

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Regional Commercial Radio – Specification of Period for Subsection 61CD(2)) Variation Instrument 2019 (No. 1)

Issued by the Australian Communications and Media Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Broadcasting Services (Regional Commercial Radio – Specification of Period for Subsection 61CD(2)) Variation Instrument 2019 (No.1)* (**the Instrument**) under subsection 61CD(2) of the *Broadcasting Services Act 1992* (**the BSA**).

Subsection 61CD(2) of the BSA provides that the ACMA may, by legislative instrument, specify a five-week period during which the obligations on regional commercial radio broadcasting licensees to comply with the ‘minimum service standards’ for local news and information do not apply.

Purpose and legislative basis

In 2012, the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* amended the BSA to provide for five-week exemption periods from the obligation for regional commercial radio broadcasting licensees to provide specified amounts of local content. During the five-week period a licensee is exempted from obligations to broadcast specified amounts of local news and information. The default exemption period in relation to the minimum service standards commences on the second Sunday in December 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* (**the 2012 Instrument**) in reliance on that power.

In September 2019, the ACMA received an application from Midwest Radio Network Pty Ltd (Midwest), the licensee of two regional commercial radio broadcasting licences in Lithgow RA1 (the licences), for an alternative exemption period for the licences. Midwest requested that the five week exemption period start on the third Sunday in December each year in relation to the minimum service standards.

Each previous variation to the 2012 Instrument, varied the five-week exemption period for each of the licensees under sections 43C (local content) and 61CD (minimum service standards).

For the two Midwest licences, the Instrument only varies the default exemption period under subsection 61CD(2). For these licences the five-week exemption period under subsection 43C(1A) remains the default exemption period as set out in the BSA.

Intended operation of the Instrument

The Instrument varies the 2012 Instrument to specify five-week exemption periods for two additional licences.

During the exemption periods specified in the Instrument, the licensee of the two licences is exempted from the obligation to comply with the minimum service standards for local news and information. The five week period for which the licensee is exempted commences and finishes on dates that are one week later than that specified for the default exemption period in the BSA.

A provision-by-provision description of the Instrument is set out in the notes 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 document by reference.

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 8 November 2019, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment by 22 November 2019. No submissions were received on the draft Instrument.

Regulatory Impact

The ACMA prepared a preliminary regulatory impact assessment on 14 October 2019, for the purposes of making the Instrument. On 25 October 2019, 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. The OBPR reference number for this matter is 25779.

Statement of compatibility with human rights

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 LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

Notes to the *Broadcasting Services (Regional Commercial Radio – Specification of Period for Subsection 61CD(2)) Variation Instrument 2019 (No. 1)*

Section 1 – Name

Section 1 provides that the name of the Instrument is the *Broadcasting Services (Regional Commercial Radio – Specification of Period for Subsection 61CD(2)) Variation Instrument 2019 (No. 1) (the Instrument)*.

Section 2 – Commencement

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

Section 3 – Authority

This section identifies the provision that authorises the making of the Instrument, namely subsection 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 (the 2012 Instrument)*.

Schedule 1

Item 1

Item 1 inserts a new subsection 5(3) into the 2012 Instrument. This provision specifies a five week exemption period commencing on the third Sunday in December for the holder of a regional commercial radio broadcasting licence listed in column 2 of the table in the new Schedule 3 to the 2012 Instrument.

Item 2

Item 2 inserts a new Schedule 3 into the 2012 Instrument with the heading – ‘Licences specified for the purposes of subsection 5(3) of this Instrument’. The table in Schedule 3 specifies licences that have the five week exemption period set out in subsection 5(3) of the Instrument.

Statement of Compatibility with Human Rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011

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Overview of the Instrument

Amendments to the *Broadcasting Services Act 1992 (the BSA)*, which commenced on 16 April 2012, relaxed some of the local content obligations that 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 meet minimum service standards for local news and information.

The BSA specifies default five-week period for the obligation, 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 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.

The *Broadcasting Services (Regional Commercial Radio — Specification of Period for Subsection 61CD(2)) Variation Instrument 2019 (No. 1) (the Instrument)* varies the 2012 Instrument by specifying an alternative five week exemption period for an additional two regional commercial radio broadcasting licences identified in the Instrument, commencing on the third Sunday in December each year. Arrangements for the 82 licences previously specified in the Instrument remain unchanged.

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 *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Instrument engages the following rights/freedoms:

- the right to freedom of opinion and expression in Article 19 of the International Covenant on Civil and Political Rights (**ICCPR**);
- the right to culture in Article 15 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).

The right to freedom of opinion and expression: Paragraph 2 of Article 19 of the ICCPR relevantly provides that everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

Subsection 61CD(2) of the BSA exempts licensees from meeting the minimum service standards of local news and other information for a period of five weeks. The option to request a change to the dates for the five-week exemption period, provides the licensee with flexibility in meeting minimum standards during the requested exemption period. The ACMA considers that the exemption period specified in the Instrument promotes the right to freedom of expression by allowing radio

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broadcasting licensees additional flexibility in meeting their obligations to impart news and information.

The right to culture: Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life. The legislative provision under which the Instrument is made is designed to give licensees greater flexibility in selecting content and allows for “a balance between reducing the compliance burden and maintaining the principle of equity to ensure that regional and rural Australians receive local content which reflects local identity and culture” (Explanatory Memorandum for the *Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011*, p 13).

The BSA provides a default five-week period in which the minimum standards do not have to be met for all regional commercial radio broadcasting licenses. The impact of the Instrument is to move this five week period to start one week later than the default period in subsection 61CD(2). There are no other changes. As required under the BSA, the local area will continue to receive the required minimum standards for the remaining 47 weeks of the year.

Accordingly, the exemption period specified in the Instrument has no net limiting effect on the licensee’s provision of local content in the Lithgow RA1 licence area.

Conclusion

The Instrument is compatible with human rights because it promotes the human right to freedom of expression and it does not limit the human right to culture.