

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2012)

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. 1 of 2012)* (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 the 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 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).

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 certain matches of the 2012 Australian Open tennis tournament from the current anti-siphoning list. The events to be removed are those specified in Item 9.1 of the Schedule to the Principal Notice, as amended by this Notice.

2012 Australian Open

The 2012 Australian Open is a Grand Slam tennis tournament that will be held between 16 January and 29 January 2012 in Melbourne. It will consist of men's and women's singles competitions; men's, women's and mixed doubles competitions; and various juniors' and wheelchair events.

This Notice will remove from the Principal Notice certain events held as part of the 2012 Australian Open, specifically all matches of the 2012 Australian Open except for the men's and women's singles finals .

This will allow the free-to-air broadcaster that holds the broadcast rights to the 2012 Australian Open (the Seven Network) to premiere events on a digital multichannel in each relevant television licence area while regularly-scheduled programming is broadcast on its main channel.

Removing these events from the anti-siphoning list will provide for greater flexibility in the free-to-air television coverage and increase live coverage of the 2012 Australian Open. 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. 1 of 2012).

Clause 2 provides that the Notice will commence on the day after 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 9.1 of the Schedule to the Principal Notice with a new Item 9.1.

This amendment has the effect of removing certain events from the Principal Notice; specifically, the effect of new Item 9.1 of the Schedule is that each match of the Australian Open will remain listed on the Principal Notice (for the purposes of the obligations in Part 4A of Schedule 4 to the BSA), except for all matches held as part of the 2012 Australian Open except for the men's and women's singles finals.

Consultation

Consultation was undertaken with the Seven Network in relation to this Notice following their request to the Minister to have the 2012 Australian Open tennis tournament removed from the anti-siphoning list.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2012)

This Legislative Instrument 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*.

Overview of the Legislative Instrument

The Legislative Instrument amends the Broadcasting Services (Events) Notice (No. 1) 2010 (commonly known as the anti-siphoning list) to remove certain matches from the 2012 Australian Open tournament which has the effect of permitting the events to be premiered on a free-to-air television digital multi-channel.

This Legislative Instrument is consistent with Australia's reservation that regulation of television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people is compatible with Article 19 of the International Covenant on Civil and Political Rights (one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*) of which Australia is a signatory.

Removing these events from the anti-siphoning list will provide for greater flexibility in the free-to-air television coverage and increase live coverage of the 2012 Australian Open. This will enhance the viewing experience for Australian audiences.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Stephen Michael Conroy
Minister for Broadband, Communications and the Digital Economy