

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2016)

Issued by the Authority of the Minister for Communications.

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2016)* (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. The Notice also removes a spent provision from the Principal Notice.

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 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’ primary 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 remove from the current anti-siphoning list each match in the men's and women's singles quarter-finals, semi-finals and finals of the 2016 Wimbledon tennis tournament, and each match of the 2016 International Tennis Federation Davis Cup World Group tournament (i.e. the 'Davis Cup') involving an Australian representative team. The events to be removed are those specified as exceptions in clauses 9.2 and 9.4 of the Schedule to the Principal Notice, as amended by this Notice. The Notice also removes a spent provision from the Principal Notice concerning past Davis Cup events.

2016 Wimbledon tournament

The Wimbledon tennis tournament is an annual 'Grand Slam' professional tennis tournament played in England. The 2016 staging of the tournament will be held from 27 June 2016 to 10 July 2016. The tournament consists of men's and women's singles competitions; men's, women's and mixed doubles competitions; and various veterans', juniors' and wheelchair events.

This Notice will remove from the Principal Notice each match in the men's and women's singles quarter-finals, semi-finals and finals held as part of the 2016 Wimbledon tournament.

This amendment will allow (but not require) the free-to-air broadcaster that holds the free-to-air broadcast rights to these events (the Seven Network and its affiliated broadcasters) to premiere the events on a digital multichannel.

Removing these events from the anti-siphoning list will provide for greater flexibility in free-to-air television coverage and increase live coverage of the 2016 Wimbledon tennis tournament. This will enhance the viewing experience for Australian audiences.

2016 Davis Cup

The Davis Cup tournament is the premier international teams event in men's tennis. The Australian representative team will compete against the United States' representative team in Kooyong between 4 and 6 March 2016 (inclusive). If the Australian team progresses through the tournament in 2016, it will also compete in a tie to be held between 15 and 17 July 2016 (inclusive), and a tie to be held between 16 and 18 September 2016 (inclusive) and a tie to be held between 25 and 27 November 2016 (inclusive).

This Notice will remove from the Principal Notice the matches in the ties involving the Australian representative team in the 2016 Davis Cup World Group tennis tournament.

This amendment will allow (but not require) the free-to-air broadcaster that holds the free-to-air broadcast rights to these events (the Seven Network and its affiliated broadcasters) to premiere the events on a digital multichannel.

Removing these events from the anti-siphoning list will provide for greater flexibility in free-to-air television coverage and increase live coverage of the 2016 Davis Cup tournament. This will 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 2016).

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 9.2 of the Schedule to the Principal Notice and substituting a new clause 9.2.

Clause 9.2 of the Principal Notice specifies that each match in the men's and women's singles quarter-finals, semi-finals and finals of the Wimbledon tennis tournament is included in the anti-siphoning list. This amendment adds a new paragraph 9.2(a) that provides an exception to clause 9.2. This exception removes from the list any of those matches held as part of the 2016 Wimbledon tennis tournament.

Item 2 provides that the Principal Notice is amended by repealing the existing clause 9.4 of the Schedule to the Principal Notice and substituting a new clause 9.4.

Clause 9.4 of the Principal Notice specifies that each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament involving an Australian representative team is included in the anti-siphoning list. This amendment replaces the existing paragraph 9.4(a) to provide a new exception to clause 9.4. This exception removes from the list any matches in any of those ties of the 2016 International Tennis Federation Davis Cup World Group tennis tournament involving the Australian representative team.

In replacing existing paragraph 9.4(a), the amendment also removes a spent provision that provided an exception from the anti-siphoning list for matches in ties held as part of the 2015 tournament, which has now finished.

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 2016 Wimbledon tennis tournament, and the 2016 Davis Cup World Group tennis tournament.

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 events to be played as part of the 2016 Wimbledon tennis tournament, and the 2016 Davis Cup World Group tennis tournament 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 Seven Network Foxtel and Tennis Australia in relation to this Notice. The Seven Network holds the Australian free-to-air broadcast rights to the 2016 Wimbledon tennis tournament and the 2016 Davis Cup tennis tournament. Foxtel holds subscription broadcast rights to the 2016 Wimbledon tennis tournament.