



Australian Government

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

Review of local content requirements for regional commercial radio

Final report

March 2011

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Introduction

The availability of local content on regional commercial radio stations helps to ensure Australians living in regional areas have access to program material reflecting the culture and diversity of their communities. The Government is committed to maintaining the levels of local content available to people living in regional Australia. It also recognises the importance of achieving a balance between regional commercial radio licensees providing local content and the ongoing viability of the industry.

The objects of the *Broadcasting Services Act 1992* (the Act) include promoting the availability to audiences of television and radio programs about matters of local significance¹ and encouraging commercial broadcasters to provide appropriate coverage of matters of local significance². In relation to regional commercial radio, the Act requires licensees in regional licence areas³ to provide minimum levels of local content and, in certain circumstances, to broadcast minimum levels of local news and information, maintain a local presence and comply with additional reporting and recordkeeping obligations. This report uses the collective term ‘localism provisions’ to describe these requirements.

Under section 61CT of the Act, the Minister for Broadband, Communications and the Digital Economy must cause to be conducted, at least once every three years, a review of the operation of the localism provisions and whether they should be amended.

The review was conducted by the Department of Broadband, Communications and the Digital Economy (the Department) with input from the Australian Communications and Media Authority (the ACMA). The review included public consultation with the release of a discussion paper on 5 March 2010 and an invitation to make submissions that was published in several metropolitan and 93 regional newspapers. Submissions received are published on the Department’s website. The Terms of Reference for the review are at page 17.

In general, radio industry submissions provided information about licensees’ experiences with the operation of the provisions and proposals for change. A number of non-industry submissions provided information about the ongoing importance of local content.

While the localism provisions include a wide range of requirements that were considered as part of the review, this report focuses on areas most commonly identified during the consultation process.

¹ *Broadcasting Services Act 1992* s. 3(1)(ea).

² *Broadcasting Services Act 1992* s. 3(1)(g).

³ Regional licence area means a licence area that is not a metropolitan licence area. The metropolitan licence areas are those that include the General Post Office in the five mainland state capitals (plus the Western Sydney licence area).

Legislative framework

The Act sets out the legislative framework under which regional commercial radio broadcasting licensees (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 changes in ownership and control known as ‘trigger events’.

The legislative requirements apply to 222 regional commercial radio licences across 102 regional licence areas. Of these, 219 licences broadcast via radio communication spectrum in the Broadcasting Services Bands (BSB – the traditional AM and FM frequencies) and three broadcasters operate under licences issued under section 40 of the Act using frequencies outside of the BSB⁴.

Eighty-nine radio licences were affected by a trigger event between 4 April 2007 (when the provisions commenced) and 30 September 2009. Over 41 per cent of these licences were affected by more than one trigger event.

Local content obligations

Section 43C of the Act requires the ACMA to ensure that, at all times after 1 January 2008, a licence condition is in force under section 43 of the Act setting out the local content obligations for licensees⁵. 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.

This means that between 5.00 am and 8.00 pm⁶ each business day⁷, licensees must broadcast the following amounts of material of local significance:

- 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) and those that hold a licence under section 40 of the Act
- five minutes for remote area and racing radio broadcasters⁸.

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 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 such other time specified by the ACMA, and make them available to the public.

⁴ Licences issued under section 40 of the Act are only subject to the requirements relating to the provision of local content in section 43C of the Act.

⁵ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

⁶ Broadcasting Services (Hours of Local Content) Regulations 2007.

⁷ A day that is not a Saturday, Sunday or public holiday in the place concerned.

⁸ Broadcasting (Hours of Local Content) Declaration No.1 of 2007. The declaration also sets out definitions for ‘remote area service licence areas’ and ‘racing service licence areas’.

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 group⁹. These requirements are set out in section 43B (local presence) and Division 5C of Part 5 (local news and information) of the Act.

The ACMA monitoring indicates that around 58 per cent of trigger events which occurred between 4 April 2007 and 30 September 2009 resulted in the formation of new registrable media groups, 29 per cent were caused by changes of controller of registrable media groups, 10 per cent occurred due to the transfer of a radio licence, and five per cent due to both a change in controller and transfer of a licence.

Local presence

Section 43B of the Act 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 Act that applies to licensees after a trigger event. The licence condition must also require licensees to maintain in perpetuity at least the ‘existing level of local presence’. The ‘existing level of local presence’ is defined in terms of average monthly staffing levels¹⁰ and broadcast hours produced using studios and other production facilities in the licence area in the three-month period prior to the trigger event¹¹. 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 Act 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

⁹ The term ‘trigger event’ is defined in section 61CB of the Act.

