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***NULLA MENS A SINE IMPENSA***

It is no exaggeration to say that Australia is not only one of the leading sporting nations of the world, it is - given its size - *the* world's leading sporting nation.

I watch when I can the French news which is relayed through SBS. Hardly a day goes by without some reference to Australia. More often than not, this is about sport.

This sporting prowess no doubt prepared Australians for one of our other contributions to the world, again well beyond our size. This has been our contribution to the peace and freedom of the world. The interplay there between athlete and warrior is exemplified in the film *Gallipoli*, and documented more recently by Les Carlyons in his superb history of the same name.

George Orwell, the brilliant author of *Animal Farm* and *1984* saw a sinister side to this link when he wrote:

“Serious sport has nothing to do with fair play. It is bound up with hatred, jealousy, boastfulness, disregard of all rules, and sadistic pleasure in witnessing violence: in other words; it is war minus the shooting.”

Perhaps Orwell is far too cynical. Or perhaps Australia is different. We still find fair play everywhere in Australian sport.

Is there I wonder another link between sport and the story of Australia? That is of a sports loving nation, playing by the rules, also being one of the world's most successful democracies. If you play by the rules, are you not likely to live by the rules and practice fair play in everything you do?

There was a time when we were criticised for our love of sport. Barry Humphries once said “Sport is a loathsome and dangerous pursuit”. I think he was pulling our leg. More mildly, a future Archbishop of Canterbury once denigrated cricket in this

way – “Personally I’ve always looked upon cricket as organised loafing”. In any event our love of sport was often said to be evidence of our anti-intellectualism. How different were we from, say those civilised European nations.

But that comparison between an empty headed sports obsessed Australia and civilised Europe has fallen flat on its face. For two reasons. First the love of sport does not of course involve a hatred or absence of intelligence and culture. You only have to listen to some of our marvellous young athletes to realise that. And secondly, Europe now is as in love with sport as Australia. It was just that we set the fashion, that Australia was in advance of the world.

So why did Australians turn so early and so passionately to sport?

A superficial comparison can be made with Ancient Greece, a cultured society which prized both intelligence and athleticism.

But, as the historian Finlay Hooper says, in Ancient Greece it was the cheapness of slave labour which meant that men even of modest means could spend part of their days exercising in the *palaestra*, the playing fields. As to the nobility, they were not athletes, but warriors who lived an athletic life.

There was no slave labour here. Men – and increasingly women – fitted in sport around their work. Nor were Australians a vast civilian army – armies were raised when they were needed.

Was it our climate? Our early attachment to universal education? Our law-abiding democracy which channelled physical expression, even aggression, into sport conducted by rules mainly invented by the colonial power?

In any event, sport became of tremendous importance early in Australian life - earlier than most countries.

As there was a period in Ancient Greece when the amateur held pride of place, so in Australia. It was with the growing democratisation of life generally in the late 5<sup>th</sup> century, that the old ideal of the well rounded amateur was complemented by those for whom it was not only a way of life, but in way of making a living.

And so in Australia, well after the advent of television in 1956, sport came to be more and more professional. This gave depth to those words attributed to the US football coach Vincent Lombardi:

“Winning isn’t everything, it’s the only thing.”

## **TELEVISION AND SPORT**

How then do we regulate the interplay of a great part of our national life – sport – with the economic market and Baird’s wonderful invention, television?

Television and also radio have obviously significant influences on sport, bringing as they do, sporting events into the living rooms and the club and pubs of the nation.

And a principal feature of broadcasting is Parliament's intervention to ensure that the broadcast of "events of national significance" can be seen on free-to-air television.

This is not the place to debate the reasons for that policy, which is politically bipartisan.

Some may ask whether it was necessary. A report by the FCC (the agency which regulates broadcasting in the United States) concluded that it was not necessary in the United States. But this of course was in the context of the world's largest market in sports broadcasting.

I suspect that there will only be two debates in Australia. One among sports people and broadcasters about the detailed application of the policy. The other will be among economists as to the effects of Parliament's intervention on the efficiency of the sporting broadcast market, and who benefits. Certainly the intervention must allow some people to see sport who cannot or will not subscribe to Pay TV. Certainly this must have had an impact on the take up of Pay TV. Now we call terrestrial television free-to-air TV, but is it free? The Latin maxim is appropriate, *Nulla mensa sine impensa*. (There's no such thing as a free lunch.) Through the advertising costs viewers do pay a nominal amount for free-to-air television. And by reducing the number of broadcast competitors for events, economists could argue that the sporting organisations and the players are less able to maximise their returns and they are paying.

## **International anti-siphoning experience**

Having said that it is not at all realistic to see any substantial deviation from the Australian system for guaranteeing access to principal sporting events. And I should point out in Europe too, some sports are considered to be of such "national or heritage important" that access through free-to-air television should be guaranteed. (See *Television without Frontiers Directive*, Article 3a, Directive 97/EC, 30 June 1997).

Internationally, Australia's anti-siphoning regime was one of the first examples of regulation to protect major sporting events from migrating from free-to-air to pay TV. As part of its investigation, the ABA has reviewed anti-siphoning rules operating in other countries. While specific circumstances in those countries including the size of their market, make direct comparisons with Australia difficult, the ABA notes that Australia's anti-siphoning scheme and its list of events are both more extensive and restrictive than those in operation overseas.

European examples of anti-siphoning regulation encourage non-exclusive live coverage of listed events by television broadcasters. European countries may list events of major importance for society that must be broadcast free-to-air, live or delayed. As with the Minister's anti-siphoning list in Australia, these provisions apply to contracts concluded after the publication of the directive and relate to events taking place after its entry into force.

Generally neither free-to-air nor pay TV are permitted exclusive live rights to the key events listed in the UK. Under the UK's two-tiered list of events (Groups A and B), 'exclusive live' rights to second tier events (Group B) is permitted if other television broadcasters are providing supplementary coverage, such as full or partial delayed or highlights coverage.

