

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice 2023

Issued by the Authority of the Minister for Communications

Authority

The *Broadcasting Services (Events) Notice 2023* (the Notice) is made by the Minister for Communications (the Minister) under subsection 115(1) of the *Broadcasting Services Act 1992* (the Act).

Purpose

Subsection 115(1) of the Act provides that the Minister may give notice, by legislative instrument, specifying an event, or events of a kind, the televising of which should, in the Minister's opinion, be available free to the general public. A notice made under subsection 115(1) of the Act is commonly known as the 'anti-siphoning list' (the list). The anti-siphoning list forms an integral part of the anti-siphoning scheme (as set out in section 115 of the Act and paragraph 10(1)(e) of Schedule 2 to the Act).

The Notice revokes and remakes the *Broadcasting Services (Events) Notice (No. 1) 2010* (the 2010 Notice) – which is due to expire on 1 April 2023 – with minor amendments to update out-of-date names of sporting bodies and competitions.

The purpose of the Notice is to maintain the events listed in the 2010 Notice for a period of 3 years (and, in turn, the operation of the anti-siphoning scheme) while broader legislative reforms to the anti-siphoning scheme are considered.

The notes on the provisions of the Notice are set out in **Attachment A**.

This instrument is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

Background

The anti-siphoning scheme operates through the inclusion of an event on the anti-siphoning list (in accordance with subsection 115(1) of the Act). This triggers a licence condition for subscription television broadcasting licensees which prohibits them from acquiring a right to televise the event ahead of a commercial television broadcasting licensee or a national broadcaster (see section 99 of the Act and paragraph 10(1)(e) of Schedule 2 to the Act).

Events are taken to be removed from the anti-siphoning list 4,368 hours (approximately 6 months) before their start unless the Minister intervenes to retain an event on the list (see subsection 115(1AA)) of the Act).

The anti-siphoning list has been amended a number of times since it was first made on 6 July 1994, with events added and removed. To date, all events included on the list have been sporting events.

The inclusion of an event on the anti-siphoning list does not guarantee that it will be broadcast on free-to-air television. Rather, the list (and the anti-siphoning scheme) aim to encourage free-to-air coverage of events on the list by giving free-to-air broadcasters an opportunity to acquire the right to televise those events ahead of subscription television broadcasting licensees.

Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) undertook a consultation process as part of the review of the anti-siphoning scheme. Consultation opened on 11 October 2022 with the release of a consultation paper and closed for submissions on 6 December 2022.

A total of 25 submissions were received in response to the consultation paper. All 13 public submissions were published on the Department's website. The remaining 12 submissions were confidential. There were a variety of views put forward in submissions in relation to the anti-siphoning list. However, the majority of submissions focused on the acquisition of media rights by streaming services and digital platforms. These views and perspectives will inform consideration of broader legislative reforms to the anti-siphoning scheme.

Regulatory impact analysis

The Office of Impact Analysis (OIA) has advised that self-assessment by the Department can be conducted in lieu of an Impact Analysis. The Department has certified that the 2010 Notice is operating effectively and efficiently, and therefore an Impact Analysis is not required to remake it. A certification letter advising of this will be published on the OIA website. The OIA reference number is OBPR23-03909.

Statement of compatibility with human rights

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 B**.

Broadcasting Services (Events) Notice 2023

Section 1 provides that the name of the instrument is the *Broadcasting Services (Events) Notice 2023* (the Notice).

Section 2 provides that the Notice will commence on the day after it is registered.

Section 3 provides that the source of authority for making the Notice is subsection 115(1) of the *Broadcasting Services Act 1992*.

Section 4 sets out relevant definitions for the Notice. Only one definition is set out – the term ‘Act’ is defined to mean the ‘*Broadcasting Services Act 1992*’.

Section 5 provides that each instrument that is specified in a Schedule to the Notice is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Notice has effect according to its terms. Only one instrument is specified – the *Broadcasting Services (Events) Notice (No. 1) 2010* in Schedule 2.

Section 6 provides that, for the purpose of subsection 115(1) of the Act, each event specified in Schedule 1 to this Notice is an event specified of a kind, the televising of which should, in the Minister’s opinion, be available free to the general public.

Section 7 provides that the Notice will be repealed 36 months (or 3 years) after it commences. This is less than the usual ten years that would apply by operation of the sunseting repeal rule under section 50 of the *Legislation Act 2003*. The self-repeal provision effectively provides time for consideration of broader reforms to the anti-siphoning scheme while maintaining the operation of the scheme in the interim.

Schedule 1

The following table sets out the events included in the anti-siphoning list.

Sport	Event
Item 1 Olympic Games	(1) Each event that is held as part of the Summer Olympic Games, including the Opening and Closing Ceremonies.
	(2) Each event that is held as part of the Winter Olympic Games, including the Opening and Closing Ceremonies.
Item 2 Commonwealth Games	Each event held as part of the Commonwealth Games, including the Opening Ceremony and the Closing Ceremony.
Item 3 Horse racing	Each running of the Melbourne Cup organised by the Victoria Racing Club.
Item 4 Australian rules football	Each match in the Australian Football League Premiership competition, including the Finals Series.
Item 5 Rugby league football	(1) Each match in the National Rugby League Premiership competition, including the Finals Series.
	(2) Each match in the National Rugby League State of Origin Series.

