

## **Explanatory Statement**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 8 of 2017)**

Issued by the Authority of the Minister for Communications

#### **Purpose**

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 8 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 an international rugby union event from the Principal Notice which will permit the event to be premiered on a free-to-air television digital multichannel. The Notice also removes a spent provision 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 purpose of the Notice is to remove from the current anti-siphoning list the international “test” match to be played in Australia on 16 September 2017 involving the senior Australian representative team selected by the Australian Rugby Union and the senior Argentine team. The event to be removed is specified as an exception to clause 6.1 of the Schedule to the Principal Notice, as amended by the Notice. The Notice also removes a spent provision from the Principal Notice concerning past international test matches held on 11 June 2016, 18 June 2016 and 25 June 2016 between the senior Australian representative team and the senior English representative team.

### *Australia versus Argentina*

The international test match between the senior Australian representative rugby union team and the senior Argentine team will be held at GIO Stadium in Canberra, Australia and will commence at 20:05 (local time) on 16 September 2017.

This amendment will allow (but not require) the free-to-air broadcaster that holds the broadcast rights to this event (Network Ten and its affiliates) to premiere coverage of the ‘delisted’ event on a digital multichannel.

Removing this event from the anti-siphoning list will provide for greater flexibility in the free-to-air television coverage of the test match. This will enhance the viewing experience for Australian audiences.

### **Consultation**

The Department of Communications and the Arts on behalf of the Minister for Communications, consulted with Network Ten, Foxtel and the Australian Rugby Union, in relation to the Notice. Network Ten holds the free-to-air broadcast rights to the rugby union test match affected by this Notice. Foxtel holds subscription television rights to the test match.

Further information about the Notice is at **Attachment 1**.

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment 2**.

**Attachment 1****Notes on Clauses**

Section 1 provides that the name of the Notice is the *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 8 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 Schedule 1 to the Notice repeals existing clause 6.1 of the Schedule to the Principal Notice and substitutes it with a new clause 6.1.

The replacement clause 6.1 specifies that each international “test” match, involving the senior Australian representative team selected by the Australian Rugby Union, played in Australia, New Zealand, South Africa or Europe is included in the anti-siphoning list.

The amendment to clause 6.1 effectively removes from the list one international test match to be played on 16 September 2017, involving the senior Australian representative team, selected by the Australian Rugby Union, and the senior Argentine team.

Repealing the existing clause 6.1 of the Schedule to the Principal Notice and substituting a new clause 6.1 will also have the effect of removing spent provisions concerning rugby union test matches played between the senior Australian team and the senior English representative team in 2016.

**Attachment 2****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. 8 of 2017)* (the Notice) amends the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to exclude from the Principal Notice one international rugby union “test” match on 16 September 2017 involving the senior Australian representative team, selected by the Australian Rugby Union, against the senior Argentine team.

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 a rugby union test match 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 international rugby union test matches.