## **THE ANTI-SIPHONING RULES**

The Explanatory Memorandum to the Broadcasting Services Bill 1992 referred to Australians continuing 'to have free access to important events'. These are "events of national importance and cultural significance that have traditionally been televised by free-to-air broadcasters... (and) received by the public free of charge". It aimed to safeguard the interests of those without access to pay TV by retaining traditional free-to-air coverage of sporting events. This was to ensure "on equity grounds" Australians could continue to have free access.

The legislation was not intended to guarantee those broadcasters exclusive rights to listed events. Rather the desire was that subscription broadcasters would '... provide complementary, or more detailed, coverage of the events'. (Explanatory Memorandum BSA) The anti-siphoning provisions provide free-to-air broadcasters with priority in the acquisition of rights to listed events. While the legislation ensures that free-to-air broadcasters have access to rights to listed events it does not compel free-to-air broadcasters to acquire rights to these events. Nor under what are called the anti-hoarding provisions does it compel them to broadcast the events to which they hold rights.

The anti-siphoning provisions may be found in *Broadcasting Services Act 1992*. Under section 115 the Minister may formally list in a notice events that should be available on free-to-air television for viewing by the general public.

And under a licence condition set out in Schedule 2 to the Act (10(1)(e)), pay TV licensees can only acquire the right to broadcast listed events if live broadcast rights are held by commercial television licensees (who have the right to televise the event to a total of more than 50 per cent of the Australian population) or by a national television broadcaster (the ABC or SBS). If live broadcast rights to a listed event are not held by a free-to-air broadcaster, a pay TV licensee may request that the Minister remove a particular event from the list.

### **Minister's notice not retrospective**

The timing of the Minister's notice affects the ability of section 115 to achieve the policy outcome to which it is directed, namely preventing the acquisition of exclusive rights to certain events by subscription broadcasters. If a subscription TV licensee already has the right to broadcast an event, listing the event does not divest the licensee of that right. In other words, the Minister's notice does not operate retrospectively.

## **Listing of events**

The inclusion, or removal, of an event on the list is a matter on which the Minister has complete discretion. While there are no explicit criteria, the original thinking of Government was that the anti-siphoning list should cover events of national importance and cultural significance. For an event to be considered for inclusion on the anti-siphoning list, however, it must have broadcast rights able to be traded. Many events that could be considered of national importance or cultural significance, such as the commemoration of Anzac Day, are public events that all broadcasters are entitled to cover freely. This partly explains the sporting focus of the anti-siphoning list.

The current anti-siphoning list contains sports events within 11 categories and has effect until 31 December 2004. The exception to this is the 2006 tournament of the FIFA World Cup. The anti-siphoning list is at attachment A.

For rights holders and pay TV broadcasters to negotiate agreements concerning the acquisition of events, they must be able to be certain as to whether or not a specific match in an event is on the list. In order to provide certainty to all parties affected by the inclusion of an event on the anti-siphoning list, the Minister listed events in extensive terms that cover all matches and rounds. For example, each match in the premiership AFL competition is on the list even though it was never the case that all were broadcast on free-to-air television. The free-to-air broadcaster may have had, say, the pick of three matches each round but listing in those terms would not adequately specify which matches exactly were on or off the list. The extensive listing of each match in the AFL and NRL rounds despite free-to-air television being incapable of showing all of them, is a negative outcome of the need to provide certainty concerning events on the list.

## **Role of the ABA**

The ABA has, at the request of successive Ministers, advised on the creation and variation of the anti-siphoning list.

Prior to creating the anti-siphoning list, the then Minister for Communications and the Arts, The Hon. Michael Lee, directed the ABA in February 1994 to conduct an investigation into which events should remain free to the general public and to present options for his consideration.

Just after the Minister published his notice of the events on the anti-siphoning list in December 1994, the ABA received a second direction, to monitor and to report to the Minister at six-monthly intervals on the operation of the anti-siphoning list. In particular, the ABA was to report on:

- the extent to which rights to televise events were both made available and acquired by national and commercial broadcasting licensees;
- the extent to which those events acquired were televised; and

- whether there were any other grounds for the Minister to consider specifying other events for the list.

The ABA prepared three reports for the Minister under this direction.

On 30 September 1996, the Minister for Communications and the Arts issued a new direction to the ABA, revoking the previous monitoring direction. Under this more general direction the ABA was to:

... report to the Minister, in a comprehensive and timely manner, if the ABA considers that the Minister should be made aware of particular matters pertaining to the operation of the Act in relation to the free availability of certain types of programs to the general public.

In its role of monitoring the operation of the anti-siphoning list, the ABA regularly requests information from the five free-to-air networks in relation to the nature and duration of rights acquired or offered.

### **ABA advice on free-to-air live coverage of listed events - July 1995 to June 1996**

In January 1998, the ABA was requested by the Minister's office and the Department of Communications and the Arts for advice on the level of coverage of listed events reported by the pay TV industry and commercial broadcasters. The ABA examined reports prepared by FACTS and the pay TV industry, respectively, using AC Nielsen reports and program guides. FACTS had calculated the total hours of live coverage of listed events as a percentage of the total hours of listed events broadcast on commercial television. The pay TV industry calculated the total hours of live coverage of listed events by free-to-air television as a percentage of the total hours potentially available for live broadcast.

The ABA concluded that the different methodologies used had produced different but equally valid results. The ABA found that the figures provided by FACTS had illustrated that of the hours of listed events broadcast by commercial networks in 1995-96, most (72 per cent) were shown live. Pay TV operators concluded that free-to-air networks broadcast only around 50 per cent of the total hours of potential coverage of listed events, of which only about 37 per cent were live coverage.

It was the ABA's view that the pay TV industry's findings were a reflection of the large number and extent of events on the anti-siphoning list, and the fact that the list did not correspond with actual patterns of sporting broadcasts by the free-to-air broadcasters. The ABA did not find a significant change in the level of coverage in 1996 from previous years. The ABA concluded that commercial networks continued to broadcast events at similar levels in 1996 as those reported by the ABA in its three six-monthly monitoring reports to the Minister.

