

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 2020 (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 Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2020 (No. 1)* (**the Instrument**) under subsections 43C(1A) and 61CD(2) of the *Broadcasting Services Act 1992* (**the BSA**).

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.

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 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. In accordance with paragraphs 43C(1A)(c) and 61CD(2)(c) of the BSA, the default exemption periods commence 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 default exemption periods**). 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.

Schedule 1 of the *Broadcasting Services Amendment (Regional Commercial Radio and Other Measures) Act 2020* (Amending Act) amends the current exemption provisions in the BSA to allow licensees to determine and publicise their own five-week exemption periods (e.g. on their websites) without requiring the ACMA to make an instrument (although it retains the power to do so). The Amending Act includes a transitional provision which deals with how any exemption-related instrument made by the ACMA under subsections 43C(1A) and 61CD(2) of the BSA applies after the commencement of the Amending Act. The effect of this transitional provision is to maintain the exemption periods already specified in the 2012 Instrument as in force immediately before commencement of the Amending Act.

Schedule 1 of the Amending Act commences on the 28th day after that Act receives the Royal Assent. The Amending Act received the Royal Assent on 20 November 2020.

This Instrument is required because the amendments to the BSA made by Schedule 1 of the Amending Act commence after the start date for the exemption periods in the Instrument.

The 2012 Instrument has been varied in 2015, 2016, 2017 and 2019 to include alternative exemption periods for various regional commercial broadcasting licences.

In March and August 2020, the ACMA received applications for alternative five-week exemption periods from Southern Cross Austereo (SCA) on behalf of the licensees of 56 commercial radio broadcasting licences. For eight of its licences, SCA requested alternative periods commencing on the

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third Monday in December for the obligation to provide material of local significance, and from the third Sunday in December for the obligation to comply with the minimum service standards. For the other 48 of its licences in New South Wales, Queensland, Victoria, South Australia and Tasmania, SCA requested to return to the default exemption periods for both obligations.

In May 2020 the ACMA received applications from Grant Broadcasters Pty Ltd (Grant Broadcasters) on behalf of the licensees of six regional commercial radio broadcasting licences. Grant Broadcasters requested that the five-week exemption periods for the licences commence on the third Monday in December for the obligation to provide material of local significance, and on the third Sunday in December for the obligation to comply with the minimum service standards.

Intended operation of the Instrument

The Instrument varies the 2012 Instrument to specify five-week exemption periods for 14 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 obligations to broadcast specified amounts of material of local significance and to comply with the minimum service standards for local news and information.

For the 14 additional licences, 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.

	Licence #	Licence Area
1.	SL10370	Geraldton RA1
2.	SL10371	Geraldton RA1
3.	SL10009	Karratha RA1
4.	SL10337	Karratha RA1
5	SL10014	Port Hedland RA1
6.	SL10342	Port Hedland RA1
7.	SL10012	Carnarvon RA1
8.	SL10338	Carnarvon RA1
9.	SL10352	Port Lincoln RA1
10.	SL1639	Port Lincoln RA1
11.	SL10175	Riverland RA1
12.	SL10178	Riverland RA1
13.	SL4193	Spencer Gulf North RA1
14.	SL4195	Spencer Gulf North RA1

The Instrument also returns the 48 licences, identified in the table below, to the default exemption periods under subsections 43C(1A) and 61CD(2) of the BSA, by omitting the licences from the table at Schedule 2 to the 2012 Instrument.

	Licence #	Licence Area
1.	SL10289	Albury RA1
2.	SL1150011	Albury RA1
3.	SL1150016	Atherton RA1
4.	SL10258	Bendigo RA1
5	SL10367	Bendigo RA1
6.	SL1150057	Bundaberg RA1
7.	SL5742	Cairns RA1
8.	SL1150044	Cairns RA1
9.	SL10410	Coffs Harbour RA1
10.	SL1150055	Coffs Harbour RA1
11.	SL10053	Dubbo RA1
12.	SL10333	Emerald RA1
13.	SL3182	Gold Coast RA1
14.	SL4173	Gold Coast RA1
15.	SL4113	Gosford RA1
16.	SL5145	Gosford RA1
17.	SL4132	Griffith RA1
18.	SL10310	Griffith RA1
19.	SL 3864	Hobart RA1
20.	SL4217	Hobart RA1
21.	SL2161	Kempsey RA1
22.	SL1150051	Kempsey RA1
23.	SL1150096	Kingaroy RA1
24.	SL1964	Mackay RA1
25.	SL1150089	Mackay RA1
26.	SL1150052	Maryborough RA1
27.	SL1150054	Maryborough RA1
28.	SL10094	Mildura RA1
29.	SL10096	Mildura RA1
30.	SL4197	Mt Gambier RA1
31.	SL10312	Mt Gambier RA1

