

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014 made under the *Broadcasting Services Act 1992*

Purpose

On 11 September 2014, the Australian Communications and Media Authority (the ACMA) determined the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014* (the Instrument). The Instrument replaces the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* (the 2012 Licence Condition).

Since 2008, section 43C of the *Broadcasting Services Act 1992* (the BSA) has required the ACMA to ensure that there is in force under section 43 of the BSA, a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance (the local content obligation).

The government's deregulation agenda has a priority of reducing costs to industry, especially through process improvements and efficiencies for industry dealings with government agencies. Changes made to the 2012 Licence Condition and reflected in the Instrument seek to simplify or remove compliance reporting and record-keeping for relevant regional commercial radio licensees, announced as part of the communications portfolio deregulation roadmap 2014 released by the Minister on 6 May 2014. The reduction in administrative burden is supported by the high rate of compliance by licensees with the local content obligation imposed by the 2012 Licence Condition and the preceding *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007*.

Legislative basis

The ACMA determined the Instrument under subsection 43(1) of the BSA in accordance with subsection 43C(1) of the BSA. Subsection 43(1) provides that:

The ACMA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

Consultation

On 2 July 2014, the ACMA released a draft of the Instrument, seeking comment on the proposed changes from affected licensees, Commercial Radio Australia and the public. The ACMA also published the proposed changes in the Government Notices Gazette. Consultation on the draft Instrument closed on 30 July 2014.

The ACMA is satisfied that this consultation meets the requirements of both subsection 43(2) of the BSA and section 17 of the *Legislative Instruments Act 2003*.

Operation

The Instrument is consistent with the local content obligation under the BSA.

The impact of the Instrument is substantially the same as the 2012 Licence Condition, although the Instrument includes the following deregulatory features that affect relevant regional commercial radio licensees:

- It removes the annual reporting requirements that were imposed under section 9 of the 2012 Licence Condition. The ACMA will instead rely on complaints and investigations to assure compliance with the local content obligation. The ACMA has the power under section 170 of the BSA to conduct investigations. The rationale for the removal of annual reporting to the ACMA is to reduce the compliance cost burden for regional radio licensees. That ACMA notes the high compliance rates of regional commercial radio licensees with the local content obligation and is of the opinion that the policy objective for regional commercial radio services to provide a minimum amount of content that is relevant to the communities they serve will still be met notwithstanding that licensees are no longer required to prepare annual reports.
- It reduces the audio content record-keeping requirements for all relevant licensees which were imposed under paragraph 10(2)(a) of the 2012 Licence Condition. Under the Instrument, audio content will now only be required to be kept for 30 days rather than 6 weeks as required by the 2012 Licence Condition. This change seeks to ensure consistency with complaint handling requirements under the current commercial radio codes of practice and with record-keeping obligations for regional commercial television licensees.
- It removes the requirement for licensees to provide local content statements to the ACMA in writing which was imposed under section 11 of the 2012 Licence Condition. Instead, under the Instrument, licensees will be required to have a current program schedule indicating 'material of local significance' which will either be kept on a licensee's website or made available on request. The rationale for the removal of local content statement reporting to the ACMA is to reduce the compliance cost burden for regional radio licensees while retaining the provision of local content information for the public on when local content is broadcast by the licensee.

Regulatory Impact Statement

Based on a preliminary assessment, the Office of Best Practice Regulation (the OBPR) determined that the proposed regulatory changes reflected in the Instrument were minor or machinery in nature and that no further regulatory impact analysis was required – OBPR reference number 16669.

Documents incorporated by reference

None.

Statement of Compatibility

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The statement is at Attachment A.

NOTES ON THE INSTRUMENT

Section 1 – Name of instrument

Section 1 provides that the name of the Instrument is the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014*.

Section 2 – Commencement

Section 2 provides that the Instrument commences on 1 October 2014.

Section 3 – Revocation

Section 3 provides that the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* is revoked.

Section 4 – Purpose and application

Section 4 sets out the purpose and application of the Instrument. Its purpose is to impose additional conditions on certain regional commercial radio broadcasting licences. Its application is to regional commercial radio licences that are not remote area service radio licences, regional racing service radio licences, or licences allocated under subsection 40(1) of the BSA.

Section 5 – Definitions

Section 5 defines terms used in the Instrument. The definitions are unchanged from the 2012 Licence Condition.

