



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

Local content requirements for regional commercial radio

**Discussion paper
March 2010**

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Terms of Reference

Australians living in regional areas should have access to broadcasting content that reflects the culture and diversity of their local communities. The Government is committed to there being no reduction of local content. A key aspect of ensuring the availability of local content is strong regional radio stations.

The *Broadcasting Services Act 1992* (the Act) requires regional commercial radio broadcasting licensees to provide minimum levels of local content and, in certain circumstances (that is, after the occurrence of ‘trigger events’), to broadcast minimum levels of local news and information, maintain a local presence and comply with additional reporting and recordkeeping obligations.

[Section 61CT](#) of the Act requires the Minister for Broadband, Communications and the Digital Economy to conduct a review of these localism and trigger event related provisions at least once every three years. Under the Act, the first review must be undertaken by 4 April 2010. A report on the review must be tabled in Parliament in accordance with the statutory requirements.

As required by the Act, the review will consider the operation and appropriateness of the following provisions:

- sections 43B and 43C
- Division 5C of Part 5, and
- paragraph 8(2)(c) of Schedule 2.

The review will also consider the statutory instruments that have been made in accordance with the provisions.

- Broadcasting Services (Hours of Local Content) Regulations 2007¹
- Broadcasting Services (Meaning of Local) Instrument 2007²
- Broadcasting (Hours of Local Content) Declaration No.1 of 2007³
- Australian Communications and Media Authority (Commercial Radio Broadcasting Services) Direction (No.1) 2007⁴
- Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007⁵
- Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice 22 March 2007⁶.

These instruments provide detailed requirements for the operation of the legislation.

¹ www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/8EABF9F87F588DC8CA25735C0023DDD5?OpenDocument

² www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/9E90B155462A31E2CA25739F007A7EB8?OpenDocument

³ www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/85FD483EBB337E54CA2573540001CE7A?OpenDocument

⁴ www.frii.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/C892BB6B70C4B98DCA2572910003A096?OpenDocument

⁵ www.acma.gov.au/webwr/_assets/main/lib100057/broad_serv_add_reg_comm_radio_lic_con-notice_19_dec_2007.pdf

⁶ www.acma.gov.au/webwr/_assets/main/lib101061/bs_addtnl_reg_comm_radio_lic_cond-local_presence_%20notice_22_mar_07.pdf

As part of the review process, the Government's considerations will include:

1. whether greater flexibility is needed for regional commercial radio broadcasters to provide 'material of local significance'
2. the application of 'material of local significance' and local presence requirements, and the local news and information requirements imposed after a trigger event, to:
 - regional commercial radio broadcasters primarily providing racing services; and
 - remote commercial radio broadcasters
3. the application of 'material of local significance' and local presence requirements to regional radio services operating outside the Broadcasting Services Bands (section 40 licensees)
4. whether section 61CB(1) of the Act, which relates to transfers of regional commercial radio broadcasting licences, should be expanded to ensure consistency with the media control principles in the Act
5. the appropriateness of the trigger provisions applying to the following events:
 - (a) intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence
 - (b) the formation of a new registrable media group that is created only due to significant population changes in a licence area; and
 - (c) internal corporate restructures where the ultimate controller does not change
6. the appropriateness of additional requirements imposed after a trigger event occurs applying permanently

Where changes to the existing legislative provisions are considered as a result of the review, the Government will ensure that these changes do not lead to an overall reduction in local content required by the Broadcasting Services Act on regional commercial radio.

This discussion paper

This discussion paper provides information on the operation of the localism and trigger event related provisions and seeks submissions from the public.

Submissions should relate to the operation of the legislative requirements and whether amendments are required.

This paper is in two parts:

- an outline of the regulatory framework for the regional commercial radio local content and trigger event related provisions, and
- issues on which public comment is being sought.

Details of how to make a submission are at page 10.

Regional radio localism and trigger event related requirements

Background

The Act sets out the legislative framework under which regional commercial radio licensees operate. The legislation includes obligations relating to local content, as well as requirements for local presence and minimum levels of local news and information following certain ownership and control changes known as ‘trigger events’. These provisions were introduced into the Act as part of the media ownership changes in 2006 and began operating in April 2007.

