Investigation report no. BI-572

| Summary |  |
| --- | --- |
| **Licensees** | Resonate Regional Radio Pty Limited and Resonate Broadcasting Pty Ltd  |
| **Licences** | Resonate Regional Radio Pty Limited (SL4176, SL4183, SL10218, SL10220, SL10224, SL10227)Resonate Broadcasting Pty Ltd (SL4172, SL10221, SL10223, SL10325) |
| **Type of service** | Commercial Radio Broadcasting  |
| **Name of program/s** | Local news content |
| **Dates of broadcasts** | 6 October 2020 to 15 October 2020 |
| **Relevant legislation** | Section 61CD of the Broadcasting Services Act 1992[minimum service standards for local news and information]Section 61CP of the Broadcasting Services Act 1992[compliance with approved local content plan]Schedule 2 of the Broadcasting Services Act 1992[standard conditions of commercial radio broadcasting licences] |
| **Date finalised** | 10 March 2021 |
| **Decision** | Resonate Regional Radio Pty Limited:* breached paragraph 61CD(1)(a) of the BSA [minimum service standards for local news and information]
* did not breach section 61CP of the BSA [compliance with approved local content plan]
* breached the licence condition in paragraph 8(2)(c) of Schedule 2 to the BSA as they have not complied with requirement under Division 5C of Part 5 of the BSA.

Resonate Broadcasting Pty Ltd:* breached paragraph 61CD(1)(a) of the BSA [minimum service standards for local news and information]
* did not breach section 61CP of the BSA [compliance with approved local content plan]
* breached the licence condition in paragraph 8(2)(c) of Schedule 2 to the BSA as they have not complied with requirement under Division 5C of Part 5 of the BSA.
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Background

On 2 November 2020, the Australian Communications and Media Authority (the ACMA) commenced an investigation under section 170 of the Broadcasting Services Act 1992 (the BSA) into Resonate Regional Radio Pty Limited and Resonate Broadcasting Pty Ltd (the Licensees) non-compliance with each of the following requirements in Division 5C of Part 5 of the Broadcasting Services Act 1992 (the BSA) that was in force before 18 December 2020:

* to meet minimum service standards for local news (paragraph 61CD(1)(a) of the BSA)
* to take all reasonable steps to ensure that an approved local content plan is complied with (section 61CP of the BSA).

On 8 October 2020, the Licensees notified the ACMA about non-compliance with their approved local content plans for each licence listed in **Attachment A** by not broadcasting eligible local news bulletins on each week day from 6 October 2020 to 15 October 2020 (inclusive).

The Licensees also made a ‘dispensation’ request on the basis that the non-compliance was unintentional and caused by unplanned staff leave.

On 18 December 2020, the BSA was amended to vary the requirements to provide local news/weather. Those amendments also removed the requirement for licensees to submit local content plans to the ACMA for approval. Instead, licensees can provide information about eligible local news and local weather bulletins in local content statements published on their websites.

As the breaches took place prior to the amendments taking effect, this investigation was conducted according to the provisions of the BSA that were in force during the investigation period (i.e., before the amendments took effect on 18 December 2020).

Legislative requirements

To comply with paragraph 61CD(1)(a) of the BSA as in force throughout the investigation period, a licensee must meet the minimum service standards for local news set out in subsection 61CE(1) of the BSA.

Further, paragraph 61CE(1)(b) requires that each commercial radio broadcasting service provided by the Licensees were required to provide 20 eligible local news bulletins per week (being the average weekly number of eligible local news bulletins broadcast during the benchmark year ending on the Saturday before the most recent trigger event for each licence) The relevant legislative provisions are at **Attachment B**.

Section 61CP of the BSA provides that a licensee is required to take all reasonable steps to ensure that an approved local content plan is complied with.

Paragraph 8(2)(c) of Schedule 2 to the BSA provides that if a requirement under Division 5C of Part 5 (which sets out local news and information requirements) applies to the licensee - the licensee will comply with that requirement.

Assessment and submissions

This investigation took into account the Licensees’ approved local content plans for each licence (at **Attachment A**) and the submissions of the Licensees provided in the emails to the ACMA of 8 October 2020, 13 to 15 October 2020, 10 November 2020, 15 January 2021, 20 January 2021, and 1 March 2021 (at **Attachment C**). Other sources are identified in this report where relevant.

Issue 1: Did the Licensees meet minimum service standards for local news and information?

Relevant provisions of the Broadcasting Services Act 1992

61CD Licensee must meet minimum service standards for local news and information

 (1) If a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the trigger event, the licensee must meet:

 (a) minimum service standards for local news;

[…]

61CE Minimum service standards for local news and information

Local news

 (1) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local news*** during a particular week if, during that week, the number of eligible local news bulletins broadcast by the licensee is at least:

 (a) the local news target number; or

 (b) if the average weekly number of eligible local news bulletins broadcast under the licence during the benchmark year is a number greater than the local news target number—the greater number.

