted negotiation process might be shortened through strengthening the anti-hoarding regime or by introducing a formal 'use it or lose it process'. However shortening the existing list would be a more effective approach to this problem, while being consistent with the overall policy objective. [Productivity Commission, August 2009]*

However, this view was not universal. Submissions from the majority of sporting bodies expressed the view that the current anti-hoarding rules have the potential to disadvantage a sport where rights are offered automatically to the ABC and the SBS and therefore limiting the potential market for sports rights.

> *The anti-hoarding requirements unfairly provide a double advantage to the ABC and SBS, (both of which are FTA channels and therefore have already had equal rights to bid for a listed event along with other FTA providers), and impose a secondary disadvantage on Pay TV providers who have already been limited in their ability to bid for listed events. [Submission to the review, Tennis Australia]*

These submissions generally advocated a more open arrangement whereby all potential broadcasters, including pay television operators and the ABC and the SBS, are able to bid for rights where a primary free-to-air broadcaster does not intend to show a listed event live.

Conclusion

The control and use of rights to anti-siphoning listed events elicited strong views through the public consultation process. There is a clear expectation among members of the public and sectors of the industry that if a free-to-air broadcaster acquires a right to an anti-siphoning listed event and doesn't intend to use it, other broadcasters should be provided with an opportunity to do so. At present, the anti-siphoning scheme provides no such incentives for broadcasters to offer-on unused rights to anti-siphoning listed events. The anti-hoarding rules currently provide a means for otherwise unused events to be shown on free-to-air television, although they have been relatively unutilised to date and concerns were expressed through submission about their impact in their current form. There were arguments that consideration could be given to expanding these rules to ensure that every opportunity is provided for full coverage of anti-siphoning listed events.

Sport on free-to-air digital multi-channels

> *The critical issue in relation to digital multi-channels concerns access within the population. [Submission to the review]*

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. This restriction was introduced in 2006 to provide the widest access for viewers to anti-siphoning listed events while digital television take-up remained relatively low.

The review sought comment on whether the current restrictions on free-to-air digital multi-channels in relation to the anti-siphoning scheme should remain, or whether it should be relaxed.

Views supporting the use of free-to-air digital multi-channels for sport

Eighteen per cent of submissions supported the relaxation of the multi-channel restrictions, viewing this as a good way to drive digital television take-up and also an opportunity for more areas of Australia to get access to live coverage of events on free-to-air television.

> *The lifting of this restriction may well go some way to enabling broadcasters to show events live and in full on an alternative channel where previously they may not have been willing to do so on their primary channel. [Submission to the review]*

> *There is no need to prevent expanded use of digital multichannel free to air TV for anti-siphoned sports. ... Free-to-air digital multi-channels will be indistinguishable from main digital free-to-air once analog services are discontinued. [Submission to the review]*

The free-to-air television industry also supported the removal of the multi-channelling restrictions, arguing that this would increase the free-to-air coverage of important sporting events.

> *...lifting of the current restrictions would allow increased live coverage of major multi-round events such as the Olympic and Commonwealth Games, without any subscription fees. Australian viewers are well aware of the existence of free to air multi-channels and become frustrated when broadcasters do not make use of additional channels to show expanded coverage of events, particularly for multi-event tournaments such as the Commonwealth and Olympic Games. [Submission to the review, Free TV Australia]*

The free-to-air sector also argued that the relaxation of the multi-channelling restrictions on the grounds that it would drive digital television take-up.

The submission to the review from Free TV Australia also suggested that sporting bodies would benefit from increased exposure of their sports through the greater use of digital multi-channels. This view was shared by a few sporting organisations that did support the use of free-to-air digital multi-channels to premiere listed events.

We also support allowing events on the anti-siphoning list to be broadcast first on digital multi-channels. These free to access channels provide greater opportunities for events and sports to increase their audiences and promote their activities. [Submission to the review, Professional Golfers Association of Australia]

Views against the relaxation of the free-to-air digital multi-channel restrictions

A total of 47 per cent of submissions suggested the restrictions on the use of free-to-air digital multi-channels should remain. A majority of these submissions were part of ASTRA's *Fair Go Sport* campaign. Many submissions were concerned that allowing listed sports to 'migrate' to multi-channels would be inequitable for those who yet to make the switch to digital.

