

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Anti-Siphoning List) Instrument 2024

Issued by the Authority of the Minister for Communications

Authority

The *Broadcasting Services (Anti-Siphoning List) Instrument 2024* (the Instrument) is made by the Minister for Communications (the Minister) under subsection 146V(1) of the *Broadcasting Services Act 1992* (the Act).

Purpose

The purpose of the Instrument is to create a list of events the televising of which should, in the opinion of the Minister, be available free to the general public. Subsection 146V(1) of the Act provides for the Minister to make such a list which is commonly known as the anti-siphoning list (the list).

The list forms an integral part of the anti-siphoning scheme (the scheme) which is designed to further the object specified in paragraph 3(1)(eb) of the Act: to promote the free availability to audiences throughout Australia of television coverage of events of national importance and cultural significance.

The Instrument retains the composition of the *Broadcasting Services (Events) Notice 2023 (the 2023 Instrument)* – the list made under the previous scheme – and includes a number of additional events to modernise the overall operation of the scheme and bring it into line with contemporary community expectations.

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

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

Background

The anti-siphoning scheme commenced in 1994 and is premised on the inclusion of an event, or events, on the list. Prior to the commencement of Schedule 2 to the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024* (the 2024 reforms), the scheme operated as a licence condition for subscription television broadcasting licensees prohibiting them from acquiring the right to televise an event on the list unless:

- a national broadcaster has the right to televise the event on any of its broadcasting services; or
- commercial television broadcasting licensees (excluding licensees of certain types of commercial television broadcasting licences) whose television services cover more than 50 per cent of the Australian population have a right to televise the event.

The 2024 reforms introduced a new anti-siphoning scheme that retained the capacity for the Minister to make a list and modernised the scheme to incorporate online services.

The new scheme – established in Part 10B of the Act – prevents the providers of media content services (including, but not limited to, subscription television broadcasting licensees and streaming services) from acquiring the right to televise or otherwise provide coverage of the whole or a part of a listed event to end-users in Australia unless a free-to-air broadcaster has the right to televise the event on a broadcasting service. Events are automatically removed from the list 4,368 hours (i.e. 26 weeks) prior to their commencement.

The Instrument has been designed to better reflect the modern media landscape and moderately broadens the composition of nationally important and culturally significant events. The composition of the Instrument also seeks to reflect the increased national prominence of women’s sports events and Para-sports, which have traditionally not been listed under the scheme.

The Instrument maintains the composition of events in the 2023 Instrument, and also includes a number of additional events:

- all events held as part of the Summer Paralympic Games;
- the finals series of the Australian Football League Women’s Premiership;
- the finals series of the National Rugby League Women’s (NRLW) Premiership;
- the NRLW State of Origin Series; and
- the complete Women’s Ashes cricket series played in the United Kingdom.

The Instrument also includes international rugby league, rugby union, cricket and soccer matches that involve a senior Australian representative team, irrespective of gender, and irrespective of whether these matches are standalone fixtures or played as part of a world cup tournament.

The Instrument is identical in substance to exposure draft of the list published by the Government on 29 November 2023 to aid the Parliament’s consideration of the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2024 (the Bill), which introduced the 2024 reforms.

Consultation

The design of the Instrument has been informed by extensive public and stakeholder consultation between 2022 and 2024.

The Government undertook a review of the scheme and list in 2022 and 2023, in line with its 2022 election commitment. This review was supported by two phases of consultation.

- The first phase involved the release of a public consultation paper and targeted stakeholder roundtables in November 2022 with free-to-air broadcasters, subscription television broadcasters, streaming services and sporting organisations. The consultation paper was published on 11 October and the submission period closed on 6 December 2022. The composition of the list was a key issue considered in the paper and the associated consultation process.

- The second phase of consultation, informed by the views provided to the first consultation, involved the release of a proposals paper. The proposals paper detailed three specific models for reform of the scheme and three options for reform of the list (including the list of events that comprise the Instrument). This paper was published on 19 August 2023 and the submissions period closed on 17 September 2023.

