



SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

***LOCAL CONTENT REQUIREMENTS FOR REGIONAL COMMERCIAL
RADIO***

**RESPONSE TO THE DISCUSSION PAPER ISSUED BY THE
DEPARTMENT OF BROADBAND COMMUNICATIONS AND THE
DIGITAL ECONOMY**

March 2010

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Commercial Radio Australia (**CRA**) welcomes the opportunity to participate in the review of the local content requirements for regional commercial radio.

CRA is the peak national industry body for Australian commercial radio stations. CRA has 260 members and represents approximately 99% of the commercial radio broadcasting industry in Australia.

The commercial radio industry recognises the importance of promoting social inclusion in communities through local content in broadcasts. Accordingly, the industry does not seek to reduce the 3 hour (or 30 minutes for very small markets) local content requirement.

However, there are a number of aspects to the local content and trigger event legislation that threaten the viability of the regional commercial radio industry by imposing inflexible and unworkable operating conditions and significant additional compliance costs and obligations.

The commercial radio industry strongly urges the Government to take the industry's comments into account when reviewing and amending these legislative provisions. This will ensure that regional commercial radio stations are able to survive and can continue to support and service their local communities in the future.

A. SUMMARY

CRA's primary comments are:

- The commercial radio industry strongly urges the Government to make the following amendments to the *Broadcasting Services Act 1992* (**BSA**) and the accompanying statutory instruments:
 - repeal section 43B and Division 5C of Part V. If repeal is not possible, the industry recommends that a “sunset clause” be inserted, so that the maximum duration of the local presence licence condition and the additional content and reporting requirement is a maximum of 12 months;
 - narrow the definition of “trigger event” to instances where a cross-media merger occurs. At a minimum, the definition should specifically exclude certain events (see response to Key Issue 4);
 - allow licensees to count material broadcast on any 5 days of the week towards their s43C licence condition obligations;
 - amend the section 43C licence condition so that the requirement to broadcast “material of local significance” applies only to 46 weeks in the year;

- add a provision to the BSA stating that remote area broadcasters and providers of racing radio services are not required to broadcast “material of local significance” and are exempt from the local presence requirements in the BSA; and
- exempt remote commercial radio broadcasters and racing service broadcasters from the post trigger event local news and information requirements.
- A key aspect of ensuring the ongoing availability of local content is maintaining strong viable regional radio stations. The current legislative provisions in relation to "trigger events" and the consequential local presence licence condition seriously and negatively impact on both the operation and value of regional radio stations. These provisions impose perpetual restrictive operating conditions and unworkable compliance burdens and therefore directly threaten the viability of affected regional radio stations.
- The industry remains committed to broadcasting 3 hours of local content 5 days a week (30 minutes for very small markets) in regional Australia and is not seeking to reduce the local content hours required each day.

B. NATURE OF THE COMMERCIAL RADIO INDUSTRY

1. Restrictive, interventionist and prescriptive regulatory requirements have a disproportionate effect on the viability of regional licensees. Many staff in regional radio stations fulfil a number of different roles and these roles may often change depending on circumstances and economic conditions.
2. It is vital that the regulations recognise the nature of the regional radio industry, by ensuring that obligations are realistic and sufficiently flexible to allow these regional stations to comply, without making their businesses unworkable in practical or financial terms.

C. KEY ISSUES RAISED IN THE DISCUSSION PAPER

Key Issue 1 – Should greater flexibility be provided for regional commercial radio broadcasters required to provide “material of local significance” (for example, should broadcasters be permitted to broadcast material of local significance on weekends?)

3. The commercial radio industry urges the Government to increase the flexibility of the rules requiring the provision of “material of local significance”. There are two areas in particular where increased flexibility should be afforded to stations.

Days when “material of local significance” is counted

4. Under the current legislation, licensees may only count material broadcast on “business days” towards their “material of local significance” quota.¹ This excludes public holidays and weekends.

¹ Section 43C(1), BSA.

5. Many licensees provide local content on weekends – particularly weekend coverage of local sports. These are popular broadcasts, which attract significant numbers of listeners. Local sports coverage contributes significantly to the community, providing exposure for events and organisations that would not otherwise receive media interest.
6. The legislative distinction between material broadcast on business days and material broadcast at the weekends seems artificial and does not recognise the format or popularity of regional radio programs and the areas of interest of people in local regional communities.
7. Furthermore, the requested amendment would make section 43C consistent with the Division 5C requirements, which are not prescriptive about the days on which “eligible local news bulletins” must be broadcast. The relevant provisions in Division 5C refer to “5 days during the week”.
8. **The commercial radio industry urges the Government to amend the legislation to allow licensees to count material broadcast on any 5 days of the week towards their s43C licence condition obligations.**