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32.	SL10226	Mt Isa RA1
33.	SL4117	Newcastle RA1
34.	SL4126	Newcastle RA1
35.	SL10277	Orange RA1
36.	SL10286	Orange RA1
37.	SL1150045	Rockhampton RA1
38.	SL1150183	Rockhampton RA1
39.	SL10229	Roma RA1
40.	SL10389	Shepparton RA1
41.	SL10390	Shepparton RA1
42.	SL4174	Toowoomba RA1
43.	SL1150094	Toowoomba RA1
44.	SL4168	Townsville RA1
45.	SL4185	Townsville RA1
46.	SL4136	Wagga Wagga RA1
47.	SL6446	Wagga Wagga RA1
48.	SL1150752	Warragul RA1

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 6 November 2020, the ACMA placed a copy of the draft Instrument on the ACMA's website for public comment by 20 November 2020. No submissions were received on the draft Instrument.

Regulatory Impact

The ACMA prepared a preliminary regulatory impact assessment on 29 October 2020 for the purposes of making the Instrument. On 5 November 2020, the Office of Best Practice Regulation (**OBPR**) considered that the changes have no more than a minor (positive) regulatory impact. The OBPR reference number for this matter is 43222.

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 Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2020 (No. 1)*

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 2020 (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 provisions that authorise the making of the Instrument, namely subsections 43C(1A) and 61CD(2) of the BSA.

Section 4 – Amendments

Section 4 provides that Schedule 1 to the Instrument amends the 2012 Instrument.

Schedule 1

Item 1

Item 1 omits the current table at Schedule 2 of the Instrument and substitutes a new table. The new table in Schedule 2 specifies licences that have the five-week exemption periods set out in subsections 4(2) and 5(2) of the Instrument.

Statement of Compatibility with Human Rights

Prepared by the Australian Communications and Media Authority in accordance with Part 3 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 broadcast specified amounts of material of local significance or to comply with the minimum service standards for local news and information.

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

The *Broadcasting Services (Regional Commercial Radio – Specification of Periods for Subsections 43C(1A) and 61CD(2)) Variation Instrument 2020 (No. 1) (the Instrument)* varies the 2012 Instrument by specifying alternative five-week exemption periods for an additional 14 regional commercial radio broadcasting licences identified in the Instrument. For these 14 licences the exemption from the obligation to provide specified amounts of material of local significance commences on the third Monday in December each year and the exemption from the obligation to meet minimum service standards for local news and information commences on the third Sunday in December each year. The Instrument also returns 48 licences to the default exemption periods under subsections 43C(1A) and 61CD(2) of the BSA by omitting them from the table at Schedule 2 to the 2012 Instrument.

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.

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Subsection 43C(1A) of the BSA exempts licensees from the obligation to broadcast specified amounts of material of local significance for a period of five weeks. Subsection 61CD(2) of the BSA exempts licensees from the obligation to comply with the minimum service standards for local news and information for a period of five weeks. The option to request a change to the dates for the five-week exemption periods provides the licensee with flexibility in meeting minimum standards during the requested exemption periods. The ACMA considers that the exemption periods specified in the Instrument promote the right to freedom of expression by allowing radio 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 default five-week periods in which the obligations to broadcast specified amounts of material of local significance and to comply with the minimum standards do not have to be met for all regional commercial radio broadcasting licenses. The impact of the Instrument is to move the five-week periods to start one week later than the default periods in subsections 43C(A1) and 61CD(2) of the BSA. The Instrument also returns 48 licences to default exemption periods under subsections 42C(1A) and 61CD(2) of the BSA. As required under the BSA, the local areas will continue to receive the required material of local significance and minimum standards for the remaining 47 weeks of the year.

Accordingly, the exemption periods specified in the Instrument have no net limiting effect on the licensees’ provision of local content in the applicable regional commercial radio broadcasting licence areas.

Conclusion

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