

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BROADCASTING SERVICES AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications and the Arts, the
Hon. Michael Lee, MP)

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OUTLINE

This Bill amends the *Broadcasting Services Act 1992* to ensure that events can be removed from the Pay-TV anti-siphoning list under subsection 115(1) of the Act when, for example, the rights to events have been acquired but not used by a free-to-air broadcaster. The Bill also clarifies the Minister's power to add events to the list.

Subsection 115(2) of the Act empowers the Minister to amend a notice under subsection 115(1) to remove an event from the anti-siphoning list if satisfied that:

- . national and commercial television broadcasters have had a real opportunity to acquire, on a fair commercial basis, the right to televise the event; and
- . none of those persons has acquired the right within a reasonable time.

There is uncertainty about the range of circumstances in which the Minister could remove events from the list. There is a possible legal argument that by making express provision for one set of circumstances in which a notice may be amended to remove an event, subsection 115(2) manifests an intention that an event cannot be removed from the notice in other circumstances.

This Bill will substitute a new subsection 115(2) which will give a general power to the Minister to remove an event from the notice, thereby ensuring that the power is not confined to circumstances expressly identified in the Act. The exercise of this power will remain subject to disallowance by the Parliament.

FINANCIAL IMPACT STATEMENT

The Bill is expected to have no financial impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 - Short title etc.

This clause provides for the citation of the amending Act. It also provides that in the amending Act, "Principal Act" means the *Broadcasting Services Act 1992*.

Clause 2 - Commencement

This clause provides for the amending Act to commence on Royal Assent.

Clause 3 - Minister may protect the free availability of certain types of programs

Subsection 115(1) of the *Broadcasting Services Act 1992* empowers the Minister to specify an event or events of a kind the televising of which should, in the Minister's opinion, be available free to the general public.

Subsection 115(2) empowers the Minister to remove an event from such a list of specified events if the Minister is satisfied that:

- . national and commercial television broadcasters have had a real opportunity to acquire, on a fair commercial basis, the right to televise the event; and
- . none of those persons has acquired the right within a reasonable time.

A notice under subsection 115(1) or (2) is disallowable by the Parliament.

Paragraph 10(1)(e) of Schedule 2 to the Act makes each subscription television broadcasting licence subject to a condition that the licensee will not acquire the right to broadcast on its service an event on the list unless a national or commercial television broadcaster has acquired the right to broadcast the event.

The policy objective of these provisions is to prevent Pay-TV licensees acquiring the exclusive rights to broadcast important events that should be available free to the public on free-to-air television services.

This clause amends subsection 115(2) to make it clear that the Minister may amend a notice under subsection 115(1) for reasons other than those currently listed in subsection 115(2).

Clause 3(a) makes a minor technical amendment to remove an unnecessary reference to 'live televising' in subsection 115(1).

Clause 3(b) omits the existing subsection 115(2) and substitutes two new subsections.

New subsection 115(1A) enables the Minister to amend the notice under subsection 115(1) to specify additional events the televising of which should, in the opinion of the Minister, be available free to the public. This provision makes it clear that the Minister will have the power to amend a notice under subsection 115(1) to include further events.

New subsection 115(2) makes it clear that the Minister may amend a notice under subsection 115(1) to remove an event from the notice.

A note is included under the new subsection providing examples of situations in which the Minister might exercise the power to remove an event from a notice.

The first example essentially corresponds to the circumstances set out in the current subsection 115(2) of the Act, i.e. the national broadcasters and commercial licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. The Minister may form the opinion that removing the event is likely to have the effect that the event will be televised to a greater extent than if it remained on the notice.

The second example deals with the situation where the hoarding of an event occurs. This example is where a commercial television broadcasting licensee has acquired the right to televise an event, but has failed to televise it or has televised only an unreasonably small proportion of the event. The Minister may form the opinion that removing that event, or another event, from the notice is likely to have the effect that the removed event will be televised to a greater extent than it would be if it remained on the notice. Such a situation could occur, for example, where a licensee acquires the right to an overseas sporting event in a particular year but does not televise that event. The Minister may form the opinion that removing equivalent events in following years from the list will increase the chances that those events will be televised.

Clause 3(c) makes a consequential amendment to subsection 115(3) to ensure that a notice published under the new subsection 115(1A) is a disallowable instrument.