### **Anti-Hoarding Rules**

Let us turn now to the rules to discourage the hoarding of sports broadcasts without the public seeing them. Parliament has addressed this the relevant provisions are set

out in section 10A of the BSA. They oblige commercial television broadcasters with live rights to designated events and tournaments who do not intend to use all or part of them, to offer the unused rights to the ABC and SBS. The ABC and SBS must offer their unused live rights to each other. The Minister may make a disallowable instrument designating the events or series of events that are covered by the rules. These are designated events.

The minimum offer time is 30 days before the start of the event or series, unless the Minister is satisfied that it should be closer to the start. As the offer must remain open for acceptance for a minimum period of seven days, the shortest offer period is one week.

The policy intent expressed in the Explanatory Memorandum and second reading speech is that the Minister would use his designation power in limited circumstances. The purpose of the investigation was to advise the Minister on the events or series of events which might be covered by the rules, as well as the offer times which should apply in relation to them.

The anti-hoarding scheme aims to improve the operation of the anti-siphoning scheme by increasing opportunities for free-to-air television audiences to access full live coverage of major sports events. The anti-siphoning provisions prevent pay TV acquiring exclusive rights to sports events on the anti-siphoning list.

## **ABA investigation**

On 29 February 2000, the Minister directed the ABA to investigate the working of the anti-hoarding scheme. The ABA consulted with interested parties and invited comment on an issues paper.

Submissions were received from members of the public (47), FACTS and SBS, sports rights bodies (2), sporting organisations (3) and the pay TV industry (3).

Very few events were identified by submitters for possible designation on the anti-hoarding list.

Members of the public were mainly concerned with the continued availability of major sports events on free-to-air television and improved coverage of particular sports such as soccer and international motorcycle racing. Few focussed on the operation of the anti-hoarding rules.

Commercial broadcasters and sports rights holders considered the new rules unnecessary and doubted they would operate to increase the availability of live sport to free-to-air audiences. Furthermore, a broad application of the rules would result in adverse consequences for sporting bodies and possibly television viewers.

The pay TV industry saw the anti-hoarding rules as a further layer of regulation in the complicated market for sports rights and advocated reform of the anti-siphoning list provisions in the context of the new regulations.

The ABC's support for the anti-hoarding rules and its interest in participating in the scheme is unclear, as it did not make a submission to the investigation. SBS supported the scheme. Its submission focussed on soccer events, and proposed that the anti-siphoning list be expanded to cover some of these.

## **Key issues**

The anti-hoarding rules should not be implemented in such a way that the extent of sports coverage may be reduced. This would be counter-productive to the intention of the anti-siphoning scheme and an unintended consequence of the new anti-hoarding provisions.

Continued availability of free-to-air television coverage of major sports events is an important public policy objective. While members of the public expressed dissatisfaction with free-to-air coverage of some sports, the potential loss of access is a greater concern. Designation of an extensive list of events and tournaments could make acquisition of some rights unattractive, as broadcasters have to decide 30 days or more prior to the event, whether they are able to broadcast the event live and in full. If free-to-air broadcasters acquire fewer events, then there may be less sport available for free-to-air audiences.

The investigation identified the likely impact on sporting bodies, sports rights holders and broadcasters if the legislation is implemented broadly. The value of rights to sporting organisations could be reduced and the market for sports rights would become more complicated.

Pay TV audiences could also be adversely effected because of the operation of the anti-siphoning rules, which prevent subscription broadcasters acquiring rights to listed events ahead of their acquisition by free-to-air broadcasters. The ABA has considered the interrelationship of the anti-hoarding rules and the anti-siphoning scheme in the context of the investigation. However, the operation of anti-siphoning rules was not within the terms of reference set by the Minister's direction.

## **Criteria for designation**

The Minister directed the ABA in conducting its investigation, to have regard to the policy that:

- events should not be designated unless there is a widespread public expectation, based on past practice, that the event or series will be televised live and in full on free-to-air television; or,
- the event or series has so grown in importance in the public's perception over time that it warrants full live free-to-air coverage.

The investigation examined the level of viewer interest in major sports events and the scheduling of events on the anti-siphoning list. Very popular sports events are televised live and in full on free-to-air television and viewers would expect this to

continue. However, many major events and tournaments are broadcast on delay or as highlights. Some matches in the AFL and NRL, two of the most popular television events, are covered live and in full, with shared pay TV coverage of these (and many other) events being now well established.

Taking account of viewer expectation, and the practical operation of the rules, the ABA considered that an event or competition should meet the following criteria to be designated on the anti-hoarding list:

- there is a high level of viewer interest in the event;
- the event is regularly shown live and in full on free-to-air television;
- the event is of equal interest nationally, recognising strong regional variations in audiences for football codes and in particular, coverage of AFL and NRL; and
- the event or competition is on the anti-siphoning list.

In light of the potential unintended consequences that might result from inappropriate designation, an event should not be considered for designation unless:

- the likelihood of benefits outweighs possible adverse impact of designation.

### **Options:**

The investigation identified three broad approaches that the Minister might adopt towards the implementation of the anti-hoarding legislation. These are:

1. Declare as designated events all events on the anti-siphoning list (proposed by SBS);
2. List no events or series of events at this time, with the ABA continuing to monitor the use of live rights to events on the anti-siphoning list and in response to identified problems consider declaring those events as designated events on the anti-hoarding list (proposed by FACTS); or
3. Declare as designated events a limited number of sports events to be covered by the anti-hoarding provisions.

There are compelling policy and practical reasons to limit the events which are subject to the anti-hoarding provisions. Nevertheless, the legislation can ensure the opportunity for free-to-air coverage of a number of major sporting events which Australians would expect to be televised live and in full on free-to-air on television. While the popularity of these events with television audiences, and their significance as national or global sports events would generally guarantee full live coverage, as it has in the past, the application of the 'must offer' provisions to the events would make this outcome more assured.

The reactive nature of the FACTS approach runs the risk that no new events would be protected by the legislation for some time into the future. Broadcast rights to events on the anti-siphoning list are mostly purchased a number of years ahead of the actual event. The anti-hoarding provisions apply prospectively. Should a problem occur with the free-to-air coverage of an event of significant public interest and the Minister subsequently considers that it should be covered by the 'must offer' rules, it is likely that the rights would have already been acquired perhaps for five years or more. The anti-hoarding designation will have no impact until the next time the rights are negotiated. This delay would mean that anti-hoarding designation would be an ineffective reactive measure in most cases.

