

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 10 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. 10 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 from the current anti-siphoning list all matches to be played between 20 July 2012 and 6 August 2012 as part of the 2012 National Rugby League Premiership competition.

The events to be removed are those specified in Item 5.1 of the Schedule to the Principal Notice, as amended by this Notice.

2012 National Rugby League Premiership

The 2012 National Rugby League Premiership competition is being held between 1 March and 30 September 2012 in various locations around Australia. It consists of 26 rounds and a Finals Series and is being contested by 16 teams.

This Notice will remove from the Principal Notice all matches to be played between 20 July 2012 and 6 August 2012 as part of the 2012 National Rugby League Premiership competition.

These amendments will allow (but not require) the free-to-air broadcaster that holds the free-to-air broadcast rights to the 2012 National Rugby League Premiership (the Nine Network) to premiere these events on a digital multi-channel in each relevant licence area.

Removing these events from the anti-siphoning list will provide for greater flexibility in free-to-air television coverage and increase live coverage of these events. 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. 10 of 2012).

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 existing Item 5.1 of the Schedule to the Principal Notice with a new Item 5.1. This amendment has the effect of removing certain events from the Principal Notice.

The effect of new Item 5.1 is that each match in the National Rugby League Premiership competition, including the Finals Series, will remain listed in the Principal Notice except for all matches to be played between 15 June 2012 and 16 July 2012 and between 20 July 2012 and 6 August 2012 as part of the 2012 National Rugby League Premiership competition.

The substituted Item 5.1 also has the effect of removing a spent exception from the Principal Notice. The spent exception specified events held as part of the 2012 National Rugby League Premiership competition that have already occurred.

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 the 2012 National Rugby League Premiership competition.

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 specific events are televised free to the Australian public. The removal of certain events to be held as part of the 2012 National Rugby League Premiership competition from the anti-siphoning list will give free-to-air broadcasters greater flexibility in broadcasting these events and increase live coverage of such events. This will enhance the viewing experience for Australian audiences.

Consultation

The office of the Minister consulted with the Nine Network in relation to this Notice. The Nine Network holds the free-to air broadcast rights to the 2012 National Rugby League Premiership competition (including the Finals Series).