¹⁰ Staffing level means any one of: (a) the number of full time equivalent staff employed; or (b) the total number of staff hours worked; or (c) expenditure on staff.

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

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 above¹².

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 of the Act is a licence condition for licensees to whom the requirements apply.

¹² *Broadcasting Services Act 1992* s 43C(2) and Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

Discussion

The regional commercial radio local content, local presence and local news and information provisions were introduced as a part of the *Broadcasting Services Amendment (Media Ownership) Act 2006* ('the 2006 legislation'), which amended Australia's foreign and cross-media ownership rules and addressed concerns about a reduction in the level of local content in regional areas¹³.

Concerns about local content levels on television and radio are not new. The issue was considered by a House of Representatives Standing Committee in 2001¹⁴. *Local Voices: an Inquiry into Regional Radio* identified a decline in regional radio programming arising from increasing levels of consolidation of ownership, the loss of independently owned local stations and an increase in networked, pre-recorded, automated and syndicated programming.

The Explanatory Memorandum to the 2006 legislation suggested that the decline in local programming was a possible result of two broad developments within the radio and television industry:

- ownership consolidation that had occurred in regional broadcasting markets, with new owners seeking cost efficiencies, and
- the introduction of digital technology which allowed efficiencies by centralising news production.

Mandating levels of local content for regional radio was intended to provide an appropriate balance between allowing regional media companies to benefit from the scale and scope that mergers can deliver and protecting the public interest in maintaining diversity¹⁵. In introducing the provisions, the then government recognised that the capacity of the regional commercial radio sector to meet additional obligations was linked to its commercial viability. It also recognised that imposing additional regulatory requirements on regional licensees would involve additional costs¹⁶.

Since the 2006 amendments were introduced, the commercial radio industry peak body, Commercial Radio Australia (CRA), has called for changes to what it considers to be 'burdensome' requirements. The Productivity Commission has also criticised the requirements. In its 2009 report¹⁷, the Commission suggested that the inflexibility of the local content provisions limited the ability of licensees to tailor programming to

¹³ Broadcasting Services Amendment (Media Ownership) Bill 2006 Revised Explanatory Memorandum, Regulation Impact Statement.

[http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/\\$file/06132rEM.pdf](http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/$file/06132rEM.pdf).

¹⁴ *Local Voices: an Inquiry into Regional Radio*, by the House of Representatives Standing Committee on Communications, Transport and the Arts, which reported in September 2001.

¹⁵

[http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/\\$file/06132rEM.pdf](http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/$file/06132rEM.pdf)

¹⁶

[http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/\\$file/06132rEM.pdf](http://scaleplus.law.gov.au/ComLaw/legislation/bills1.nsf/0/69E446D84342176ECA25727D000365CF/$file/06132rEM.pdf)

¹⁷ Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, page 165, 2009.

their listeners' needs and the administrative burden of the reporting requirements may reduce resources that could be used to produce local content. The Commission also argued that the need to maintain levels of staffing and use of local infrastructure after a trigger event could prevent licensees from responding to changing circumstances and threaten their viability. It questioned the rationale of imposing greater content obligations on some licensees and considered the trigger event reporting requirements excessively burdensome, particularly for smaller licensees.

The Commission recommended:

- a more flexible regime for local content obligations, with quotas applying over a longer period (for example, weekly instead of daily)
- the streamlining of local content reporting requirements and targeting those licensees at high risk of non-compliance, and
- abolition of the trigger event provisions.

The ACMA has undertaken several investigations into the localism provisions, including the *Local Content Levels Investigation Report* in 2007 which identified a number of concerns such as the burden placed on licensees by the additional reporting and record-keeping requirements¹⁸.

Compliance with the obligations is monitored under a self-reporting regime under which each licensee retains records that demonstrate compliance with the material of local significance and trigger event-related requirements¹⁹. Licensees must provide this information to the ACMA—which monitors compliance with the localism requirements—by the reporting date.

Compliance data submitted by licensees to the ACMA indicates a high level of compliance with the local content licence condition, with many licensees indicating that they broadcast more than the minimum amount of material of local significance required²⁰. However, the ACMA also reported that 11.7 per cent did not submit compliance reports on time²¹. Non-network licensees reported a higher level of local content broadcast than licensees that are part of a radio network.