A note to the section explains that some terms used in the Instrument are defined and have the same meaning as in the BSA.

Section 6 – Meaning of *material of local significance*

Section 6 sets out the meaning of 'material of local significance' in the Instrument.

The three ways in which a licensee may meet the obligation to broadcast material of local significance is by broadcasting, during daytime hours on business days, material which is 'produced in the licence area', 'hosted in the licence area' or 'relat[ed] to the licence area'.

Section 7 – Definitions relating to material of local significance

Section 7 defines 'produced in the licence area', 'hosted in the licence area' and 'relates to the licence area'.

Section 8 – Licensee must broadcast material of local significance

Section 8 sets out the substantive licence condition requirement for regional radio licensees to broadcast the applicable number of hours of material of local significance during daytime hours on a relevant business day. The section also provides that advertising and sponsorship material that is counted as material of local significance must comprise not more than 25% of the applicable number of hours broadcast on a relevant business day.

The applicable number of hours for licensees is set out in section 4 of the *Broadcasting (Hours of Local Content) Declaration No 1 of 2007*.

Section 9 – Records

Section 9 sets out the requirement that a licensee must make an audio record of the applicable number of hours of material of local significance that it has broadcast in the licence area during daytime hours. A licensee must retain audio records for 30 days from the date on which the material was broadcast. If a complaint has been made in relation to the material, the recording must be kept for 60 days. The ACMA can also specify in writing that the material be kept for a longer period. The ACMA may ask the licensee for access to an audio record kept under this section.

The requirement does not apply during the default or prescribed 'holiday period' determined in accordance with subsection 43C(1A) of the BSA.

Section 9 includes a transitional provision which provides that a licensee who was required under the 2012 Licence Condition to make a record must continue to comply with that requirement as though the 2012 Licence Condition was still in force.

Section 10 – Material of local significance – local content statements

Section 10 requires a licensee to compile a 'local content statement' indicating the material of local significance that is to be broadcast in its licence area during daytime hours. The local content statement must set out a regular program schedule for each day of the week, signalling which programs contain material of local significance and if the content is 'produced in the licence area', 'hosted in the licence area' or 'relat[ed] to the licence area'.

A licensee must ensure that its local content statement is available to the public by either publishing the statement on its website or by supplying it to a person on request. The ACMA may also request a copy of the local content statement. A licensee must keep a copy of a local content statement for either 18 months or for another period specified by the ACMA in writing, whichever is greater.

Section 10 includes a transitional provision and provides that a licensee who was required under the 2012 Licence Condition to make, keep and publish a local content statement must continue to comply with that requirement as though the 2012 Licence Condition was still in force.

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 – Material of Local Significance) Licence Condition 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Licensees of regional commercial radio broadcasting licences must broadcast a prescribed number of hours of material of local significance. The ACMA has set out the ways in which a licensee can meet that obligation in a legislative instrument (under sections 43 and 43C of the *Broadcasting Services Act 1992* (the BSA)).

The *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014* (the Instrument) replaces the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* (the 2012 Licence Condition).

The Instrument adapts the record-keeping obligations of the 2012 Licence Condition by reducing the period that relevant regional commercial radio licensees must keep audio records of broadcasts, from six weeks under the 2012 Licence Condition, to 30 days under the Instrument.

The Instrument requires licensees to place a local content statement on the licensee's website, outlining the material of local significance that is to be broadcast or, where requested, make that statement available to a person on request. However, the previous requirements of local content statements in the 2012 Licence Condition have been simplified in the Instrument. Annual reporting to the ACMA on the licensee's compliance with the Instrument is no longer required (as previously required under section 9 of the 2012 Licence Condition).

Human Rights Implications

Australia is a party to a number of international human rights treaties.

In developing this Legislative Instrument, the human rights implications have been considered in the context of the International Covenant on Civil and Political Rights (ICCPR).

This Legislative Instrument does not limit any of the applicable rights or freedoms. The Legislative Instrument engages and promotes human rights recognised in the ICCPR including the right to freedom of expression, such as the freedom to receive information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other chosen media (Article 19(2) of the ICCPR).

By requiring the licensees of regional commercial radio broadcasting licences to broadcast a minimum level of material of local significance, this Instrument promotes the dissemination of information and ideas of local significance through radio programs to people living in regional areas of Australia.

Conclusion

This Instrument is compatible with human rights as it facilitates the dissemination of information of local significance through radio programs to people living in regional areas of Australia.