



Australian Government

Department of Communications

Review of Local Content and Local Presence requirements on regional commercial radio broadcasters

Statutory review under section 61CT of the *Broadcasting Services Act 1992*

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1. Purpose

1.1. Statutory requirement for review

The *Broadcasting Services Act 1992* (BSA) requires the Government to conduct a review of local content requirements every three years. This review report sets out the scope, background, process and outcomes for the latest review commenced in 2013. The report of the previous triennial review was tabled in Parliament on 1 March 2011. A copy of this report is available from the Department of Communications website at:

www.communications.gov.au/radio/commercial_radio/review_of_local_content_requirements_for_regional_commercial_radio

Section 61CT of the BSA provides the basis for the review, specifically:

61CT Regular reviews of local content requirements

- (1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:
 - (a) the operation of sections 43B and 43C;
 - (b) the operation of this Division;
 - (c) the operation of paragraph 8(2)(c) of Schedule 2;
 - (d) whether sections 43B and 43C should be amended;
 - (e) whether this Division should be amended;
 - (f) whether paragraph 8(2)(c) of Schedule 2 should be amended.
- (2) For the purposes of facilitating the conduct of a review under subsection (1), the Australian Communications and Media Authority (ACMA) must make available information about regional commercial radio broadcasting licensees' compliance with:
 - (a) licence conditions imposed as a result of section 43B or 43C; and
 - (b) licence conditions imposed as a result of an investigation directed under section 61CR; and
 - (c) licence conditions imposed as a result of a direction under section 61CS; and
 - (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (4) The ACMA must comply with a direction under subsection (3).
- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must cause copies of a report to be laid before each House of Parliament within 15 sitting days of that House after the completion of the report.

1.2. Scope of this review

This triennial review primarily focuses on the impact of the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* on regional commercial broadcasters, which implemented a number of reforms to the local content provisions for radio broadcasters, and whether there is a need for further change.

The *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* contained measures that sought to reduce the regulatory burden on regional commercial radio broadcasters that resulted from their local content requirements and therefore respond to concerns raised by this sector in the last triennial review. Part 2 of this report provides further detail on these measures, which commenced on 16 April 2012 or 15 October 2012.

Given the focus of the review, formal submissions were only requested from the industry regulator, the ACMA and the peak industry body for the commercial radio sector, Commercial Radio Australia (CRA). Notwithstanding the focus of the review outlined above, submitters were free to raise any matter consistent with the scope of section 61CT of the BSA and, in the case of CRA, did so. CRA was given the opportunity to review its submission in December 2014.

Subsequent to initial submissions being received, the Government announced its deregulation agenda which seeks to ease the regulatory burden on individuals, businesses and community organisations by repealing counterproductive, unnecessary or redundant legislation and consequently removing any associated regulation. This prompted the implementation of additional reforms unrelated to the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* that addressed some of the issues raised by CRA.

The report of this review has been delayed to take into account changes considered in the deregulation agenda. The process of deregulation is continuing and further reforms to local content and local presence requirements may be considered in the future.

2. Background

The provisions referred to in section 1.1 (61CT (1) and (2) of the BSA) contain the requirements for regional commercial radio broadcasters to maintain existing levels of local presence, to provide minimum levels of local content and to meet minimum service standards for local news and information. These are summarised at Attachment A.

2.1. 2010 Review of Local Content and Local Presence Requirements

The Department conducted a review of local content in 2010, which was tabled in Parliament in March 2011. The review was advertised in several metropolitan and 93 regional newspapers. A total of 15 submissions were received. The issues raised in submissions to the 2010 review were:

- a need for clarification of local content requirements to avoid inconsistencies and confusion about licensees' obligations and to reduce regulatory interference with business operations;
- to provide flexibility for licensees in meeting their obligations;
- to refine recordkeeping and reporting obligations to reduce administration requirements and assist compliance; and
- whether there was value in remote area service licensees, racing licensees or services licensed under subsection 40(1) of the BSA, which do not use broadcasting services bands spectrum, continuing to be subject to local content requirements.

2.2. 2012/2013 Changes to the local content and local presence requirements

Following the outcomes of the 2010 review, the then Government decided to proceed with amendments to the BSA to give effect to the main recommendations of the review report.

2.2.1. *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*

The *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* made a number of amendments to the local content requirements for regional commercial radio broadcasters in response to the 2010 review. The Act received Royal Assent on 15 April 2012.

