

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

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

Since 2008, section 43B 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 that, if a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the event, the licensee must maintain at least the existing level of local presence (the local presence 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 this 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 arises from the opportunity to reduce duplicate record-keeping requirements already existing under other Commonwealth obligations and is supported by the high rate of compliance by licensees with the local presence obligation imposed by the 2012 Licence Condition and the preceding *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

The ACMA determined the Instrument under subsection 43(1) of the BSA and in accordance with subsection 43B(1A) of the BSA.

Legislative basis

The ACMA determined the Instrument under subsection 43(1) of the BSA in accordance with subsection 43B(1A) 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 presence obligation set out in the BSA.

The Instrument applies only to those regional commercial radio broadcasting licences that have not been excluded by the BSA, and for those licences, the obligation is to maintain at least the existing level of local presence for 24 months from the date of occurrence of a trigger event.

The impact of the Instrument has the deregulatory effect of removing the record-keeping requirements for trigger event affected licensees that were imposed under section 9 of the 2012 Licence Condition. Affected licensees are already required to retain records under other Commonwealth legislation (i.e. the *Corporations Act 2001* and *Fair Work Act 2009*) relating to staffing levels and business premises locations. The rationale of this change is to reduce unnecessary duplication of record-keeping requirements.

Regulatory Impact Statement

Based on a preliminary assessment, the Office of Best Practice Regulation (the OBPR) determined that the proposed regulatory change reflected in the Instrument was 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 – Local Presence) 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 – Local Presence) 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 a relevant regional commercial radio broadcasting licence. 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 those in the BSA.

Section 6 – Definition of *existing level of local presence*

Section 6 sets out the meaning of 'existing level of local presence' in the Instrument.

Levels of local presence can be established by reference to staffing levels and by the use of studios and other productions facilities. The existing levels of local presence for each are determined using the calculation methods provided in subsections 6(2) and 6(3) of the Instrument.

Section 7 – Licensee must maintain existing level of local presence after trigger event

Section 7 creates the obligation that, if a trigger event for a relevant regional commercial radio broadcasting licence occurs, the licensee must maintain at least the existing level of local presence in the licence area throughout the 24 month period beginning on the date the trigger event occurs for the licence.

Section 8 – Reporting to the ACMA

Section 8 sets out reporting requirements for an affected licensee. After a trigger event for a licence occurs, the licensee must report to the ACMA on the existing level of local presence and must do so within 90 days of the trigger event occurring (subsection 8(1) of the Instrument).

The provision also requires a licensee to report to the ACMA within 3 months of the end of the 'relevant period' during which a licensee must comply with the obligation to maintain at least the existing level of local presence (subsection 8(2) of the Instrument).

A 'relevant period' is defined in section 5 of the Instrument and means the period beginning on the date a trigger event for the licence occurs and ending 24 months later.

The reporting obligations in the Instrument are the same as those in the 2012 Licence Condition.

Section 9 – Measuring compliance with section 7

Section 9 sets out how the ACMA will measure a licensee's compliance with the obligation at section 7 of the Instrument to maintain at least the existing level of local presence after a trigger event.

In respect of staffing levels, the existing level of local presence is maintained if, at the conclusion of the 'relevant period', there has been no material reduction in the average monthly staffing level compared with the staffing levels determined by subsection 6(2) (subsection 9(1) of the Instrument).

In respect of studios and other production facilities, the existing level of local presence is maintained if, at the conclusion of the 'relevant period', there has been no material reduction in the number of average monthly broadcast hours produced using studios and other production facilities in the licence area compared with the number of average monthly hours produced using studio and other production facilities determined by subsection 6(3) (subsection 9(2) of the Instrument).

ATTACHMENT A

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 – Local Presence) 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

Under the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014* (the Instrument), licensees of relevant regional commercial radio broadcasting licences must maintain at least the existing level of local presence in the licence area after a trigger event occurs for the licence.

'Trigger event' is defined in section 61CB of the *Broadcasting Services Act 1992* (the BSA). The ACMA has defined 'existing level of local presence' and how it will be measured in the Instrument.

The Instrument replaces the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2012* (the 2012 Licence Condition).

The Instrument removes the requirements for a relevant regional commercial licensee to retain records on staffing levels and studio and production facilities required under section 9 of the 2012 Licence Condition.

Human Rights Implications

The Instrument engages the following human rights:

Right to work

Under the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR), economic, social and cultural rights (such as the right to work) may be subject to limitations but only to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society' (see Article 4).

The Instrument engages the right to work, because it requires relevant regional commercial radio licensees affected by a trigger event to maintain the existing level of local presence in the licence area for 24 months; this includes maintaining the same staffing levels as calculated by reference to the three month period preceding the trigger event.

While the Instrument may protect the right to work of an affected licensee's local staff for 24 months after the trigger event, it may also have the effect of limiting, to some extent, the licensee's ability to utilise staff located outside the licence area. This limitation is proportionate and reasonable as the local presence obligations are intended to ensure that commercial radio services in regional areas continue to maintain the same level of local presence in the licence area after the licence is subject to a trigger event (as defined in section 61CB of the BSA).

The Instrument is therefore consistent with Article 4 of the ICESCR, in that the obligation imposed by the Instrument, insofar as it may limit a licensee's ability to utilise staff located outside the licence area, reflects Parliament's intention, subsists in limited circumstances for a relatively short period of time (24 months), and is reasonably adapted to promote the interests of citizens in regional areas.

Conclusion

The Instrument is compatible with human rights and to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.