 (2) For the purposes of subsection (1), the ***local news target number*** is:

 (a) 5; or

 (b) if the Minister, by legislative instrument, declares that a greater number is the local news target number—the greater number.

[…]

Finding

Between 6 October 2020 and 15 October 2020 (inclusive), the Licensees did not comply with section 61CD(1)(a) of the BSA, and as a consequence, breached the licence condition at paragraph 8(2)(c) of Schedule 2 of the BSA by not meeting the minimum service standards for local news.

Reasons

Under section 61CD of the BSA, a licensee must meet minimum service standards for local news and information.

On 8 October 2020, the Licensees informed the ACMA that, on each weekday from 6 October to 15 October 2020 (inclusive), no local news bulletins would be provided for any of the licences listed at **Attachment A** and that local news bulletins scheduled for broadcast in the approved local content plan were to be replaced with national news bulletins (at **Attachment C**). On
14 October 2020, the Licensees subsequently confirmed that no local news bulletins were provided during the 6 October to 15 October period.

As noted above, the Licensees advised the ACMA they were not able to provide local news bulletins as a result of unplanned and unanticipated staff leave, allowing no time for a replacement to be made.

The ACMA notes that although the absence of the responsible staff member may not have been anticipated, in general, it is reasonable for a commercial radio broadcasting licensee to:

* expect and plan for employees to have occasional unscheduled absences from work
* have contingency measures in place to respond to such absences in a way that facilitates compliance with its regulatory obligations.

As a result, Licensees did not broadcast the required number of eligible local news bulletins for each licence in order to comply with section 61CD(1)(a) of the BSA, in the weeks beginning 5 October 2020 and 12 October 2020 and the approved local content plan in force for the licence on each weekday from 6 October to 15 October 2020 (inclusive).

**Issue 2:** **Did the Licensees take all reasonable steps to comply with the approved local content plan?**

Relevant provision of the Broadcasting Services Act 1992

61CP Compliance with approved local content plan

If an approved local content plan for a regional commercial radio broadcasting licence is in force, the licensee must take all reasonable steps to ensure that the plan is complied with.

Finding

The Licensees complied with section 61CP of the BSA and as a consequence did not breach the licence condition at paragraph 8(2)(c) of Schedule 2 to the BSA by taking all reasonable steps to comply with the approved local content plans.

Reasons

Under section 61CP a licensee must ‘take all reasonable steps’ to ensure that it complies with its approved local content plan.

Each licence at **Attachment A** had an approved local content plan in force throughout the period from 6 October to 15 October 2020. The local content plans were submitted within 90 days of the most recent trigger event for each licence and approved by the ACMA as follows:

|  |  |
| --- | --- |
| **Licence** | **Approval date for local content plan** |
| *Resonate Regional Radio Pty Limited* |
| SL4176 | 30 March 2016 |
| SL4183 | 30 March 2016 |
| SL10218 | 30 March 2016 |
| SL10220 | 30 March 2016 |
| SL10224 | 30 March 2016 |
| SL10227 | 30 March 2016 |
| *Resonate Broadcasting Pty Ltd* |
| SL4172 | 16 July 2008 |
| SL10221 | 30 October 2012 |
| SL10223 | 30 October 2012 |
| SL10325 | 15 July 2008 |

In the period investigated, the approved local content plans, in force, for each licence at **Attachment A** provided that each of the Licensees would comply with paragraph 61CD(1)(a) each week by broadcasting 4 eligible local news bulletins per weekday.

The Licensees self-reported that between 6 and 15 October 2020 (inclusive) no local news bulletins scheduled for were broadcast. Consequently, the investigation found that, between 6 and 15 October 2020 (inclusive), the Licensees did not comply with the approved local content plan in force for each licence.

The ACMA notes that although the absence of the responsible staff member may not have been anticipated, in general, it is reasonable for a commercial radio broadcasting licensee to:

* expect and plan for employees to have occasional unscheduled absences from work and
* have contingency measures in place to respond to such absences in a way that facilitates compliance with its regulatory obligations.

The Licensees advised in an email dated 10 November 2020, that they had previously entered into an arrangement to employ a substitute journalist as a short-term replacement if the usual employee was unavailable. However, during the period of 6 October 2020 to 15 October 2020, the substitute journalist was not available due to other employment commitments.

In an email dated 1 March 2021, the Licensees confirmed that, including the substitute journalist referred to above, 3 other journalists were contacted in an attempt to replace the absent staff member over the period from 6 October 2020 to 15 October 2020, but each journalist was unavailable.

