

Explanatory Statement

Broadcasting Services Act 1992

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

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

Purpose

The Broadcasting Services (Events) Notice (No. 1) 2010 (the Notice) is made by the Minister for Broadband, Communications and the Digital Economy (the Minister) under subsection 115(1) of the *Broadcasting Services Act 1992* (the BSA). A notice made under subsection 115(1) of the BSA is commonly known as the anti-siphoning list.

The Notice revokes the anti-siphoning list contained in the Broadcasting Services (Events) Notice (No. 1) 2004, which was due to expire on 31 December 2010. The Notice remakes the anti-siphoning list in largely the same form as that in the revoked Notice.

The purpose of the Notice is to maintain the current arrangements under the anti-siphoning regime until such time as broader reforms to the regulatory framework for the regime are fully implemented.

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 available 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 which 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). The 'simulcast period' is a transitional period leading up to the switch-over to digital television during which commercial television broadcasters and national broadcasters are required to transmit their broadcasting services simultaneously in analog and standard definition digital mode (see paragraphs 6(3)(c) and 19(3)(c) of Schedule 4 to the BSA, and subclauses 6(7) and 19(7) 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.

Policy objectives

The Notice revokes the anti-siphoning list contained in the Broadcasting Services (Events) Notice (No. 1) 2004, which was due to expire on 31 December 2010, and specifies events, or events of a kind, that in the opinion of the Minister should be free to the general public.

This new anti-siphoning list has been revised to ensure its continued relevance to Australian audiences and to reflect the commercial realities of the sporting and broadcasting sectors. As a result, the list does not include previously-listed events that have traditionally received little or no free-to-air television coverage, such as the British Open golf and French Open tennis tournaments. The new list also reflects the popularity of certain sports, with some Twenty20 cricket matches and FIFA World Cup qualifying matches involving Australia added. In other aspects, the new list specifies the same events as the previous list.

On 25 November 2010, the Government announced a number of reforms to the anti-siphoning regime which will require legislative amendments. The purpose of the new anti-siphoning list contained in the Notice is to maintain the current arrangements, with some changes as described above, until the new regulatory framework is in place and the reforms announced by the Government have been fully implemented. Thus, the new anti-siphoning list is intended to operate as an interim arrangement and is expected to be replaced by a new list sometime in 2011.

Notes on Clauses

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

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

Clause 3 provides that the Broadcasting Services (Events) Notice (No. 1) 2004 is revoked.

Clause 4 provides that the Schedule specifies events or events of a kind that, in the opinion of the Minister, should be available free to the general public.

With the exceptions of the changes set out in the tables below, the list in the Schedule is the same as the anti-siphoning list contained in Schedule 2 to the Broadcasting Services (Events) Notice (No. 1) 2004.

The following table sets out the events that are no longer specified on the anti-siphoning list.

SPORT	Events removed
Golf	British Open
Cricket	One day international matches involving Australia, played in the United Kingdom
Cricket	International Cricket Council 50 Over World Cup: all matches not involving Australia before the semi-finals
Rugby League	Test matches involving the Australian team, played in countries other than Australia, New Zealand or the United Kingdom
Rugby Union	Rugby Union World Cup: all matches not involving Australia played before the quarter-finals
Rugby Union	Test matches involving Australia played outside Australia, New Zealand or South Africa unless designated in a 'spring tour'

Tennis—Wimbledon	All matches other than the men’s and women’s singles quarter-finals, semi-finals and finals matches
Tennis—French Open	Men’s and women’s quarter-finals, semi-finals and finals matches
Tennis Davis Cup	Non ‘World Group’ Davis Cup ties involving Australia
Netball	All international matches played by the senior Australian team outside Australia and New Zealand, and the Netball World Championships (other than a semi-final or final involving the Australian team)
Motor sports	Each IndyCar race held in Australia

The following table sets out events that will be included in the anti-siphoning list for the first time.

SPORT	Events added
Cricket	Twenty20 matches involving Australia, played in Australia
Cricket	Twenty20 World Cup: matches involving Australia and the Final
Football	FIFA World Cup qualifiers involving the senior Australian team (ie. the Socceroos)

To summarise the anti-siphoning list in the Schedule, the specified events fall into the following twelve categories:

- Olympic Games (the Summer Olympic Games, including the Opening and Closing Ceremonies, and the Winter Olympic Games, including the Opening and Closing Ceremonies);
- Commonwealth Games (each event in the Commonwealth Games, including the Opening and Closing Ceremonies);
- Horse Racing (the Melbourne Cup);
- Australian Rules Football (Premiership competition, including the Finals Series);
- Rugby League Football (Premiership competition, Finals Series, State of Origin, international “test” matches involving the Australian team played in Australia, New Zealand and the United Kingdom, and Rugby League World Cup matches involving Australia);
- Rugby Union Football (international “tests” matches involving the Australian team played in Australia, New Zealand, South Africa or in Europe (known as the “spring tour”), the quarter-finals, semi-finals and the final of the Rugby World Cup and matches played by the Australian team at the Rugby World Cup);
- Cricket (international “tests” played in Australia by the Australian team, international “tests” between Australia and England played in Australia or the United Kingdom, one day international matches played in Australia by the Australian team, Twenty20 matches played in Australia by the Australian team, the semi-finals, final and matches played by the Australian team at the International Cricket Council One Day International World Cup, the final and matches played by the Australian team at the International Cricket Council Twenty20 World Cup);
- Soccer (the English Football Association Cup final, the FIFA World Cup and each match in the FIFA World Cup Qualification tournament involving the senior Australian representative team);
- Tennis (each match in the Australian Open, the quarter-finals, semi-finals and finals of the singles in the United States Open and Wimbledon, and matches in “World Group” ties in the Davis Cup involving Australia);
- Netball (international matches played in Australia or New Zealand by the senior Australian team and the semi-final and final of the Netball World Championships if such matches involve the senior Australian team);
- Golf (each round of the Australian Masters, Australian Open and United States Masters); and
- Motor Sports (races of the Formula 1 Grand Prix and Moto GP held in Australia, and the V8 Supercar Championship Series including the Bathurst 1000).

Consultation

The free-to-air television broadcasting industry, the pay television broadcasting industry and sporting bodies have been consulted in relation to the changes to the anti-siphoning list made under this Notice.

Members of the general public were also provided with the opportunity to express their views in relation to the operation of the anti-siphoning scheme as part of a public consultation process that was conducted in late 2009. This eight week period of consultation occurred as part of a statutory review of the anti-siphoning scheme, in accordance with section 115A of the BSA. At that time, members of the public as well industry stakeholders were invited to submit their views in response to a discussion paper released by the Minister for Broadband, Communications and the Digital Economy on 20 August 2009.