Until digital television is mandatory (set down for 2013 at this stage), to allow a broadcaster to televise an event exclusively on their digital channel is inequitable. [Submission to the review]

… the restriction should continue until the analogue system is switched off. Thereafter the restriction should be lifted to allow television broadcasters to broadcast the sporting event on any free-to-air digital channel that is available to the whole community. [Submission to the review]

It is worth noting that submissions to the review were invited in August 2009, when 56 per cent of Australian households had converted their main television to digital. Since that time, there has been continued and rapid growth in digital take-up, with 76 per cent of households having converted their main television to digital. .

Other submitters to the review reasoned that the multi-channel restrictions should remain as events of national significance warrant coverage on the main television channel.

… [I] believe that the restriction should remain until analogue is discontinued. To do otherwise is to disadvantage STA subscribers who will have to purchase new television sets or expensive set top boxes with varying degrees of success. If the FTA channel does not consider the programme to be of national or international significance why bid for it in the first place… [Submission to the review]

The majority of sporting bodies advocated for the multi-channel restrictions to remain. The reasons cited in support of this position related to viewer access and the fear that a relaxation of the multi-channel restrictions would have a negative impact on the value of sports rights.

… [A] decision to allow FTA digital multi-channels to broadcast listed events … is likely to have a highly negative overall impact on the value of media rights. … The effect of that would be catastrophic on the sports industry, and will directly impact on each sport's ability to reinvest in grass roots and community programs. [Submission to the review, Rugby League]

Until 100 per cent penetration of digital television in Australian homes is achieved this should not be used as a reason to abolish the prohibition on premiering listed events on digital multichannels … Enabling the migration of premium sports content…to digital multichannels has the significant impact of further eroding the

> *sport governing bodies' ability to achieve fair market value for sports broadcast rights. [Submission to the review, Cricket Australia]*

The latter point regarding adverse financial impacts on sporting bodies was shared by the Productivity Commission in its August 2009 report *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services.*

> *If the restrictions on the multi-channel broadcasting were removed, while the anti-siphoning restrictions on subscription TV remain, the impact on the subscription networks could be significant. [Productivity Commission, August 2009]*

The pay television industry (with the exception of SelecTV) also opposed the removal of free-to-air digital multi-channel restrictions, agreeing relaxing the restrictions would adversely affect sporting bodies' revenues. ASTRA also expressed that a relaxation of the multi-channel restrictions would further disadvantage the pay television industry in the sports rights market and increase the anti-competitive nature of the anti-siphoning scheme.