The ABA recommended approach no. 3: the designation of a limited number of events which satisfy criteria for application of the anti-hoarding rules, while avoiding the problems associated with any broad approach. In accordance with the criteria, the ABA has identified three possible lists of events with offer times. The priority is test cricket and World Cup cricket, as the duration of a cricket match and the length of a series can result in some shortened coverage of significant matches. (The failure to broadcast the first session of The Ashes in 1997 was the origin of the legislation.) Specific matches in two other international sports events are proposed for the Minister's consideration.

The ABA's findings of the past coverage of major sports events are set out in Attachment D.

## **Proposed events and offer times**

### **Option 3(a)**

- each test cricket match involving the senior Australian representative team played in Australia (60 days offer time);
- each 'Ashes' test cricket match involving the senior Australian representative team played in the UK (60 days offer time);
- each World Cup cricket finals match (60 days offer time).

### **Option 3(b) extend with**

- each FIFA World Cup Soccer semi finals and finals match (90 days offer time);
- each Wimbledon men's and women's finals match (30 days offer time).

### **Option 3(c) extend with**

- each one day international cricket match involving the senior Australian representative team played in Australia (60 days offer time); and
- each one day international cricket match involving the senior Australian representative team played in the UK (60 days offer time).

## **Delisting events**

I return now to the ways in which events may be delisted.

Section 115(2) allows the Minister to remove an event from the anti-siphoning list. Situations in which delisting is envisaged include:

- when free-to-air broadcasters have had a real opportunity to acquire the live right to an event, but none of them has done so within a reasonable time; and

- a commercial television broadcasting licensee has acquired the live right to televise an event, but has failed to do so or has televised only an unreasonably small proportion of the event.

In both these circumstances, the Minister would delist an event if he is of the opinion that removing the event from the notice is likely to have the effect that it will be televised to a greater extent than it would be if it remained on the notice.

Following reports from the ABA, the Minister has, at the request of pay TV, removed events from the anti-siphoning list on 11 occasions. The delisted events comprise the Hong Kong Sevens Rugby Union tournament for three years and cricket tests and one day international matches played outside of Australia and the United Kingdom (see attachment B for details of delisted events).

The usual practice for delisting occurs after free-to-air broadcasters have been given a genuine opportunity to acquire the live rights to an event but have declined to do so. The process for a delisting involves the pay TV licensee making an application to the Minister, and for the ABA to provide advice to the Minister in relation to the application.

### **ABA Report on Anti-Siphoning**

In December 2000 the Minister for Communications, Information Technology and the Arts directed the ABA to investigate which events should be removed from or added to the anti-siphoning list and the date or dates on which protection should expire for these events.

The original purpose of the anti-siphoning regime was to ensure audiences continuing access to television events that they had traditionally seen on free-to-air television. At the same time there was an expectation that pay TV would provide complementary or extended coverage of events. The rules were not intended to limit the enjoyment of pay TV subscribers to sports channels by reducing the amount of sport available on new services.

Fourteen submissions were received from representatives of the free-to-air and pay TV industry, sporting bodies, broadcast rights management and individuals. In conducting the investigation the ABA was to have regard to the policy that an event should only be included on the list if the event has been consistently broadcast by free-to-air television broadcasters in the past five years. The ABA examined the way in which rights to sporting events on the anti-siphoning list have been used by free-to-air broadcasters in the past five years. Accordingly, the ABA also examined events proposed by submitters for possible inclusion on the anti-siphoning list. (See attachment C).

### **The meaning of ‘consistently broadcast’**

While full live coverage of listed events is highly desirable the ABA recognises that this is often not possible.

The general principles used to judge whether an event could be said to be ‘consistently broadcast’ over the period, are:

- The event or some matches in a multi-match event is broadcast each time the event or tournament is held;
- Extent of coverage is be substantially similar each year the event is held (or increasing in amount);
- Coverage of an event need not be live and in full to be ‘consistently broadcast’; and
- Highlights only coverage does not mean consistently broadcast.

### **Removing events from the list**

Using these principles the ABA determined that most events had a consistent pattern of broadcast. The following events, which were not consistently broadcast, were identified for removal from the list:

- Australian Football League State of Origin matches (item 2.33 on the list).
- international rugby league matches involving the senior Australian representative team and a non-representative team (item 3.7).
- Hong Kong Sevens Rugby tournament (item 4.3).
- test cricket matches involving the senior Australian representative team played outside Australia and the United Kingdom (item 5.1).
- one day cricket matches involving the senior Australian representative team played outside Australia or the United Kingdom (item 5.2).
- doubles matches and singles preliminary rounds and quarterfinals of the French Open tennis tournament (item 7.3).
- Australian Men’s Hardcourt tennis Championships (item 7.5).
- Australian Women’s Hardcourt tennis Championship (item 7.6).
- semi finals of the Australian National Basketball League playoffs (item 9.1).

### **New events for the list**

The ABA recommends adding new events, these should be in two categories only swimming and soccer - reflecting changing viewer interest since the introduction of the list, and future expectation arising from free-to-air’s consistent coverage of these events. The three events are:

- each international soccer match involving the senior Australian representative team and the senior representative team of another country.
- Federation Internationale de Natation (FINA) World Swimming Championships (Long Course).
- Pan Pacific Swimming Championships.

## **Future review of the rules**

While confirming the underlying philosophy of the anti-siphoning regime the ABA's investigation concluded that there were problems with the list that should be addressed.

The current decade promises to be the most structurally significant for Australian broadcasting with potentially major changes to the television landscape. The ABA advocates that amendments flowing from the current investigation be implemented as soon as possible, but the new list should run for no more than five years through to the end of 2006.

Before this time there should be a thorough re-examination of the anti-siphoning rules, with changes to the scope of the list and its operation decided in the context of the outcomes of the scheduled digital television reviews. This should include any changes to the restrictions on multi-channelling after 2005 and the 2006 moratorium on new players. The application to the Australian market of a possible non-exclusive rights arrangement perhaps along the lines of the UK system, covering a more limited list of events, should be evaluated. This would require a more rigorous examination of market factors concerning the acquisition and use of sports rights with access to relevant commercial information.

