

Legislative Instruments Act 2003
Section 26 – Explanatory Statement

Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012 made under the Broadcasting Services Act 1992

Issued by the Australian Communications and Media Authority

Purpose and legislative basis

On 10th December 2012, the Australian Communications and Media Authority (the **ACMA**) made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* (the **Instrument**).

The ACMA made the Instrument under subsections 43C(1A) and 61CD(2) of the *Broadcasting Services Act 1992* (the Act) which provides that the ACMA may, by legislative instrument, specify a five week period during which the obligations on regional commercial radio broadcasting licensees to provide required amounts of 'material of local significance' and to comply with the minimum service standards (local news and information) (together, **local content**) do not apply.

Background

In 2012, the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* amended the Act to provide a five week exemption period for regional commercial radio broadcasting licensees from the obligation to broadcast specified amounts of local content. The default exemption period commences on the second Monday in December (material of local significance) and the second Sunday in December (minimum service standards) each year. The ACMA may, however, by legislative instrument, specify a different five week period in relation to one or more specified regional commercial radio broadcasting licensees.

In September 2012 the ACMA received an application from Bathurst Broadcasters Pty Ltd to vary the period for its two licences in the Bathurst RA1 licence area. The request was for the exemption period to start in the fourth week of December, instead of the second week in December.

Intended impact of the Instrument

The Instrument specifies five week exemption periods for the licensee of two regional commercial radio broadcasting licences during which the licensee is exempted from the obligation to broadcast specified amounts of 'material of local significance' and to comply with the minimum service standards for local news and information. The five week periods for which the licensee is exempted from each of those obligations commence and finish on dates later than those specified in the Act.

The ACMA does not otherwise intend that the impact and effect of the Instrument be any different from the legislated exemption period. To that extent, the Instrument is consistent with the local content and minimum service standard obligations under the Act.

Consultation

On 5 November 2012, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment.

The Minister for Broadband, Communications and the Digital Economy undertook consultation on the policy underpinning the reduction from 52 to 47 weeks per year during which licensees must broadcast local content in the 2010 *Review of the Local Content Requirements for Regional Commercial Radio*.

The ACMA is satisfied that this consultation meets the requirements of section 43 of the Act, and the requirements of section 17 of the *Legislative Instruments Act 2003*.

Regulatory Impact

A regulation impact statement titled *Regulation Impact Statement – Amendments to Local Content and Local Presence Requirements for Regional Commercial Radio* was prepared by the DBCDE for

the 2010 *Review of the Local Content Requirements for Regional Commercial Radio*. The Office of Best Practice Regulation (the OBPR) reviewed the regulation impact statement and assessed it as adequate under the Australian Government best practice regulation requirements - OBPR reference number 10943.

In addition, the ACMA prepared a preliminary assessment on 2 July 2012 for the purposes of making the Instrument. On 4 July 2012, the OBPR considered that a separate Regulation Impact Statement from the ACMA was not required – OBPR reference number 14006.

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a human rights compatibility statement has been prepared by the ACMA and is attached.

NOTES ON INSTRUMENT

Section 1 – Name of instrument

Section 1 provides that the name of the Instrument is the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*.

Section 2 – Commencement

This section provides that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Definitions

This section defines terms used in the Instrument and notes that the term 'regional licence area' is defined in the Act.

Section 4 – Periods under subsection 43C(1A) of the Act for specified licensees

This section provides that the licence holders in column 2 of Schedule 1 are exempt from the local content obligations for the period specified in column 3 of Schedule 1.

Section 5 – Periods under subsection 61CD(2) of the Act for specified licensees

This section provides that the licence holders in column 2 of Schedule 2 are exempt from the minimum service standard obligations for the period specified in column 3 of Schedule 2.

Section 6 – Recurring Periods

This section provides that the periods specified in sections 5 and 6 are recurring periods, that is, occurring at the same time every twelve months.

Schedule 1 – Periods under subsection 43C(1A) of the Act for licensees

This schedule comprises a table listing the Service Licence number, radio licence area and the period during which the specified licensees are not required to broadcast material of local significance.

Schedule 2 – Periods under subsection 61CD(2) of the Act for licensees

This schedule comprises a table listing the Service Licence number, radio licence area and the period during which the specified licensees are not required to meet the minimum service standards for local news and information.

Statement of Compatibility with Human Rights

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

Broadcasting Services (Regional Commercial Radio — Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012

This Legislative 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*.

Overview of the Legislative Instrument

Amendments to the *Broadcasting Services Act 1992* (the **Act**) which commenced on 16 April 2012 relaxed some of the local content obligations which apply to regional commercial radio broadcasters. The amendments have the effect that, for a five-week period each year, a regional commercial radio broadcasting licensee is not required to comply with the obligation to provide specified amounts of material of local significance and local news and information. The default period starts in the first week of December but the ACMA may, by legislative instrument, specify a different period for one or more specified licensees.

The *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* (the **Instrument**) specifies a later 5 week period for the regional commercial radio broadcasting licensees identified in the Instrument.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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