

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Meaning of Local) Instrument 2018

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Meaning of Local) Instrument 2018* (the **instrument**), under subsection 61CC(1) of the *Broadcasting Services Act 1992* (the **Act**), and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Under subsection 61CC(1) of the Act, ACMA may define what is meant by the expression ‘local’ for the purposes of the application of a specified provision of Division 5C of Part 5 of the Act to a specified licence area. Subsection 61CC(2) of the Act states that in making an instrument under subsection 61CC(1), the ACMA must have regard to:

- (a) the areas where separate programming is provided; and
- (b) such other matters (if any) as the ACMA considers relevant.

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.

Purpose and operation of the instrument

The instrument will replace the *Broadcasting Services (Meaning of Local) Instrument 2007* (the **2007 instrument**), which is due to sunset on 1 April 2018. Subdivision B of Division 5C of Part 5 of the Act sets out the minimum service standards for local news and information (the **local content rules**) for relevant regional commercial radio broadcasting licensees (the **licensees**), and Subdivision C of Division 5C of Part 5 of the Act imposes obligations on the licensees to submit local content plans to the ACMA for approval. The instrument defines the meaning of ‘local’ for the purpose of the local content rules.

The instrument is designed to provide guidance to the licensees in the licence areas specified in Schedule 1 to the instrument about what is meant by the expression ‘local’. The definition is relevant for licensees who may be affected by a trigger event, and who are consequently required to meet local content rules, and to submit draft local content plans to the ACMA.

As required under subsection 61CC(2) of the Act, in developing the instrument, the ACMA had regard to the areas, if any, where separate programming is provided. In preparing the instrument consideration was also given to information provided by the licensees that are subject, or may in the future be subject, to Division 5C of Part 5 of the Act about the provision in their licence areas of local content in general and as required under Division 5C during the period since the 2007 instrument has been in force.

The ACMA considers that the definition of the meaning of ‘local’ remains relevant for providing guidance and certainty to industry, and that the 2007 instrument has been operating efficiently and effectively.

On this basis the ACMA decided to remake the 2007 instrument with only minor changes and to retain the definition of the meaning of ‘local’. The minor changes to the instrument are to reflect current drafting standards, and to update the list of licences in Schedule 1 to the instrument so as to reflect legislative changes and changes to licence area plans.

A provision-by-provision description of the instrument is set out at Attachment A.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

Documents incorporated by reference

The instrument does not incorporate any documents by reference, apart from the Act, which can be accessed at www.legislation.gov.au.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

On 18 October 2017, the ACMA placed a copy of the draft instrument on the ACMA’s website for public comment by 17 November 2017.

On 18 October 2017, the ACMA also wrote to affected licensees and Commercial Radio Australia with information about the proposed instrument, providing a copy of the draft instrument and inviting comment by 17 November 2017.

The ACMA received no submissions on the draft instrument or the proposed meaning of ‘local’.

Regulatory impact assessment

The ACMA considered whether a regulatory impact analysis process was required by undertaking a preliminary assessment. Based on this preliminary assessment the Office of Best Practice Regulation (**OBPR**) has determined that the proposed regulatory change in this submission is minor or machinery in nature. OBPR has therefore verified that no further regulatory impact analysis is required – OBPR reference number 23072.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the **HRPS Act**) requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

Overview of the instrument

The instrument has been made by the ACMA to define what is meant by the expression ‘local’ and support the framework for regulating local content established by Subdivision B of Division 5C of Part 5 of the Act.

The instrument replaces the 2007 instrument, and continues the existing arrangements with the minor amendments set out above. Importantly, the definition of the meaning of ‘local’ has not been changed. It is expected that the instrument will continue to assist industry, and the public, to understand the meaning of ‘local’ for the purpose of the local content rules.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the HRPS Act as they apply to Australia.

Having considered the likely impact of the instrument, the ACMA has formed the view that the instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

Notes to the *Broadcasting Services (Meaning of Local) Instrument 2018*

Part 1 – Preliminary

Section 1 – Name

This section provides for the instrument to be cited as the *Broadcasting Services (Meaning of Local) Instrument 2018*.

Section 2 - Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 – Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 61CC(1) of the Act.

Section 4 – Repeal of the *Broadcasting (Meaning of Local) Instrument 2007*

Section 4 provides that the *Broadcasting Services (Meaning of Local) Instrument 2007* (Registration No. F2007L04527) is repealed.

Section 5 – Purpose and application of instrument

Section 5 provides that the instrument defines what is meant by the expression *local* for the purposes of Subdivision B of Division 5C of Part 5 of the Act for the licence areas specified in Schedule 1 to the instrument.

The note to section 5 notes that Division 5C of Part 5 of the Act does not apply to certain types of licences including: a licence allocated under subsection 40(1) of the Act, a remote area service radio licence; or a regional racing service radio licence.

Section 6 – Definitions

This section defines what is meant by the expressions ‘Act’ and ‘licensee’.

The note to the section notes that the expression ‘licence area’ is defined in subsection 6(1) of the Act, and that the expressions ‘community service announcement’, ‘designated local content’ program, ‘news bulletin’, ‘regional commercial radio broadcasting licence’, ‘regional licence area’, and ‘weather bulletin’ are defined in section 61CA of the Act.

Part 2 – Definition

Section 7 – Meaning of Local

Section 7 provides that news bulletins, weather bulletins, community service announcements and designated local content programs are *local* if they relate to a licensee’s licence area.

Schedule 1 – Licence areas

Schedule 1 to the instrument specifies the licence areas to which the instrument applies.