

## **Explanatory Statement**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 2 of 2012)**

Issued by the Authority of the Minister for Broadband, Communications  
and the Digital Economy

#### Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 2 of 2012)* (the Notice) is made by the Minister for Broadband, Communications and the Digital Economy (the Minister) under subsection 115(2) of the *Broadcasting Services Act 1992* (the BSA).

The purpose of this Notice is to amend the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to remove certain events from the Principal Notice to permit the events to be premiered on a free-to-air television digital multi-channel.

This Notice is a legislative instrument for the purposes of subsection 6(d) of the *Legislative Instruments Act 2003*.

#### Background

##### *Legislative background*

Subsection 115(1) of the BSA provides that the Minister may, by notice in the Gazette, specify events that in the Minister's opinion should be televised free to the public. Such a notice is commonly known as the anti-siphoning list.

The inclusion of an event in a subsection 115(1) notice triggers a licence condition for subscription television broadcasters that prohibits the subscription television broadcasters from acquiring rights to televise the event ahead of commercial television broadcasters and national broadcasters (see section 99 of the BSA and paragraph 10(1)(e) of Schedule 2 to the BSA).

The BSA also imposes restrictions on both commercial television broadcasters and national broadcasters with regard to televising events listed on a subsection 115(1) notice. Such restrictions ensure that anti-siphoning events (or parts of those events) are not shown on the broadcasters' standard definition or high definition television digital multi-channels without first being shown, or being shown simultaneously, on the broadcasters' main channels during the simulcast period (see Part 4A of Schedule 4 to the BSA). Similar restrictions apply after the end of the simulcast period to ensure that events on the anti-siphoning list are shown first, or shown simultaneously, on commercial television and national broadcasters' primary digital multi-channels.

Subsection 115(2) of the BSA allows the Minister to amend a notice made under subsection 115(1) of the BSA to remove an event from the notice.

The purpose of this Notice is to amend the Principal Notice to remove from the current anti-siphoning list all matches to be played as part of the 2012 Australian Football League Premiership competition, including matches to be played as part of the 2012 Finals Series but excluding the 2012 Grand Final. The events to be removed are those specified in Item 4.1 of the Schedule to the Principal Notice, as amended by this Notice.

### *2012 Australian Football League Premiership*

The 2012 Australian Football League Premiership competition will be held between 24 March 2012 and 29 September 2012 in various locations around Australia. It will consist of 23 rounds and a Finals Series and will be contested by 18 teams.

This Notice will remove from the Principal Notice all events held as part of the 2012 Australian Football League Premiership competition, including the Finals Series but excluding the 2012 Grand Final which will remain on the anti-siphoning list.

This amendment will allow (but not require) the free-to-air broadcaster that holds the free-to-air broadcast rights to the 2012 Australian Football League Premiership (the Seven Network) to premiere the delisted events on a digital multichannel in each relevant television licence area.

Removing these events from the anti-siphoning list will provide for greater flexibility in the free-to-air television coverage and increase live coverage of the 2012 Australian Football League Premiership competition. This will enhance the viewing experience for Australian audiences.

### Notes on Clauses

Clause 1 provides that the name of the Notice is the Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 2 of 2012).

Clause 2 provides that the Notice will commence on the day it is registered on the Federal Register of Legislative Instruments.

Clause 3 is a definitions clause.

Clause 4 is the main operative clause.

It provides that the Principal Notice is amended by substituting the existing Item 4.1 of the Schedule to the Principal Notice with a new Item 4.1.

This amendment has the effect of removing certain events from the Principal Notice. Specifically, the effect of new Item 4.1 of the Schedule is that each match of the Australian Football League Premiership competition, including the Finals Series, will remain listed on the Principal Notice, except for: all matches to be played as part of the 2012 Australian Football League Premiership competition, including the Finals

Series but excluding the 2012 Grand Final. That is, the Grand Final will be the only event of the 2012 Australian Football League Premiership competition that will remain on the anti-siphoning list.

The substituted Item 4.1 also has the effect of removing spent provisions from the Principal Notice. The spent provisions of Item 4.1 specified particular events that occurred during the 2011 Australian Football League Premiership competition.

Statement of Compatibility with Human Rights (prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

This Notice is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This is because the Notice does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

Australia is a signatory to the International Covenant on Civil and Political Rights (one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*) (the ICCPR). Article 19 of the ICCPR deals with freedom of expression and Australia has made a reservation to paragraph 2 of Article 19.

This Notice is consistent with such reservation, which states that the regulation of television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people is compatible with Article 19 of the ICCPR.

Furthermore, removing from the anti-siphoning list certain events to be held as part of the 2012 Australian Football League Premiership competition will provide for greater flexibility in the free-to-air television coverage of such events and increase live coverage of the 2012 Australian Football League Premiership competition. This will enhance the overall viewing experience for Australian audiences.

Consultation

The Minister for Broadband, Communications, and the Digital Economy consulted with the Australian Football League and the Seven Network in relation to this Notice. The Seven Network holds the free-to air broadcast rights to the 2012 Australian Football League Premiership competition.