The legislative requirements apply to 222 regional commercial radio licences across 102 regional licence areas. Of the regional licensees, 219 licences use the Broadcasting Services Bands (the traditional AM and FM frequencies) and three broadcasters operate under licences issued under section 40 of the Act (using other frequencies).

Eighty nine broadcasting licences were affected by a trigger event between 4 April 2007, when the provisions commenced, and 30 September 2009.

Local content obligations

Section 43C of the Act deals with local content (referred to as ‘material of local significance’) requirements for all regional commercial radio licensees.

In compliance with section 43C, detailed requirements are specified in a licence condition imposed by the Australian Communications and Media Authority (ACMA) under section 43 of the Act.⁷ The licence condition 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.

Under the current framework, regional commercial radio licensees must, between 5.00 am and 8.00 pm⁸ each business day, broadcast minimum levels of ‘material of local significance’ as follows:

- three hours for the majority of broadcasters
- 30 minutes for broadcasters in small markets (a licence area with a population of 30 000 or less, which is about 16 per cent of licences) and those that hold a licence under section 40
- five minutes for remote area and racing radio broadcasters.⁹

⁷ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

⁸ Broadcasting Services (Hours of Local Content) Regulations 2007.

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

The licence condition also includes annual reporting and ongoing recordkeeping requirements such as keeping audio records of the local content broadcast and compiling a local content statement for each business day.

Trigger event related requirements

Where a regional commercial radio license 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.¹⁰ These requirements are set out in section 43B and Division 5C of Part 5 of the Act and are in addition to the obligations under section 43C of the Act.

Section 43B of the Act requires the ACMA to impose a licence condition that applies to regional commercial radio broadcasting licensees after a trigger event and that requires licensees to maintain in perpetuity at least the existing level of ‘local presence’. The existing level of local presence is defined in terms of staffing and the use of studios and other production facilities in the licence area. The level is determined by reference to the level that existed in the three month period prior to the trigger event occurring.¹¹

Division 5C of Part 5 of the Act requires regional commercial radio licensees subject to a trigger event to broadcast specified amounts of local news and information, submit to the ACMA local content plans and comply with additional reporting obligations. More specifically, under the current framework, broadcasters must provide:

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

These local news and information requirements also count towards the local content requirements under section 43C described above. In accordance with section 43C, the ACMA has defined ‘material of local significance’ broadly to include also material that licensees are required to provide under Division 5C of Part 5 of the Act.

Part 4 of Schedule 2 to the Act 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 is a licence condition for licensees to whom the requirements apply.

¹⁰ The term ‘trigger event’ is defined in section 61CB of the Act.

¹¹ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice 22 March 2007.

Issues for comment

Objectives

Despite the changing media environment, the broad intent of the regional commercial radio localism provisions remains valid and reflects community concerns about a potential loss of local content and local presence in regional radio services. The review is considering the operation of the legislative provisions and whether changes are required to assist in their effective operation.

The measures implemented in 2006 allow little flexibility for regional commercial radio broadcasters in determining how to meet the requirements. As a result, they place a heavy regulatory and administrative burden on regional radio licensees.

It may be appropriate to modify the local content, local presence and trigger event related provisions to improve their operation. For example, improvements could allow greater flexibility for broadcasters in complying with requirements, while retaining a framework to ensure the provision of local content.

Key issues

The review is seeking public comment on the key issues outlined below which describe some of the matters that have arisen in relation to the provisions. The Productivity Commission made a number of recommendations relating to the legislative requirements for regional commercial radio broadcasters in its recent review of regulatory burdens on business.¹² The ACMA examined the local content requirements in 2007.¹³

1. Time period for local content requirements

The Act requires each regional commercial radio licensee to broadcast a specified amount of material of local significance (three hours for most licensees) on each of the five business days of each week, for 52 weeks of the year. Smaller amounts apply for smaller broadcasters and broadcasters primarily providing racing services (page 5 refers). In meeting the requirements, the legislation does not permit radio stations to include any material of local significance broadcast on weekends or public holidays. This could be considered an unreasonable restriction on licensees and possibly discourage local content being provided on weekends.

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)?

2. Application to different categories of broadcasters

Remote and racing radio broadcasters are required by section 43C of the Act to

¹² Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, September 2009.

