

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

### ***Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2017 (No. 1)***

#### **Purpose and legislative basis**

The Australian Communications and Media Authority (the ACMA) has made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2017 (No. 1)* (the Instrument). The Instrument has been made by the ACMA under with subsections 43C(1A) and 61CD(2) of the *Broadcasting Services Act 1992* (the BSA), and under 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 for five-week exemption periods from the local content obligations 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 an alternative 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 alternative five-week periods 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 varied the instrument to again include alternative exemption periods for 13 regional commercial radio licences held by subsidiaries of ACE Radio Network.

In July 2017, the ACMA received an application from Southern Cross Austereo, requesting that the ACMA determine alternative exemption periods for 66 regional commercial radio licences held by subsidiaries of Southern Cross Austereo (SCA). SCA requested that the exemption periods be changed so that the five-week exemption period starts on the third Monday in December each year (in relation to material of local significance); and the third Sunday in December each year (in relation to minimum service standards).

#### **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 66 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 will now commence and finish on dates that are one week later than those specified for the default exemption periods in the BSA.

	<b>Licence #</b>	<b>Licence Area</b>
1	1150016	Atherton RA1
2	1150057	Bundaberg RA1
3	5742	Cairns RA1
4	1150044	Cairns RA1
5	10333	Emerald RA1
6	1150096	Kingaroy RA1
7	1964	Mackay RA1
8	1150089	Mackay RA1
9	1150054	Maryborough (Qld) RA1
10	1150052	Maryborough (Qld) RA1
11	10226	Mt Isa RA1
12	1150045	Rockhampton RA1
13	1150183	Rockhampton RA1
14	10229	Roma RA1
15	4174	Toowoomba/Warwick RA1
16	1150094	Toowoomba/Warwick RA1
17	4168	Townsville RA1
18	4185	Townsville RA1
19	10410	Coffs Harbour RA1
20	1150055	Coffs Harbour RA1
21	4113	Gosford RA1
22	5145	Gosford RA1
23	2161	Kempsey RA1
24	1150051	Kempsey RA1
25	10277	Orange RA1
26	10286	Orange RA1
27	4136	Wagga Wagga RA1
28	6446	Wagga Wagga RA1
29	3864	Hobart RA1
30	4217	Hobart RA1
31	10258	Bendigo RA1
32	10367	Bendigo RA1
33	10094	Mildura RA1
34	10096	Mildura RA1
35	10389	Shepparton RA1
36	10390	Shepparton RA1
37	10041	Albany RA1
38	10401	Albany RA1

	Licence #	Licence Area
39	10072	Bridgetown RA1
40	10073	Bridgetown RA1
41	10320	Esperance RA1
42	10335	Esperance RA1
43	10006	Kalgoorlie RA1
44	10336	Kalgoorlie RA1
45	10076	Katanning RA1
46	10400	Katanning RA1
47	10003	Merriden RA1
48	10008	Merriden RA1
49	10079	Narrogin RA1
50	10399	Narrogin RA1
51	10045	Northam RA1
52	10385	Northam RA1
53	3182	Gold Coast RA1
54	4173	Gold Coast RA1
55	10289	Albury RA1
56	1150011	Albury RA1
57	10053	Dubbo RA1
58	4117	Newcastle RA1
59	4126	Newcastle RA1
60	1150752	Warragul RA1
61	4132	Griffith RA1
62	10310	Griffith RA1
63	4197	Mt Gambier RA1
64	10312	Mt Gambier RA1
65	10043	Bunbury RA1
66	10404	Bunbury RA1

The format of the Instrument also has the effect of reconfiguring the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012*. This new format has been adopted to streamline the Instrument, but the new format does not in itself make any substantive change.

**Documents incorporated by reference**

The Instrument does not incorporate any documents by reference.

**Consultation**

On 13 October 2017, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment by 30 October 2017. No submissions were received on the draft Instrument.

**Regulatory Impact**

The ACMA prepared a preliminary assessment on 7 September 2017 for the purposes of making the Instrument. On 12 September 2017, the Office of Best Practice Regulation (OBPR) advised that the changes have a minor regulatory impact only and that no formal regulatory impact statement is required. The OBPR reference number for this matter is 22796.

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 2017 (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 has the effect 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 omits sections 4 and 5 of the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* and substitutes new sections 4 and 5. New section 4 provides the period under subsection 43C(1A) of the BSA for the holder of a regional commercial radio broadcasting licence specified in Column 2 of the table in Schedule 1 or Schedule 2 to the Instrument. New section 5 provides the period under subsection 61CD(2) for the holder of a regional commercial radio broadcasting licence specified in the table in Column 2 of Schedule 1 or Schedule 2 to the Instrument.

#### **Item 2**

Item 2 omits the words “of this Instrument” from section 6 to simplify the section.

#### **Item 3**

Item 3 substitutes a new note following section 6, which is a consequential change arising from the new structure of the Instrument.

#### **Item 4**

Item 4 omits Schedule 1 to the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* and substitutes a new Schedule 1 with the heading: ‘Licences specified for the purposes of subsections 4(1) and 5(1) of this Instrument’. The table in Schedule 1 specifies licences that have the alternative exemption periods set out in subsections 4(1) and 5(1) of the Instrument,

#### **Item 5**

Item 5 omits Schedule 2 to the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* and substitutes a new Schedule 2 with the heading – ‘Licences specified for the purposes of subsections 4(2) and 5(2) of this Instrument’. The table in Schedule 2 specifies licences that have the alternative exemption periods set out in subsections 4(2) and 5(2) of the Instrument.

## 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 2017 (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 alternative 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.

In 2012 the ACMA made the *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012* (the 2012 Instrument), for the purpose of specifying alternative exemption periods for certain licences.

This Legislative Instrument varies the 2012 Instrument by specifying alternative five-week exemption periods for an additional 66 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. Arrangements for the 16 licences already specified in the 2012 Instrument remain unchanged.

#### **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.