

Legislation Act 2003
Section 26 – Explanatory Statement

Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2016 (No. 1) made under the Broadcasting Services Act 1992

Issued by the Australian Communications and Media Authority

Purpose and legislative basis

On 29 November 2016 the Australian Communications and Media Authority (the ACMA) made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2016 (No. 1)* (the Instrument). The Instrument has been made by the ACMA 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 (in relation to material of local significance) and the second Sunday in December (in relation to minimum service standards) each year.

The ACMA may, by legislative instrument, determine a different five-week period in relation to one or more specified regional commercial radio broadcasting licensees. In 2012 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. The ACMA varied the Instrument in 2015 to include alternative exemption periods for a licence held by Radio Gippsland Pty Ltd.

In August 2016, the ACMA received an application from Ace Radio Broadcasters Pty Limited, requesting that the ACMA determine alternative exemption periods for 13 regional commercial radio licences held by Ace Radio Broadcasters Pty Limited or its subsidiary, Regional Communications Pty Ltd. It was requested that the exemption periods relevant to those licences start in the third week of December.

Intended operation 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 13 additional licences, as set out in the table below.

During the exemption periods specified in the Instrument, the licensee for each licence 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.

Service Licence No.	Licensee	Licence Area
10387	Ace Radio Broadcasters Pty Limited	Albury RA1
4149	Ace Radio Broadcasters Pty Limited	Colac RA1
10309	Ace Radio Broadcasters Pty Limited	Colac RA1
4152	Ace Radio Broadcasters Pty Limited	Hamilton RA1
1150773	Ace Radio Broadcasters Pty Limited	Hamilton RA1
4159	Ace Radio Broadcasters Pty Limited	Horsham RA1
10308	Ace Radio Broadcasters Pty Limited	Horsham RA1
4157	Ace Radio Broadcasters Pty Limited	Sale RA1
1150756	Ace Radio Broadcasters Pty Limited	Sale RA1
10294	Ace Radio Broadcasters Pty Limited	Swan Hill RA1
10380	Ace Radio Broadcasters Pty Limited	Swan Hill RA1
4160	Regional Communications Pty Ltd	Warrnambool RA1
1150778	Regional Communications Pty Ltd	Warrnambool RA1

Consultation

On 17 October 2016, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment. One comment, from Commercial Radio Australia, was received in support of the variation.

Regulatory Impact

The ACMA prepared a preliminary assessment on 6 September 2016 for the purposes of making the Instrument. On 8 September 2016, 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 21223.

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

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 2016 (No 1)*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Instrument is made under subsections 43C(1A) and 61CD(2) of the BSA.

Section 4 – Amendments

Section 4 provides that Schedule 1 to the Instrument 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 repeals the note immediately before Schedule 1 to the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*,

which contained outdated references, and substitutes text with updated references to the Federal Register of Legislation and the website www.legislation.gov.au.

Item 2

Item 2 adds rows 4 to 17 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*. Each new row is inserted to specify, for the purposes of subsection 43C(1A) of the BSA, a service licence number, its radio licence area and the period of exemption from the requirement to broadcast material of local significance.

Item 3

Item 3 adds rows 4 to 17 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*. Each new row is inserted to specify, for the purposes of subsection 61CD(2) of the BSA, a service licence number, its 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 2016 (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) that commenced in 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 different five-week exemption periods for the 13 regional commercial radio broadcasting licences identified in the Legislative Instrument, commencing 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.