

Automatic sunseting of legislative instruments:

Proposal to remake 2 regional commercial radio licence conditions

Consultation paper

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Background

Under Part 4 of Chapter 3 of the *Legislation Act 2003*, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislation. This is an automatic process applying to most legislative instruments regardless of their particular content.

The following related instruments are due to sunset on the following dates:

Name of instrument	Sunset date
Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014	1 October 2024
Broadcasting Services (Regional Commercial Radio– Material of Local Significance) Licence Condition 2014	1 October 2024

Under sections 43B and 43C of the *Broadcasting Services Act 1992* (the BSA), the ACMA is required to ensure that local presence and local content licence conditions are in force at all times and must therefore remake these instruments before the sunset date.

We have formed the preliminary view that these instruments are operating effectively and efficiently within the current legislative settings set out in the BSA.

Accordingly, we propose to revoke and remake each licence condition as a new instrument before the sunset date above, with only minor and necessary changes, as outlined in this paper, and retitle them:

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

Drafts of the proposed licence conditions are available alongside this consultation paper.

In arriving at this preliminary view, the ACMA approached Commercial Radio Australia (CRA), the industry body representing the commercial radio broadcasting sector, for their initial views about the operation of the existing instruments.

The ACMA notes that the Australian Government, through its News Media Assistance Program (News MAP) has committed to secure an evidence base to inform news and media policy interventions and formulate measures to support public interest journalism and media diversity. The outcome of this process may require future amendments to both the BSA and these instruments that we are proposing to remake.

Brief details of what each of the legislative instruments does

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

Subsection 43B(1A) of the BSA requires the ACMA to ensure that, at all times, there is a licence condition in force that has the effect of requiring a regional commercial radio broadcasting licensee to maintain at least the existing level of local presence for the 24-month period following a ‘trigger event’ (the local presence licence condition).

A trigger event can be the change in control of the licence, or the formation of a new registrable media group or the change of controller of a registrable media group (see section 61CB of the BSA).

The local presence licence condition defines the ‘existing level of local presence’ by reference to staffing levels related to the licence and the use of studios and other production facilities in the licence area by the former licensee.

The local presence licence condition also requires licensees of trigger-event affected licences to provide to the ACMA:

- a report on the existing level of local presence at the time of the trigger event, within 3 months after a trigger event
- a report on the licensee’s compliance with the requirement to maintain at least the existing level of local presence, within 3 months after the end of the 24-month period.

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

Subsection 43C(1) of the BSA requires the ACMA to ensure that, at all times, there is a licence condition in force 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 (the local content licence condition).

The BSA requires that the licence condition defines ‘material of local significance’.

The local content licence condition requires licensees of a regional commercial radio licence to broadcast the applicable number of hours of material of local significance during daytime hours on a relevant business day. The applicable number of hours of material of local significance are set out in the *Broadcasting (Hours of Local Content) Declaration No. 1 of 2017* made by the Minister for Communications as:

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

The local content licence condition also requires licensees to:

- make and publish a local content statement that records the material of local significance that is broadcast each relevant business day
- keep audio records of material of local significance that was broadcast each relevant business day, for a 60-day period.

Under the local content licence condition, 'material of local significance' means material that is hosted or produced in, or relates to, the licence area of the regional commercial radio broadcasting licence.

Material is also material of local significance if it is broadcast by a licensee in compliance with the minimum service standards for local news and information, set out in Subdivision B of Division 5C of Part 5 of the BSA.

Proposed changes to the legislative instruments

Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2024

The ACMA has reviewed the local presence licence condition and concluded that it is fit for purpose and is operating effectively and efficiently to meet the objects of the BSA and the requirements of section 43B.

While we considered whether simplifications could be made to the licence condition (without changing the legislation), for example, by amending the definition that deals with staffing levels, studios and other production facilities, we concluded that these changes would likely increase, rather than decrease, complexity.

Consequently, we propose to remake the local presence licence condition with the following minor changes that would not substantively change the operation of the licence condition:

- remove the definitions of ‘metropolitan licence area’ and ‘regional licence area’ as reliance is now placed on the new defined term ‘regional commercial radio broadcasting licence’, which is defined in section 6 of the BSA
- change the commencement date of the instrument, the authorising provision in the BSA and the repeal of the previous licence condition in Part 1 (‘Preliminary’)
- update instrument references (for example, clause numbers).

A draft of the proposed local presence licence condition is available alongside this paper.

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

The ACMA has reviewed the local content licence condition and concluded that it is fit for purpose and is operating effectively and efficiently to meet the objects of the BSA and the requirements of section 43C.

We considered comments provided by CRA about the local content licence condition. This included the possibility of amending the meaning of ‘relates to the licence area’ to include material that relates to the Australian state(s) that the licence area is within and next to.

Subsection 7(3) of the licence condition sets out the meaning of ‘relates to the licence area’. We consider that the list is currently sufficiently broad and takes into account that matters occurring outside of a licence area may still relate to a licence area (and therefore be considered material of local significance), provided the matter affects, or is associated with, the licence area.

Consequently, we propose to remake the local content licence condition with the following minor changes, which would not substantively change the operation of the licence condition:

- remove the definitions of ‘metropolitan licence area’ and ‘regional licence area’, as reliance is now placed on the new defined term ‘regional commercial radio broadcasting licence’, which is defined in section 6 of the BSA
- change the definition of ‘relevant business day’ to be consistent with amendments made to the BSA since the local content licence condition was made
- change the commencement date of the instrument, the authorising provision in the BSA and the repeal of the previous licence condition in Part 1 (‘Preliminary’)

- include a new section 7 ('References to other instruments')
- update instrument references (for example, clause numbers).

A draft of the proposed local content licence condition is available alongside this paper.

Invitation to comment

Making a submission

Comments are sought from the public about the ACMA's proposal to remake these legislative instruments without any significant changes, on the basis that each of them is operating effectively and efficiently.

- [Online submissions](#) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.
- Submissions by post can be sent to:
The Manager
Media Diversity Section
Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building NSW 1230

The closing date for submissions is **5 pm (AEST), Monday 12 August 2024**.

Consultation enquiries can be emailed to localcontentradio@acma.gov.au.

Publication of submissions

The ACMA publishes submissions on our website, including personal information (such as names and contact details), except for information that you have claimed (and we have accepted) is confidential.

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