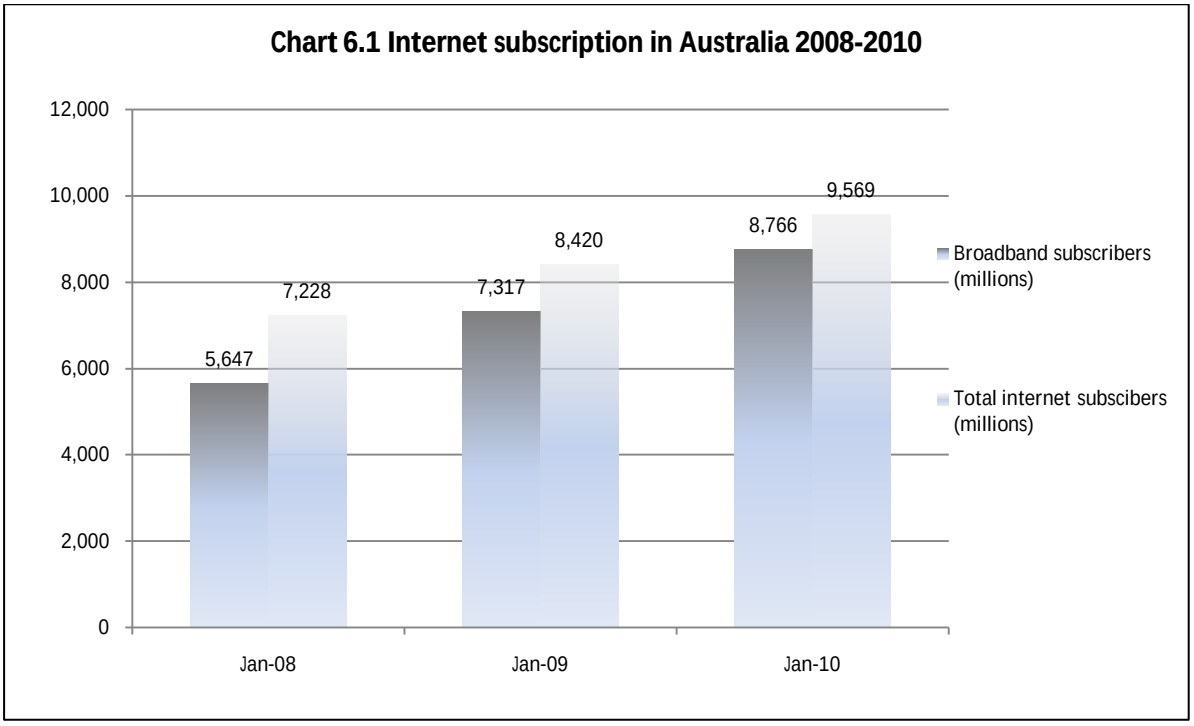
Conclusion

Submissions to the review highlighted that equity of access for those yet to make the switch to digital, or where digital television multi-channels are not available, is an issue of relevance to many viewers. Sports bodies and the pay television sector are also clearly concerned about the impact of any relaxation of the multi-channelling restrictions in the absence of other changes to the anti-siphoning scheme. In contrast, the free-to-air television industry noted the benefits of multi-channelling flexibility for viewer choice.

New media and the anti-siphoning scheme

The anti-siphoning scheme regulates the acquisition of broadcast rights by pay television broadcasting licensees, and it does not affect sports coverage on any other media platform, including online. The anti-siphoning scheme was introduced in 1994 at a time when the internet was in its infancy and the impetus for the anti-siphoning scheme related to the potential impact of the then emerging pay television sector on free-to-air television coverage of significant sporting and other events.

The media landscape has changed significantly over the past 16 years. Broadband internet access is increasing. As can be seen in the Chart 6.1, broadband subscriptions have grown from 5.6 million subscribers in 2008 to 8.8 million in 2010. Penetration and the speed and quality of broadband services will rise further with the continuing roll-out of the Government's National Broadband Network (NBN), which will provide a wholesale open access network to 100 per cent of Australian premises, capable of delivering a range of media and communications services via technologies, including Internet Protocol (IP). However, until the eight year rollout is complete, affordable and high speed broadband will not be available to all Australians.



Source: Australian Bureau of Statistics, *Internet Activity, Australia 8153.0*, June 2010

Sporting bodies, including Cricket Australia, the AFL, the NRL, the V8 Supercars and the International Olympic Committee, have been using new media platforms for a number of years to achieve wider public exposure to their sports and to provide complementary coverage to that available through traditional broadcast platforms. A key policy question is whether the use of these and other IP-based platforms is likely to expand beyond complementary coverage to the point where anti-siphoning listed events migrate *exclusively* to new media outlets and are no longer freely available to the general public. In this context, the review sought comment on the role of new media in modern sports coverage and its potential impact in the media landscape.

New media developments

A range of services have emerging in Australia over recent years that can be described as new media. Although these services are often very different in terms of the content they provide and the consumer device on which they are intended to be accessed and viewed, they generally have in common their use of Internet Protocol (IP). As discussed in the 2009 discussion paper, there are generally two types of new media services with some level of commercial presence: Internet Protocol television (IPTV) and Internet video.

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.

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 streamed or downloaded.

Recent developments

Free-to-air television networks have actively engaged in the provision of internet video in recent years. The ABC's i-View, the Nine Network's fixplay, the Seven Network's Plus 7, Network Ten and SBS all operate internet video services with access to a range of catch up television programs, libraries of television shows as well as short clips of news, sports, entertainment and program specific video extras.