In September 2009, the ACMA received a complaint about the level of local content broadcast by three regional commercial radio licensees—2HC Coffs Harbour, 2EL Orange and 2PM Kempsey—owned by the Super Radio Network. The ACMA investigation found that the licensees breached a condition of their licences by failing to broadcast the required amount of material of local significance on 8 September 2009²². It also found that the licensees had breached the requirement in subsection 10(4) of the licence condition imposed by the ACMA to record specific program details in local content statements. The ACMA has conducted a broader audit to assess the compliance of regional commercial radio licensees with the local content

¹⁸ ACMA, *Local Content Levels Investigation Report*, 2007.

¹⁹ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice 22 March 2007; Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

²⁰ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

²¹ ACMA, 2009 Regional radio local content report—compliance, analysis and findings, November 2009.

²² The ACMA investigation reports are available at www.acma.gov.au/WEB/STANDARD/pc=PC_310230#2335

requirements. Release of the outcomes of the audits is expected in the first half of 2011.

The ACMA found that applying the local content licence condition to all licensees led to two section 40 licensees breaching the condition because they were not broadcasting at the time²³. It also concluded that the inflexibility of the provisions meant licensees would breach them if exceptional circumstances, such as natural disasters and technical and licensing issues, prevented the broadcast of local content.

Submissions from the commercial radio industry in response to the discussion paper²⁴ indicated a strong desire for amendment of the localism requirements. Two submissions received from the public and a submission from the Community Broadcasting Association of Australia (CBA) expressed support for various elements of the requirements.

Challenges of regulating the commercial radio industry

The regional commercial radio industry is highly concentrated, with 33 entities owning the 222 regional licences. In the majority of regional licence areas (69.7 per cent), the same licensee owns two radio stations—usually an AM and an FM regional licence.

Regional radio is dominated by Southern Cross Media Australia, which owns 66 regional licences and is joint venture owner of two others. The five largest radio networks, including Southern Cross Media, own about 70 per cent of all regional radio licences (see Table 1). A further 29 regional licences are owned by eight smaller networks, and the remaining 37 licences are owned by 20 non-network licensees.

Table 1: The five largest regional commercial radio networks

Network	Number of regional radio licences
Southern Cross Media Australia ²⁵	66 + 2 ²⁶
Super Radio Network	35
Grant Broadcasters	28
Ace Radio	13
Prime Radio	10
Total	154

While commercial radio stations continue to attract large audiences, the industry is facing a number of challenges including competition for audiences and advertisers, and increasing costs.

Regional licensees, particularly AM stations, are generally less profitable than their metropolitan counterparts. Regional commercial radio services had a total profit of about \$84 million in 2008–09, with FM licensees making an average profit of \$0.59 million per licence and AM licensees averaging \$0.11 million per licence.

²³ ACMA, 2009 Regional radio local content report—compliance, analysis and findings, November 2009.

²⁴ *Local content requirements for regional commercial radio*, www.dbcde.gov.au/radio/commercial_radio

²⁵ Formerly Macquarie Southern Cross Media, which was renamed Southern Cross Media Australia on 17 December 2009.

²⁶ Southern Cross Media Australia interests include two Austereo Network joint ventures.

Forty-one regional stations made a loss during the financial year²⁷.

The diversity of licence areas creates regulatory challenges as the relative impact of regulation may vary due to the characteristics of each licence area—such as its size, population density and proximity to major metropolitan markets. Licensees in the Newcastle RA1 licence area (522 222 people) are subject to the same regulatory and reporting requirements as those in a small market like Queenstown RA1 (5274 people)²⁸. Likewise the proximity of regional licence areas to major metropolitan markets impacts on the availability of information from other sources. This includes fortuitous reception from radio licensees in adjacent metropolitan areas that are not bound by the local content and trigger event obligations.

Key issues

1. Time period for local content requirements

The discussion paper asked whether licensees should have greater flexibility to provide local content under section 43C of the Act.

All submissions received from the commercial radio industry supported greater flexibility in delivering local content, identifying two issues they considered problematic:

- (1) not allowing local content broadcast on weekends or public holidays to count towards their obligations, and
- (2) requiring the broadcast of local content 52 weeks of the year.

CRA said that, despite these issues, the industry remained committed to broadcasting three hours of local content five days a week (30 minutes for small markets) and was not seeking to reduce the level of the local content broadcast²⁹.

In contrast, the CBAA argued that greater flexibility would lead to an undesirable dilution of local content³⁰. Another submission called for a commitment from commercial radio licensees to provide at least eight hours a day of local programming, and four local news bulletins a day from Monday to Friday³¹.