On 29 November 2023, the Government released an exposure draft of the Instrument to support Parliamentary and stakeholder consideration of the Bill. On 30 November 2023, the Senate referred the Bill to the Environment and Communications Legislation Committee for inquiry and report. A number of submissions to the inquiry provided comments on the exposure draft of the list.

The views expressed by the individuals and organisations through the review and inquiry processes were integral to the design of the Instrument. These views were detailed in the Explanatory Memorandum to the Bill, including in the associated Impact Analysis which assessed the list in the form included in the Instrument. The report of the Parliamentary Committee inquiry also detailed the views and positions of stakeholders with respect to the events in the list.

Regulatory impact analysis

An Impact Analysis has been undertaken. The OIA reference number is OIA23-05172.

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 (Anti-Siphoning List) Instrument 2024

Section 1 provides that the name of the instrument is the *Broadcasting Services (Anti-Siphoning List) Instrument 2024* (the Instrument).

Section 2 provides that the Instrument commences at the same time as Schedule 2 to the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024*.

The note at the end of section 2 provides that the Instrument replaces any instruments previously made under subsection 115(1) of the *Broadcasting Services Act 1992* as in force immediately before the commencement of the Instrument. Those instruments will be impliedly repealed. The effect of this will be to repeal the *Broadcasting Services (Events) Notice 2023*.

Section 3 provides that the source of authority for making the Instrument is subsection 146V(1) of the *Broadcasting Services Act 1992*.

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

Section 5 provides that, for the purpose of subsection 146V(1) of the Act, each event, or event of a kind, mentioned in Schedule 1 to the Instrument is specified as an event, or event of a kind, the televising of which should, in the Minister’s opinion, be available free to the general public.

Schedule 1 - Events

Clause 1 sets out how the events on this schedule are to be interpreted. This clause is intended to ensure that there is reasonable consistency and continuity as to how events and associated organising bodies are identified and understood to enable the effective operation of the anti-siphoning scheme.

Subclause 1(2) provides that a reference to an event, or an event of a kind, is a reference to that event, or kind of event, held from time to time.

Subclause 1(3) provides that a reference to a named sporting competition should be interpreted to include reference to:

- each event of a sporting competition, where the competition consists of more than one event (for example, a multi-event tournament, an annual competition, or the competition series of a sporting league or association);
- a sporting competition as held from time to time, irrespective of any other name by which the competition is also known, or any change in its name;
- each sporting competition, where a competition referenced has been restructured or rebranded into two or more competitions;
- each of the events in an expanded sporting competition, where the competition has expanded to include further sports;
- each of the events in an expanded sporting competition, where previously the competition consisted of only men’s events or only women’s events and has since expanded to include the other; and

- the final tournament of a sporting competition, but not the qualification phase for that competition, where a competition consists of both.

Subclause 1(4) provides that a reference to the name of a sporting body or organisation is a reference to that body or organisation irrespective of any other name by which it is also known or any change in its name from time to time.

Subclause 1(5) clarifies that a reference to a men’s event means an event in which only men are competitors and a women’s event means an event in which only women are competitors.

The following table sets out the events specified in clauses 2 through 13 of Schedule 1 to the Instrument.

SPORT	EVENT
Clause 2 – Olympic Games	(1) Each event that is held as part of the Summer Olympic Games, including the opening ceremony and closing ceremony.
	(2) Each event that is held as part of the Winter Olympic Games, including the opening ceremony and closing ceremony.
Clause 3 – Summer Paralympic Games	Each event held as part of the Summer Paralympic Games, including the opening ceremony and the closing ceremony.
Clause 4 – Commonwealth Games	Each event held as part of the Commonwealth Games, including the opening ceremony and the closing ceremony.
Clause 5 – Horse racing	Each running of the Melbourne Cup organised by the Victoria Racing Club.
Clause 6 – Australian rules football	(1) Each match in the Australian Football League Premiership, including the Finals Series.
	(2) Each match in the Finals Series of the Australian Football League Women’s Premiership.
Clause 7 – 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.
	(3) Each match in the Finals Series of the National Rugby League Women’s Premiership.
	(4) Each match in the National Rugby League Women’s State of Origin Series.
	(5) Each men’s or women’s international rugby league test match that: involves the senior Australian representative team; and is played in Australia or New Zealand.
	(6) Each men’s or women’s 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.

