

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 5 of 2017)

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 5 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 the 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 the 2017 Wimbledon tennis tournament and the 2017 Australian Open golf tournament. The events to be removed are those specified as exceptions in clauses 9.2 and 11.2 of the Schedule to the Principal Notice, as amended by the Notice. The Notice also removes spent provisions from the Principal Notice concerning past Wimbledon tennis tournaments and Australian Open golf tournaments.

2017 Wimbledon tennis tournament

The Wimbledon tennis tournament is an annual ‘Grand Slam’ professional tennis tournament played in England. The 2017 staging of the tournament will be held from 3 to 16 July 2017. 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.

The 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 2017 Wimbledon tennis tournament.

This 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 flexibility in the free-to-air television coverage of the 2017 Wimbledon tennis tournament and thus enhance the viewing experience for Australian audiences.

2017 Australian Open Golf Tournament

The 2017 Australian Open golf tournament is the ‘flagship’ tournament of the Professional Golfers Association (PGA) Tour of Australasia. The 2017 staging of the tournament will be held from 23 to 26 November 2017 at the Australian Golf Club in New South Wales.

The Notice will remove from the Principal Notice each round of the 2017 Australian Open golf tournament. This 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 flexibility in the free to-air television coverage of the 2017 Australian Open golf tournament and thus enhance the viewing experience for Australian audiences.

Consultation

The Seven Network, Foxtel and Golf Australia were consulted in relation to the Notice. The Seven Network holds the free-to-air broadcast rights to both the 2017

Wimbledon tennis tournament and the 2017 Australian Open golf tournament, while Foxtel holds subscription television rights to Wimbledon.

Notes on Clauses

Section 1 provides that the name of the Notice is the *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 5 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 items contained in Schedule 1 to the Notice.

Schedule 1 - Amendments

Item 1 of Schedule 1 to the Notice repeals the existing clause 9.2 of the Schedule to the Principal Notice and substitutes it with a new clause 9.2.

The effect of the amendment is to exclude from the anti-siphoning list the 2017 Wimbledon tennis tournament.

The replacement clause 9.2 no longer contains the previously specified exclusion dealing with the 2016 Wimbledon tennis tournament. As this tournament has concluded, that exclusion is spent and therefore no longer required.

All future Wimbledon tennis tournaments following 2017 will continue to be specified in clause 9.2 of the Schedule to the Principal Notice.

Item 2 of Schedule 1 to the Notice repeals the existing clause 11.2 of the Schedule to the Principal Notice and substitutes it with a new clause 11.2.

The effect of the amendment is to exclude from the anti-siphoning list the 2017 Australian Open golf tournament, played as part of the Professional Golfers Association Tour of Australasia.

The replacement clause 11.2 no longer contains the previously specified exclusion dealing with the 2015 and 2016 Australian Open golf tournaments. As these tournaments have concluded, that exclusion is spent and therefore no longer required.

All future Australian Open golf tournaments following 2017 will continue to be specified in clause 11.2 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. 5 of 2017)* (the Notice) amends the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to exclude from the Principal Notice the 2017 Wimbledon tennis tournament and the 2017 Australian Open golf tournament.

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 the 2017 Wimbledon tennis and Australian Open golf tournaments 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 these tournaments. 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 Wimbledon tennis tournament and the 2017 Australian Open golf tournament.