Requirement to broadcast local content on business days

CRA and the majority of submissions from broadcasters argued for legislative amendments to allow material of local significance broadcast on any five days of the week to count towards their requirement, rather than only material broadcast on business days.

CRA noted that many licensees provided local content on weekends and public holidays, particularly local sports coverage which was popular with listeners, but the material did not count towards the local content requirements³². It argued that the

²⁷ ACMA, *Broadcasting Financial Results* report for 2008–09.

²⁸ Population figures sourced from ABS 2006 Census of Population and Housing.

²⁹ www.dbcde.gov.au/__data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

³⁰ www.dbcde.gov.au/__data/assets/pdf_file/0008/127790/CommunityBroadcastingAssociationofAustralia_CBAA.pdf

³¹ www.dbcde.gov.au/__data/assets/pdf_file/0009/127791/Craig_Wilson.pdf

³² www.dbcde.gov.au/__data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

distinction between broadcasting local content on business days and weekends was artificial.

Support was also expressed for an approach similar to that of the Productivity Commission under which licensees would need to broadcast a specified number of hours of local content per week (or month), instead of a minimum level per day³³.

One submission noted the lack of local sports coverage on regional radio and suggested that commercial licensees be required to give local sporting results in real-time. It also argued that broadcasters should provide this form of local programming in addition to existing local content requirements³⁴.

The Communications Law Centre at the University of Technology Sydney (CLC) opposed changing the requirements from business days to any five days of the week, arguing that licensees may abandon local programming on some weekdays and this could detrimentally effect the availability of news and current affairs content in regional areas³⁵.

Broadcasting local content 52 weeks a year

The commercial radio industry has proposed a reduction from 52 to 46 in the number of weeks per year for which the local content obligations apply. Submissions from the industry argued that the current requirement was unduly onerous and made no allowance for staff leave or the effects of staff turnover. Additionally, under the Broadcasting and Entertainment Award 2010, journalists are entitled to six weeks' annual leave per year. Radio announcers are entitled to more than four weeks' annual leave in exchange for working on Sundays or public holidays. These industry working arrangements are not reflected in the localism obligations.

Some commercial licensees argued that engaging qualified production and on-air staff for short periods was difficult and costly. They said regional licensees often operated with fewer staff than metropolitan services, and engaging temporary employees or relocating staff from another office each time someone was on leave was not practicable or cost-effective. Broadcasters also argued that the licence condition does not consider the time required to replace staff.

Several broadcasters asserted that the licence condition was detrimental to listeners' experiences. One respondent said small licensees previously met listeners' expectations over holiday periods by broadcasting quality network programming and pre-recorded special shows, but this could no longer occur due to the local content requirements.

While a non-industry submission expressed concern that local news was not broadcast in December and January³⁶, the industry argued that the lack of qualified staff in regional areas meant that licensees were unable to produce quality local programming when staff were on leave.

³³ www.dbcde.gov.au/__data/assets/pdf_file/0010/127792/Grant_Broadcasters.pdf;
www.dbcde.gov.au/__data/assets/pdf_file/0006/127797/Southern_Cross_Media.pdf

³⁴ www.dbcde.gov.au/__data/assets/pdf_file/0011/127793/Ian_St Stanley.pdf

³⁵ www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

³⁶ www.dbcde.gov.au/__data/assets/pdf_file/0011/127793/Ian_St Stanley.pdf

2. Applying localism requirements to different categories of broadcasters

Remote commercial radio service licences were introduced in the 1980s to provide people living in remote regions with access to commercial radio services. While remote area service licences were converted to normal commercial broadcasting licences in 1992, the three remote zones—Western, Central and North East—remain. There are five commercial radio licences operating in the remote areas. These licensees are not required to establish transmission facilities at any particular site, services are often networked from outside the broadcast area and licensees often provide the same programming across their entire licence area.

Regional racing radio broadcasters predominantly relay racing programming from capital cities and regional centres and do not always have a physical presence within their licence areas.

Section 40 licensees provide niche broadcasting services to relatively modest audiences and operate outside the normal broadcasting bands.

The requirement for remote commercial radio broadcasters and regional commercial radio broadcasters that primarily provide racing services to comply with the localism provisions has been a contentious issue since the requirements were introduced. This is partly because providing local content has a disproportionate effect on the licensees. For example, a requirement to provide five minutes per day of local content may provide little benefit to audiences while placing additional administrative obligations on licensees and requiring a change in business practices.

