

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

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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:

 (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***);

 (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***);

 (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.