

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2015)

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2015)* (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-air commercial 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 digital television 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 effectively remove from the current anti-siphoning list the semi-finals and the final of the 2015 International Cricket Council (ICC) One Day International World Cup (the ‘2015 ICC World Cup’), and each match of the 2015 ICC World Cup involving the senior Australian representative team selected by Cricket Australia. The events to be removed are specified as exceptions in clauses 7.5 and 7.6 of the Schedule to the Principal Notice, as amended by this Notice. This amending Notice also removes spent provisions in the Principal Notice concerning cricket “test” matches involving the senior Australian team played in Australia.

The 2015 ICC One Day International World Cup

The 2015 ICC World Cup will be played at various locations in Australia and New Zealand between 14 February and 29 March 2015 and will involve the senior Australian cricket team. This Notice will remove from the Principal Notice the semi-finals and the final of the tournament, along with each match involving the senior Australian representative team selected by Cricket Australia.

These amendments will allow (but not require) the free-to-air broadcaster that holds the broadcast rights to the 2015 ICC World Cup, the Nine Network and its affiliates, to premiere coverage of the ‘delisted’ events on a digital multichannel. Removing these events from the anti-siphoning list will provide for greater flexibility in the free-to-air television coverage of the matches in question and thus 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. 1 of 2015).

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 1 - Amendments

Item 1 provides that the Principal Notice is amended by repealing the existing clause 7.1 of the Schedule to the Principal Notice and substituting a new clause 7.1. This has the effect of removing spent provisions that concern cricket “test” matches involving the senior Australia representative team selected by Cricket Australia played in Australia.

Item 2 provides that the Principal Notice is amended by repealing the existing clause 7.5 of the Schedule to the Principal Notice and substituting a new clause 7.5. Clause 7.5 of the Principal Notice specifies that each match in the semi-finals and the final of the ICC One Day International World Cup is included in the anti-siphoning list. The

amendment to clause 7.5 effectively removes from the list the semi-finals and the final of the 2015 ICC World Cup.

Item 3 provides that the Principal Notice is amended by repealing the existing clause 7.6 of the Schedule to the Principal Notice and substituting a new clause 7.6. Clause 7.6 of the Principal Notice specifies that each match of the ICC One Day International World Cup involving the senior Australian representative team selected by Cricket Australia is included in the anti-siphoning list. The amendment to clause 7.6 effectively removes from the list each match of the 2015 ICC World Cup involving the senior Australian representative team selected by Cricket Australia.

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 cricket tournaments.

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 cricket matches from the anti-siphoning list will give relevant 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 and Foxtel in relation to this Notice. The Nine Network currently holds the free-to-air broadcast rights to ICC One Day International World Cup matches affected by this Notice. Foxtel holds subscription television rights to the matches.