



Broadcasting Services (Regional Commercial Radio) Regulation 2013

Select Legislative Instrument No. 216, 2013

I, Quentin Bryce AC CVO, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Broadcasting Services Act 1992*.

Dated 05 August 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

Anthony Albanese
Minister for Broadband, Communications and the Digital Economy

OPC50268 - A

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Part 1—Preliminary

1 Name of regulation

This regulation is the *Broadcasting Services (Regional Commercial Radio) Regulation 2013*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *Broadcasting Services Act 1992*.

4 Definitions

- (1) In this regulation:

Act means the *Broadcasting Services Act 1992*.

media operation has the same meaning as in Division 5A of Part 5 of the Act.

wholly-owned subsidiary has the same meaning as in the *Corporations Act 2001*.

- (2) In this regulation, the following terms have the same meaning as they have in Division 5C of Part 5 of the Act:

- (a) controller;
- (b) regional commercial radio broadcasting licence;
- (c) registrable media group;
- (d) trigger event.

Note: In this regulation, some terms have the same meaning as in the Act, including the following:

- (a) control;
- (b) shares.

Part 2—Trigger event: exemptions

5 Trigger event—exemptions

- (1) For subsections 61CB(1D), (2C) and (5) of the Act, this section sets out exemptions from subsections 61CB(1A), (2) and (3) of the Act.

Note: Subsections 61CB(1A), (2) and (3) of the Act set out trigger events.

Change in control of licence

- (2) Subsection 61CB(1A) of the Act does not apply if the control event mentioned in that subsection occurs in the following circumstances:
- (a) a person (the **first person**) ceases to be in a position to exercise control of a regional commercial radio broadcasting licence;
 - (b) another person (the **second person**) starts to be in a position to exercise control of the regional commercial radio broadcasting licence;
 - (c) the second person is controlled in the same way as the first person was controlled;
 - (d) either:
 - (i) the persons who are in a position to exercise control of the regional commercial radio broadcasting licence do not otherwise change; or
 - (ii) any other change to the persons who are in a position to exercise control of the regional commercial radio broadcasting licence is not a trigger event.

Note: An example for paragraph (c) is that the first person and second person are, or were, wholly controlled subsidiaries of the same parent company.

Change of controller of registrable media group

- (3) Subsection 61CB(3) of the Act does not apply if the change of controller mentioned in that subsection occurs in the following circumstances:

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- (a) a controller (the **first controller**) of a registrable media group ceases to be a controller of the group;
 - (b) a person (the **second controller**) who was not a controller of the registrable media group 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;
 - (e) either:
 - (i) the persons who are in a position to exercise control of the regional commercial radio broadcasting licence do not otherwise change; or
 - (ii) any other change to the persons who are in a position to exercise control of the regional commercial radio broadcasting licence is not a trigger event.

Note: An example for paragraph (d) is that the first controller and second controller are, or were, wholly controlled subsidiaries of the same parent company.

Change of directors

- (4) Subsection 61CB(1A) or (3) of the Act does not apply if:
 - (a) the event mentioned in that subsection arises solely from a change of directors of a company; and
 - (b) the change (the **current change**), together with any other change of director during the 12 months ending on the day of the current change, results in no more than 50% of the total number of directors of the company (both executive and non-executive) having changed during those 12 months.

Sale or transfer of shares between companies

- (5) Subsection 61CB(1A), (2) or (3) of the Act does not apply if the event mentioned in that subsection occurs in the following circumstances:
 - (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**);

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- (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;
- (d) either:
 - (i) the persons who are in a position to exercise control of the regional commercial radio broadcasting licence do not otherwise change; or
 - (ii) any other change to the persons who are in a position to exercise control of the regional commercial radio broadcasting licence is not a trigger event.

Formation of new company

- (6) Subsection 61CB(1A), (2) or (3) of the Act does not apply if the event mentioned in that subsection occurs in the following circumstances:
 - (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;
 - (e) either:
 - (i) the persons who are in a position to exercise control of the regional commercial radio broadcasting licence do not otherwise change; or
 - (ii) any other change to the persons who are in a position to exercise control of the regional commercial radio broadcasting licence is not a trigger event.

Subsidiary company ceases to exercise control

- (7) Subsection 61CB(1A), (2) or (3) of the Act does not apply if the event mentioned in that subsection occurs in the following circumstances:
 - (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*);
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- (c) both before and after the event mentioned in paragraph (a) occurs, the parent company is in a position to exercise control of the regional commercial radio broadcasting licence;
- (d) either:
 - (i) the persons who are in a position to exercise control of the regional commercial radio broadcasting licence do not otherwise change; or
 - (ii) any other change to the persons who are in a position to exercise control of the regional commercial radio broadcasting licence is not a trigger event.
- (8) To avoid doubt, for subparagraphs (2)(d)(ii), (3)(e)(ii), (5)(d)(ii), (6)(e)(ii) and (7)(d)(ii), a change may not be a trigger event because:
 - (a) this section exempts the change from being a trigger event; or
 - (b) section 61CB of the Act provides that the change is not a trigger event.
- (9) In this section:

event means:

 - (a) a control event mentioned in subsection 61CB(1A) of the Act; or
 - (b) the coming into existence of a registrable media group mentioned in subsection 61CB(2) of the Act; or
 - (c) the change of controller mentioned in subsection 61CB(3) of the Act.