Local content

Remote area and racing services are required to provide five minutes of material of local significance on each business day, while section 40 licensees must provide a minimum of 30 minutes³⁷. The requirements reflect that these categories of licensees have a limited capacity to produce a significant amount of local content³⁸. This limited capacity was also recognised by the ACMA in its 2007 investigation into the local content levels. It found that it was not appropriate to require remote area services and racing radio services to provide local content due to the potential impact on their viability³⁹.

Redwave Media, which operates two remote commercial radio services, offered an insight into the difficulties experienced by licensees providing services to a large geographic area. Its remote licence areas stretch from Kununurra in far north Western Australia to Bremer Bay in the south and from Christmas/Cocos Islands to the South Australian border. Redwave Media noted the difficulty in defining ‘local’ for its licence areas and the financial burden of providing local news for different areas within its large and sparsely-populated licence areas⁴⁰.

³⁷ Broadcasting (Hours of Local Content) Declaration No.1 of 2007.

³⁸ Explanatory Statement to the Broadcasting (Hours of Local Content) Declaration No.1 of 2007 ([www.comlaw.gov.au/ComLaw/legislation/LegislativeInstrument1.nsf/0/4CD937E323B5C3CDCA25735400185E16/\\$file/BroadHoursofLocalContentDecNo1of2007_ESES.pdf](http://www.comlaw.gov.au/ComLaw/legislation/LegislativeInstrument1.nsf/0/4CD937E323B5C3CDCA25735400185E16/$file/BroadHoursofLocalContentDecNo1of2007_ESES.pdf))

³⁹ ACMA, Local Content Levels Investigations Report, 2007.

⁴⁰ www.dbcde.gov.au/_data/assets/pdf_file/0004/127795/RedWave_Media.pdf

Other submissions expressed the view that local content may not be readily available in large licence areas. However, the CLC argued that the importance of local news and information to remote audiences should remain paramount. It proposed that remote licensees provide five minutes per day of local news and current affairs to audiences in different geographic zones within their licence area, with the additional costs offset by abolishing other local content requirements⁴¹.

Respondents maintained that racing service providers operated in a similar way to licensees in remote areas, often having limited staff and providing content supplied by services outside the licence area. The CLC noted that racing radio provided a service for a special interest audience that did not expect local content. It argued for the regulation of the four regional commercial radio racing services as narrowcasters, along with section 40 licensees, whose services are also limited in some way⁴². Section 40 licensees are restricted in part by the need to have equipment capable of receiving the services.

Trigger event provisions

The majority of submissions to the review expressed concern that trigger event-related obligations did not take into consideration the unique nature of remote area and racing radio services, including the difficulty in defining 'local' for large and sparsely-populated licence areas. Some argued that the cost of complying with the provisions could force broadcasters out of business.

Respondents that opposed the requirements applying to remote areas and racing services licensees argued that the local news and information obligation increased the logistical, financial and administrative burden on licensees. For example, the requirement for 12.5 minutes of local news has a disproportionate effect on small, remote area and racing service licensees which are otherwise only required to provide five minutes of local content each business day under the 'material of local significance' requirement.

The CLC also supported abolishing the obligation for remote area, racing services and section 40 broadcasters because it provided little or no benefit for listeners⁴³. This position was also supported by CRA, while another submission supported retaining the trigger event requirements for remote licensees⁴⁴. The impact of the local presence condition on licensees is considered in Issue 4.

3. Scope of trigger event

The discussion paper asked whether the trigger event definition should be modified, including to ensure consistency with the media control principles of the Act.

Radio industry submissions strongly supported repealing all trigger event provisions. Respondents put forward a range of rationales for this position, including that the definition was too broad, had unintended consequences and was counterproductive.

⁴¹ www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

⁴² www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

⁴³ www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

⁴⁴ www.dbcde.gov.au/__data/assets/pdf_file/0011/127793/Ian_St Stanley.pdf

Industry respondents considered that any change to the provision would broaden its application and increase the burden on licensees. CRA argued that, if the provisions were not repealed, the definition of trigger event should be narrowed to include only instances where a cross-media merger occurred, and should specifically rule out certain types of events⁴⁵.

Canberra FM, which has had four trigger events, argued for the exclusion from the requirements of any trigger events that do not affect the programming or operation of a licence⁴⁶. Other industry submissions called for the trigger event definition to exempt intergenerational change, partner buyout, radio-to-radio sales and changes to licence areas. A further suggestion was for the trigger event provisions to apply only where there was a reduction in the number of independent media groups⁴⁷. Austereo and its subsidiary Canberra FM also argued for exemption of large regional markets from the trigger event obligations because competition ensured licensees had a strong local focus.