¹³ Local Content Levels Investigation Report, 2007.

provide five minutes per day of material of local significance.

Remote licensees provide a service to large and sparsely populated geographic areas, making it difficult to specify what is 'local' and to maintain a 'local presence' throughout the licence area after a 'trigger event' has occurred.¹⁴ Regional racing radio broadcasters predominantly relay racing services from capital cities and regional centres and licensees do not have a physical presence within their regional licence areas. The nature of racing radio indicates that listeners are generally seeking access to a comprehensive regional or national racing calendar of events rather than localism.

For these reasons, a requirement of five minutes is likely to require a change of business practices by the stations, and could be onerous depending on how 'local' was defined. Therefore, a requirement to provide only five minutes per day of local content may provide little benefit for consumers, while placing a range of administrative requirements on broadcasters such as record keeping requirements.

In addition, once a trigger event occurs, these broadcasters are required to comply with additional local news and information, local presence and reporting requirements.

Section 40 licensees are required to provide a minimum of 30 minutes of material of local significance each business day. In most cases, section 40 licensees provide niche broadcasting services (for example, serving particular community groups) with relatively modest audiences and are restricted in part by the need to have reception equipment capable of receiving services operating outside the normal broadcasting bands. These licensees are not subject to the local news and information requirements in Division 5C of Part 5 of the Act or the requirements in section 43B of the Act.¹⁵

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
- (b) remote commercial radio broadcasters
- (c) regional radio services operating outside the Broadcasting Services Bands (section 40 licensees)?¹⁶

Please comment.

Key issue 2.2

Should the additional local news and information requirements imposed after a trigger event occurs apply to:

- (a) remote commercial radio broadcasters
- (b) regional commercial radio broadcasters primarily providing racing services?

Please comment.

¹⁴ Licence area maps are available at www.acma.gov.au/WEB/STANDARD/pc=PC_300251

¹⁵ Section 50A of the Act provides that Part 5 of the Act does not apply to commercial radio broadcasting licences allocated under section 40 of the Act.

¹⁶ While this is already the case under the current framework, the amendment would expressly provide for this.

3. Application of trigger event to changes of control or transfers of licences

The media ownership regulatory framework in the Act is built around the concept of ‘control’. The details of what constitutes control of a media entity are set out in Schedule 1 to the Act.

The media control principles reflect the view that concerns about media ownership arise not at the level of who owns the business per se, but at the level of who ultimately controls the company and influences its decisions and directions.

Subsection 61CB(1) of the Act is currently inconsistent with the media control principles as it only relates to a transfer of a licence, not a change in control of a licence. The transfer of a regional commercial radio broadcasting licence is relatively uncommon and it is more common for shares in the licensee company that controls the licence to be traded. For example, the sale of shares in a company that holds a radio licence would not result in the transfer of the licence (as the licence would still be held by the same company) but could result in a change of control. However, subsection 61CB(1) may not be activated even though a change of control has occurred, creating an inconsistency with the media control principle.

Key issue 3

Should section 61CB(1) be consistent with the media control principles in the *Broadcasting Services Act 1992*? Please comment.

4. Scope of trigger event

Under section 61CB of the Act, a trigger event occurs in respect of a regional commercial radio broadcasting licence when there is a transfer of a regional commercial radio 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 where a regional commercial radio broadcasting licence is in the group.

This definition captures events that are outside the control of licensees, do not lead to a change in control of a licence or where application of the provisions may be inappropriate—for example, intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence. Conversely, the definition does not capture a range of circumstances that may give rise to a change in control of a licence without a formal transfer of the licence actually occurring. This second aspect is dealt with in section 3 above.

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?

5. Time period for application of trigger event related obligations

The additional trigger event related obligations¹⁷ currently apply indefinitely to a regional commercial radio licence after a trigger event has occurred. This locks the broadcaster permanently into the same levels of staffing and use of studios and production facilities that existed in the three month period prior to the trigger event. It also requires broadcasters to provide specified amounts of local news and information and comply with additional reporting requirements on an ongoing basis.

The ongoing nature of the requirements may leave parts of the radio industry unable to benefit from improved technical or business practices. It may also discourage innovation and prevent some broadcasters from responding to changed audience demand.

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?

