

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Communications

Broadcasting Services Act 1992

Broadcasting Services (Regional Commercial Radio Trigger Event Exemptions) Regulations 2023

Authority

Section 217 of the *Broadcasting Services Act 1992* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted to be prescribed by the Act, or necessary and convenient to be prescribed for carrying out or giving effect to the Act.

Subsections 61CB(1D), 61CB(2C) and 61CB(5) of the Act state that the regulations may provide for exemptions from the definition of “trigger events” contained in, respectively, subsection 61CB(1A), 61CB(2) and 61CB(3) of the Act.

Purpose

The purpose of the *Broadcasting Services (Regional Commercial Radio Trigger Event Exemptions) Regulations 2023* (the Regulations) is to repeal the *Broadcasting Services (Regional Commercial Radio) Regulation 2013* (the existing Regulation), due to sunset in October 2023, and replace it with new Regulations that maintains the policy intent to provide that the six events relating to ownership and control in the existing Regulation continue as exemptions to the trigger event obligations that would otherwise be activated. The exemptions are designed to reduce the regulatory burden on regional commercial radio broadcasting licensees. The circumstances prescribed in the regulations are either identical to or substantially similar to the circumstances that were prescribed in the existing Regulations.

A change of control will not be a trigger event if it is exempt through the operation of section 6 of the Regulations and if section 61CB of the Act provides that it is not a trigger event.

Background

Paragraph 3(1)(3ea) of the Act identifies one of the objects of the Act is to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance.

In furtherance of that object, Division 5C of Part 5 of the Act sets out local news and information requirements for regional commercial radio broadcasting licensees. Where these licences are subject to particular changes in control (including changes of ownership) known as a “trigger event”, the licence holder must comply with local presence obligations (section 43B of the Act) and minimum service standards for provision of local news and information (sections 61CD and 61CE of the Act).

A "trigger event" will occur where there is a:

- transfer of a regional commercial radio broadcasting licence from one person to another (s.61CB(1) of the Act);
- change in control of a regional commercial radio broadcasting licence (s.61CB(1A) of the Act);
- formation of a new registrable media group, containing a regional commercial radio broadcasting licence (s.61CB(2) of the Act); or
- change of controller of a registrable media group containing a regional commercial radio broadcasting licence.

Specifically, regional commercial radio broadcasting licensees that are subject to a trigger event must comply by:

- maintaining existing levels of local presence (staffing levels and facilities) for 24 months from the date of the trigger event;
- meeting minimum service standards for local news and information (local weather, Community Service Announcements and emergency warnings);
- preparing and publishing local content statements; and
- providing information to ACMA on compliance with emergency warnings.

Failure to comply is a breach of licence conditions which can result in ACMA taking enforceable action.

The Regulations specifies six circumstances that are exempt from the definition of "trigger event" under the Act:

- change in control of a licence where the incoming controller and outgoing controller are controlled by the same person (in same way) before and after the change event;
- where a person in control of a registrable media group agrees to sell or transfer their holding or interest in the group to another person. The incoming controller steps into the role of the outgoing controller and both are controlled by the same person in the same way;
- a change in company directors subject to certain conditions being met;
- an intra-group transfer where the sale or transfer of shares between two or companies (which are wholly owned subsidiaries of the same parent company) and the parent company remains in the position to exercise control of the broadcasting licence, and the person in position to exercise control of the licence does not change;
- a company restructure whereby a new wholly owned subsidiary is created to be the new controller of the licence, provided, if before and after formation of the new company, there is no change in the parent company or licence controller; and
- intra-group restructure by parent company so that shares and control are transferred from one subsidiary company to another, and the first subsidiary wound down, where there is no change in the parent company or licence controller.

Impact Analysis

The Office of Impact Analysis (OIA) has confirmed that the preparation of an Impact Analysis is not necessary, as it is likely that the Regulation would only have a no or minor impact on businesses, community organisations or individuals (Ref: OIA23-05369).

Consultation

Both the Australian Communications and Media Authority (ACMA) and Commercial Radio and Audio Limited (CRA) were consulted in the preparation of this Regulation and supported the continuation of the exemptions. Since their introduction in 2006, trigger event obligations have been amended progressively to reduce the regulatory burden on licensees.

Other matters

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislation.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment A**.

Details of the accompanying regulations are set out in **Attachment B**.