In its submission, Grant Broadcasters said government intervention in the daily operations of private enterprises, including regional radio, should be restricted to the most extreme situations. It said the trigger event provisions were damaging to its business and employees, forcing it to retain staff in licence areas with limited career opportunities and to limit new facilities in areas affected by, or at risk of, a trigger event⁴⁸.

An alternative regulatory approach put forward by the CLC supported the trigger event definition applying to changes in ownership and control that may influence programming and operational decisions of a radio station⁴⁹. The CLC noted that the approach would not exclude any particular type of event, such as internal restructures, which may lead to a change in control. Instead, it focused on the potential effect of changes on listeners, rather than on the structure or control of a media company.

The ACMA has identified a number of potential difficulties with the scope of the trigger event definition. It considers that the broad definition currently captures events such as the formation of a registrable media group that is created only due to geographic or demographic changes in a licence area, internal corporate restructures where the ultimate controller does not change, and intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence. The ACMA also highlighted the complexity of the trigger event definition and difficulty identifying trigger events.

4. Length of time for which trigger event requirements should apply

Local presence requirements

The indefinite nature of the local presence obligations is a key concern for industry, which says the requirements force an unsustainable business model onto regional licensees and have a negative impact on competition within licence areas.

⁴⁵ www.dbcde.gov.au/__data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

⁴⁶ www.dbcde.gov.au/__data/assets/pdf_file/0006/127788/Canberra_FM.pdf

⁴⁷ www.dbcde.gov.au/__data/assets/pdf_file/0006/127797/Southern_Cross_Media.pdf

⁴⁸ www.dbcde.gov.au/__data/assets/pdf_file/0010/127792/Grant_Broadcasters.pdf

⁴⁹ www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

Submissions to the review argued that the current regulatory obligations may lead regional licensees to refrain from employing staff in buoyant economic periods due to fears they will be unable to reduce numbers in tough economic times should a trigger event affect them. Licensees that temporarily employ additional staff during a busy period such as Christmas may face similar disadvantage. If a trigger event occurs during or just after this period, the provisions require the licensee to maintain the higher staffing level in perpetuity.

The provisions also have a disproportionate impact on smaller licensees. For example, if one person leaves a radio station that has three staff, a material reduction in the staffing level (defined by the ACMA as five per cent) will have occurred, thus triggering a breach of the requirements. However, if a regional station with 16 staff loses one employee the reduction is only 2.5 per cent.

Redwave Media submitted that it had recently decided not to increase staff numbers despite needing an additional employee in its Geraldton office. The licensee feared it would be unable to decrease staff levels if necessary⁵⁰.

Another submitter, Grant Broadcasters, said the requirement had forced it to hire staff unnecessarily. This occurred because, despite the lack of interest and suitable candidates for a sales position in a remote area, the local presence obligations required employment of an additional worker to maintain staffing levels. This resulted in the radio station engaging someone who was unable to satisfactorily perform the sales role and, combined with the loss of advertising revenue, led to the station making a loss for the period⁵¹.

Submissions also said the trigger event requirements to maintain production facilities had practical and financial effects on their businesses. Independent Regional Radio (IRR), an association of licensees of 95 regional commercial radio stations, contends that the local presence requirements prevent the efficient use of resources and, in a multi-station market, place the affected radio station at a serious competitive disadvantage⁵². This was supported by Redwave Media, which provided the example of a redundant studio at its Karratha office which it was required to retain⁵³, and Smart Radio Group, which outlined the financial impact on its business:

Trigger events place restrictive impositions on the ability of regional commercial radio stations to perform efficiently and to react to changing market circumstances. During the recent global financial crisis, many of our rural advertisers heavily restricted their spending, yet we were forbidden to take normal commercial steps to reduce our losses and protect our company from this change in business sentiment⁵⁴.

