

## **Explanatory Statement**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 9 of 2017)**

Issued by the Authority of the Minister for Communications

#### **Purpose**

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 9 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 four Fédération Internationale de Football Association (FIFA) World Cup qualification events from the Principal Notice to permit those events 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 matches of the FIFA World Cup qualification tournament to be played between 5 October and 30 November 2017 involving the senior Australian representative team and their listed opponents.

The events to be removed are specified as exceptions to clause 8.3 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 FIFA World Cup qualification matches that were previously excluded (namely, the matches played between 6 October 2016 and 5 September 2017).

#### *FIFA World Cup qualification matches*

Four matches of the FIFA World Cup qualification tournament involving the senior Australian representative team are currently scheduled to take place on 5 and 10 October 2017 and two other dates in November 2017 (the dates which are to be confirmed). The relevant matches are scheduled as follows:

- 5 October 2017 – Australia v Syria
- 10 October 2017 – Australia v Syria
- in November 2017 – Australia v TBC
- in November 2017 – Australia v TBC

The dates listed above are based on the local time of the location where the match is to be played. Due to differing time zones, the dates may not in all cases represent the broadcast date in Australia.

The Notice will remove these matches from the Principal Notice. This amendment will allow (but not require) the free-to-air broadcaster that holds the rights to the affected matches (the Nine Network and its affiliated broadcasters) to premiere coverage on a digital multichannel. Removing these 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 Department of Communications and the Arts, on behalf of the Minister for Communications, consulted with the Nine Network and Foxtel in relation to the Notice. The Nine Network holds the free-to-air broadcast rights to the affected matches, while Foxtel holds the subscription broadcasting rights.

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**.

## Notes on Clauses

Section 1 provides that the name of the Notice is the *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 9 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 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 clause 8.3 of the Schedule to the Principal Notice and substitutes it with a new clause 8.3.

The effect of the amendment is to exclude from the anti-siphoning list FIFA World Cup qualification matches to be played between 5 October and 30 November 2017 involving the senior Australian representative team. Any other matches of the FIFA World Cup qualification tournament involving the senior Australian representative team will continue to be specified in clause 8.3 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. 9 of 2017)* (the Notice) amends the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to exclude from the Principal Notice FIFA World Cup qualification matches to be played between 5 October 2017 and 30 November 2017 involving the senior Australian representative 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 these four FIFA World Cup qualification 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 the 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 soccer.