

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024* (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**).

Subsection 43(1) of the Act provides that:

The ACMA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

Subsection 33(3) of the AIA 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 repeals the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014* (the **2014 Licence Condition**) and remakes a new licence condition in similar terms. The Instrument is made pursuant to subsection 43C(1) of the Act is made without substantive change to the repealed 2014 Licence Condition.

The ACMA has made the Instrument because the 2014 Licence Condition was due to ‘sunset’ (i.e. be automatically repealed) on 1 October 2024, in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). Following review, and consultation as described below, the ACMA formed the view that the 2014 Licence Condition was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework.

Section 43C of the Act requires the ACMA to ensure that there is in force, at all times, a licence condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

Accordingly, the ACMA has remade the 2014 Licence Condition by making the Instrument, without any significant changes, so that its on-going effect is preserved.

Section 43C of the Act specifies that a licence condition made by the ACMA in accordance with that section must define **material of local significance**, and that this meaning must be broad enough to cover any material that a licensee is required to broadcast in order to meet the minimum service standards for local news and information, set out in section 61CD of the Act.

Section 43C of the Act specifies that the **applicable number** of hours of material of local significance is either 4.5, or another number declared by the Minister in a legislative instrument. Under the

Broadcasting (Hours of Local Content) Declaration No. 1 of 2017 declared by the Minister in accordance with section 43C, the applicable number of hours of material local significance are:

- 30 minutes for small licences (serving a licence area population of fewer than 30,000 people)
- 3 hours for all other licences.

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 LA.

Documents incorporated by reference

The Instrument incorporates the following Act and legislative instrument (including by the adoption of definitions) by reference:

- the Act, as in force from time to time; and
- the 2014 Licence Condition, as in force immediately prior to the commencement of this instrument.

The following Acts and legislative instrument are referred to in the Instrument, but are not incorporated by reference:

- the *Acts Interpretation Act 1901*;
- the *Broadcasting (Hours of Local Content) Declaration No. 1 of 2017*; and
- the *Legislation Act 2003*.

The above Commonwealth Acts and legislative instruments are available free of charge from the Federal Register of Legislation (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.

As part of an initial review of the 2014 Licence Condition, the ACMA sought, and considered, comments from Commercial Radio and Audio (**CRA**) about the operation of that licence condition.

While subsection 43C(5) of the Act has the effect that the Instrument is not subject to notification requirements under subsection 43(2), the ACMA conducted a 4-week consultation process from 15 July 2024 to 12 August 2024 seeking comment on a draft of the Instrument from affected licensees, CRA and the public. As part of this process the ACMA published a draft of the proposed instrument (in materially the same form as the Instrument), and an explanatory consultation paper, on its website.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required.

OIA advised that a RIS would not be required because the Instrument contained no substantive changes and only minor amendments which will not change the effect or operation of the licence condition (OIA reference number – OIA24-07545).

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 with human rights set out in **Attachment B** has been prepared to meet that requirement.

Notes to the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024*

Part 1–Preliminary

Section 1 Name of Instrument

This section provides for the Instrument to be cited as the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024*

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 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 Repeal of the *Broadcasting Services (Regional Commercial Radio– Material of Local Significance) Licence Condition 2014*

This section provides that the *Broadcasting Services (Regional Commercial Radio– Material of Local Significance) Licence Condition 2014* (F2014L01263) is repealed.

Section 5 Purpose and Application

This section sets out the purpose and application of the Instrument. Its purpose is to impose conditions on certain regional commercial radio broadcasting licences pursuant to subsection 43C(1) of the Act. Its application is to regional commercial radio licences that are not remote area service radio licences, regional racing service radio licences, or licences allocated under subsection 40(1) of the Act.

Part 2–Terms used in this Instrument

Section 6 Definitions

This section defines a number of key terms used throughout the Instrument. The definitions for *metropolitan licence area* and *regional licence area* that were in the 2014 Licence Condition have not been included, as reliance is now placed on the term *regional commercial radio broadcasting licence*, which was inserted into section 6 of the Act after the 2014 Licence Condition was made.

