**EXPLANATORY STATEMENT**

**Issued by the Australian Communications and Media Authority**

*Broadcasting Services Act 1992*

*Broadcasting Services (Additional Television Licence Condition) Notice 2014*

**Purpose**

The purpose of the *Broadcasting Services (Additional Television Licence Condition) Notice 2014* (the Licence Condition) is to replace the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007* (the 2007 Licence Condition).

The Licence Condition, like the 2007 Licence Condition, defines material of local significance and mandates its broadcast, while also defining local areas and stipulating certain record keeping requirements.

The 2007 Licence Condition implemented a points-based system where points were allocated for broadcast material in accordance with its significance to the local area in which it was broadcast, with news that relates directly to a local area attracting double points. Since the introduction of the 2007 Licence Condition, there have been no reported breaches of the licence condition, nor valid complaints about possible breaches. Most licensees have reported meeting (and in some cases significantly exceeding) the requirements set out in the 2007 Licence Condition.

Having regard to the high level of compliance with the 2007 Licence Condition, the similar level of compliance with the *Broadcasting Services (Additional Television Licence Condition) Notice 7 April 2003* (which was replaced by the 2007 Licence Condition) and the high level of visibility of compliance associated with the requirement that television local content relate directly to the licence (or local) area, the ACMA did not consider that continued reporting to the ACMA was necessary.

Following consultation with affected broadcasters, the ACMA also considered the need to keep detailed written compliance records, the type of compliance records that need to be kept (such as audio or written), and the retention period for these records. Again, having regard to the high level of compliance with the requirements of the 2007 Licence Condition, and acknowledging the administrative burden that results from the need to keep detailed points-based compliance records, the ACMA considered that the retention of audio-visual records would be sufficient to demonstrate compliance with the licence condition. The ACMA still retains the power to make directions with respect to those and other records if required.

In replacing the 2007 Licence Condition, the Licence Condition takes into account the circumstances described above and in doing so allows broadcasters flexibility in record-keeping while also removing the need to report routinely to the ACMA.

**Legislative Basis**

The ACMA imposes the Licence Condition under subsection 43(1) of the *Broadcasting Services Act 1992* (the Act).

Section 43A of the BSA requires the ACMA to have in place at all times a licence condition that has the effect of requiring the licensee of a regional aggregated commercial television broadcasting licence to broadcast a minimum level of material of local significance during specified periods. A regional aggregated commercial television broadcasting licence is defined in the BSA as a commercial television broadcasting licence for the licence areas of Northern New South Wales, Southern New South Wales, Regional Victoria, Eastern Victoria, Western Victoria, Regional Queensland and Tasmania. The licence condition must also define the terms ‘local area’ and ‘material of local significance’, where the definition of ‘material of local significance’ must be broad enough to cover news that relates directly to the local area concerned.

**Consultation**

Before deciding to revoke the 2007 Licence Condition and replace it with the Licence Condition, the ACMA took the following steps by way of consultation:

* On 26 March 2014, the ACMA wrote to Free TV Australia and affected licensees, seeking comment on the proposed changes to record-keeping and reporting requirements.

The ACMA received formal submissions from Free TV Australia and two licensees as a result of the March 2014 consultation. The submissions received indicated support for the proposed changes and also suggested a further reduction in record-keeping requirements. This suggestion was considered by the ACMA and included in the proposed condition for consultation.

* On 16 June 2014, the ACMA sent the proposed Licence Condition to Free TV Australia and affected licensees and sought comment on the proposed Licence Condition, while also undertaking a broader public consultation via the ACMA’s Issues for Comment webpage.
* On 19 June 2014, the proposed Licence Condition was published in the Gazette.

The ACMA received one formal submission from Free TV Australia on 15 July 2014. Free TV Australia was generally in support of the proposed Licence Condition, while requesting additional consideration be given to discretionary powers of the ACMA and the potential for exemptions to local content requirements to allow broadcasters to cover significant events such as major sporting events or events of national significance.

In determining the 2014 Licence Condition, the ACMA has had regard to all matters raised during consultation.