SPORT	EVENT
Clause 8 – Rugby union football	(1) Each men’s or women’s international rugby union test match that: involves the senior Australian representative team selected by Rugby Australia; and is played in Australia or New Zealand.
	(2) Each men’s or women’s match of the Rugby World Cup tournament that involves the senior Australian representative team selected by Rugby Australia.
	(3) The men’s or women’s finals of the Rugby World Cup tournament.
Clause 9 – Cricket	(1) Each men’s or women’s cricket test match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.
	(2) Each men’s or women’s cricket match of an Ashes series 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 men’s or women’s One Day International cricket match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia. The note in this subclause clarifies that this covers matches played under both the One Day International and the Women’s One Day International formats.
	(4) Each men’s or women’s Twenty20 (T20) International cricket match that: involves the senior Australian representative team selected by Cricket Australia; and is played in Australia. The note in this subclause clarifies that this covers matches played under both the T20 International and the Women’s T20 International formats.
	(5) Each match of the International Cricket Council Men’s Cricket World Cup and the International Cricket Council Women’s 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 Men’s Cricket World Cup and the International Cricket Council Women’s Cricket World Cup, if the final is played in Australia or New Zealand.
	(7) Each match of the International Cricket Council Men’s T20 World Cup and the International Cricket Council Women’s 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 Men’s T20 World Cup and the International Cricket Council

SPORT	EVENT
	Women's T20 World Cup if the final is played in Australia or New Zealand.
Clause 10 – 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 FIFA World Cup.
	(3) Each match in the FIFA World Cup Qualification tournament that: involves the senior Australian representative team selected by Football Australia; and is played in Australia.
	(4) Each match of the FIFA Women's World Cup tournament that involves the senior Australian representative team selected by Football Australia.
	(5) The final of the FIFA Women's World Cup.
	(6) Each women's soccer match that: is part of the tournament by which teams may qualify for the FIFA Women's World Cup; and involves the senior Australian representative team selected by Football Australia; and is played in Australia. This subclause includes the example of the 2022 AFC Women's Asian Cup as a tournament by which teams could qualify for the 2023 FIFA Women's World Cup.
Clause 11 – Tennis	(1) Each match in the Australian Open.
	(2) Each match in each tie of the International Tennis Federation Davis Cup World Group that: involves an Australian representative team; and is played in Australia.
	(3) The final of the International Tennis Federation Davis Cup World Group, if the final involves an Australian representative team.
Clause 12 – Netball	(1) Each semi-final or final of the Netball World Cup that involves the senior Australian representative team selected by Netball Australia.
Clause 13 – Motor sports	(1) Each race in the Fédération Internationale de l'Automobile Formula One World Championship (Grand Prix) held in Australia.
	(2) Each race in the Fédération Internationale de Motocyclisme MotoGP World Championship held in Australia.
	(3) Each Bathurst 1000 race in the Supercars Championship.

Statement of Compatibility with Human Rights

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

Broadcasting Services (Anti-Siphoning List) Instrument 2024

The *Broadcasting Services (Anti-Siphoning List) Instrument 2024* 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 (Anti-Siphoning List) Instrument 2024* (the Instrument) is a legislative instrument made by the Minister for Communications (the Minister) under subsection 146V(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.

An instrument made under subsection 146V(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 (the scheme), as set out in Part 10B of the Act.

The scheme operates to prevent the providers of media content services (including, but not limited to, subscription television broadcasting licensees and streaming services) from acquiring the right to televise or otherwise provide coverage of the whole or a part of a listed event to end-users in Australia unless a free-to-air broadcaster has the right to televise the event on a broadcasting service. The scheme provides that events are automatically removed from the list approximately 26 weeks prior to their commencement.

The scheme (and list) are designed to further the object specified in paragraph 3(1)(eb) of the Act: to promote the free availability to audiences throughout Australia of television coverage of events of national importance and cultural significance.

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 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 Instrument 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 Instrument promotes freedom of expression and cultural rights by facilitating greater access by all Australians to free coverage of sporting events.

Conclusion

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