A number of other expressions used in the Instrument are defined in the Act.

Section 7 References to other instruments

This section provides that in the Instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force at the commencement of the Instrument.

Section 8 **Meaning of *material of local significance***

This section sets out the meaning of *material of local significance* in the Instrument.

Material that is broadcast by a licensee is *material of local significance* if it is hosted in, or is produced in, or relates to, the licence area of the regional commercial radio broadcasting licence, or if it is broadcast by a licensee in compliance with obligations under Subdivision B of Division 5C of Part 5 of the Act.

This section also provides that an announcement (including a station promotion) that material of local significance will be broadcast at a later time is not itself material of local significance.

Section 9 **Definitions relating to material of local significance**

This section defines *produced in the licence area*, *hosted in the licence area* and *relates to the licence area*.

Part 3 – Licence Conditions

Section 10 **Licensee must broadcast material of local significance**

This section sets out the substantive licence condition requirement for regional radio licensees to broadcast the applicable number of hours of material of local significance during daytime hours on a relevant business day. The section also provides that advertising and sponsorship material that is counted as material of local significance must comprise not more than 25% of the applicable number of hours broadcast on a relevant business day.

This section includes a note clarifying that the applicable number of hours for licensees is set out in section 4 of the *Broadcasting (Hours of Local Content) Declaration No 1 of 2017*.

The requirement does not apply during the default or prescribed 'holiday period' determined in accordance with subsection 43C(1A) of the Act.

Part 4 – Record Keeping

Section 11 **Records**

This section sets out the requirement that a licensee must make an audio record of the applicable number of hours of material of local significance that it has broadcast in the licence area during daytime hours. A licensee must retain audio records for 30 days from the date on which the material was broadcast. If a complaint has been made in relation to the material, the recording must be kept for 60 days. The ACMA can also specify in writing that the material be kept for a longer period. The ACMA may ask the licensee for access to an audio record kept under this section.

This section includes a transitional provision which provides that a licensee who was required under the 2014 Licence Condition to make a record must continue to comply with that requirement as though the 2014 Licence Condition was still in force.

Section 12 **Material of local significance—local content statements**

This section requires a licensee to compile a 'local content statement' indicating the material of local significance that is to be broadcast in its licence area during daytime hours. The local content statement must set out a regular program schedule for each day of the week, signalling which programs contain material of local significance and if the content is 'produced in the licence area', 'hosted in the licence area' or 'relat[ed] to the licence area'.

A licensee must ensure that its local content statement is available to the public by either publishing the statement on its website or by supplying it to a person on request. The ACMA may also request a copy of the local content statement. A licensee must keep a copy of a local content statement for either 18 months or for another period specified by the ACMA in writing, whichever is greater.

This section includes a transitional provision and provides that a licensee who was required under the 2014 Licence Condition to make, keep, and publish a local content statement must continue to comply with that requirement as though the 2014 Licence Condition was still in force.

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*

Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024

Overview of the Instrument

The *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2024* (the **Instrument**) replaces the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014* (the **2014 Licence Condition**).

The Australian Communications and Media Authority (the **ACMA**) is required to make the Instrument under sections 43 and 43C of the *Broadcasting Services Act 1992* (the **Act**).

The Instrument ensures there are licence conditions in force, at all times, that have the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance (the **local content licence obligation**).

The Instrument is substantially unchanged from the 2014 Licence Condition, which was scheduled to sunset on 1 October 2024, and is consistent with the local content licence obligation.

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 and promotes human rights recognised in the International Covenant on Civil and Political Rights (**ICCPR**) including the right to freedom of expression, such as the freedom to receive information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other chosen media (Article 19(2) of the ICCPR).

By requiring the licensees of regional commercial radio broadcasting licences to broadcast a minimum level of material of local significance, this Instrument promotes the dissemination of information and ideas of local significance through radio programs to people living in regional areas of Australia, thereby promoting the right in Article 19(2) of the ICCPR.

Conclusion

This Instrument is compatible with human rights as it facilitates the dissemination of information of local significance through radio programs to people living in regional areas of Australia.