The Licensees highlighted that since this situation occurred they have made additional commitments to meet their local news obligations. The Licensees advised that they had put new measures in place to ensure future compliance with its obligations to provide eligible local news bulletins under the BSA. This includes the implementation of a new ‘short-notice’ relief system where 2 relief journalists have been sourced to produce local news bulletins for the 10 licences if the usual employee is unexpectedly absent.

In a response to the preliminary investigation finding (dated 15 January 2021), the Licensees advised that this relief system was successfully utilised on 26 October 2026 when a relief journalist replaced the ongoing journalist.

The investigation found that, with respect to the provision of eligible local news bulletins, although the Licensees did not comply with the approved local content plans, that this non-compliance occurred after, and in spite of, the Licensees taking all reasonable steps to comply. On this basis, the investigation found the Licensees were not in breach of section 61CP of the BSA.

Attachment A

**Summary of Resonate broadcasting service licences and the relevant local content obligations in force before 18 December 2020**

|  |  |  |
| --- | --- | --- |
| **Licensee: Resonate Regional Radio Pty Limited** |  |  |
|  |  |  |  |  | **Minimum local service standards** |
| **BSL No** | **Licence Area** | **Call Sign/On-Air ID** | **Licence area size** | **Local content obligation(per business day)** | **Local news bulletins (per business day)** | **Local weather bulletins (per week)** |
| 10218 | CHARLEVILLE RA1 | 4VL | Small | 30 mins | 4 | 106 |
| 10220 | CHARLEVILLE RA1 | 4CCC/ Triple C FM | Small | 30 mins | 4 | 106 |
| 4176 | EMERALD RA1 | 4HI | Standard | 3 hours | 4 | 106 |
| 4183 | KINGAROY RA1 | 4SB/ 1071AM | Standard | 3 hours | 4 | 106 |
| 10224 | MT ISA RA1 | 4LM | Small | 30 mins | 4 | 106 |
| 10227 | ROMA RA1 | 4ZR | Small | 30 mins | 4 | 106 |

|  |  |  |
| --- | --- | --- |
| **Licensee: Resonate Broadcasting Pty Ltd** |  |  |
|  |  |  |  |  | **Minimum local service standards** |
| **BSL No** | **Licence Area** | **Call Sign/On-Air ID** | **Licence area size** | **Local content obligation(per business day)** | **Local news bulletins (per business day)** | **Local weather bulletins (per week)** |
| 10325 | CHARTERS TOWERS RA1 | 4CHT/ HOT FM | Small | 30 mins | 4 | 106 |
| 4172 | CHARTERS TOWERS RA1 | 4GC | Small | 30 mins | 4 | 106 |
| 10221 | LONGREACH RA1 | 4LG | Small | 30 mins | 4 | 95 |
| 10223 | LONGREACH RA1 | 4LRE/ West FM | Small | 30 mins | 4 | 77 |

Attachment B

**Division 5C—Local news and information requirements for regional commercial radio broadcasting licensees (in force before 18 December 2020)**

**61CA  Definitions**

                   In this Division:

***approved local content plan*** means an approved local content plan under Subdivision C.

[…]

***designated local content program*** means a program about matters of local significance, other than:

                     (a)  a news bulletin; or

[…]

***eligible local news bulletins*** means local news bulletins that meet the following requirements:

                     (a)  the bulletins are broadcast on at least 5 days during the week;

                     (b)  the bulletins broadcast on each of those days have a total duration of at least 12.5 minutes;

                     (c)  the bulletins are broadcast during prime‑time hours;

                     (d)  the bulletins adequately reflect matters of local significance;

                     (e)  none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

**61CD  Licensee must meet minimum service standards for local news and information**

             (1)  If a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the trigger event, the licensee must meet:

1. minimum service standards for local news;

[…]

             (2)  A licensee (the ***relevant licensee*)** is not required to meet any of the minimum service standards referred to in subsection (1):

                     (a)  if:

                              (i)  the ACMA, by legislative instrument, specifies a period, in relation to one or more specified regional commercial radio broadcasting licensees; and

                             (ii)  the period does not exceed 5 weeks; and

                            (iii)  the licensees specified in the instrument consist of or include the relevant licensee;

                            on a day during that period; or

                     (b)  if the ACMA, by legislative instrument, specifies a period that does not exceed 5 weeks—on a day during that period; or

                     (c)  if neither paragraph (a) nor (b) applies—on a day during the 5‑week period beginning on the second Sunday in December each year.

A period specified under paragraph (a) or (b) may be a recurring period.

**61CE  Minimum service standards for local news and information**

*Local news*

             (1)  For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local news*** during a particular week if, during that week, the number of eligible local news bulletins broadcast by the licensee is at least:

                     (a)  the local news target number; or

                     (b)  if the average weekly number of eligible local news bulletins broadcast under the licence during the benchmark year is a number greater than the local news target number—the greater number.

