

Legislative Instruments Act 2003
Section 26 – Explanatory Statement

Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2015 (No. 1) made under the Broadcasting Services Act 1992

Issued by the Australian Communications and Media Authority

Purpose and legislative basis

On 30 November 2015 the ACMA made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2015 (No. 1)* (the **Instrument**). The Instrument has been made by the Australian Communications and Media Authority in accordance with subsections 43C(1A) and 61CD(2) of the *Broadcasting Services Act 1992* (the **BSA**), and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsections 43C(1A) and 61CD(2) of the BSA provide that the ACMA may, by legislative instrument, specify a five-week period during which the obligations on regional commercial radio broadcasting licensees to provide required amounts of ‘material of local significance’ and to comply with the minimum service standards for local news and information (together, **local content**) do not apply.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

In 2012 the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* amended the BSA to provide five-week exemption periods for regional commercial radio broadcasting licensees. During the five-week periods a licensee is exempted from obligations to broadcast specified amounts of local content. The default exemption period commences on the second Monday in December (material of local significance) and the second Sunday in December (minimum service standards) each year. The ACMA may, by legislative instrument, specify a different five-week period in relation to one or more specified regional commercial radio broadcasting licensees. In 2012, upon request of the relevant licensee, the ACMA made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* to specify a different five-week period in relation to two licences in the Bathurst RA1 licence area.

In September 2015, the ACMA received a request from Radio Gippsland Pty Ltd for alternative exemption periods for its regional commercial broadcasting licence in the Warragul RA1 licence area. Radio Gippsland Pty Ltd requested that the exemption periods relevant to it should start in the third week of December.

Intended impact of the Instrument

The Instrument varies the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* to specify five-week exemption periods for the licensee of a regional commercial radio broadcasting licence (licence number SL 4158) in the Warragul RA1 licence area. During the exemption periods specified in the Instrument, the licensee is exempted from the obligation to broadcast specified amounts of ‘material of local significance’ and to comply with the minimum service standards for local news and information. The five-week periods for which the licensee is exempted from each of those obligations commence and finish on dates that are one week later than those specified for the default exemption periods in the BSA.

Consultation

On 2 November 2015, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment. No comments were received.

Regulatory Impact

The ACMA prepared a preliminary assessment on 16 September 2015 for the purposes of making the Instrument. On 25 September 2015, the Office of Best Practice Regulation (OBPR) considered that the changes have a minor regulatory impact and that no formal regulatory impact statement is required. Therefore no formal RIS assessed by the OBPR is required. The OBPR reference number for this matter is 19278.

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a human rights compatibility statement has been prepared by the ACMA and is attached.

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 – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2015 (No 1)*.

Section 2 – Commencement

This section provides that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Definitions

Section 3 provides that Schedule 1 amends the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*.

Schedule 1

Item 1

Item 1 adds a third row to the table in Schedule 1 to the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*. The third row is inserted to specify, for the purposes of subsection 43C(1A) of the BSA, a third service licence number, the related radio licence area and the period of exemption from the requirement to broadcast material of local significance.

Item 2

Item 2 adds a third row to the table in Schedule 2 to the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*. The third row is inserted to specify, for the purposes of subsection 61CD(2) of the BSA, a third service licence number, the related radio licence area and the period of exemption from the requirement to meet the minimum service standards for local news and information.

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 — Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2015 (No. 1)

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

Amendments to the *Broadcasting Services Act 1992* (the **BSA**) which commenced on 16 April 2012 relaxed some of the local content obligations which apply to regional commercial radio broadcasters. The amendments have the effect that, for a five-week period each year, a regional commercial radio broadcasting licensee is not required to comply with the obligation to provide specified amounts of material of local significance and the obligation to meet minimum service standards for local news and information.

The BSA specifies default five-week periods for both obligations, but the ACMA may, by legislative instrument, specify different periods for one or more specified licensees. The default period exempting licensees from the obligation to provide specified amounts of material of local significance starts on the second Monday in December each year. The default period exempting licensees from the obligation to meet minimum service standards for local news and information starts on the second Sunday in December each year.

This Legislative Instrument specifies five-week exemption periods for the regional commercial radio broadcasting licensee and licence identified in the Legislative Instrument that commence on the third Monday in December each year and the third Sunday in December each year.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.