Explanatory Statement

# Broadcasting Services Act 1992

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

**(Amendment No. 11 of 2014)**

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 11 of 2014)* (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 paragraph 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 general public. An event or an event of a kind specified in a notice under subsection 115(1) is an ‘anti-siphoning event’ for the purposes of the definition of that term in section 6 of the BSA. The notice made under subsection 115(1) 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 subscription television broadcasters from acquiring rights to televise the event ahead of ‘free-to-air’ 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 free-to-aircommercial television broadcasters and national broadcasters with regard to televising events from the anti-siphoning list. Such restrictions ensure that these events (or parts of these 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 (see Part 4A of Schedule 4 to the BSA). These restrictions continue to apply now that the simulcast period has concluded.

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 four rugby league “test” matches to be played as part of the 2014 Rubgy League Four Nations tournament. The events to be removed are those specified as exceptions in Item 5.3 of the Schedule to the Principal Notice, as amended by this Notice.

*The 2014 Rugby League Four Nations tournament*

The 2014 Rugby League Four Nations tournament will be held in various locations across Australia and New Zealand on and between 25 October and 15 November 2014.

The Notice will remove from the anti-siphoning list each match of the 2014 Rugby League Four Nations tournament that involves the senior Australian representative team. This will include three matches of the tournament – the match to be played on 25 October 2014 between Australia and New Zealand, the match to be played on 2 November 2014 between Australia and England, and the match to be played on 9 November 2014 between Australia and Samoa. It may also include the final match of the tournament to be played on 15 November 2014, if the match involves Australia.

These amendments will allow (but not require) the free-to-air broadcasters that hold the free-to-air broadcast rights to these matches (the Nine Network and its regional affiliates) to premiere coverage of the ‘delisted’ events on a digital multichannel in each relevant television licence area.

Removing the 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

Section 1 provides that the name of the Notice is the Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 11 of 2014).

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

Section 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 provides that the Principal Notice is amended by repealing the existing clause 5.3 of the Schedule to the Principal Notice and substituting a new clause 5.3.

Clause 5.3 of the Principal Notice effectively specifies the rugby league “test” matches that are included in the anti‑siphoning list. The amendment to clause 5.3 effectively removes from the list each rugby league “test” match to be played in Australia or New Zealand between 25 October and 15 November 2014, involving the senior Australian representative team.

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 league test matches.

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 league “test” matches from the anti-siphoning list will give free-to-air broadcasters greater flexibility and increase live coverage of the events. This will enhance the viewing experience for Australian audiences.

Consultation

The office of the Minister for Communications consulted with the Nine Network, Foxtel and Fox Sports in relation to this Notice. The Nine Network holds the free‑to‑air broadcast rights to the rugby league “test” matches affected by this Notice. Foxtel holds subscription television rights to the matches.