Pay television and telecommunications providers in Australia have also moved into the provision of IPTV and internet video services. Foxtel provides an IP based on-demand service to those subscribers connected to the internet via its iQ2 personal video recorder. Foxtel has also announced it will provide a suite of subscription and pay-per-view channels through the X-box gaming console and also through other set top boxes such as Telstra's T-box. Telecommunications companies such as Telstra and TransACT provide IP-based on-demand and subscription IPTV services through branded set top boxes.

In addition, there are other players in the IPTV market in Australia. TiVo is a set top box and personal video recorder provided by Hybrid TV and allows transmission of free-to-air television services as well as access to an on-demand service known as CASPA that provides its content via IP. Fetch TV is a new entrant to the IPTV market in Australia. Fetch TV is a content aggregator and through agreements with various Internet Service Providers provides a pay television style IPTV via a set top box. There are also various gaming consoles such as Sony's Playstation 3 that provide access to online on-demand pay-per-view and free video services.

Finally, televisions are increasingly becoming web-enabled. This immediate internet connectivity through the television is providing additional means for Australians to access audio-visual content. Sony, Samsung and LG as well as other television manufacturers all provide the ability in Australia to access numerous internet video and on-demand video services including YouTube, ABC's i-View and in some cases Telstra's Bigpond TV.

In terms of broadcast rights, sporting bodies and broadcasters are increasingly utilising new media to provide sports coverage. Google is currently providing online coverage of the Indian Premier League Twenty 20 cricket competition via a YouTube channel. In Europe, in 2009 a FIFA World Cup qualifying match between England and the Ukraine was streamed exclusively live on the internet with highlights provided on traditional television.

In Australia, Telstra's Bigpond Sport website offers consumers highlights coverage of the AFL and NRL Premierships and the V8 Supercars Championship, while Vodafone and Three Mobile's 3G Network coverage of cricket, V8 Supercars, Formula 1 and the Tour de France broadcasts to its mobile phone customers.

Fox Sports also provides internet subscriptions to view live streaming and on demand English Premier League coverage. Fox Sports also provides its news channel and various sports videos as mobile TV in varying forms on Vodafone and Three Mobile, Optus and Telstra. Foxtel also provided six channels of the 2010 Commonwealth Games coverage on its pay television service and also streamed those six channels online. Australian Waterpolo is providing pay-per-view coverage of its National League and other competitions via live streamed and on-demand coverage on its website that is powered by rivusTV.

Views of submissions to the review

Only a small number of submissions to the review provided any direct comment on the issue of new media. A total of 15 per cent of submissions stated the view that new media provides a supplementary or complementary viewing experience to tradition television services.

> *New media technologies supplement consumer television viewing, rather than replacing it. I am going to replace my television with neither my mobile telephone nor my computer. [Submission to the review]*

Seven per cent of submissions went further to suggest that the anti-siphoning laws should not be extended to new media and online platforms. Those opposing any extension of the scheme to the online environment included the pay television sector, Telstra, Ericsson and Optus, and the majority of sporting bodies. These submissions suggested that new media platforms are not a substitute for traditional television at present and thus do not warrant regulation.

> *…while internet users are spending more time online, this is having a negligible effect on their television viewing habits. [Submission to the review, Cricket Australia]*

Several submissions suggested that extending the anti-siphoning scheme to new media services would stymie an industry that is still in its infancy.

> *To restrict the development of new media platforms in this way, in the early stages of their emergence, is both unnecessary, and protectionist in favour of the dominant industry players. [Submission to the review, Ericsson]*

> *... new media platforms are still in early development and must be provided the opportunity to grow and evolve without the burden of regulation that would, in*

> *effect, simply stifle innovation and protect the strongest players. [Submission to the review, Australian Mobile Telecommunications Association]*

The view of new media as a complementary viewing experience has also been noted overseas. In the United Kingdom, the Independent Advisory Panel's November 2009 report into the Listed Events Scheme found that television is likely to remain the first choice for sports coverage.

> *... the Panel has been convinced that, at least in the foreseeable future, and as far as the biggest sporting events are concerned, most people's first choice of how to view them will be by means of what is still identifiably a television set.*[7]

Research conducted by US television network NBC Universal of its 2008 Beijing Olympics coverage revealed that while there were over 75 million streams of its online content, less than 1 per cent of the audience relied solely on the internet to view the Games, seeing internet use as complementary to traditional television viewing.[8] This led NBC executives to declare that new media does not cannibalise television viewing.