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 Trigger Event Exemptions) Regulations 2023

This 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 Regulations

Division 5C of Part 5 of the *Broadcasting Services Act 1992* (the Act) sets out local news and information requirements for regional commercial radio broadcasting licensees.

Where such licensees are subject to particular changes in ownership and/or control, known as a “trigger event”, they must comply with local presence obligations (section 43B of the Act) and minimum service standards for the provision of local news and information (sections 61CD and 61CE of the Act). Local presence requirements relating to the maintenance of local staffing levels and facilities, while minimum service standards relate to the provision of local news, local weather, community service announcements and emergency warnings.

The effect of the Regulations is to provide exemptions from the definition of “trigger event” contained in subsections 61CB(1A), 61CB(2) and 61CB(3) of the Act. The exemptions are designed to exclude from the definition of trigger event certain transactions including those resulting from corporate group restructures where there is continuity of overarching control of the relevant regional commercial radio broadcasting licence or registrable media group.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Details of the *Broadcasting Services (Regional Commercial Radio Trigger Event Exemptions) Regulations 2023*

Section 1 – Name of regulations

Section 1 provides that the title of the Regulations is the *Broadcasting Services (Regional Commercial Radio Trigger Event Exemptions) Regulations 2023*.

Section 2 – Commencement

Section 2 provides for when the Regulations take effect. They commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Regulations are made under the *Broadcasting Services Act 1992*.

Section 4 – Schedules

Section 4 provides that each instrument specified in the Schedules will be amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to this instrument would have the effect according to the terms. There is only one schedule, Schedule 1, which relates to the repeal of the 2013 Regulation.

Section 5 – Definitions

Section 5 provides the definitions for key terms used in the Regulations. This includes terms that may have specific meaning for the Regulations. It does not provide definitions for those key expressions already defined in the Act and have the same meaning in this and other parts of the Act. A note to this effect accompanies this section.

Section 6 – Exemptions from trigger events

Section 6 is the main operative clause and explains that for the purposes of the control events in subsections 61CB(1D), (2C) and (5) of the Act, the section sets out six exemptions from different trigger events outlined in the following provisions of the Act:

- subsections 61CB(1A) (“Change in control of licence”);
- subsection 61CB(2) (“Formation of a new registrable media group”); and
- Subsection 61CB(3) (“Change of controller of registrable media group”)

Change in control of licence

Subsection 6(2) of the Regulations provides that subsection 61CB(1A) of the Act does not apply to a “control event” under that subsection in the specified circumstances.

A licence-related control event occurs where a person either starts or ceases to be in a position to exercise control of a regional commercial radio broadcasting licence and will normally constitute a trigger event unless certain exemptions in subsections 61CB(1B) and (1C) of the Act apply.

Subsection 6(2) of the Regulations creates an exemption from any licence-related control event under the following circumstances: (a) a person ceases to be in a position to exercise control of a regional commercial radio broadcasting licence; (b) a second person starts to be in a position to exercise control of a regional commercial radio broadcasting licence; (c) the second person is controlled in the same way as the first person; and (d) either person in a position to exercise control of that licence does not otherwise change or if they do change, any such change is not a trigger event under the Act.

The phrase “controlled in the same way” as used in paragraph (c) is generally intended to mean that the first and second persons are ultimately controlled by the same person or persons, both before and after the event. For example, a person in control of a regional commercial radio broadcasting licence enters into an agreement to sell or transfer their holding in a licensee company (one that controls and manages the day-to-day operations of a regional commercial radio broadcasting licence) to another person. The incoming controller steps into the role of the outgoing controller, and both are controlled by the same person or persons.

A note to subsection 6(2) gives an example for paragraph (d), where the first and second person are or were wholly-owned subsidiaries of the same parent company.

Change of controller of registrable media group

Subsection 6(3) of the Regulations provides that subsection 61CB(3) of the Act does not apply to a change of controller of a registrable media group in specified circumstances. A change in a registrable media group, as defined in subsection 61AC(1) of the Act, would normally constitute a trigger event. This exemption largely mirrors subsection 6(2) except that the change is to control of a registrable media group which includes a regional commercial radio broadcasting licence rather than changes in control to the licence itself.