⁵⁰ www.dbcde.gov.au/__data/assets/pdf_file/0004/127795/RedWave_Media.pdf

⁵¹ www.dbcde.gov.au/__data/assets/pdf_file/0010/127792/Grant_Broadcasters.pdf;
www.dbcde.gov.au/__data/assets/pdf_file/0010/127999/Bathurst_Broadcasters_2BS.pdf;
www.dbcde.gov.au/__data/assets/pdf_file/0006/127797/Southern_Cross_Media.pdf

⁵² www.dbcde.gov.au/__data/assets/pdf_file/0003/127794/Independent_Regional_Radio_IRR.pdf ;
www.dbcde.gov.au/__data/assets/pdf_file/0005/127796/Smart_Radio.pdf

⁵³ www.dbcde.gov.au/__data/assets/pdf_file/0004/127795/RedWave_Media.pdf

⁵⁴ www.dbcde.gov.au/__data/assets/pdf_file/0005/127796/Smart_Radio.pdf

A number of regional licensees also criticised the obligations for stifling the ability of some licensees to innovate. These included Canberra FM, which submitted that the indefinite nature of the requirements risked ‘fossilising’ regional services at a time of rapid technology advancement and was contrary to the regulatory policy of the Act to readily accommodate technological change⁵⁵.

CRA said the burden created by the provisions was an unreasonable intervention in the industry and threatened the long term viability of regional commercial radio⁵⁶. It argued that regional licensees must have scope to implement changes aimed at improving productivity—including changes to staffing levels—particularly in difficult economic times or when technological improvements led to operational efficiencies.

CRA indicated that while repealing the provisions was the industry’s preferred solution, it would support a ‘sunset clause’ to limit the duration of the provisions to 12 months. A sunset clause was also supported by the CLC, Productivity Commission and a number of submissions from the commercial radio industry.

However, repealing the local presence requirements or reducing the length of time for which they applied was not supported by all respondents. A member of the public said radio licensees had an obligation to give something back to their communities⁵⁷, while the CLC argued that public interest objectives made it incumbent on licensees to maintain some level of local presence⁵⁸.

Local news and information requirement

The requirement to provide specified amounts of local news and information after a trigger event was criticized by broadcasters as unnecessary. Submissions to the review argued that there was no threat to localism as a result of a trigger event.

The ACMA reported that, despite confusion about the interpretation of the provisions, self-reporting from licensees indicates that they generally exceeded the requirement to provide a specific number of local news and information bulletins after a trigger event. However, it suggested that small licensees were disproportionately affected by the requirement. Compliance data from the ACMA shows that small licensees did not broadcast local news and information during the benchmark year, however, after a trigger event they are required to comply with the same requirements as large licences.

Some broadcasters argued that rather than protecting localism, the local presence requirements could discourage a higher level and quality of local content. Grant Broadcasters noted that if licensees exceeded the minimum local news requirement, they would have to maintain the higher level indefinitely⁵⁹.

A further concern regarding the requirements is the cost of producing relevant local material. In the *Local Content Levels Investigation Report*, the ACMA estimated that the cost of complying with the local news bulletin requirement could reach 15–26 per

⁵⁵ www.dbcde.gov.au/__data/assets/pdf_file/0006/127788/Canberra_FM.pdf

⁵⁶ www.dbcde.gov.au/__data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

⁵⁷ www.dbcde.gov.au/__data/assets/pdf_file/0009/127791/Craig_Wilson.pdf

⁵⁸ www.dbcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

⁵⁹ www.dbcde.gov.au/__data/assets/pdf_file/0010/127792/Grant_Broadcasters.pdf

cent of the profit of some licensees, which represented a ‘significant financial impost’⁶⁰.

This was supported by Redwave Media which said it was reluctant to broadcast local content that exceeded the minimum requirement because the organisation may not be able to fund it indefinitely⁶¹.

The CLC suggested that the costs for licensees could reduce by defining local news and information more broadly to include repeat bulletins. It has also suggested modifying the obligations to ensure licensees could choose to broadcast additional news and information without penalty⁶².

Reporting requirements

The requirement for licences affected by a trigger event to comply with additional reporting obligations was strongly criticised by the commercial radio industry as unnecessary, onerous and expensive. A number of submissions expressed concern about the volume of reporting as well as the requirement to comply with the obligations indefinitely⁶³.

The obligations are additional to the annual reporting requirements for all commercial radio licensees and those for all regional licensees⁶⁴.

To fulfil the trigger event related reporting requirements, licensees must retain specific types of records. All licensees, including those not affected by a trigger event, must keep records sufficient to allow the ACMA to calculate minimum local presence and local news and information requirements in case the licence is affected by a trigger event⁶⁵.

IRR submitted that the reporting obligations were disproportionate to the benefits derived from the provisions⁶⁶. For example, Canberra FM spent more than 35 hours completing the trigger event annual compliance report⁶⁷, while Bathurst Broadcasters said the compliance burden was affecting the ability of key staff to carry out its core service of radio broadcasting⁶⁸.