             (2)  For the purposes of subsection (1), the ***local news target number*** is:

                     (a)  5; or

                     (b)  if the Minister, by legislative instrument, declares that a greater number is the local news target number—the greater number.

[…]

**61CP  Compliance with approved local content plan**

                   If an approved local content plan for a regional commercial radio broadcasting licence is in force, the licensee must take all reasonable steps to ensure that the plan is complied with.

[…]

**Schedule 2**

**8  Standard conditions of commercial radio broadcasting licences**

[…]

(2)  Each commercial radio broadcasting licence is also subject to the following conditions:

[…]

                     (c)  if a requirement under Division 5C of Part 5 (which sets out local news and information requirements) applies to the licensee—the licensee will comply with that requirement.

Attachment C

Licensee response and submissions

***Licensee submission to the ACMA dated 8 October 2020***

[…]

I am seeking some advice pertaining to our local news obligation on the Resonate Regional Radio network in Qld.

I am writing to inform you of the situation and seek a dispensation from our daily local news content until our journalist returns to work later next week.

In the interim, I have been substituting local news with national news bulletins.

When considering this request, would you please note that we are still running our locally produced show Rural Queensland Today, which runs weekdays 9am to 10am and focuses upon issues facing the rural areas in our broadcast area.

***Licensee submission to the ACMA dated 10 November 2020***

[…]

In response to the four issues raised under ‘next steps’ in your email, I can advise the following;

1/ Additional steps taken to prevent or reduce non-compliance. - I have now sourced two relief journalists to prepare Resonate Local News should this situation arise again.

[…]

To ensure that we lost no further time in meeting our local news obligation, I utilised the services of one of the aforementioned ‘relief journalists’ to prepare local news on that date.

3/ Proposal to make up missing news bulletins - Resonate takes seriously our commitment to the communities within our broadcast area to provide ‘localism’ and information.  We also take very seriously our commitment to meet our local content obligations to ACMA.

4/ Other comments. - When considering this response I would ask ACMA to take into account the costs that will be incurred by Resonate for making up missing local news bulletins.

[…]

***Licensee submission to the ACMA dated 15 January 2021 – response to Investigation Preliminary Finding***

[…] Thank you for your email dated the 8 January, 2021 and Letter of Preliminary Finding.

In response I wish to make comment regarding the below paragraph in your letter.

“The ACMA is of the preliminary view that although the specific circumstance of that staff member may not have been anticipated, in general, it is reasonable for a commercial radio broadcasting licensee to expect and plan for employees to have occasional unscheduled absences from work and to have contingency measures in place to respond to such absences in a way that facilitates compliance with its regulatory obligations.”

Can I advise that on (rare) occasions during the past five years we have been required to engage the services of ‘relief journalists’ during periods of planned Leave / absence from our journalist.   The last occasion being in 2017.

On this un-expected and sudden instance, the availability of those relief resources was un-available at short notice due to issues at that time caused by the ‘erratic and unpredictable’ effects from the Covid pandemic, to work restrictions upon those relief personnel  at that time. Hence and as a result, I engaged two further relief journalists available to me at short notice in order that this situation is not repeated. One of the new relief journalists being required on the 26th October, 2020 when the Resonate journalist was required. I wish to highlight and that our short notice relief system is engaged, has been tested, and is operational. […] We believe we have done everything we possibly could to abide by the regulations. We are a small operation […] Yet we still carried out all our duties and responsibilities at great cost to us to ensure compliance.’

***Licensee submission to the ACMA dated 1 March 2021*** *(information identifying individuals has been removed)*

To clear confusion, there was no direct Covid-19 issue involved during this initial specific period. […] Resonate is a small company and does not have any other journalists employed. Hence, I sought to notify The ACMA and seek advice and a dispensation.

At that time I did contact a journalist who had previously undertaken local news duties for us - the last occasion being several years beforehand. […]. At that time, […] informed me that he had recently undertaken a new position […], and was unable to assist […].

I also enquired with local news staff […] to seek any information as to the availability of relief journalists that could cater for regional Queensland. However, I was informed that […] was at that time involved in a significant workplace re-structure and could not provide assistance. […].

I also made enquires with a Resonate […] contractor […]. Unfortunately […] was not in a position to take time away from his magazine role to commit to short term local news research and preparation. […].

[…]

I wish to highlight that time consuming enquiries were being made. But by the time all these enquiries has been undertaken, our Resonate journalist was returning back to work -15th October.

[…]

In respect to my comments regarding Covid-19 restrictions[…] And not unlike many other businesses at that time, we were facing challenges to our operations and human resource management with staff being displaced from normal work offices together with travel restrictions.