

## Explanatory Statement

### *Broadcasting Services Act 1992*

#### *Broadcasting Services (Events) Amendment Notice 2023*

Issued by the Authority of the Minister for Communications

#### Authority

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

#### Purpose

The purpose of this Notice is to amend the *Broadcasting Services (Events) Notice 2023* (the Principal Notice) to include certain events from the Fédération Internationale de Football Association (FIFA) Women's World Cup. The listing of certain events from the FIFA Women's World Cup mirrors the listing of certain events from the FIFA World Cup (the equivalent men's tournament) in the Principal Notice.

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 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 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).

Subsection 115(1A) of the Act provides that the Minister may give notice, by legislative instrument, amending a notice under subsection 115(1) to specify an additional event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the public.

This Notice amends the Principal Notice to add certain events from the FIFA Women's World Cup to the list. This will ensure that these events are subject to the anti-siphoning scheme while a broader review of the scheme and list is conducted.

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 a broader review of the anti-siphoning scheme and list. On 11 October 2022, the *Review of the anti-siphoning scheme: consultation paper* (the consultation paper) was released to initiate the review and the submissions period for the consultation paper closed 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. Three stakeholder round tables were also held with free-to-air broadcasters, subscription television and streaming services, and sporting bodies in November 2022.

On 19 August 2023, the *Anti-siphoning review: proposals paper* (the proposals paper) was released for consultation. The proposals paper canvassed potential models for reform of the scheme and potential options for a new list to be made once those reforms were enacted. The consultation period for the proposals paper closes on 17 September 2023.

A variety of views were put forward in relation to the composition of the anti-siphoning list through the initial consultation process, with a number of stakeholders arguing that it should be expanded to include more women's sports. Stakeholders that supported increasing the representation of women's sports on the list included some sporting bodies, free-to-air broadcasters and community groups.

## 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 addition of events from the FIFA Women's World Cup in a manner that mirrors existing inclusion of events from the FIFA World Cup (the equivalent men's tournament) is a minor addition and, as such, that an Impact Analysis is not required for this amendment.

A certification letter advising of this will be published on the OIA website. The OIA reference number is OIA23-05544.

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

**Notes On Clauses**

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

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

Section 3 provides that the Notice is made under subsection 115(1A) of the Act.

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

Schedule 1 – Amendments

This Notice amends the Principal Notice in the following manner:

After subclause 8(3) of Schedule 1 (soccer) insert:

- (4) Each match of the Fédération Internationale de Football Association Women’s World Cup tournament that involves the senior Australian representative team selected by Football Australia.
- (5) The final of the Fédération Internationale de Football Association Women’s World Cup tournament.
- (6) Each match in the Fédération Internationale de Football Association Women’s World Cup Qualification tournament that:
  - (a) involves the senior Australian representative team selected by Football Australia; and
  - (b) is played in Australia.

**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**.

## Statement of Compatibility with Human Rights

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

This *Broadcasting Services (Events) Amendment Notice 2023* (the Notice) amends the *Broadcasting Services (Events) Notice 2023* (the Principle Notice) to include additional events on the Principle Notice from the Fédération Internationale de Football Association (FIFA) Women's World Cup.

The Notice is a legislative instrument made by the Minister under subsection 115(1A) of the *Broadcasting Services Act 1992* (the Act), specifying additional events which should, in the opinion of the Minister, be available free to the general public.

The Notice adds additional events to the Principle Notice, which is a legislative instrument made by the Minister under subsection 115(1) of the Act. 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 adds certain events from the FIFA Women's World Cup to the Principle Notice in a manner which mirrors the listing of events in the Principle Notice from the FIFA World Cup (the equivalent men's tournament). This will ensure that these events are subject to the anti-siphoning scheme while a broader review of the scheme and list is conducted.

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 anti-siphoning 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 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.

### 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 anti-siphoning list 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 supporting greater access for Australians to free coverage of sporting events.

### **Conclusion**

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