

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 15 of 2013)

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 15 of 2013)* (the Notice) is made by the Minister for Communications (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 multichannel.

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 make a notice that specifies 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 the anti-siphoning list 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 from the anti-siphoning list. Such restrictions ensure that these events (or parts of those events) are not shown on the broadcasters' standard definition or high definition television digital multichannels 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 a commercial television broadcaster's or a national broadcaster's primary digital multichannel.

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 the rugby union “test” match to be played on 2 November 2013 between Australia and England, and the rugby union “test” match to be played on 9 November 2013 between Australia and Italy. The amending Notice also removes spent provisions in the Principal Notice concerning past rugby union events.

The 2013 Spring Tour

The 2013 Spring Tour involves the senior Australian representative rugby union team (the Wallabies) playing five rugby union test matches against the senior representative rugby union teams of England, Italy, Ireland, Scotland and Wales. The matches will be held in various locations across the United Kingdom and Italy between 2 and 30 November 2013 local time in those regions.

This Notice will remove from the anti-siphoning list two rugby union “test” matches to be played as part of the Spring Tour. The matches to be removed will be played on 2 November 2013 between Australia and England and on 9 November 2013 between Australia and Italy.

This amendment will allow (but not require) the free-to-air broadcasters that hold the free-to-air broadcast rights to these matches (Network Ten and its regional affiliates) to premiere coverage of 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 of the delisted matches. 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. 15 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 provides that the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) is amended in accordance with the items contained in the attached Schedule.

Schedule - Amendments

Item 1 amends clause 6.1 of the Schedule to the Principal Notice.

Clause 6.1 of the Principal Notice includes particular rugby union “test” matches in the anti-siphoning list. The amendment to clause 6.1 removes from the list the rugby union “test” match to be played in the United Kingdom on 2 November 2013 between the senior Australian representative team selected by the Australian Rugby Union and the senior English representative team, and the rugby union “test” match to be played

in Italy on 9 November 2013 between the senior Australian representative team selected by the Australian Rugby Union and the senior Italian representative team. This amendment also has the effect of removing several spent provisions that concern past rugby union “test” matches that were played between 7 September 2013 and 19 October 2013.

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 promotes freedom of expression and cultural rights by facilitating greater access by all Australians to live coverage of rugby union.

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 ensure that specified events are televised free to the Australian public. The removal of certain international rugby union “test” matches from the anti-siphoning list will give free-to-air broadcasters greater flexibility and increase live coverage of these events. This will enhance the viewing experience for Australian audiences.

Consultation

The office of the Minister for Communications consulted with Network Ten in relation to this Notice. Network Ten holds the free-to-air broadcast rights to the rugby union “test” matches affected by this Notice. The office of the Minister for Communications also consulted with the Australian Rugby Union, and subscription television broadcasters in relation to this Notice.