

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 216

Issued by the Authority of the Minister for Broadband, Communications
and the Digital Economy

Broadcasting Services Act 1992

Broadcasting Services (Regional Commercial Radio) Regulation 2013

Purpose

Subsections 61CB(1D), 61CB(2C) and 61CB(5) of the *Broadcasting Services Act 1992* (the Act) state that the regulations may provide for exemptions from the definition of ‘trigger event’ contained in, respectively, subsections 61CB(1A), 61CB(2) and 61CB(3) of the Act.

The purpose of the *Broadcasting Services (Regional Commercial Radio) Regulation 2013* (the Regulation) is to provide for such exemptions.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Background

One of the objects of the Act is to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance (paragraph 3(1)(ea)).

In furtherance of that object, Division 5C of Part 5 of the Act sets out local news and information requirements for regional commercial radio broadcasting licensees. Where regional commercial radio broadcasting licences are subject to particular changes in control (including changes in ownership), known as a ‘trigger event’, the licence holder must comply with local presence obligations (s. 43B of the Act) and minimum service standards for the provision of local news and information (s. 61CD and 61CE of the Act). Specifically, regional commercial radio broadcasting licensees that are subject to a trigger event must:

- meet minimum service standards for local news and information – these include minimum amounts of local news, local weather, community service announcements and emergency warnings;
- maintain at least their existing level of local presence (involving staff, studios and production facilities) for 24 months from the date of the trigger event;
- within 90 days of the trigger event occurring, provide the Australian Communications and Media Authority (the ACMA) with a draft local content plan detailing how the licensee intends to meet the minimum service standards and including information about the existing level of local presence; and
- report to the ACMA about the licensee’s compliance with these local content and presence obligations by 30 September each year.

A 'trigger event' will occur where there is a:

- transfer of a regional commercial radio broadcasting licence from one person to another, prior to 15 October 2012 (s. 61CB(1));
- change in control of a regional commercial radio broadcasting licence (s. 61CB(1A));
- formation of a new registrable media group, containing a regional commercial radio broadcasting licence (s. 61CB(2)); or
- change of controller of a registrable media group containing a regional commercial radio broadcasting licence (BSA s. 61CB(3)).

The *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* (Radio Act) introduced a number of exceptions to the definition of 'trigger event', designed to reduce the regulatory burden on regional commercial radio broadcasting licensees. These included exemptions for trigger events arising from: inter-generational transfers of shares between near relatives without legal consideration (e.g. transfer by inheritance); change in control of a licence, or registrable media group, due to circumstances beyond the control of relevant parties (e.g. medical incapacitation); and changes in licence area boundaries or populations caused by certain ACMA action.

The Radio Act also introduced new regulation making powers to provide for further exemptions (subsections 61CB(1D), 61CB(2C) and 61CB(5) of the Act).

The Regulation would insert further exemptions covering a variety of scenarios which, in general, are designed to exclude from the definition of a trigger event transactions resulting from corporate group restructures where there is substantial continuity of control of the relevant licence (and associated station) or registrable media group, from higher up the corporate chain. Such transactions are considered likely to have relatively minimal effect on the day-to-day operations of a licensee company or group, such that they should not trigger regulatory obligations in relation to local presence and minimum service standards.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals.

Consultation

Both Commercial Radio Australia and the ACMA have been consulted in the preparation of this Regulation.

Details of the accompanying regulation are set out in the Attachment.

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) Regulation 2013

This Regulation 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 Regulation

Division 5C of Part 5 of the *Broadcasting Services Act 1992* (the Act) sets out local news and information requirements for regional commercial radio broadcasting licensees.

Where such licensees are subject to particular changes in ownership and/or control, known as a ‘trigger event’, they must comply with local presence obligations (s. 43B of the Act) and minimum service standards for the provision of local news and information (s. 61CD and 61CE of the Act). Local presence requirements relate to the maintenance of local staffing levels and facilities, while minimum service standards relate to the provision of local news, local weather, community service announcements and emergency warnings.

The effect of the Regulation is to provide exemptions from the definition of ‘trigger event’ contained in subsections 61CB(1A), 61CB(2) and 61CB(3) of the Act. The exemptions are designed to exclude from the definition of trigger event certain transactions including those resulting from corporate group restructures where there is continuity of ‘upstream’ control of the relevant regional commercial radio broadcasting licence or registrable media group.