Schedule 1 to the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*, which commenced on 16 April 2012, contained amendments that:

- excluded remote, racing and services licensed under subsection 40(1) of the BSA from both the general and 'trigger event' related local content requirements for regional commercial radio broadcasters;¹

¹ See **Attachment A** to this report for an explanation of 'trigger' event provisions.

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- introduced a 24 month sunset period for the trigger event provisions; and
- introduced an annual five week 'regulatory holiday' from the local content requirements to allow broadcasters to use networked programming to cover staff leave over the Christmas/New Year period.

Schedule 2 to the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*, which commenced on 15 October 2012, contained amendments that:

- introduced a new concept of 'control event' as the basis for a trigger event, with a control event referring to a change in control of a licence;
- provided for a number of exemptions where control events do not result in a trigger event; including inter-generational transfers, changes due to circumstances beyond the control of relevant parties (e.g. incapacitation), and changes to licence area plans by the ACMA; and
- allowed for regulations (see 2.2.2 immediately below) to be drafted to define circumstances where a control event is not a trigger event for the purposes of the Division.

2.2.2. Broadcasting Services (Regional Commercial Radio) Regulation 2013

The subsequent Broadcasting Services (Regional Commercial Radio) Regulation 2013 came into effect on 5 August 2013. The regulation sets out circumstances where a control event involving a regional commercial radio licence will not lead to a trigger event, and will accordingly be exempt from trigger event provisions. These include changes in control of a licence or changes in the controller of a registrable media group where the change involves no change in control of the parent company.

Other exemptions are for changes in executive and non-executive directors of a company if fewer than 50 per cent of the directors change in a 12 month period, sales of shares between wholly owned subsidiaries, formation of new wholly owned subsidiary companies, or when a wholly owned subsidiary company ceases to exercise control of a licence.

3. Consultation

As the focus of the 2013 review was primarily on the initial effects of the changes to the local content and local presence requirements made under the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*, consultation was limited to industry through CRA and the industry regulator, the ACMA. Note that the regulation referred to in 2.2.2 was finalised following the commencement of the review and hence its impact was not reflected in early submissions by the ACMA and CRA.

3.1. ACMA - Compliance with local content and local presence requirements

The ACMA assessed there were high levels of compliance with the local content and local presence requirements between 2010-11 and 2012-13, based on the annual compliance returns it was provided by broadcasters. During that time period, the maximum number of licensees subject to the standard licence condition was 222, and the maximum number of licensees subject to additional requirements related to trigger events was 95.

The changes directly resulting from the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* (see 2.2.1) took effect in 2011-12, while the changes resulting from the regulation

took effect in 2013-14 (see 2.2.2). It is expected that annual compliance results for 2013-14 will be made available in April 2015

Annual compliance results for regional commercial radio licensees			
Local content quota for licensees – Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007 / Broadcasting Services (Regional Commercial Radio– Material of Local Significance) Licence Condition 2012	2010-11	2011-12	2012-13
Number of licences subject to provision	222	222	211
Compliance rate (%)	99.6	100	100
Local presence requirements for licensees subject to a trigger event – Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007 / Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2012	2010-11	2011-12	2012-13
Number of licences subject to provision	92	94	95
Compliance rate (%)	100	100	100
Minimum service standards for licensees subject to a trigger event – section 61CD of the BSA	2010-11	2011-12	2012-13
Number of licences subject to provision	92	94	95
Compliance rate (%)	98.9	100	100
Compliance with an approved local content plan for licensees subject to a trigger event – section 61CP of the BSA	2010-11	2011-12	2012-13
Number of licences subject to provision	92	94	95
Compliance rate (%)	96.7	95.8%	97.9

Note: The one non-compliant licensee in 2010-11 self-reported the breach and the ACMA agreed on measures to be taken by the licensee towards ensuring its future compliance, including staff training and improved processes.

The ACMA has advised the following effects of the amendments implemented by the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*.

