

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 3 of 2017)

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 3 of 2017)* (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 which will permit the events to be premiered on a free-to-air television digital multichannel. The Notice also removes spent provisions from the Principal Notice.

The Notice is a legislative instrument for the purposes of subsection 8(2) of the *Legislation 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 anti-siphoning 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).

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 Notice amends the Principal Notice to remove each match of the 2017 Australian Football League (AFL) Premiership competition, including the Finals Series but excluding the Grand Final.

The events to be removed are those specified as exceptions in clause 4.1 of the Schedule to the Principal Notice, as amended by the Notice. The Notice also removes spent provisions from the Principal Notice concerning past AFL events relating to the 2016 AFL Premiership competition.

2017 AFL Premiership

The 2017 AFL Premiership will be held between 23 March 2017 and 30 September 2017 in various locations around Australia and in Shanghai, China (one match). It consists of 23 rounds and a Finals Series, and is being contested by 18 teams.

The Notice will remove from the Principal Notice all matches to be played between 23 March 2017 and 23 September 2017 (inclusive) (i.e. Round 1 to the Preliminary Finals) as part of the 2017 AFL Premiership. The 2017 AFL Grand Final will remain on the Principal Notice.

This Notice 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 the events from the anti-siphoning list will provide flexibility in the free-to-air television coverage of the matches in question and thus enhance the viewing experience for Australian audiences.

Consultation

The Seven Network, Foxtel and the Australian Football League were consulted in relation to the Notice. The Seven Network currently holds the free-to-air broadcast rights to the 2017 AFL Premiership matches affected by the Notice. Foxtel holds subscription television rights to 2017 AFL Premiership matches.

Notes on Clauses

Section 1 provides that the name of the Notice is the *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 3 of 2017)*.

Section 2 provides that the Notice will commence on the day it is registered on the Federal Register of Legislation.

Section 3 provides that the Notice is made under subsection 115(2) of the BSA.

Section 4 provides that the Principal Notice is amended in accordance with the item contained in Schedule 1 to the Notice.

Schedule 1 - Amendments

Item 1 of the Schedule to the Notice repeals the existing clause 4.1 of the Schedule to the Principal Notice and substitutes it with a new clause 4.1.

The effect of the amendment is to exclude from the anti-siphoning list all matches to be played between 23 March and 23 September 2017 (inclusive) as part of the 2017 AFL Premiership.

The replacement clause 4.1 no longer contains the previously specified exclusion dealing with matches of the 2016 AFL Premiership. As those matches have been played, therefore that exclusion is spent and no longer required.

All AFL matches to be played after 23 September 2017, including the 2017 AFL Grand Final, will continue to be specified in clause 4.1 of the Schedule to the Principal Notice.

Statement of Compatibility with Human Rights

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

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 3 of 2017)* (the Notice) amends the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to exclude from the Principal Notice all matches to be played between 23 March and 23 September 2017 (inclusive) as part of the 2017 Australian Football League (AFL) Premiership competition.

The purpose of the Principal Notice, also known as the ‘anti-siphoning list’, is to ensure that specified events are televised free to the Australian public. The removal of certain AFL matches from the anti-siphoning list, as set out in the Notice, will give relevant free-to-air broadcasters greater flexibility and increase live coverage of those matches. This will enhance the viewing experience for Australian audiences.

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 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 2017 AFL Premiership competition.