Explanatory Statement

# Broadcasting Services Act 1992

**Broadcasting Services (Events) Notice (No. 1) 2010**

**(Amendment No. 6 of 2013)**

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. 6 of 2013)* (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.

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 legislative instrument, specify events that in the Minister’s opinion should be televised free to the general 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).

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.

Subsection 115(1AA) of the BSA provides that an event specified in a notice made by the Minister under subsection 115(1) – i.e. the anti-siphoning list – is removed from the list 2,016 hours (12 weeks) prior to its commencement, unless the Minister makes a declaration that the event in question should continue to be in the notice after that time. This is commonly known as the ‘automatic delisting provision’.

The purpose of this Notice is to amend the Principal Notice to remove from the current anti-siphoning list any matches held as part of the United States Open tennis tournament (‘ the US Open’) for the years 2013, 2014, 2015 and 2016.

The events to be removed are specified in Item 9.3 of the Schedule to the Principal Notice, as amended by this Notice.

*The 2013, 2014, 2015 and 2016 US Open*

The US Open is a tennis tournament held annually in New York in late August and early September for a two week period. The US Open is organised and run by United States Tennis Association (‘the US Tennis Association’).

Over recent years, the US Open has received very limited free-to-air coverage in Australia, notwithstanding the inclusion of matches of the US Open on the anti-siphoning list. Where free-to-air broadcasters demonstrate little interest in providing coverage of particular sporting events, it is reasonable that the events no longer be protected under the anti-siphoning scheme. This provides subscription television broadcasters with an opportunity to acquire the rights, potentially enabling them to offer full and complete coverage of these events.

Furthermore, the US Tennis Association, represented by sports rights broker the International Management Group of America (IMG), have advised the government that the Australian broadcast rights to the US Open for the 2013 to 2016 period have been made available to free-to-air broadcasters in Australia, and that none of these broadcasters have taken up to the opportunity to acquire any such rights.

This Notice will remove from the current anti-siphoning list any matches held as part of the US Open for the years 2013, 2014, 2015 and 2016 and allow subscription broadcasters an opportunity to acquire the rights without restriction under the anti-siphoning scheme.

Notes on Clauses

Clause 1 provides that the name of the Notice is the *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 6 of 2013)*.

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 existing Item 9.3 of the Schedule to the Principal Notice with a new Item 9.3. This amendment has the effect of removing certain events from the Principal Notice.

The effect of new Item 9.3 is that each match of the men’s and women’s singles quarter-finals, semi-finals and final of the US Open will remain listed in the Principal Notice, except for any matches of the 2013, 2014, 2015, and 2016 tournaments. That is, the men’s and women’s singles quarter-finals, semi-finals and final of the US Open from 2017 and beyond will remain listed in the Principal Notice.

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 limit or regulate the right to enjoy culture.

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (two of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*). Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination. Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life. Cultural life includes sports.

The purpose of the Principal Notice is to provide the opportunity for specified events to be televised free to the Australian public. However, where free-to-air broadcasters demonstrate little interest in providing coverage of events included on the Principal Notice, it is reasonable that these events no longer be protected under the anti‑siphoning scheme. The rights holder of the US Open – the US Tennis Association – has made available the Australian broadcast rights to the 2013 to 2016 tournaments to Australian free-to-air broadcasters and none of these broadcasters have acquired any such rights.

In order to facilitate broadcast coverage of these tournaments in Australia, for the benefit of Australian tennis fans, it is appropriate to remove any matches held as part of these tournaments from the anti-siphoning list. This will enable subscription television broadcasters to acquire broadcast rights to the tournament for the 2013 to 2016 period now, without restriction under the anti-siphoning scheme, rather than having to wait for an Australian free-to-air broadcaster to acquire such rights first, or for the events to automatically delist 12 weeks prior to the commencement of each event (match). Enabling subscription television broadcasters to acquire these rights in 2013 will maximise the opportunity for television coverage of the US Open to be made available in Australia. Facilitating this early acquisition of television broadcast rights will promote the right to freedom of expression and the right to participate in cultural life consistent with the ICCPR and ICESCR respectively.

Consultation

The office of the Minister consulted with the US Tennis Association, IMG, Australia’s three free-to-air commercial television networks and Fox Sports in relation to this Notice.