Human rights implications

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

Conclusion

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

Details of the *Broadcasting Services (Regional Commercial Radio) Regulation 2013*

Section 1 – Name of regulation

Section 1 provides that the title of the regulation is the *Broadcasting Services (Regional Commercial Radio) Regulation 2013*.

Section 2 – Commencement

Section 2 provides that the Regulation takes effect on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Broadcasting Services Act 1992*.

Section 4 – Definitions

Section 4 is a definitions clause.

Section 5 – Trigger event - exemptions

Section 5 is the main operative clause. It sets out a series of exemptions from the different types of trigger events contained in subsections 61CB(1A), (2) and (3) of the Act.

Change in control of licence

Subsection 5(2) of the Regulation provides that subsection 61CB(1A) of the Act (‘Change in control of licence’) does not apply to a ‘control event’, mentioned in that subsection, in specified circumstances. A control event occurs where a person either starts or ceases to be in a position to exercise control of a regional commercial radio broadcasting licence. Such an event will normally constitute a trigger event, subject to certain exceptions in subsections 61CB(1B) and (1C).

Subsection 5(2) of the Regulation creates an additional exemption for any control event which occurs in the following circumstances: (a) a person ceases to be in a position to exercise control of a regional commercial radio broadcasting licence; (b) a second person starts to be in a position to exercise control of the licence; (c) the second person is controlled in the same way as the first person; and (d) either the persons in a position to exercise control of the licence do not otherwise change or, if they do change, any change is not a trigger event.

This exemption is intended to apply where an incoming controller replaces an outgoing controller and both parties are controlled in the same way (for example both companies are wholly controlled subsidiaries of the same parent company). More broadly, where the first and second person are not wholly owned subsidiaries of the same parent company, the phrase “controlled in the same way” is generally intended to mean that the first and second persons are ultimately controlled by the same person or persons, both before and after the event.

For example, a person in control of a regional commercial radio broadcasting licence enters into an agreement to sell or transfer their holding in a licensee company (one that controls and manages the day-to-day operations of a regional commercial radio broadcasting licence) to another person. The incoming controller steps into the role of the outgoing controller, and both are controlled by the same person or persons. A transaction of this nature would be exempt from the trigger event provisions.

Change of controller of registrable media group

Subsection 5(3) of the Regulation provides that subsection 61CB(3) of the Act ('Change of controller of registrable media group') does not apply to a change of controller of a registrable media group which occurs in specified circumstances.

A registrable media group, in relation to a commercial radio broadcasting licence, means a media group covered by item 1 of the table in subsection 61AC(1) of the Act. A change of controller of a registrable media group will normally constitute a trigger event (s. 61CB(3)). However, subsection 5(3) of the Regulation creates an exception for any change of controller which occurs in the following circumstances: (a) a controller of a registrable media group ceases to be a controller; (b) a second person becomes a controller of the group; (c) the registrable media group includes a regional commercial radio broadcasting licence; (d) the second controller is controlled in the same way as the first controller was controlled; and (e) either the persons who are in a position to exercise control of the licence do not otherwise change or, if they do change, any change is not a trigger event.

This exemption largely mirrors that in subsection 5(2), except that it applies to changes in control of a registrable media group including a regional commercial radio broadcasting licence, rather than changes in control of the licence itself. As with subsection 5(2), the exemption is intended to apply where an incoming controller replaces an outgoing controller and both parties are controlled in the same way. The phrase "controlled in the same way" has the same meaning as in subsection 5(2), described above.

For example, a person in control of a registrable media group that includes a regional commercial radio broadcasting licence enters into an agreement to sell or transfer their holding or interest in the group to another person. The incoming controller steps into the role of the outgoing controller, and both are controlled by the same person or persons. A transaction of this nature would be exempt from the trigger event provisions.

Change of directors

Subsection 5(4) of the Regulation provides that subsections 61CB(1A) ('Change in control of licence') and 61CB(3) ('Change of controller of registrable media group') of the Act do not apply to a change of control of a regional commercial radio broadcasting licence or registrable media group arising solely from a change of company directors, in certain circumstances.