> *The internet hardly cannibalises - it actually fuels interest."*[9]

The opposition to the regulation of new media was not universal through submissions to the review. A total of 2.7 per cent of submissions suggested that the anti-siphoning regime should be extended to new media.

The submission from Free TV Australia argued that the emerging pay-per-view and subscription-based online models, combined with the imminent introduction of the National Broadband Network, warranted action to ensure the anti-siphoning scheme continues to deliver on its objectives.

> *There is a strong possibility that the emergence of new content services (such as IPTV or other video services delivered over communications networks) will create the same potential for the siphoning of major sporting events.*
>
> *... For providers of subscription content services, regardless of which technological platform they provide their services on, there will be the same strong incentive towards the acquisition of exclusive sporting rights as a means of driving take-up as existed for emerging pay TV providers. [Submission to the review, Free TV Australia].*

Conclusion

At present, sports coverage via new media platforms appears to be supplementary to that of traditional television. New media services such as IPTV remain in their infancy in Australia and there are no examples to date of sporting events being siphoned exclusively to these

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[7] Review of Free-to-air Listed Events, Report by the Independent Advisory Panel to the Secretary of State for Culture, Media and Sport, November 2009.
[8] Review of Free-to-air Listed Events, Report by the Independent Advisory Panel to the Secretary of State for Culture, Media and Sport, November 2009.
[9] Alan Wurtzel, research president for NBC Universal, Guardian, *Olympics: NBC hails multimedia 'phenomenon' in games coverage*, 14 August 2008, *www.guardian.co.uk*

platforms. Submissions to the review commenting on this issue generally opposed extending the anti-siphoning scheme to new platforms. However, there are views that the pace of technology convergence and the ever increasing quality of broadband means that differences between traditional and new media platforms are being eroded and the delivery of robust, high quality audio-visual services via IP-based platforms is increasingly feasible. These submissions conclude it is possible that in the future subscription-based new media services may indeed pose a threat to free access to sport for Australian audiences.

Other issues

Duration of the list

The review sought comment on an appropriate duration for the anti-siphoning list. The term of the current anti-siphoning list is five years, expiring on 31 December 2010. The previous list had a 10-year term and this is the maximum duration for any list under the automatic sunset arrangements in the *Legislative Instruments Act 2003*.

There was not a strong response to this issue in submissions to the review. Seven per cent of submissions felt the current duration of 5 years was appropriate, 6 per cent of submission indicated support for 10 years, and 5 per cent of submissions suggested the list should be less than 5 years in duration.

Automatic de-listing arrangements

Events on the anti-siphoning list are automatically de-listed 12 weeks before their commencement. This provision was introduced in 2005 to improve the operation of the scheme by allowing pay television operators to access events where free-to-air broadcasters do not intend to purchase the broadcasting rights. The review sought comment on whether the 12 week automatic delisting period remains appropriate.

Submissions to the review from pay television broadcasters argued that the 12 week period provides insufficient time for them to acquire unpurchased broadcast rights, finalise programming schedules, negotiate advertising contracts and promote the event.

> *The automatic de-listing period should be extended to 26 weeks prior to the event occurring to enable any alternative subscription TV broadcaster to pick up the event, and importantly to promote the event so that sports fans know where to find it. Old television networks know well in advance whether they want to broadcast an event or not. It is not unreasonable to allow others to have the time to make plans for broadcast on this basis. [Submission to the review, ASTRA]*

The majority of sports bodies also supported this position, noting that 12 weeks is insufficient time to negotiate a rights deal and the current duration unduly favours free-to-air television broadcasters.

> *"Completing broadcasting negotiations for a major sporting event takes many months and leaving a 12-week period to negotiate a deal is inadequate. For a major event, it is recommended that a 6-month time frame for negotiation is required. A 6-month lead in period is more than enough for a broadcaster to determine their broadcast schedule and decide if they will, or will not be televising a listed event live. A de-listing period any shorter than 6-months simply allows FTA broadcasters to potentially hold out on a decision until the last minute, thereby placing excessive pressure on event organisers to try and negotiate a deal with a Pay TV or other provider that allows for a reasonable return on investment to be derived. [Submission to the review, Tennis Australia]*

This view was also shared by the Australian Sports Commission (ASC) who reasoned that extending the automatic delisting period to up to six months would not be unreasonable on

the free-to-air television industry, would provide the ability for increased revenue for sporting bodies from meaningful rights negotiations and ensure greater exposure of sport on television for the benefit of the Australian public.