Sport	Event
	(3) Each international rugby league test match that: involves the senior Australian representative team; and is played in Australia or New Zealand.
	(4) Each match of the Rugby League World Cup that: involves the senior Australian representative team; and is played in Australia, New Zealand or Papua New Guinea
Item 6 Rugby union football	(1) Each international test match that: involves the senior Australian representative team selected by Rugby Australia; and is played in Australia or New Zealand.
	(2) Each match of the Rugby World Cup tournament that involves the senior Australian representative team selected by Rugby Australia.
	(3) The final of the Rugby World Cup tournament.
Item 7 Cricket	(1) Each test match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.
	(2) Each test match that involves both: the senior Australian representative team selected by Cricket Australia; and the senior English representative team; and is played in the United Kingdom.
	(3) Each one day cricket match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.
	(4) Each Twenty20 (T20) cricket match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.
	(5) Each match of the International Cricket Council Cricket World Cup that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia or New Zealand.
	(6) The final of the International Cricket Council Cricket World Cup if the final is played in Australia or New Zealand.
	(7) Each match of the International Cricket Council T20 World Cup that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia or New Zealand.
	(8) The final of the International Cricket Council T20 World Cup if the final is played in Australia or New Zealand.
Item 8 Soccer	(1) Each match of the Fédération Internationale de Football Association (FIFA) World Cup tournament that involves the senior Australian representative team selected by Football Australia.
	(2) The final of the Fédération Internationale de Football Association

Sport	Event
	<p>(FIFA) World Cup tournament.</p> <p>(3) Each match in the Fédération Internationale de Football Association (FIFA) World Cup Qualification tournament that: involves the senior Australian representative team selected by Football Australia; and is played in Australia.</p>
Item 9 Tennis	<p>(1) Each match in the Australian Open tennis tournament.</p> <p>(2) Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that: involves an Australian representative team; and is played in Australia.</p> <p>(3) The final of the International Tennis Federation Davis Cup World Group tennis tournament if the final involves an Australian representative team.</p>
Item 10 Netball	<p>(1) A semi-final of the Netball World Cup if the semi-final involves the senior Australian representative team selected by Netball Australia.</p> <p>(2) The final of the Netball World Cup if the final involves the senior Australian representative team selected by Netball Australia.</p>
Item 11 Motor sports	<p>(1) Each race in the Fédération Internationale de l'Automobile Formula One World Championship (Grand Prix) held in Australia.</p> <p>(2) Each race in the Fédération Internationale de Motocyclisme MotoGP World Championship held in Australia.</p> <p>(3) Each Bathurst 1000 race in the Supercars Championship.</p>

Schedule 2

Item 1 provides that the *Broadcasting Services (Events) Notice (No. 1) 2010* is repealed.

Statement of Compatibility with Human Rights

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

Broadcasting Services (Events) Notice 2023

The *Broadcasting Services (Events) Notice 2023* 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*.

Overview

The *Broadcasting Services (Events) Notice 2023* (the Notice) is a legislative instrument made by the Minister under subsection 115(1) of the *Broadcasting Services Act 1992* (the Act), specifying the events which should, in the opinion of the Minister, be available free to the general public. A notice made under subsection 115(1) of the Act is commonly known as the ‘anti-siphoning list’. The anti-siphoning list forms an integral part of the anti-siphoning scheme (as set out in section 115 of the Act and paragraph 10(1)(e) of Schedule 2 to the Act).

The Notice revokes and remakes the *Broadcasting Services (Events) Notice (No. 1) 2010* (the 2010 Notice) – which is due to expire on 1 April 2023 – with minor amendments to update out-of-date names of sporting bodies and competitions.

The purpose of the Notice is to maintain the events listed in the 2010 Notice for a period of 3 years (and, in turn, the operation of the anti-siphoning scheme) while broader legislative reforms to the anti-siphoning scheme are considered.

The anti-siphoning scheme operates through the inclusion of an event on the anti-siphoning list (in accordance with subsection 115(1) of the Act). This triggers a licence condition for subscription television broadcasting licensees which prohibits them from acquiring a right to televise the event ahead of a commercial television broadcasting licensee or a national broadcaster (see section 99 of the Act and paragraph 10(1)(e) of Schedule 2 to the Act).

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Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

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 15(1) of the ICESCR recognises the right of everyone to take part in cultural life. Cultural life includes sports. Articles 19(2) and 27 of the ICCPR also respectively:

- recognise the right to freedom of expression, including the right to receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person's choice; and
- provide that ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture.

The UN Committee on Economic, Social and Cultural Rights has given a very broad interpretation to the term 'culture'. This could potentially include the ability to access or participate in sporting events through viewing these events live or on television. The current anti-siphoning notice consists entirely of sporting events. There are no limitations on events which could be added to the anti-siphoning list, other than that the Minister must be of the opinion that those events should be available free to the public. Arguably, the inclusion of events on the anti-siphoning list promotes both the right to receive information and to take part in culture.

Human rights implications

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 free coverage of sporting events.

Conclusion

This Notice is compatible with human rights as it does not raise any human rights issues.