- A reduction in the number of licences subject to the local content provisions of section 43C of the BSA from 222 in 2011-12 to 211 in 2012-13. The licences now not subject to these provisions are five remote area commercial services, three racing radio services and three licences allocated under subsection 40(1) of the BSA.
- A reduction in the period licensees must broadcast prescribed amounts of local content from 52 weeks per year to 47 weeks per year. A total of 209 licences are using the default exemption period of five weeks beginning on the second Monday in December, with the two licensees in the Bathurst RA1 licence area electing a different five week period.
- A reduction in the number of licences potentially subject to the obligation to maintain existing levels of local presence (staff and studio facilities) if a trigger event occurs from 219 in 2011-12 to 211 in 2012-13. The licences now not subject to these provisions are five remote area commercial services and three racing radio services.
- The obligation to maintain the existing levels of local presence in perpetuity has now been reduced to 24 months from the date of the trigger event or 16 April 2012, whichever is the latter. On 16 April 2014, the 24-month local presence compliance period ceased for 88 regional commercial radio licences affected by trigger events².
- The number of licensees potentially subject to the application of minimum standards for local news and information once a trigger event has occurred was reduced from 222 in 2011-12 to 211 in 2012-13, with remote area commercial services, racing radio services and services licensed under subsection 40(1) of the BSA no longer subject to these provisions.
- The prescribed period for licensees subject to a trigger event to meet minimum standards for providing local news and information has been reduced from 52 weeks per annum to 47 weeks per annum, with up to 209 licences using the default exemption period of five weeks beginning the second Sunday in December.
- In summary, the regulatory reforms have had the desired effect of reducing the regulatory burden while ensuring continued local content availability.

3.2. 2013 CRA submission

CRA is the peak national body for Australian commercial radio stations, representing 99 per cent of broadcasters. CRA provided a submission to the review in 2013 that acknowledged measures in the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* had reduced elements of the regulatory burden on regional commercial radio licensees. However, the submission noted that a number of aspects of the local content and local presence legislative provisions continue to

² ACMA Communications Report 2013-14 <http://www.acma.gov.au/theACMA/Library/Corporate-library/Corporate-publications/communications-report>

impose compliance costs and obligations. CRA advised that the industry remained committed to broadcasting the current levels of local content and is not seeking to reduce the required amounts.

CRA raised four major points in its submission to the review: finalising the regulations exempting internal corporate restructures where the ultimate controller of a licence does not change from the definition of a trigger event; providing more flexibility in meeting the prescribed amounts of local news bulletins; changing the days when material of local significance is counted towards statutory requirements; and reviewing the level of compliance reporting and record keeping³. These are discussed further in sections 3.2.1 to 3.2.4.

3.2.1. Requirements for trigger event regulation

The Broadcasting Services (Regional Commercial Radio) Regulation 2013 came into effect in August 2013. As section 2.2.2 indicates, this regulation sets out circumstances where a control event involving a regional commercial radio licence will not lead to a trigger event, and will accordingly be exempt from trigger event provisions.

3.2.2. Requirements for local news bulletins

With regard to the requirements for providing local news bulletins, the commercial radio industry is generally accepting of such a requirement but CRA raised concerns about the requirement for licensees subject to a trigger event to maintain the average number of local news bulletins per week that were broadcast in the year prior to the trigger event. CRA suggested that although the prescribed 12.5 minutes per day for local news bulletins could be retained, a minimum number of bulletins should not be prescribed. CRA recommended that subparagraph 61CE (1)(b) of the BSA should be deleted to provide greater flexibility in meeting the local news requirement.

3.2.3. Requirements for 'material of local significance'

CRA noted that section 43C of the BSA prescribes that only material broadcast on business days can count towards licensees' material of local significance quota, whereas local news requirements in Division 5C for licensees subject to a trigger event can be broadcast on any five days during the week. CRA believes that the legislative distinction between material broadcast on business days versus weekends does not recognise the format and popularity of regional radio programming, particularly local sporting events and specialised shows such as gardening or fishing shows. CRA recommended that section 43C be amended so that material of local significance broadcast on any day of the week can be counted towards annual calculations of the amount of local content broadcast.

³ CRA reiterated its concerns about compliance reporting in a separate submission to a review of communications portfolio regulation initiated in late 2013 in the context of the Government's deregulation agenda. In that submission, CRA proposed to replace the yearly reporting for regional radio stations for both local content plans and trigger event reports with a baseline reporting system, where reports are only required where elements change and nil returns are acceptable in all other cases.