This exemption is subject to the caveat that the change must not result in more than 50 per cent of the total directors of the relevant company having changed during the previous 12 months. For example, if a company board contained 9 directors, and the members of the company voted to remove and replace 4 of those directors, this event would be excluded from the definition of trigger event by this exemption. However, if more than 50 per cent of the directors changed in any 12 month period – whether as a result of one event or multiple

events – the event that breached the 50 per cent threshold would not gain the benefit of the exemption and would therefore potentially remain a trigger event.

Sale or transfer of shares between companies

Subsection 5(5) of the Regulation provides that subsections 61CB(1A) (‘Change in control of licence’), 61CB(2) (‘Formation of new registrable media group’) and 61CB(3) (‘Change of controller of registrable media group’) of the Act do not apply to an event occurring in specified circumstances relating to the sale or transfer of shares.

Those subsections will not apply where: (a) there is a sale or transfer of shares between 2 or more companies; (b) the companies are wholly owned subsidiaries of the same company (the parent company); (c) both before and after the sale or transfer of the shares, the parent company is in a position to exercise control of a regional commercial radio broadcasting licence; and (d) either the persons in a position to exercise control of the licence do not otherwise change or, if they do change, any change is not a trigger event.

For example, a parent company (company A) wholly owns two subsidiary companies (company B and company C). Company B transfers shares in a licensee company (one that controls and manages the day-to-day operations of a regional commercial radio broadcasting licence) to company C. This type of intra-group transfer would be excluded from the definition of trigger event by this exemption.

The phrase “wholly owned subsidiary” has the same meaning as in the *Corporations Act 2001* (see section 4)

Formation of a new company

Subsection 5(6) of the Regulation provides that subsections 61CB(1A) (‘Change in control of licence’), 61CB(2) (‘Formation of new registrable media group’) and 61CB(3) (‘Change of controller of registrable media group’) of the Act do not apply to an event which occurs in specified circumstances involving the formation of a new company.

Those subsections will not apply where: (a) a new company is formed; (b) the new company is a wholly owned subsidiary of another company (the parent company); (c) the new company starts to be in a position to exercise control of a regional commercial radio broadcasting licence; (d) both before and after the new company is formed, the parent company is in a position to exercise control of the regional commercial radio broadcasting licence; and (e) either the persons in a position to exercise control of the licence do not otherwise change or, if they do change, any change is not a trigger event.

For example, a parent company (company A) wholly owns a number of licensee companies (companies that control and manage the day-to-day operations of various regional commercial radio broadcasting licences). Company A decides to restructure its existing radio operations and form a new company, company B, to sit between it and the licensee companies. Company B would be wholly owned by company A and would, in turn, wholly own the licensee companies. Such a restructure would be exempt from the trigger event provisions.

Subsidiary company ceases to exercise control

Subsection 5(7) of the Regulation provides that subsections 61CB(1A) ('Change in control of licence'), 61CB(2) ('Formation of new registrable media group') and 61CB(3) ('Change of controller of registrable media group') of the Act do not apply to an event which occurs in specified circumstances involving the exit of a subsidiary company.

Those subsections will not apply where: (a) a company ceases to be in a position to exercise control of a regional commercial radio broadcasting licence; (b) the company (the subsidiary) is a wholly owned subsidiary of another company (the parent company); (c) both before and after cessation in control, the parent company is in a position to exercise control of the licence; and (d) either the persons in a position to exercise control of the licence do not otherwise change or, if they do change, any change is not a trigger event.

For example, a parent company (company A) decides to restructure its radio operations. Company A wholly owns two subsidiary companies, company B and company C. All shares in various licensee companies (companies that control and manage the day-to-day operations of various regional commercial radio broadcasting licences) are transferred from company B to company C, and then company B is wound up (and therefore ceases to be in a position to control the licences). This type of intra-group restructure would be permitted by this exemption.

Subsection 5(8) of the Regulation confirms the bases on which a change in control may not be a trigger event, for the purposes of subparagraphs (2)(d)(ii), (3)(e)(ii), (5)(d)(ii), (6)(e)(ii) and (7)(d)(ii). A change of control will not be a trigger event if it is exempt through the operation of section 5 of the Regulation or if section 61CB of the Act provides that it is not a trigger event. Subsection 5(8) is included for the avoidance of doubt.

Subsection 5(9) of the Regulation clarifies the definition of "event" for the purposes of section. It is also included for the avoidance of doubt.