An analysis of sports rights negotiations reveals that agreements between sports bodies and broadcasters are typically made and announced at least six months (and often longer) from the commencement of the respective event, as shown in Table 7.1 below.

Table 7.1—Timing for sports rights deals		
Event	*Announcement date*	*Time in advance of event commencement*
AFL 2007-11	January 2006	15 months
Melbourne Cup 2007-12	May 2006	18 months
Australian Open tennis and Davis Cup 2009-14	November 2007	14 months
Cricket Australia matches played in Australia 2006-13	May 2005	10 months
Rugby league 2007-12	July 2005	over 18 months

Source: various public announcements of rights agreements by sporting bodies and broadcasters.

Submissions from the free-to-air television sector presented a contrary position on the automatic delisting period. Free TV Australia argued that the current 12 week delisting period is appropriate and provides pay television providers with ample time to acquire rights unlikely to be broadcast on free-to-air television. Free TV Australia also supports the current arrangements which allow the Minister to prevent automatic de-listings.

> *The current 12 week automatic delisting period remains appropriate and provides ample opportunities for pay TV to acquire the rights to events which are unlikely to be broadcast on free to air television. Free TV notes that the 12-week delisting period was introduced in 2005 (it was previously 6-weeks) at the request of the pay TV sector. [Submission to the review, Free TV Australia]*

The automatic delisting period received little comment from the remainder of submissions to the review from members of the general public.

Third party access to rights

The anti-siphoning scheme does not prevent a company other than a pay television broadcaster from acquiring the rights to broadcast an anti-siphoning listed event before a free-to-air broadcaster. This includes a company that is associated with a pay television licensee, such as Premier Media Group, or any other third party. However, the licence condition on pay television broadcasters prevents a third party organisation from on-selling

rights to a pay television broadcaster unless the rights had been acquired by a free-to-air television broadcaster, or the relevant event was delisted.

Although the review did not seek specific comment on this aspect of the scheme, a small number of submissions to the review did provide some comment. The Australian Sports Commission, Free TV Australia and the ABC called for the 'loophole' in the operation of the scheme to be addressed.

> *... this condition does not prevent entities related to subscription licensees, such as channel providers, from acquiring such rights. As such, the legislation is unable to ensure community access to significant events via free-to-air television as intended. [Submission to the review, Australian Broadcasting Corporation]*

The example cited in submissions by the ABC and Free TV Australia related to Premier Media Group (owner of Fox Sports) acquiring the rights to the 2005 Ashes series prior to any free-to-air broadcasters doing so. It is argued that this prevented free-to-air broadcasters from acquiring the rights to the series.

There is currently a mechanism within the anti-siphoning scheme for rights to be retained on the anti-siphoning list in certain circumstances. Where a free-to-air 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. However, the scheme does not guarantee free-to-air broadcasters the *sole right* to bid for events. That is, it does not guarantee broadcasters exclusivity in bidding for the rights. In the case of the 2005 Ashes, the free-to-air broadcast rights were eventually purchased by the SBS who provided live coverage.

More recently, the ACMA conducted an investigation into complaints received regarding the limited free-to-air coverage of the 2009 French Open tennis tournament and 2009 British Open golf championship. The investigation considered whether the acquisition of the rights to the two events by Foxtel constituted a breach of the licence condition applying to pay television broadcasting licensees. The ACMA found no evidence to suggest that Foxtel had acquired the rights to either event prior to the acquisition of rights by the Nine Network. As such, the ACMA found no breach of the relevant licence condition. A copy of the ACMA investigation report (No. 2360 of 13 July 2010) is available on the Authority's website: *www.acma.gov.au*.

Way forward

The Government remains strongly committed to the free availability of sport on free-to-air television. Sport is central in Australian society and the objective of ensuring free public access to events of national importance and cultural significance remains a relevant public policy objective. However, the media landscape is changing rapidly as a result of the shift to digital technologies and amendments to the operation of the anti-siphoning scheme are needed to keep pace with these changes.

