

Explanatory Statement

BROADCASTING SERVICES (ANTI-SIPHONING MONITORING) DIRECTION (NO. 1) 2005

**Issued by the authority of the Minister for Communications, Information
Technology and the Arts**

Purpose

The Broadcasting Services (Anti-Siphoning Monitoring) Direction (No. 1) 2005 (the Direction) directs the Australian Communications and Media Authority (ACMA) to investigate the operation of the anti-siphoning provisions of the *Broadcasting Services Act 1992* (the Act), and to report its findings to the Minister for Communications, Information Technology and the Arts (the Minister).

Anti-siphoning rules

The Act contains provisions (known as the anti-siphoning rules) which prevent subscription television broadcasting (pay TV) licensees from acquiring exclusive broadcast rights to events, the televising of which the Minister considers should be free to the general public.

Subsection 115(1) of the Act 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. Subsection 115(2) of the Act empowers the Minister, by Notice published in the Gazette, to amend a Notice under subsection 115(1) to remove an event from a notice.

In the *Commonwealth of Australia Gazette* No. GN 20, 19 May 2004, the Minister published the Broadcasting Services (Events) Notice No. 1 of 2004, which specified a list of events in accordance with subsection 115(1) of the Act. This is known as the anti-siphoning list. The list is now registered on the Federal Register of Legislative Instruments (FRLI) under the *Legislative Instruments Act 2003* (LIA).

The effect of section 99 of the Act and paragraph 10(1)(e) in Part 6 of Schedule 2 to the Act is that pay TV licensees are subject to a licence condition which prevents them from acquiring a broadcast right to an event on the anti-siphoning list unless a national broadcaster or commercial television broadcasting licensee has acquired the right to broadcast that event, or the event has been delisted.

Monitoring

In its 2004 election policy *21st Century Broadcasting* the Government committed to monitor the free-to-air coverage of events on the anti-siphoning list to gauge whether the coverage received is consistent with the national significance of the events.

ACMA currently collects information from the commercial television broadcasting licensees and national broadcasters regarding the types of rights held, the nature of those rights and whether events have been offered to other broadcasters. This information is generally sought on a six-monthly basis.

The Direction requires ACMA to investigate and monitor the broadcasting of events on the anti-siphoning list in a comprehensive way, and to report its findings to the Minister.

Notes on Clauses

Clause 1 of the Direction provides that ACMA is no longer to act under Direction to the ABA No. 4 of 1996 (the previous direction). The previous direction issued to the then-ABA required ACMA to report to the Minister about the free availability of programming to the public. This Direction replaces the previous direction.

Clause 2 relies upon subsection 171(1) of the Act. Section 171 of the Act empowers the Minister to direct ACMA to investigate any matter within Commonwealth constitutional power over communications. Section 178 requires ACMA to prepare a report for the Minister on an investigation conducted under such a Direction. Section 179 provides the Minister with discretion as to whether this report is published.

Clause 2 provides that ACMA is directed to investigate issues relating to the operation of the anti-siphoning provisions of the Act and the anti-siphoning list. This investigation must be conducted from 1 January 2006 until 31 December 2010.

The matters ACMA must investigate include the nature and extent of television rights to events on the anti-siphoning list obtained by commercial television broadcasting licensees and national broadcasters, and the use of those rights. In investigating the use of the rights, ACMA is to consider the broadcasting of listed events and the provision or on-selling of unused or partially used rights.

ACMA is to provide interim reports regarding the investigation to the Minister at least every six months, and a final report by 1 July 2011.

Consultation

No specific consultation has been undertaken in relation to the making of this Direction, other than with ACMA. The Department of Communications, Information Technology and the Arts undertook extensive consultations with industry and interested parties when the current anti-siphoning list was issued in 2004, and when the anti-siphoning provisions were amended by the *Broadcasting Services Amendment (Anti-Siphoning) Act 2005*. Further consultation in relation to this Direction was considered unnecessary (see paragraph 18(2)(e) of the LIA).

Commencement

The Direction will be registered on the FRLI, and it will take effect the day after it is registered.