**Operation**

Subsections 10(2), 10(3) and 10(4) of the 2007 Licence Condition set out the previous record-keeping requirements. These requirements have been amended in the Licence Condition with the effect that now under:

* Subsections 10(1) and (2): Audio-visual records are only required to be kept for 30 days after the end of the timing period to which the record relates (or as directed), rather than 6 weeks as required by the 2007 Licence Condition; and
* Subsection 10(2)(b): The records must be sufficient as to verify the times of broadcast, and the content, of the material the licensee claims as broadcast material for the purposes of accumulating points. Previously, the 2007 Licence Condition mandated that these records must be made in writing.

Subsection 10(5) of the 2007 Licence Condition required an affected licensee to inform the ACMA of the points accumulated for each of its local areas, and set out the due date for this information in an attached table. This requirement does not appear in the Licence Condition.

Subsection 10(8) of the 2007 Licence Condition allowed the ACMA to publish information given by the licensee under subsection 10(5) of the 2007 Licence Condition. As this information is no longer required to be given to the ACMA, no equivalent provision appears in the Licence Condition.

**Regulatory Impact Analysis**

The ACMA undertook a preliminary assessment to determine whether or not a regulatory impact statement was necessary. On the basis of this preliminary assessment, the Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change in this instance is minor or machinery in nature, and so no further regulatory impact analysis is required.

**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* Act applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument. The statement is at Attachment A.

**Documents incorporated by reference**

None.

**NOTES ON THE LICENCE CONDITION**

**Section 1 Name of Notice**

Section 1 provides that the name of the instrument is the *Broadcasting Services (Additional Television Licence Condition) Notice 2014*.

**Section 2 Commencement**

Section 2 provides that the Licence Condition commences on 1 October 2014.

**Section 3 Revocation**

Section 3 provides that the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007* is revoked.

**Section 4 Transitional**

Section 4 provides that an obligation to make or keep records under the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007* is taken to be an obligation in relation those records under section 10 of this Licence Condition.

**Section 5 Interpretation**

Section 5 sets out the meaning of various terms used in the Licence Condition.

**Section 6 Purpose of Notice**

Section 6 specifies the service licence numbers to which the Licence Condition applies.

**Section 7 Local areas**

Section 7 specifies the areas of the commercial television broadcasting licences to which the Licence Condition relates.

**Section 8 Material of local significance**

Section 8 defines material of local significance.

**Section 9 Licensee must broadcast material of local significance**

Section 9 sets out the obligation on specified licensees to broadcast material of local significance in accordance with Schedule 2.

**Section 10 Records and reporting to the ACMA**

Section 10 sets out record-keeping and reporting requirements.

**Schedule 1 Areas of commercial television broadcasting licences**

Schedule 1 sets out the areas of the commercial television broadcasting licences to which the Licence Condition relates.

**Schedule 2 The points system**

Schedule 2 sets out the points that can be accumulated for each item of material of local significance broadcast and the minimum total of points that must be accumulated to comply with section 9.

**Schedule 3 Explanatory comments**

Schedule 3 provides explanatory comments for sections 7 and 8 and Schedules 1 and 2.

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Broadcasting Services (Additional Television Licence Condition) Notice 2014***

This Legislative Instrument 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 Legislative Instrument**

This Legislative Instrument replaces the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007* (the 2007 Licence Condition).

Section 43A of the *Broadcasting Services Act 1992* (the BSA) requires the ACMA to have in place at all times a licence condition that has the effect of requiring the licensee of a regional aggregated commercial television broadcasting licence to broadcast a minimum level of material of local significance during specified periods.

This Legislative Instrument, like the 2007 Licence Condition, is a licence condition determined under section 43 of the BSA, as required by section 43A of the BSA. This Legislative Instrument defines material of local significance and mandates its broadcast, while also defining local areas and stipulating certain record keeping requirements.

**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, including 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 aggregated commercial television broadcasting licences to broadcast a minimum level of material of local significance, this Legislative Instrument promotes the freedom to receive information and ideas of local significance, disseminated through television programs to people living in regional areas of Australia.

**Conclusion**

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

**Australian Communications and Media Authority**