

## **Explanatory Statement**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 10 of 2011)**

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. 10 of 2011)* (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 these 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 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 that prohibits 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 two matches to be held as part of the 2011 Tri Nations rugby union series.

The events to be removed are specified in Item 6.1 of the Schedule to the Principal Notice, as amended by this Notice.

*2011 Tri Nations rugby union series*

The 2011 Tri Nations rugby union series, which commenced on 23 July 2011, is being held in various locations across Australia, New Zealand and South Africa until 27 August 2011.

This Notice will remove from the Principal Notice certain matches to be played as part of the 2011 Tri Nations rugby union series, specifically:

- the match to be played in New Zealand on 6 August 2011 between Australia and New Zealand; and
- the match to be played in Australia on 27 August 2011 between Australia and New Zealand.

The amendment allows (but does not require) the free-to-air broadcasters that hold the broadcast rights to the matches of the 2011 Tri Nations series featuring the senior Australian representative team (the Nine Network and its affiliate stations) to premiere the two matches listed above on a digital multi-channel. It is anticipated that, as a result of this amendment, many television viewers will be able to watch live coverage of matches that would otherwise only be shown on the primary channel after a delay.

Notes on Clauses

Clause 1 provides that the name of the Notice is the Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 10 of 2011).

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 6.1 of the Schedule to the Principal Notice with a new Item 6.1.

This amendment has the effect of removing the specified events from the Principal Notice. As amended, all rugby union international test matches involving the senior Australian representative team that are played in Australia, New Zealand, South Africa or Europe will remain listed on the Principal Notice, except for the matches to be played between Australia and New Zealand on 6 August 2011 and 27 August 2011. These matches are scheduled to be played in New Zealand and Australia, respectively.

### Consultation

Consultation was undertaken with the Nine Network and Foxtel following the Nine Network's request to the Minister that two matches of the 2011 Tri Nations rugby union series, being held on 6 August 2011 and 27 August 2011, be removed from the anti-siphoning list. The Nine Network holds the free-to-air broadcast rights to the matches of the 2011 Tri Nations rugby union series that involve Australia.