3.2.4. Reporting requirements for local content and local presence obligations

CRA considered that the overall level of reporting of compliance with local content and local presence obligations is creating difficulties for many regional commercial radio licensees. In particular licensees in smaller areas have fewer resources to meet these obligations. CRA recommended that the reporting requirements then in force could be modified to reduce the compliance burden for regional commercial radio licensees, via a:

- review of the overall level of compliance reporting and record keeping, with a view to reducing duplication and unnecessary detail;
- review of the reporting and approval obligations relating to Local Content Plans, to ensure that licensees need not seek approval from the ACMA when they broadcast *more* local content than the amount approved under the existing Plan;
- request that the ACMA only require additional information where there is a clear need, which overrides the additional burden placed on regional licensees; and
- request that the ACMA reviews the reporting forms to ensure that they are as straight forward as possible. In particular, licensees should have the option of reporting only on issues that have changed since the preceding report.

Some record-keeping and reporting requirements have been subsequently reduced as a result of the ACMA introducing new licence conditions in 2014 (see Part 4).

3.3. 2014 CRA submission

CRA was given the opportunity to review its 2013 submission prior to the review being finalised. In a letter dated 16 December 2014, CRA welcomed the amendments detailed in section 2.2, but reinforced its views that further amendments could be made to reduce the regulatory burden on regional commercial radio broadcasters by:

- removing the requirement for a specified number of local news bulletins as per 3.2.2 above;
- amending section 43C of; the BSA, as per 3.2.3 above, and
- undertaking a review of the overall level of compliance reporting and record keeping.

4. Reform following the commencement of the review

4.1.1. Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014

The ACMA has recently made amendments to the general local content obligations to:

- remove annual reporting to rely instead on complaints and investigations to assure licensee's compliance. The ACMA can conduct investigations of its own accord, if required;

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- reduce the requirement on licences to keep audio content from six weeks to 30 days for consistency with complaints handling requirements under the current Commercial Radio Codes of Practice; and
- remove the requirement for licensees to provide local content statements in writing to the ACMA. Instead, material of local significance will be demonstrated through a current program schedule.

4.1.2. Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014

The ACMA has also amended the local presence licence obligations to remove record-keeping requirements on staffing levels and production and studio facilities to avoid duplication with reporting requirements under other legislation.

5. Conclusion

The initial impacts of the amendments to the local content and local presence requirements made under the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* appear to have been positively received by industry stakeholders, with the ACMA also noting that there appear to be high levels of compliance with the new legislative arrangements. CRA has advised that its members consider that the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* has reduced elements of the regulatory burden on regional commercial radio licensees.

The review notes that the Government is currently undertaking a process for auditing the level of regulation in the Australian economy with a view to reducing the annual cost to business. CRA has argued that some of the original provisions of the local content and local presence requirements for regional commercial radio broadcasters are inflexible and impose what it considers to be unreasonable compliance costs and obligations with little discernible public benefit. While some of these issues were addressed by the *Broadcasting Services (Regional Commercial Radio) Regulation 2013*, the review recommends that the remaining issues raised by CRA be considered in the context of this larger deregulation process.

In this regard the review recognises the significant additional obligations placed on commercial radio licensees subject to trigger event regulation. Concerns about these obligations have been consistently expressed by the sector since they were first enacted in the *Broadcasting Services Amendment (Media Ownership) Act 2006*. The Productivity Commission has previously recommended that the trigger event rules be abolished and local content reporting made less

prescriptive.⁴ Following a stakeholder consultation process the Convergence Review of media regulation also recommended that the trigger event rules be repealed.⁵

The review notes, in this context, that the modern media environment and changing consumer preferences mean that tightly prescriptive regulation of local content and local presence levels on one media sector – radio – is becoming less viable as a policy response to perceptions of a lack of localism.

The review considers there would be merit in the Government considering further reforms to the local content obligations. These could include the repeal of all trigger event related provisions or implementation of some or all of the CRA proposed reforms outlined at sections 3.2.2 to 3.2.4.

The review notes that if the trigger event provisions were repealed, the standard local content licence condition for regional radio broadcasters would still require licensees to provide 3 hours of material of local significance per business day in most licence areas. The review does not recommend the Government consider any changes to the quantum of material of local significance required by this licence condition.

Finally, the review proposes that the Government also consider whether the three year review requirement imposed by section 61CT of the BSA remains the most efficient way to ensure that local content regulation for regional commercial radio licensees remains effective and relevant.