Compliance period

9. The section 43C licence condition provides that licensees must comply with the local content provisions for 52 weeks a year.
10. This takes no account of the fact that when on-air staff take annual leave it is common practice in the regional radio industry to use nationally syndicated programming during such leave periods.
11. In these circumstances, a 52 week annual compliance obligation is not reasonable. On-air staff are usually entitled to 6 weeks of annual leave, in accordance with the journalists’ award, and during that time it is not generally possible for regional radio stations to engage temporary qualified staff to produce and/or present local programming.
12. Regional radio stations operate with fewer staff than metropolitan stations and many of these staff fulfil several different roles. When a staff member is on holiday it is not usually possible to fill the gaps using other employees. Further, many stations are located in areas with significant specialised labour and skills shortages, and it generally is not feasible to locate and engage short term casual producers or presenters to fill in during these times.
13. The requested amendment would also be consistent with the licence condition that applies to regional commercial television licensees. Section 43A does not impose compliance obligations on television licensees for 52 weeks a year.
14. **The commercial radio industry asks the Government to amend the section 43C licence condition so that the requirement to broadcast “material of local significance” applies only to 46 weeks in the year.**

Key Issue 2.1 – Should the “material of local significance” and local presence requirements in the Act apply to (a) regional commercial radio broadcasters primarily providing racing services and (b) remote commercial radio broadcasters?

15. The requirement to broadcast material of local significance currently applies to all regional commercial radio broadcasters, including remote area broadcasters and racing radio services. This reflects a failure to acknowledge the special nature of these services.
16. Remote area commercial radio licences were originally issued so that cost effective commercial radio services could be provided to remote regions that lay outside commercial radio licence areas (LAPs), and which did not receive any commercial radio services. The remote zones cover very large, but sparsely populated, geographic areas.
17. For this reason, remote zone licensees are not required to establish transmission facilities at any particular sites, and provide the same service across the entire remote licence area.
18. Some commercial radio licences are also used to provide specialised racing radio services to regional areas. These services are networked from capital cities to regional centres, cover a wide range of racing material and race meetings and do not usually broadcast “material of local significance”. For instance, in Shepparton and Ballarat, commercial radio licences are used to relay the service from Sport 927 in Melbourne.
19. It is unreasonable and inconsistent to expect these categories of licensees to comply with the local content or local presence obligations.
20. **The commercial radio industry urges the Government to add a provision to the BSA, stating that remote area broadcasters and providers of racing radio services are not required to broadcast “material of local significance” and are exempt from the local presence requirements.**

Key Issue 2.2 – Should the additional local news and information requirements imposed after a trigger event apply to: (a) remote commercial radio broadcasters; and (b) regional commercial broadcasters primarily providing racing services?

21. The commercial radio industry submits that remote area broadcasters and those supplying racing services should not be obliged to comply with post trigger event local news and information requirements.
22. As explained above, these services are very different from other commercial radio services. The racing services are networked from large capital cities, and the remote area broadcasters cover large, sparsely populated zones.
23. These types of services cannot easily incorporate the local news and information requirements. Racing radio services are not produced locally and remote area services cover an extremely large area, with few inhabitants. This makes the provision of 12.5 minutes of local news and other information an unrealistic requirement.

24. The cost of complying with these provisions would be disproportionate for racing and remote area broadcasters and could force both types of broadcasters out of business.
25. **The commercial radio industry requests that remote commercial radio broadcasters and broadcasters primarily providing racing services should be exempt from the post trigger event local news and information requirements.**

Key Issue 3 – Should section 61CB(1) be consistent with the media control principles in the Broadcasting Services Act 1992?

26. The commercial radio industry submits that section 61CB(1) should not be amended to refer to a change of control of a licence rather than a transfer.
27. Reference to “change of control” would broaden out the trigger event provisions to catch a much greater number of events. The current trigger event provisions are extremely onerous and threaten the viability of regional commercial radio. Any provision that broadens the reach of these provisions would be strongly resisted by the industry.
28. Further, reference to “change of control” would not be consistent with the other parts of s61CB. Where “change of control” is used in the definition at present (in the third limb of the definition), the relevant change in control has to be in respect of the whole registrable media group, not just to a single commercial radio licensee (or a single “media operation” within a group (see s61CB(3))).
29. The only circumstances in which the industry would accept a change from “transfer” to “control” would be if the definition of trigger event were limited only to situations where a cross media transfer has occurred.

Key Issue 4 – How can the existing requirements be modified to ensure the appropriate application of the trigger event related provisions? What types of events, if any, should be exempt from the trigger event requirements?