## **Conclusion**

We have come a long way from the viewing of sports being restricted to those actually there – and even being restricted to those of the same sex and status as the players.

Guaranteed free-to-air access to the principal sporting events is firmly established. The real debate, as I said earlier is about the details. The ABA has an important, and independent role here, but one that is advisory. The final decision lies with the government and more particularly with the Minister. This is a process which is of course fully consistent with our democracy.

# **Attachment A**

## **Anti-siphoning List**

The anti-siphoning list covers events conducted during the period from the commencement of the notice up until 31 December 2004. The one exception being the 2006 FIFA World Cup tournament.

The following list of events is as specified by the Minister by notices published in the *Commonwealth of Australia Gazette*.

### **1. Horse racing**

- 1.1 each running of the Melbourne Cup organised by the Victoria Racing Club.

### **2. Australian rules football**

- 2.1 each match in the Australian Football League Premiership competition.
- 2.2 each match in the Finals Series of the Australian Football League Premiership competition.
- 2.3 each Australian Football League State of Origin match.

### **3. Rugby league**

- 3 The following events conducted by or for the New South Wales or the Australian Rugby League (as the case may be) during the period commencing at the commencement of this notice and ending at the end of 31 December 2004:

- 3.1 each match in the New South Wales Rugby League Premiership (Winfield Cup) competition;
- 3.2 each match in the New South Wales Rugby League Finals Series;
- 3.3 each match in the Australian Rugby League National Premiership competition;
- 3.4 each match in the Australian Rugby League National Premiership Finals Series;
- 3.5 each match in the New South Wales Rugby League State of Origin Series;
- 3.6 each match in the Australian Rugby League State of Origin Series;
- 3.7 each international rugby league 'test' match involving the senior Australian representative team selected by the New South Wales or Australian Rugby League (as the case may be), whether played in Australia or overseas;

- 3A The following events conducted in the period from the beginning of 1 January 1996 to the end of 31 December 2004 by or for Super League Pty Ltd, Star League Pty Ltd or a body corporate under section 50 of the Corporations Law, is related to either of those bodies:

- 3A.1 each match whether played in Australia or overseas, in the competition that is promoted as the Australasian Super League, involving the senior team of each participant in that competition;
  - 3A.2 each match, whether played in Australia or overseas, in the Finals Series of the Australasian Super League, involving the senior team of each participant in that competition;
  - 3A.3 each match, whether played in Australia or overseas, in the competition that is promoted as the Super League Tri-Series Tournament, involving the senior team of each participant in that competition;
  - 3A.4 each match, whether played in Australia or overseas, in the competition that is promoted as the World Club Championship;
  - 3A.5 each match, whether played in Australia or overseas, in the competition that is promoted as the Super League World Cup;
  - 3A.6 any other match, whether played in Australia or overseas, involving the senior Australian representative team selected by a body corporate that is specified, or to which reference is otherwise made in this clause.
- 3B Any event conducted in the period from the commencement of this item to the end of 31 December 2004, that is a match in a competition:
- (a) between the senior teams of participants in the competition; and
  - (b) organised by or for a body mentioned in 3 or 3A; and
  - (c) intended to supplement or replace the competition mentioned in item 3 or 3A (whether or not the new competition uses the name of the other competition).
- 3C Any event conducted in the period from the commencement of this item to the end of 31 December 2004, that is a match in a competition:
- (a) between the senior teams of participants in the competition; and
  - (b) playing rugby league football (whether described as rugby league, super league or by another name); and
  - (c) whose teams:
    - (i) represent, or are associated with a country, State, Territory, city, town or suburb or a region of a country, State, Territory, city, town or suburb; and
    - (ii) are not all located in one State or Territory; and
  - (d) that does not require the members of its senior teams to be:
    - (i) school students; or
    - (ii) below an age of 21 or less; or
    - (iii) above an age of 30 or more.

#### **4. Rugby union**

- 4.1 each international rugby union 'test' match involving the senior Australian representative team selected by the Australian Rugby Union, whether played in Australia or overseas.
- 4.2 each match in the Rugby World Cup tournament.
- 4.3 each match in the Hong Kong Sevens tournament.

## **5. Cricket**

- 5.1 each 'test' cricket match involving the senior Australian representative team selected by the Australian Cricket Board, whether played in Australia or overseas.
- 5.2 each one day cricket match (including World Series Cricket matches) involving the senior Australian representative team selected by the Australian Cricket Board, whether played in Australia or overseas.
- 5.3 each World Cup one day cricket match.

## **6. Soccer**

- 6.1 each finals match in the Ericsson Cup organised by the National Soccer League.
- 6.2 the English Football Association Cup Final.
- 6.3 each match in the Federation of International Football Associations World Cup Tournament. (until 2006 World Cup)

## **7. Tennis**

- 7.1 each match in the Australian Open tennis tournament.
- 7.2 each match in the Wimbledon (the Lawn Tennis Championships) tournament.
- 7.3 each match in the French Open tennis tournament.
- 7.4 each match in the United States Open tennis tournament.
- 7.5 each match in the Australian Men's Hardcourt Championships held in Adelaide.
- 7.6 each match in the Australian Women's Hardcourt Championships held in Brisbane.
- 7.7 each match in the Peters International tennis tournament (now the Adidas tennis tournament).
- 7.8 each match in each tie in the Davis Cup tennis tournament when an Australian representative team is involved.

## **8. Netball**

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

## **9. Basketball**

- 9.1 each match in the Australian National Basketball League playoffs.

## **10. Golf**

- 10.1 each round of the Australian Masters tournament.
- 10.2 each round of the Australian Open tournament.
- 10.3 each round of the United States Masters tournament.
- 10.4 each round of the United States Open tournament.

- 10.5 each round of the United States Professional Golf Association Championship tournament.
- 10.6 each round of the British Open tournament.

