

Extracts from the address by **Gareth Grainger**, General Manager Policy & Programs ABA, to the University of Technology Sydney School of Tourism and Leisure Studies National Workshop, *Sport and pay TV: Strategies for success*, on 22 October 1995.

Pay TV, **sport** and anti-siphoning

In the lead up to the passage of the *Broadcasting Services Act 1992*, concerns were expressed that television coverage of various events, including sporting events, which the Australian people were accustomed to seeing on free-to-air television would be siphoned off to pay TV. Accordingly, an anti-siphoning provision was inserted in the Act. Section 115 of the Act provides that 'the Minister may, by notice published in the Gazette, specify an event, or events of a kind, the televising of which, or the live televising of which, should, in the opinion of the Minister, be available free to the general public.'

The purpose of these deceptively brief provisions was 'to ensure, on equity grounds, that Australians will continue to have free access to important events. It will, however, also allow subscription television broadcasters to negotiate subsequent rights to provide complementary, or more detailed, coverage of events.'

The provision goes on to allow the Minister for Communications and the Arts, 'to remove an event from the [anti-siphoning] notice if the Minister is satisfied [both] that the national broadcasters and the commercial television broadcasting licensees have had a real opportunity to acquire, on a fair commercial basis, the right to televise the event, or to televise the event live [and] that none of those persons has acquired that right within a reasonable time'.

When representing the ABA I have said, 'in broad terms, the ABA sees its role in relation to the anti-siphoning rules as being rather like an umpire in a sporting match: we must make clear what the boundaries of the playing field are; we must make clear what the rules of the game are; we must point out

where the ball is going out of field and where the rules of the game are being breached. At this stage we are all learning what the boundaries of the anti-siphoning regime are and precisely what each of its rules mean. We are therefore working closely with specific parties in rights negotiations to help them understand how the game must be played... it is a learning experience for all of us but I believe the regime can work, has worked and will work. It is essential to its working that the players, that is the free-to-air and the subscription television licensees, learn to understand the rules and be allowed the opportunity to play the game on the field of commercial negotiation.'

Whilst I acknowledge I had stretched the sporting metaphor to its absolute limits, I must say that this remains my view. Whilst no doubt amendments can improve the working of s.115, basically the scheme is working quite well.

Whilst it is spoken of as being an anomaly, because of the confusion over when the rights had been acquired, I believe the 1995 West Indies cricket tour affair has been the key to understanding how the anti-siphoning rules can and should work, and the dangers any party must encounter if they hold out for insistence on conditions such as exclusivity to free-to-air against pay TV in commercial negotiations over television rights to sporting events.

Reports

The ABA made its first six monthly report to the Minister in July 1995. The principal findings were:

- commercial or national broadcasters had acquired the rights to broadcast most of the events contained on the anti-siphoning list, including the acquisition of all the major domestic

sporting events for some time to come;

- all of the events in the anti-siphoning list that were monitored by the ABA had been made available to commercial or national broadcasters for acquisition by them. Where those rights had not been acquired, the commercial or national broadcasters had not wished to acquire them or negotiations were still proceeding at the time of the report; and

- the ABA considered that listed events were being televised to a satisfactory extent by commercial and national broadcasters, with most coverage being retained at levels similar to previous years.

At the time of the report the ABA felt there were no grounds for a recommendation that the Minister consider specifying other existing events that might be added to the list.

As part of its role of monitoring and investigating, in July 1995 the ABA issued a draft *Guide to the Pay TV Anti-Siphoning Provisions*. Written comments were requested by 15 September and the ABA is now finalising that Guide.

Legislative amendments

Amendments to the anti-siphoning rules are being introduced to the Senate this week (see page 11 for more detail). Senator Tierney for the Opposition and Senator Bourne for the Democrats indicated their support for these amendments on 16 October. If passed the effect of these amendments will be:

- widening the discretion of the Minister to remove events from the list by no longer having him need to be satisfied that rights have been made available to free to air broadcasters on a fair commercial basis and in a reasonable period of time;
- allowing for automatic removal from

the list one week after an event has taken place; and
 c) altering the condition on subscription licences that prevents acquisition of rights to listed events before a free-to-air broadcaster has acquired the rights, so that acquisition has to be by a national broadcaster or by commercial broadcasters reaching more than 50 per cent of the Australian population.

Conclusion

The Australian Government is committed to upholding the anti-siphoning rules. Senator Tierney on 16 October in the Senate said that the Opposition 'supports the principle of the free list of major sporting events and cultural events'. For the foreseeable future they are part of the landscape of sporting rights in Australia. To the extent that the rules need to be fine-tuned Parliament has not been slow to do so. To the extent to which the Minister has needed advice on how to handle his obligations in respect of the rules he has not been slow to obtain it. To the extent to which sporting rights owners, acquirers and other interested parties have had views to express they have had reasonable opportunity to do so, and the door of the ABA is never closed. After more than a year of living with the Minister's anti-siphoning list there appears no noticeable shift from free-to-air pay television of sports broadcast rights. Even where one notable event appeared to have eluded the Minister's list in respect of the 1995 West Indies Cricket Tour, the various forces at play, include media and public opinion, ensured that comprehensive live free-to-air coverage occurred simultaneous with pay TV coverage on Premier Sports channel.