Subsection 6(3) of the Regulations creates an exemption from any change of controller under the following circumstances: (a) a controller of a registrable media group ceases to be a controller; (b) a second person becomes a controller of the group; (c) the regional commercial radio broadcasting licence is in the group; (d) the second controller is controlled in the same way as the first controller; and (e) either person who are in a position to exercise control of that licence do not otherwise change or if they do change, any change is not a trigger event under the Act.

For example, a person in control of a registrable media group that includes a regional commercial radio broadcasting licence enters into an agreement to sell or transfer their holding or interest in the group to another person. The incoming controller steps into the role of the outgoing controller, and both are controlled by the same person or persons.

A note accompanies subsection 6(3) gives an example for paragraph (d) where that the first and second persons are wholly-owned subsidiaries of the same parent company.

Changes of directors

Subsection 6(4) of the Regulations provides that subsections 61CB(1A) and 61CB(3) of the Act do not apply to a change of control of a regional commercial radio broadcasting licence or registrable media group in certain circumstances arising solely from a change of company directors, in certain circumstances.

This subsection creates exemption where the relevant event arises solely because of a change in directors in the company. This subsection does not override any other control or trigger events in the Act that relate to directors.

Sale or transfer of shares between companies

Subsection 6(5) of the Regulations provides that subsection 61CB(1A) and 61CB(3) of the Act do not apply to a change of control of a registrable media group in specified circumstances relating to the sale or transfer of shares.

Subsection 6(5) of the Regulations provides for an exemption where: (a) there is a sale or transfer of shares between two or more companies; (b) the companies are wholly owned subsidiaries of the same parent company; (c) both before and after the sale or transfer of the shares, the parent company is in a position to exercise control of a regional commercial radio broadcasting licence; and (d) either the person in a position to exercise control of the licence do not otherwise change or if they do change, such change is not a trigger event for that licence.

For example, a parent company (Company A) wholly owns two subsidiary companies (Company B and Company C). Company B transfers share in a licensee company (one that controls and manages the day-to-day operations of a regional commercial radio broadcasting licence) to Company C.

Formation of a new company

Subsection 6(6) of the Regulations provides that subsection 61CB(1A), 61CB(2) (“, and 61CB(3) of the Act do not apply to an event which occurs in specified circumstances involving the formation of a new company.

Subsection 6(6) of the Regulations provides for an exemption where: (a) a new company is formed; (b) the new company is a wholly owned subsidiary of another company (the parent company); (c) the new company starts to be in a position to exercise control of a regional commercial radio broadcasting licence; (d) both before and after the new company is formed, the parent company is in a position to control of the regional commercial radio broadcasting licence; and (e) either the persons in a position to exercise control of the licence do not otherwise change or if they do change, such change is not a trigger event.

For example, a parent company (Company A) owns a number of licensee companies (that is, companies that control and manage the day-to-day operations of various regional commercial radio broadcasting licences). Company A decides to restructure its existing radio operations and forms a new company (Company B) to sit between it and the licensee companies. Company B would be wholly owned by Company A and would, in turn, wholly own the licensee companies. Such a restructure would be exempt from the trigger event provisions.

Subsidiary company cease to exercise control

Subsection 6(7) of the Regulations provides that subsection 61CB(1A), 61CB(2), and 61CB(3) of the Act do not apply to an event which occurs in specified circumstances involving the cessation or exit of a subsidiary company.

Subsection 6(7) of the Regulation provides for an exemption where: (a) a company ceases to be in a position to exercise control of a regional commercial radio broadcasting licence; (b) the subsidiary company is a wholly owned subsidiary of the parent company; (c) both before and after the cessation in control, the parent company is in a position to exercise control of

the licence; and (d) either the persons in a position to exercise control of the licence do not otherwise change or, if they do change, that change is not a trigger event.

For example, a parent company (Company A) decides to restructure its radio operation. Company A wholly owns two subsidiary companies (Company B and Company C). All shares in various licensee companies (that is, companies that control and manage the day-to-day operations of various regional commercial broadcasting licences) are transferred from Company B to Company C, and then Company B is wound up (and therefore ceases to be in a position to control the licences). This type of intra-group restructure would be permitted by this exemption and not be considered a trigger event.

Schedule 1 – Repeals

Schedule 1 repeals the regulation that is being replaced, the *Broadcasting Services (Regional Commercial Radio) Regulation 2013*, which is due to sunset on 1 October 2023.