**11. Motor sports**

- 11.1 each race in the Federation Internationale de l'Automobile Formula 1 World Championship (Grand Prix).
- 11.2 each race in the International Federation of Motorcycling World 500cc Motorcycle Championship.
- 11.3 each race in the Australian Touring Car Championship.
- 11.4 each Bathurst 1000 race.
- 11.5 each race in the Australian IndyCar Grand Prix.

## **Attachment B**

### **Delisted Events**

Following reports from the ABA the Minister may remove events from the anti-siphoning list. The following events have been removed (de-listed) from the anti-siphoning list:

#### **Cricket**

- 5.1 each 'test' cricket match involving the senior Australian representative team selected by the Australian Cricket Board, whether played in Australia or overseas.

Games listed below were played in the country named.

- India – March 1998; February and March 2001
- New Zealand – March 2000
- Sri Lanka – September and October 1999
- Zimbabwe – October 1999
- West Indies – March and April 1999
- Pakistan – September, October and November 1994

- 5.2 each one day cricket match (including World Series Cricket matches) involving the senior Australian representative team selected by the Australian Cricket Board whether played in Australia or overseas

Games listed below were played in the country named.

- India – April 1998; March and April 2001
- Kenya [ICC Knock Out Trophy] – October 2000
- New Zealand – February 1998; February and March 2000
- Sri Lanka – August 1999
- Zimbabwe – October 1999
- West Indies – April 1999
- Bangladesh [Wills International Cup] – October and November 1998
- United Arab Emirates [Sharjah Trophy] – April 1998
- Pakistan – September, October and November 1994

#### **Rugby Union**

- 4.3 each match in the Hong Kong Sevens tournament.

- Hong Kong Sevens Rugby Union Tournament – 1998, 1999 and 2000

## **Proposed Amendments – Anti-Siphoning List**

This proposed list includes key events in 11 sports categories contained in the current list. It also contains new soccer events and the additional sport of swimming, which have grown in popularity and significance. The proposed amendments to the description of some events reflect the change or corrections.

The events and text proposed to be removed have ‘strike-through’ marks, whilst amendments and additions to the list are underlined.

### **1. Horse racing**

1.1 ~~each running of the Melbourne Cup organised by the Victoria Racing Club.~~

### **2. Australian rules football**

2.1 each match in the Australian Football League Premiership competition.

2.2 each match in the Finals Series of the Australian Football League Premiership competition.

~~2.3 each Australian Football League State of Origin match.~~

### **3. Rugby league**

3.1 each match in the National Rugby League Premiership competition.

3.2 each match in the National Rugby League Premiership Finals competition.

3.3 each match in the Rugby League State of Origin Series.

3.4 each international rugby league match involving the senior Australian representative team and the senior representative team of another country.

~~The following events conducted by or for the New South Wales or the Australian Rugby League (as the case may be) during the period commencing at the commencement of this notice and ending at the end of 31 December 2004:~~

~~3.1 each match in the New South Wales Rugby League Premiership (Winfield Cup) competition;~~

~~3.2 each match in the New South Wales Rugby League Finals Series;~~

~~3.3 each match in the Australian Rugby League National Premiership competition;~~

~~3.4 each match in the Australian Rugby League National Premiership Finals Series;~~

~~3.5 each match in the New South Wales Rugby League State of Origin Series;~~

~~3.6 each match in the Australian Rugby League State of Origin Series;~~

~~3.7 each international rugby league ‘test’ match involving the senior Australian representative team selected by the New South Wales or Australian Rugby League (as the case may be), whether played in Australia or overseas;~~

~~3A The following events conducted in the period from the beginning of 1 January 1996 to the end of 31 December 2004 by or for Super League Pty Ltd, Star League Pty Ltd or a body corporate under section 50 of the Corporations Law, is related to either of those bodies:~~

- ~~3A.1 each match whether played in Australia or overseas, in the competition that is promoted as the Australasian Super League, involving the senior team of each participant in that competition;~~
  - ~~3A.2 each match, whether played in Australia or overseas, in the Finals Series of the Australasian Super League, involving the senior team of each participant in that competition;~~
  - ~~3A.3 each match, whether played in Australia or overseas, in the competition that is promoted as the Super League Tri-Series Tournament, involving the senior team of each participant in that competition;~~
  - ~~3A.4 each match, whether played in Australia or overseas, in the competition that is promoted as the World Club Championship;~~
  - ~~3A.5 each match, whether played in Australia or overseas, in the competition that is promoted as the Super League World Cup;~~
  - ~~3A.6 any other match, whether played in Australia or overseas, involving the senior Australian representative team selected by a body corporate that is specified, or to which reference is otherwise made in this clause.~~
- ~~3B—Any event conducted in the period from the commencement of this item to the end of 31 December 2004, that is a match in a competition:~~
- ~~(a) between the senior teams of participants in the competition; and~~
  - ~~(b) organised by or for a body mentioned in 3 or 3A; and~~
  - ~~(c) intended to supplement or replace the competition mentioned in item 3 or 3A (whether or not the new competition uses the name of the other competition).~~
- ~~3C—Any event conducted in the period from the commencement of this item to the end of 31 December 2004, that is a match in a competition:~~
- ~~(a) between the senior teams of participants in the competition; and~~
  - ~~(b) playing rugby league football (whether described as rugby league, super league or by another name); and~~
  - ~~(c) whose teams:~~
    - ~~(i) represent, or are associated with a country, State, Territory, city, town or suburb or a region of a country, State, Territory, city, town or suburb; and~~
    - ~~(ii) are not all located in one State or Territory; and~~
  - ~~(d) that does not require the members of its senior teams to be:~~
    - ~~(i) school students; or~~
    - ~~(ii) below an age of 21 or less; or~~
    - ~~(iii) above an age of 30 or more.~~

#### **4. Rugby union**

- 4.1 each international rugby union ‘test’ match involving the senior Australian representative team selected by the Australian Rugby Union, whether played in Australia or overseas.