⁴ Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, 2009, <http://www.pc.gov.au/inquiries/completed/regulatory-burdens/social-economic-infrastructure/report/social-economic-infrastructure.pdf>

⁵ Convergence Review, *Convergence Review: Final Report*, March 2012
http://webarchive.nla.gov.au/gov/20140212091723/http://www.archive.dbcde.gov.au/2013/august/convergence_review

Local content and local presence requirements

Overview

The BSA sets out the local content legislative framework under which certain regional commercial radio broadcasting licensees are required to:

- provide minimum levels of local content; and
- in certain circumstances, maintain existing levels of local presence and meet minimum service standards for local news and information.

This framework was introduced to provide protection for local content on commercial radio in regional areas in 2006⁶ and was not subject to amendment until the measures in the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012* commenced in 2012.

Local content obligations

Section 43C of the BSA requires the ACMA to ensure that, at all times after 1 January 2008, a licence condition is in force under section 43 setting out the local content obligations for licensees.

The relevant licence condition⁷ defines ‘material of local significance’ as material that is hosted in, produced in, or relates to a regional commercial radio licensee’s licence area. The condition requires each regional commercial radio licensee to broadcast the ‘applicable number’ of hours of material of local significance during daytime hours each business day.

This means that between 5.00 am and 8.00 pm each business day⁸ for 47 weeks per annum, licensees must broadcast the following amounts of material of local significance:

- three hours for the majority of broadcasters; and
- 30 minutes for broadcasters in small markets (a licence area with a population of 30 000 or less).⁹

The licence condition includes annual reporting and ongoing recordkeeping requirements such as licensees, who are not racing services licensees, retaining audio records of local content broadcast and compiling a local content statement for each business day. Licensees are required to keep

⁶ The framework was introduced as part of the Broadcasting Services Amendment (Media Ownership) Act 2006.

⁷ Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice – 19 Dec 2007

⁸ Broadcasting Services (Hours of Local Content) Regulations 2007

⁹ Broadcasting (Hours of Local Content) Declaration No.1 of 2007

audio records of local content for six weeks or, if a complaint is made, 60 days from the date of broadcast. Most licensees must keep local content statements for 18 months (or a time period specified by the ACMA) and make them available to the public.

Trigger event-related obligations

Where a regional commercial radio licence is affected by a change referred to as a ‘trigger event’, a series of additional and overlapping requirements apply. A trigger event occurs when there is a transfer of a licence, the formation of a new cross-media group (involving the radio station plus one or both of associated newspapers and commercial television licensees) or a change of controller of a cross-media group. These requirements are set out in section 43B (local presence) and Division 5C of Part 5 (local news and information) of the BSA. There are some exemptions to this, as set out in sections 61CB (1B) and (1C) of the BSA including family share transfers or circumstances beyond the control of the licence controller. The regulations detailed in section 2.2 of this report set out a number of additional exemptions.

Local presence

Section 43B of the BSA requires the ACMA to ensure that, at all times after the commencement of that section, a licence condition is in force under section 43 of the BSA that applies to licensees after a trigger event. The licence condition requires licensees to maintain for a period of 24 months at least the ‘existing level of local presence’. The ‘existing level of local presence’ is defined in terms of average monthly staffing levels and broadcast hours produced using studios and other production facilities in the licence area in the three-month period prior to the trigger event. All licensees, not just those affected by a trigger event, are required to keep records sufficient to calculate these figures.

Licensees affected by a trigger event must detail their compliance with the requirements in a report provided annually to the ACMA.

Local news and information

Division 5C of Part 5 of the BSA sets out minimum service standards for local news and information for licensees subject to a trigger event. Specifically, it requires such licensees to:

- broadcast local news bulletins, totalling at least 12.5 minutes per day, on at least five days per week
- broadcast local weather bulletins on at least five days per week
- broadcast one community service announcement per week and emergency warnings as required, and
- submit to the ACMA for approval a Local Content Plan that details how they will comply with their local news and information obligations, and report annually on compliance with the Plan.

Where a licensee broadcasts more than five local news bulletins per week in the 12-month period before a trigger event occurs, they are required to continue providing at least this number of local news bulletins.

Content broadcast to meet local news and information requirements counts towards the local content requirements under section 43C described above.

Part 4 of Schedule 2 to the BSA sets out licence conditions for commercial radio broadcasting licences. Under paragraph 8(2)(c) of Schedule 2, compliance with the requirements in Division 5C of Part 5 of the BSA is a licence condition for licensees to whom the requirements apply.