

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition Variation 2022 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition Variation 2022 (No. 1)* (the **instrument**) under subsection 43(1) of the *Broadcasting Services Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Purpose and operation of the instrument

The instrument amends the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014* (the **licence condition**) which was made under subsection 43(1) of the Act in order to comply with section 43B of the Act.

The licence condition requires licensees for regional commercial radio broadcasting licences to maintain at least the existing level of local presence (i.e. staffing and local production facilities) in the licence area for the licence for a 24-month period after a trigger event for the licence occurs (for example, as caused by a change of control of the licence). Subsection 43B(1A) requires the ACMA to have a licence condition of this kind in effect at all times.

To enable the ACMA to assess whether licensees have met the licence condition, section 8 of the licence condition sets out requirements for licensees to submit 2 reports on local presence levels.

The first local presence report is required under subsection 8(1) of the licence condition. As currently drafted, subsection 8(1) provides that a licensee must report on the existing level of local presence in a statement ‘given to the ACMA pursuant to paragraph 61CF(1)(b) of the Act’ (the **existing level of local presence report**). At the time of making the licence condition, paragraph 61CF(1)(b) of the Act required the licensee for a trigger event-affected licence to give to the ACMA, within 90 days of a trigger event, a statement setting out such information about the licensee’s broadcasting operations as the ACMA requires.

The second report is required under subsection 8(2) of the licence condition within 3 months after the end of a relevant period, that period being the end of the 24-month period after the date a trigger event for the licence occurs.

Following amendments made in December 2020 to the Act under the *Broadcasting Services Amendment (Regional Commercial Radio and Other Measures) Act 2020* (the **Amendment Act**), the statement previously referred to in paragraph 61CF(1)(b) of the Act is no longer used. As a consequence, the reference to that provision in subsection 8(1) is now ineffective. This creates uncertainty as to the form and timing of the procedural requirements for licensees to submit a benchmark report under the substantive requirements of subsection 8(1). The other requirements in the licence condition continue to have effect.

The instrument varies subsection 8(1) to address the effect of the Amendment Act by clarifying the form in which a local presence report should be given to the ACMA under subsection 8(1) and the timing for giving the report, thereby restoring the procedural requirements in subsection 8(1).

Explanatory Statement to the Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition Variation 2022 (No. 1)

As varied by the instrument, the licence condition will require licensees for trigger event-affected licences to submit the initial local presence report to the ACMA in writing within 3 months of a trigger event. A 3-month period was included instead of the 90-day period that had been specified in section 61CF of the Act, so that the period in which the report in subsection 8(1) of the licence condition must be given is described in terms consistent with the period specified for the report in subsection 8(2) of the licence condition.

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

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

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.

The ACMA conducted a 2-week consultation process from 30 January 2022 to 14 February 2022. As part of this process the ACMA published a draft of the proposed instrument (in materially the same form as the instrument) on its website. In accordance with paragraph 43(2)(c) of the BSA, the ACMA also published the draft variation instrument in *The Gazette* on 31 January 2022.

Regulatory impact assessment

We have considered whether a regulatory impact analysis process is required by undertaking a preliminary assessment and, based on this preliminary assessment, the Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change in this submission is unlikely to have a more than minor regulatory impact and, therefore, the preparation of a Regulation Impact Statement is not required for the proposal – OBPR reference number OBPR21-01356.

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 with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument makes a minor and machinery variation to the licence condition, as a consequence of the 2020 amendments to paragraph 61CF(1)(b) of the Act described above. Specifically, the variation clarifies the form in which a local presence report should be given to the ACMA under subsection 8(1) of the licence condition and the timing for giving the report. The instrument does not vary any other aspect of the licence condition and does not otherwise affect the intended operation of the licence condition.

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.

The variations in the instrument are consequential, minor and machinery in nature. 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 does not engage any of those 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 (Regional Commercial Radio – Local Presence) Licence Condition Variation 2022 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition Variation 2022 (No. 1)*.

Section 2 Commencement

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

The note to the section states that the Federal Register of Legislation may be accessed free of charge 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 43(1) of the *Broadcasting Services Act 1992 (the Act)*.

Section 4 Amendment

This section provides that the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014* is varied as set out in Schedule 1.

Schedule 1—Amendment

Schedule 1 specifies that subsection 8(1) of the *Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014* is repealed and substituted with the subsection set out in the Schedule.