At the outset I pointed out that the underpinning objects of the Broadcasting Services Act are cultural. There is no doubt that sport is an essential part of our Australian culture. No Australian Government and no Australian broadcasting regulator is likely to underestimate the importance of this issue. The anti-siphoning rules can work, have worked and will work. Like any good sporting event they present the players with a challenge. ☐

Temporary transmission of programs by aspirant community broadcasters

for the period 7 November to 29 November 1995.

APPLICANT	AREA	FREQ.	PERIOD	DATE SIGNED
Dance-Club Broadcasters Inc. Kiss Radio	Mt Dandenong Vic	89.9 MHz	24/11/95-18/12/95	7/11/95
Sunshine Coast Co-Operative Community Radio	Buderim Qld	101.7 MHz	12/11/95-31/12/95	8/11/95
Bathurst Christian Broadcasters	Bathurst NSW	101.1 MHz	19/11/95-3/12/95	10/11/95
Bacchus Marsh Community Radio	Bacchus Marsh Vic	98.5 MHz	14/11/95-26/11/95	13/11/95
Bacchus Marsh Community Radio	Bacchus Marsh Vic	98.5 MHz	11/12/95-23/12/95	13/11/95
Darwin Christian Broadcasting Assoc. Inc.	Darwin NT	97.7 MHz	19/11/95-17/12/95	13/11/95
Cessnock Community Broadcasters	Cessnock NSW	104.5 MHz	20/11/95-10/12/95	13/11/95
Ballarat Gospel Radio Inc.	Ballarat Vic	103.9 MHz	20/12/95-25/12/95	13/11/95
Narrabri Shire Community Radio Inc.	Narrabri NSW	91.1 MHz	4/12/95-24/12/95	13/11/95
North Harbour Radio	Mosman NSW	100.9 MHz	2/12/95-31/12/95	13/11/95
North Harbour Radio	Mosman NSW	100.9 MHz	1/1/96-31/1/96	13/11/95
Family Radio Ltd	Brisbane Qld	92.1 MHz	4/12/95-25/12/95	13/11/95
Port Stephens FM Radio Inc.	Nelson Bay NSW	99.7 MHz	4/12/19-10/12/95	13/11/95
Port Stephens FM Radio Inc.	Nelson Bay NSW	99.7 MHz	1/1/96-7/1/96	13/11/95
Living Sound Broadcasters Ltd	Illawarra NSW	94.1 MHz	3/12/95-1/1/96	13/11/95
Colac Public Group Inc.	Colac Vic	99.1 MHz	25/11/95-24/12/95	13/11/95
West Gippsland Community Radio Inc.	Drouin Vic	99.5 MHz	1/12/95-3/12/95	13/11/95
West Gippsland Community Radio Inc.	Drouin Vic	99.5 MHz	16/12/95-17/12/95	13/11/95
Joy Melbourne Independent Community	South Melbourne Vic	90.7 MHz	9/12/95-2/1/96	13/11/95
Joy Melbourne Independent Community	South Melbourne Vic	90.7 MHz	6/1/96-31/3/96	13/11/95
Nu Country Music Radio Inc.	Bundoora Vic	94.3 MHz	2/12/95-17/12/95	23/11/95
Bulla FM Broadcasters	Sunbury Vic	99.4 MHz	2/12/95-24/12/95	27/11/95
Encounter FM Community Broadcasters	Victor Harbor SA	89.3 MHz	4/12/95-10/12/95	27/11/95
Canberra Christian Radio	Canberra ACT	107.1 MHz	18/12/95-31/12/95	27/11/95
Upper Murray Community Gospel Broadcaster	Corryong Vic	94.7 MHz	1/12/95-29/12/95	27/11/95
Bendigo FM Education Broadcasters	Castlemaine Vic	100.5 MHz	6/1/96-31/3/96	29/11/95
Bendigo FM Education Broadcasters	Bendigo Vic	99.7 MHz	6/1/96-31/3/96	29/11/95
Fraser Coast Community Radio Inc.	Pialba Qld	90.7 MHz	1/1/96-31/3/96	29/11/95
Radio Five O Plus	Umina NSW	95.3 MHz	6/1/96-31/3/96	29/11/95
New Wave Broadcasters	West Killara NSW	99.3 MHz	4/1/96-29/3/96	29/11/95
Southern Victoria Community Radio	Geelong Vic	89.1 MHz	18/1/96-28/1/96	29/11/95
Nepean Riverlands Community Radio Assoc.	Penrith NSW	100.7 MHz	6/1/96-31/3/96	29/11/95
Way Out West Fine Music	Penrith NSW	88.3 MHz	6/1/96-9/3/96	29/11/95
Nepean Christian Broadcasters	Hazelbrook NSW	94.5 MHz	3/12/95-1/1/96	29/11/95
Hope Island Broadcasters Pty Ltd	Coomera Qld	94.1 MHz	9/12/95-7/1/96	29/11/95