- 4.2 each match in the Rugby World Cup tournament.
- 4.3 ~~each match in the Hong Kong Sevens tournament.~~

## 5. Cricket

- 5.1 each 'test' cricket match involving the senior Australian representative team ~~selected by the Australian Cricket Board, whether played in Australia or overseas~~ the United Kingdom.
- 5.2 each one day cricket match ~~(including World Series Cricket matches) involving the senior Australian representative team selected by the Australian Cricket Board, whether played in Australia or overseas.~~ the United Kingdom.
- 5.3 each World Cup one day cricket match.

## 6. Soccer

- 6.1 each finals match in the ~~Eriesson Cup organised by the~~ National Soccer League.
- 6.2 the English Football Association Cup Final.
- 6.3 each match in the ~~Federation of International Football Associations-Federation Internationale de Football Association (FIFA) World Cup Tournament (until 2006 World Cup).~~
- 6.4 each international soccer match involving the senior Australian representative team and the senior representative team of another country.

## 7. Tennis

- 7.1 each match in the Australian Open tennis tournament.
- 7.2 each match in Wimbledon ~~(the Lawn Tennis Championships)~~ tennis tournament.
- 7.3 ~~each match in~~ men and women's semi-finals and final of the French Open tennis tournament.
- 7.4 each match in the United States Open tennis tournament.
- 7.5 ~~each match in the Australian Men's Hardecourt Championships (now known as the AAPT Championships) held in Adelaide.~~
- 7.6 ~~each match in the Australian Women's Hardecourt Championships (now known as the Thalgo Australian Women's Hardecourt Championships) held in Brisbane.~~
- 7.7 each match in the ~~Peters-Adidas~~ International tennis tournament.
- 7.8 each match in each tie in the Davis Cup tennis tournament ~~when an Australian representative team is involved.~~ involving the Australian representative team.

## 8. Netball

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

## **9. Basketball**

- 9.1 ~~each match in~~ the grand final games of the Australian National Basketball League. ~~playoffs.~~

## **10. Golf**

- 10.1 each round of the Australian Masters ~~tournament.~~
- 10.2 each round of the Australian Open ~~tournament.~~
- 10.3 each round of the United States Masters ~~tournament.~~
- 10.4 each round of the United States Open ~~tournament.~~
- 10.5 each round of the United States Professional Golf Association Championship ~~tournament.~~
- 10.6 each round of the British Open ~~tournament.~~

## **11. Motor sports**

- 11.1 each race in the Federation Internationale de l'Automobile Formula 1 World Championship (Grand Prix).
- 11.2 each race in the ~~International Federation of Motoreycling Federation~~ International de Motorcyclisme (FIM) World 500cc Motorcycle Championship.
- 11.3 each race in the Australian Touring Car Championship.
- 11.4 ~~each~~ Bathurst 1000 ~~race.~~
- 11.5 ~~each race in~~ the Australian IndyCar Grand Prix.

## **12. Swimming**

- 12.1 Federation Internationale de Natation (FINA) World Swimming Championships (Long Course).
- 12.2 The Pan Pacific Swimming Championships.

## **Attachment C**

### **Recommendations**

#### **Events that should be removed from the list**

The ABA recommends that the Minister amend the anti-siphoning list to remove events that have not been consistently broadcast by commercial or national broadcasters over the past five years. The events identified for removal from the list are:

- Australian Football League State of Origin matches (item 2.3 on the list).
- international rugby league matches involving the senior Australian representative team and a non-representative team (item 3.7).
- Hong Kong Sevens Rugby tournament (item 4.3).
- test cricket matches involving the senior Australian representative team played outside Australia and the United Kingdom (item 5.1).
- one day cricket matches involving the senior Australian representative team played outside Australia or the United Kingdom (item 5.2).
- doubles matches and singles preliminary rounds and quarter finals of the French Open tennis tournament (item 7.3).
- Australian Men's Hardcourt tennis Championships (item 7.5).
- Australian Women's Hardcourt tennis Championship (item 7.6).
- semi finals of the Australian National Basketball League playoffs (item 9.1).

#### **Events that should be added to the list**

If the Minister considers adding new events, these should be in two categories only - swimming and soccer - reflecting changing viewer interest in these sports since the introduction of the list, and future expectation arising from free-to-air's consistent coverage of these events. The three events which the ABA recommends be added to the anti-siphoning list are:

- each international soccer match involving the senior Australian representative team and the senior representative team of another country.
- Federation Internationale de Natation (FINA) World Swimming Championships (Long Course).
- Pan Pacific Swimming Championships.

#### **Date when protection should expire for events on the list**

The ABA recommends that the proposed amendments to the list be implemented as soon as possible and that the new list should run for no more than five years, through to the end of 2006. Before this time there should be a thorough re-examination of the anti-siphoning rules, with changes to the scope of the list and its operation decided in the context of the outcomes of the scheduled digital television reviews. The proposed list is presented below and at attachment K with changes shown in revision marks.

<b>Amended anti-siphoning list</b>
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An anti-siphoning list amended in line with the recommendations of this report would cover the period up until 31 December 2006, at the latest, and contain events within 12 sports.

**1. Horse racing**

1.1 the Melbourne Cup.

**2. Australian rules football**

2.1 each match in the Australian Football League Premiership competition.

2.2 each match in the Finals Series of the Australian Football League Premiership competition.

**3. Rugby league**

3C each match in the National Rugby League Premiership competition.

3C each match in the National Rugby League Premiership Finals competition.

3C each match in the Rugby League State of Origin Series.

3.7 each international rugby league match involving the senior Australian representative team and the senior representative team of another country.

#### **4. Rugby union**

4.1 each international rugby union test match involving the senior Australian representative team.

4.2 each match in the Rugby World Cup tournament.

#### **5. Cricket**

5.1 each test cricket match involving the senior Australian representative team played in Australia or the United Kingdom.

5.3 each one day cricket match involving the senior Australian representative team played in Australia or the United Kingdom.

5.3 each World Cup one day cricket match.

#### **6. Soccer**

6.1 each finals match in the National Soccer League.

6.2 the English Football Association Cup Final.

6.5 each match in the Federation Internationale de Football Association (FIFA) World Cup Tournament.

6.6 each international soccer match involving the senior Australian representative team and the senior representative team of another country.

#### **7. Tennis**

7.1 each match in the Australian Open tennis tournament.