In its submission to the Productivity Commission review, CRA said the external legal costs of compliance with the requirements were estimated by one station to be around \$50 000 per year for each affected licence⁶⁹. CRA argued it was unreasonable to

⁶⁰ ACMA, *Local Content Levels Investigation Report*, 2007.

⁶¹ www.abcde.gov.au/__data/assets/pdf_file/0004/127795/RedWave_Media.pdf

⁶² www.abcde.gov.au/__data/assets/pdf_file/0009/127809/Communications_Law_Centre_UTS.pdf

⁶³ www.abcde.gov.au/__data/assets/pdf_file/0008/127799/West_Coast_Radio.pdf;

www.abcde.gov.au/__data/assets/pdf_file/0004/127795/RedWave_Media.pdf;

www.abcde.gov.au/__data/assets/pdf_file/0006/127788/Canberra_FM.pdf

⁶⁴ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007.

⁶⁵ Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice 22 March 2007.

⁶⁶ www.abcde.gov.au/__data/assets/pdf_file/0003/127794/Independent_Regional_Radio_IRR.pdf

⁶⁷ www.abcde.gov.au/__data/assets/pdf_file/0005/127787/Austereo.pdf

⁶⁸ www.abcde.gov.au/__data/assets/pdf_file/0010/127999/Bathurst_Broadcasters_2BS.pdf

⁶⁹ CRA Submission to the *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, 2009.

expect regional licensees to maintain the current level of compliance reporting indefinitely⁷⁰.

Key findings

Although regional Australians can access local content from many sources including ABC Local Radio—which reaches 99.38 per cent of the population—and, increasingly, the internet, many people still rely on local commercial radio as a key source of information.

The submissions to the review highlighted the necessity of maintaining a balance between the need to provide this relevant local content and the costs imposed on licensees in meeting their obligations.

Recurrent themes raised in the review included:

- a need for clarification of localism requirements to avoid inconsistencies and confusion about licensees' obligations and to reduce regulatory interference with business operations
- providing flexibility for licensees to meet their obligations
- refining recordkeeping and reporting obligations to reduce administration requirements and ensure compliance, and
- whether there is value in remote area service licensees, licensees providing predominately racing services and section 40 licensees continuing to be subject to the localism requirements.

⁷⁰ www.dbcde.gov.au/_data/assets/pdf_file/0007/127789/Commercial_Radio_Australia_CRA_March_2010.pdf

Attachments

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 2007;⁷¹
- Broadcasting Services (Meaning of Local) Instrument 2007;⁷²
- Broadcasting (Hours of Local Content) Declaration No.1 of 2007;⁷³
- Australian Communications and Media Authority (Commercial Radio Broadcasting Services) Direction (No.1) 2007;⁷⁴
- Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007;⁷⁵

⁷¹

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

⁷²

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

⁷³

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

⁷⁴

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

⁷⁵ www.acma.gov.au/webwvr/_assets/main/lib100057/broad_serv_add_reg_comm_radio_lic_con-notice_19_dec_2007.pdf

- Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Local Presence) Notice 22 March 2007⁷⁶.

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

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.

⁷⁶ www.acma.gov.au/webwr/_assets/main/lib101061/bs_addtnl_reg_comm_radio_lic_cond-local_presence_%20notice_22_mar_07.pdf

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).
Localism provisions	Collective term used in this report to describe the following provisions within the <i>Broadcasting Services Act 1992</i> , which apply to regional commercial radio broadcasting licences: section 43B (Local presence), section 43C (Local content) and Division 5C of Part 5 (Local news and information requirements).
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	Essentially a regional commercial radio broadcasting service where 60 per cent of material broadcast is coverage of racing and related issues. The full definition is set out in Broadcasting (Hours of Local Content) Declaration No.1 of 2007 (see definition of the term ‘racing service licence’).
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	<p>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.</p> <hr/> <p>Points</p> <table border="1"> <thead> <tr> <th data-bbox="512 421 619 501">Item</th> <th data-bbox="619 421 1177 501">This...</th> <th data-bbox="1177 421 1337 501">is worth...</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 501 619 1391">1</td> <td data-bbox="619 501 1177 1391"> a group of 2 or more media operations, where: <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 </td> <td data-bbox="1177 501 1337 1391">1 point</td> </tr> </tbody> </table>	Item	This...	is worth...	1	a group of 2 or more media operations, where: <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 	1 point
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Remote area service licences	<p>Regional 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	<p>Regional commercial radio broadcasting 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.</p>						