The anti-siphoning review has revealed the diversity of views regarding sports broadcasting and the Government has heard what sports fans and the industry are saying. Sports broadcasting remains important in the daily lives of millions of Australians, particularly keen sports fans, and broadcast rights are pivotal to business models sports bodies, free-to-air broadcasters and pay television broadcasters. While the anti-siphoning scheme received support through submissions to the review, there was also a level of dissatisfaction with the operation of certain aspects of the scheme and their impact on sectors of the industry.

Submissions to the review provided general support for a reduction in the length of the anti-siphoning list, suggesting that the current listing is too broad and the operation of the scheme may benefit from certain events being partially or fully removed. The Government accepts these concerns and agrees that the list should be revised to remove the 'blanket listings' of sporting events that have not, and will not, be shown on free-to-air television. However some flexibility is necessary to ensure free-to-air broadcasters continue to have access to substantial amounts of content, for longer format events (eg, the Olympics), where it is a legitimate 'editorial' role of broadcasters to select the best events and coverage for free-to-air viewers from the total content available. The list should also add key events of national importance and cultural significance.

The review also highlighted that coverage of anti-siphoning listed events is falling short of public expectation. While the imposition of coverage requirements would constitute an additional condition on the right to televise events, the Government considers there are strong grounds for the introduction of such requirements. If a sporting event is significant enough to be included on the list, and the free-to-air television industry is given preferential rights to televise that event, it is reasonable that the event should receive an adequate level of coverage.

The lack of live coverage in particular was a key concern. However, the Government also acknowledges the various complications caused by a live coverage requirement for broadcasters scheduling in multiple time zones, sports rights holders seeking to promote ground attendance, and in some cases, for viewers accustomed to coverage of games at a certain time. As such, a strict requirement for live coverage is most appropriate for events that are 'nationally iconic' and for which there is a strong tradition and expectation of live coverage.

The control and use of rights to anti-siphoning listed events also elicited strong views from submissions, and these views were closely tied to the concerns regarding coverage. There is a clear expectation among members of the public and sectors of the industry that if a free-to-air broadcaster acquires a right to an anti-siphoning listed event and doesn't intend to use it, other broadcasters should be provided with an opportunity to do so. The Government shares

this view, and there is a sound case to be made for the existing anti-hoarding rules to be strengthened and enhanced.

The restriction on free-to-air broadcasters premiering anti-siphoning listed events on their digital multi-channels no longer has the same rationale as it did even a few years ago. Digital television take-up is currently at 75 per cent of households and this is continuing to rise with the market-by-market switchover to digital over the coming two years ahead of the completion of the switchover program by 31 December 2013.

The Government's position is that nationally iconic events, such as the Melbourne Cup and domestic football grand finals, should continue to be shown on main channels first, and therefore be available in both analogue and digital until digital television switchover is completed in 2013. Even after digital switchover, the level of consumer awareness and broadcaster promotion of 'main' channels may still justify some retention of this restriction. However, there is a case for other events on the anti-siphoning list to be permitted to be shown first on digital multi-channels. This will provide free-to-air broadcasters with greater flexibility to utilise the capacity of the digital platform and enhance free-to-air coverage of significant sports events, and also drive digital take-up, which is a key priority for the Government.

Finally, the Government is alert to the potential for new media to challenge the effective operation of the anti-siphoning scheme. Platforms such as Internet Protocol Television provide the *potential* for sporting content to migrate exclusively from free-to-air television, and no longer be available freely to the general public. While sports coverage on new media platforms appear to be predominantly supplementary to that of traditional television at this time, it is possible that in the future subscription-based new media services may indeed pose a threat to free access to sport for Australian audiences.

The Government will pursue a reform agenda to overhaul and modernise the anti-siphoning scheme. These reforms will promote the public interest in free-to-air television coverage of major sporting events while balancing the competing interests of broadcasters and sports rights holders. The implementation of these measures will require legislative amendment to the *Broadcasting Services Act 1992* and the making of a new anti-siphoning list. The full details of the reform model will be released separately from this review report.

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.