Making a submission

Submissions are invited in writing by Thursday, 1 April 2010.

The preferred method for the receipt of submissions is via the online form at www.dbcde.gov.au/regionalradioreview

Other means for making submissions are:

1. by fax to 1800 248 610
2. by post to

The Manager
Regional Radio Review
Radio Broadcasting Section
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
Canberra ACT 2601

3. by email attachment to regionalradioreview@dbcde.gov.au

Please use only one of the available options to make a submission.

¹⁷ Section 43B and Division 5C of Part 5 of the Act.

Submissions cover sheet

All submissions made via fax, post or email must have a coversheet attached. These are available at www.dbcde.gov.au/regionalradioreview or upon request from the Department on 1800 248 025.

Publication of submissions

Unless a contributor specifies otherwise, the Department will publish each submission on its website after the public submission period has closed.

The Department will not acknowledge receipt of submissions. Please note the possibility for delay in publishing submissions if a large number is received.

The Department will not publish submissions that breach applicable laws, promote a product or a service, contain offensive language, or express sentiments that are likely to offend or vilify sections of the community.

Please note that the Department reserves the right not to publish submissions it deems inappropriate for reasons other than those outlined above. For example, the Department may choose to publish only one of a series of duplicate, identical or near-identical 'campaign-type' responses.

Confidential information

Any submission that is confidential or sensitive must be clearly indicated as such to ensure that it is not published. However, you may choose to provide an additional version of that submission for public release.

Submitters of material marked as confidential or sensitive must understand that submissions may be released where authorised or required by law or for the purpose of parliamentary processes.

The Department will strive to consult submitters of confidential information before that information is provided to another body or agency. However, the Department cannot guarantee that confidential information will not be released through these or other legal means.

Privacy

The Department is subject to the *Privacy Act 1988*. Any personal information you provide to the Department through your response to this position paper is used only for the purposes of the Australian Government's review of the regional commercial radio local content provisions.

Contact information

If you require a copy of the discussion paper or any other information sent out to you, please call the Department on 1800 248 025

If you are deaf or have a hearing or speech impairment, please contact the Department through the National Relay Service:

- TTY users phone 1800 555 677 then ask for 1800 069 450
- Speak and Listen (speech-to-speech relay) users phone 1800 555 727 then ask for 1800 069 450
- Internet relay users connect to www.relayservice.com.au and then ask for 1800 069 450.

Glossary

Controller	Controller of a media group means a person who is in a position to exercise control of each media operation in the media group (section 61AA of the Act).
Media group	A group of two or more media operations (section 61AA of the Act).
Media operation	Defined in section 61AA of the Act as: <ul style="list-style-type: none"> • a commercial television broadcasting licence, or • a commercial radio broadcasting licence, or • a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.
Racing radio service	A regional commercial radio broadcasting service where 60% of material broadcast is coverage of racing and related issues.
Regional commercial radio broadcasting licence	A commercial radio broadcasting licence that has a regional licence area. A regional licence area is a licence area that is not a metropolitan licence area (Sydney, Melbourne, Brisbane, Perth, Adelaide and the licence area known as Western Suburbs Sydney RA1) (Subsection 43C(8) of the Act).

Registrable media group	Registrable media group, in relation to the licence area of a commercial radio broadcasting licence, means a media group that is covered by item 1 of the table in subsection 61AC(1) of the Act. Item 1 is extracted below.
Points	
Item	This... is worth...
1	<p>a group of 2 or more media operations, where:</p> <ul style="list-style-type: none"> (a) a person is in a position to exercise control of each of those media operations; and (b) each of those media operations complies with the statutory control rules; and (c) if a commercial television broadcasting licence is in the group—more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (d) if a commercial radio broadcasting licence is in the group—the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and (e) if a newspaper is in the group—the newspaper is associated with the first radio licence area
Remote area service licences	<p>Commercial radio broadcasting licences with one of the following licence areas:</p> <ul style="list-style-type: none"> • Remote Commercial Radio Service North East Zone RA1 • Remote Commercial Radio Service Central Zone RA1 • Remote Commercial Radio Service Western Zone RA1.
Small licences	Licences in licence areas with a population under 30 000. Population figures in a licence area are determined by the ACMA pursuant to section 30 of the Act.