30. The definition of trigger event under s61CB is unreasonably broad. This means that an unnecessarily large number of commercial radio stations are subject, or have the very real potential to be subject, to these additional local presence regulations.
31. The industry understands that the original purpose of the notion of a “trigger event” was to address the possible impact of cross-media mergers in regional areas, particularly with regard to combining newsrooms across two different types of media organisations (e.g. radio/television; radio/newspaper).
32. However, the current definition of “trigger event” extends well beyond these situations. It is not limited to a situation where there is a “cross-media” merger. It therefore captures many types of changes which have nothing to do with media diversity within a licence area.

33. The definition captures situations where there is a “change in control” of a “registrable media group”.² A “registrable media group” includes a “radio-only” group – i.e. two commonly controlled commercial radio licences in the same licence area.³
34. As a result, a number of seemingly unintended consequences arise from the “trigger event” definition. These include the application of the trigger event provisions to the following events:
- Intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence.
 - Formation of a new registrable media group only due to significant population changes in the licence area.
 - Internal corporate restructures where the ultimate controller does not change.
 - “Radio only” to “radio only” sales. By this, we mean the sale of a regional commercial radio licence to a person who holds no other media interests in the relevant licence area.
 - Changes in existing joint venture arrangements, where one joint venture party sells its stake in the licensee to the other joint venture party.
35. In the above circumstances – and in others too lengthy to list here – there is no apparent policy or legal reason why those events should result in significantly increased regulatory obligations for commercial radio licensees.
36. **The commercial radio industry urges the Government to narrow the definition of “trigger event” to instances where a cross-media merger occurs. At a minimum, the definition should specifically exclude the events listed above. Any exclusions must apply to the definition of trigger event as a whole, and should not be limited to specific limbs of section 61CB.**

Key Issue 5 – For how long should broadcasters comply with the additional requirements imposed after a trigger event occurs? If a change to the current arrangements is proposed, what type of change should apply and why is it appropriate?

Local presence

37. Under section 43B(1) of the BSA the ACMA must impose an additional licence condition upon all regional commercial radio licensees, requiring that:

“if a trigger event for a regional commercial radio broadcasting licence occurs, then after the occurrence of the event, the licensee must maintain **at least the existing level of local presence**”.

² s61CB(3) of the BSA.

³ This has been permitted under the BSA since its inception in 1992.

38. The ACMA interprets “local presence” to mean:

- staffing levels:

“For staffing levels the existing level of local presence is maintained if at the conclusion of each financial year there has been no material reduction in the average monthly staffing levels in the licence area in relation to the licence for that financial year or part thereof, compared with the staffing levels [during the 3 month period before the day on which the trigger event occurred]”⁴; and

- the use of studios and other production facilities in the area:

“For studios and other production facilities, the existing level of local presence is maintained if at the conclusion of each financial year there has been no material reduction in the number of average monthly broadcast hours produced during that financial year or part thereof, using studio and other production facilities in the licence area, when compared with the number of average monthly broadcast hours produced using studios and other production facilities [over the three month period before the day on which the trigger event occurred]”⁵.

39. The effect of this provision is that, following a trigger event, stations are not allowed to decrease either the number of staff they employ, or the local facilities that they use. This provision has no end date..

40. These regulations clearly constrain the ability of the industry to operate its businesses in an efficient and profitable way.

41. The requirements effectively freeze a regional commercial radio station in time, and deny it the rights enjoyed by other free enterprises, including Government owned and funded enterprises – including the right to respond to market changes and to conduct its business as it sees fit. For instance:

- a requirement to maintain the number of studios and production facilities by reference to a particular point in time ignores the rapid advance of new technologies. Business processes must be able to change to take advantage of technological developments;
- the freezing of staff levels at a minimum number is unjustifiable. Regional commercial radio licensees must be allowed to implement changes aimed at improving productivity. This may involve changes to staffing levels, particularly in bad economic climates, or when technological improvements permit a reduction in labour costs;
- rather than protecting localism, the local presence requirements are likely to stand in the way of deconsolidation and decentralisation. For example, if a commercial radio broadcaster buys a station that has been a “hub” station of another commercial radio broadcaster (i.e. providing services to other stations outside the licence area where the “hub” is located), it may be difficult for the purchaser to decentralise such

⁴ Sections 9(1) and 5(2) *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

⁵ Sections 9(2) and 5(3) *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

operations without risking a reduction of “local presence” in the licence area where the “hub” is located; and

- the local presence requirement fails to recognise that consolidations of operations and centralisation of certain radio functions often work to the benefit of radio staff, by providing them with a career path, prospects for promotion and the offer of more interesting work. Increased efficiencies also benefit audiences, by allowing better quality programmes at a lower cost.
- the local presence requirement acts as a disincentive to operators to increase employment opportunities in regional radio stations in buoyant economic periods. Under the current provisions, licensees can be the subject of a trigger event as a result of a range of occurrences, and would then suffer the resultant permanent staff and production facilities freeze.