7.2 each match in the Wimbledon tennis tournament.

7.3 Men and Women's semi-finals and final of the French Open tennis tournament.

7.4 each match in the United States Open tennis tournament.

7.7 each match in the Adidas International Tennis Tournament.

7.8 each match in each tie in the Davis Cup tennis tournament involving the Australian representative team.

#### **8. Netball**

8.1 each international netball match involving the senior Australian representative team.

#### **9. Basketball**

9.1 the grand final games of the Australian National Basketball League.

#### **10. Golf**

10.1 each round of the Australian Masters.

10.2 each round of the Australian Open.

10.3 each round of the United States Masters.

10.4 each round of the United States Open.

- 10.5 each round of the United States Professional Golf Association Championship.
- 10.6 each round of the British Open.

### **11. Motor sports**

- 11.1 each race in the Federation Internationale de l'Automobile (FIA) Formula 1 World Championship (Grand Prix).
- 11.2 each race in the Federation International de Motorcyclisme (FIM) World 500cc Motorcycle Championship.
- 11.3 each race in the Australian Touring Car Championship.
- 11.4 the Bathurst 1000.
- 11.5 the Australian IndyCar Grand Prix.

### **12. Swimming**

- 12.1 Federation Internationale de Natation (FINA) World Swimming Championships (Long Course).
- 12.2 Pan Pacific Swimming Championships.

## **Attachment D**

### **Past coverage of major sports events**

**The Melbourne Cup:** is traditionally an important annual television event, televised live because of its national significance.

**Football:** Scheduling of these matches varies between States depending on the popularity of the code, the competing teams, restrictions because of the protection of gate for live matches, time zone delays and other scheduling considerations. Pay TV provides access to a wider coverage of football competitions.

AFL fans are accustomed to seeing one to three matches per week of the qualifying rounds of domestic football competitions on free-to-air television (Seven network currently). The finals rounds and grand finals are covered live and in full in States which follow AFL: Victoria, New South Wales, Queensland, South Australia and Western Australia. However, finals not involving the Sydney or Brisbane teams will not be played live in New South Wales or Queensland, and will receive late night delayed coverage.

The NRL competition has its largest following in New South Wales and Queensland, with two or three matches being televised each week as delayed coverage. The finals rounds of the rugby league generally receive delayed coverage, with the exception of the grand final, which is broadcast live in all capitals. The State of Origin is broadcast live in those States which follow league.

The ABC broadcasts a club rugby union game live on Saturday afternoons. The Seven network provides coverage of international rugby games and the Super 12's competition. In those States where rugby union is the minority code coverage tends to be delayed. Broadcasters with live rights to international football competitions generally broadcast the games live in late night time slots.

**Cricket:** Coverage of cricket, especially test match series played in the United Kingdom, can pose particular scheduling challenges for free-to-air broadcasters. This is due to the large number of hours available for broadcast, especially during a five day test, and the time at which early sessions of tournaments are played. A complete days play will last a total of seven hours. As happened in 1997 with 'The Ashes' series, the first session of international matches can conflict with scheduled evening programming. The lack of coverage of the first session can be very controversial with cricket fans. One Day International cricket can be subject to the same scheduling problems as tests.

Free-to-air viewers have access to considerable amounts of live cricket played in Australia, although the duration of some matches or series cannot always be easily accommodated in free-to-air schedules. While One Day Internationals take account of the demands of television, coverage of representative cricket can be curtailed or interrupted when play continues into news programs. Examples of this include cricket played in the Central and Western time zones. Restrictions to protect the gate can sometimes prevent the live broadcast of matches in Melbourne and Sydney.

**Tennis:** Tennis tournaments are characterised by a large number of matches, which take place simultaneously on a number of courts, and are played over a number of days. The legislation recognises that non-centre court matches might not be broadcast, counting these matches as being covered when they overlap in time with matches, such as on centre court, which are televised live. Free-to-air viewers have access to varying amounts of coverage of international tournaments such as Wimbledon, the French Open and United States Open. The overnight night timing of international matches cannot always be accommodated without clashing with prime time programming, and factors such as the participation of Australians may have an impact on the nature of the coverage. There is extensive live coverage of Wimbledon and the US Open, and the finals of the French Open on free-to-air services. Pay TV provides increasing live coverage of these types of events. For example, the early rounds of the French Open are covered by pay TV, with very limited highlights coverage on commercial television.

Major Australian tournaments such as the Australian Open and the Adidas International tend to be covered live or with a short delay. However, to accommodate other scheduled programming at the start or end of play, some matches may not be covered in full. Tournaments of lesser interest such as the Australian Women's Hardcourt Championship are more likely to receive delayed or highlights coverage.

**Golf:** Coverage of international golf tournaments is selective in a number of ways. Only a small number of the high-profile players will be televised, and the first couple of hours or first 10 holes may not be covered. In US tournaments this pattern of coverage is dictated by established arrangements between the US commercial networks and cable channels. Viewers may access many hours of international and

domestic golf tournaments live direct from the links, but the broadcasts might not technically be full coverage.

**Motor races:** Overseas-originated motor car races are an example of sports events which are televised in full, with mainly live coverage of major Grand Prix events. The World 500cc Motor Cycle Championship races generally receive late night same day replay. Domestic motor car races, such as the Australian Touring Car Championships start at different times throughout the day but are packaged together and broadcast in a regular slot at night. This might amount to a delay of 30 minutes or up to four hours from the live start time. There is live coverage of the Australian Grand Prix around Australia, while the Bathurst 1000 motor races are televised live in the Eastern States and delayed to account for time zone differences.

**Basketball:** Sports such as basketball which have not traditionally been major television events or for which there are regional variations in interest, tend to receive delayed and highlights coverage. The Australian National Basketball League playoffs in the past has been covered live but in line with perceived audience demand, now has delayed coverage in three States.

**Netball:** Coverage of the World Netball Championships is provided in all States but is generally not live. However, when the Australian netball team played New Zealand, the timing of the match was arranged to allow for a live broadcast in Australia. This reflected the interest in the match and the possibilities provided by the New Zealand – Australia time zone difference.