42. The local presence requirements devalue existing regional commercial radio businesses. Potential purchasers of regional radio businesses must now take account of the fact that the Government now dictates how many production facilities and how many staff must be utilised in the business, irrespective of whether this number is efficient or effective. This has the potential to damage the long term future of regional commercial radio.

43. Further, the section 43B scheme assumes that commercial radio licensees are readily able to find replacement staff when staff leave to take up positions elsewhere. This does not reflect the reality experienced by many regional radio licensees, particularly those in areas far from major regional centres, who frequently find it difficult to recruit permanent staff.

44. The local presence requirements are possibly the most unreasonable and burdensome Government intervention in a particular industry sector in Australia's recent history. In their current form they have the very real potential to threaten the continued survival of the regional commercial radio stations.

Minimum service standards

45. Under sections 61CD and 61CE of the BSA, regional licensees affected by a trigger event are required to meet the minimum service standards for local news and information. This includes the obligation to broadcast a minimum number of:

- local news bulletins;
- local weather bulletins;
- community service announcements; and
- emergency warnings.

46. Compliance with the minimum service standard requirement is costly for regional stations. The ACMA *Local Content Levels Investigation Report* estimated that the cost of complying with the local news bulletin requirement alone represented as much as 15-26% of the profit of some licensees, and that this was a “significant financial impost”.

Reporting and record keeping obligations

47. The trigger event reporting and record keeping obligations are unnecessarily burdensome.⁶ Following the occurrence of a trigger event, licensees must:

- submit a draft local content plan to the ACMA for approval within 90 days of the trigger event. The local content plan must state how the licensee intends to meet the minimum service standards for local news, weather, community service announcements and emergency warnings;
- submit a Statement of Broadcasting Operations. This must report on the existing level of local presence in the licence area in relation to the licence;
- report annually to the ACMA on their compliance with the approved local content plans;
- keep weekly details – times of broadcasts, number of broadcasts and total daily duration – of broadcasts required by the minimum service standards. The ACMA requests this information annually for a “specified week”, which could be any week in the year; and
- report each year on their compliance with the requirement to maintain the existing level of local presence.

48. Further, all licensees (including those not affected by a trigger event) must make and retain records sufficient to calculate details of the studios and other production facilities and staffing levels in the licence area in relation to the licence.⁷

49. These reporting requirements are costly and burdensome. For example, a senior individual in one network affected by a trigger event spent almost 6 weeks coordinating compliance reporting, prior to the ACMA 2008 reporting deadline. It is unreasonable to expect regional stations to maintain this level of compliance reporting for an indefinite period.

50. The industry’s strong preference would be the repeal of section 43B and Division 5C of Part V.

51. If repeal is not possible, the industry recommends that a “sunset clause” be inserted, so that the maximum duration of the local presence licence condition and the additional content and reporting requirement is a maximum of 12 months.

D. PRODUCTIVITY COMMISSION REPORT

52. The Productivity Commission conducted a *Review of the Regulatory Burdens on Business* in 2009. This review looked at the impact of the local content and trigger event legislation on the regional commercial radio industry.

⁶ *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007.*

⁷ Section 8, *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*

53. The Commission recognised the significant difficulties caused to the regional commercial radio industry as a result of the legislation and made the following recommendations:

Recommendation 4.4 – Local Content

The policy objective of the local content rules could be met through more flexible rules. The Australian Government should introduce amendments to make provision for regional broadcasters to meet their local content obligations over the course of a longer time period, rather than through rigid daily content obligations. For certain categories of licence, such as racing and remote area licences, consideration should be given to whether there is a need for local content requirements. More flexible local content obligations should be accompanied by streamlined reporting requirements which target compliance activity on broadcasters who have been identified as having a high risk of non-compliance.

Recommendation 4.5 – Trigger Event

The Australian Government should introduce amendments to abolish the trigger event provisions for radio broadcasters. Instead, local content provisions should be relied on to ensure broadcast of locally significant material.

54. The commercial radio industry supports the conclusions of the Productivity Commission and urges the Government to take the Commission's recommendations into account when conducting its review of the legislation.

If you would like to discuss any aspect of this submission, please contact Joan Warner, Chief Executive Officer of Commercial Radio Australia, on 02 9281 6577.