Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011

No.      , 2011

(Broadband, Communications and the Digital Economy)

A Bill for an Act to amend the Broadcasting Services Act 1992, and for other purposes
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Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011  No. , 2011
A Bill for an Act to amend the Broadcasting Services Act 1992, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Broadcasting Services Amendment (Regional Commercial Radio) Act 2011.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>The day after this Act receives the Royal Assent.</td>
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<tr>
<td>3. Schedule 2</td>
<td>A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
</tr>
</tbody>
</table>

### Note:
This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments commencing on the day after Royal Assent

Australian Communications and Media Authority Act 2005

1 After section 16

Insert:

16A Consistency with Australia-United States Free Trade Agreement

The ACMA must perform its broadcasting, content and datacasting functions, and exercise its powers relating to those functions, in a manner consistent with Australia’s obligations under the Australia-United States Free Trade Agreement, done at Washington DC on 18 May 2004, as amended from time to time.

Note: The text of the Agreement is set out in Australian Treaty Series 2005 No. 1 ([2005] ATS 1). In 2011, the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Broadcasting Services Act 1992

2 Subsection 6(1)

Insert:

regional racing service radio licence has the meaning given by section 8AF.

3 Subsection 6(1)

Insert:

remote area service radio licence means a regional commercial radio broadcasting licence (within the meaning of Division 5C of Part 5) the licence area of which is:

(a) Remote Commercial Radio Service Central Zone RA1; or
(b) Remote Commercial Radio Service North East Zone RA1; or
(c) Remote Commercial Radio Service Western Zone RA1.
4 After section 8AE

Insert:

8AF Regional racing service radio licence

(1) For the purposes of this Act, a regional racing service radio licence is a regional commercial radio broadcasting licence (within the meaning of Division 5C of Part 5), where the following conditions are satisfied in relation to a broadcasting service provided under the licence:

(a) the broadcasting service is promoted, on the broadcasting service:

(i) as a broadcasting service of interest mainly to persons involved in horse racing, harness racing or greyhound racing; or

(ii) using the phrase “racing radio service”;  

(b) the racing content percentage, in relation to the broadcasting service, is 60% or more for each day, other than Christmas Day and Good Friday;

(c) if, on a particular day, content other than racing content is broadcast on the broadcasting service—a significant proportion of that content is:

(i) relevant to horse racing, harness racing or greyhound racing; or

(ii) of interest mainly to persons involved in horse racing, harness racing or greyhound racing.

(2) For the purposes of this section, racing content percentage means the percentage worked out using the following formula:

\[
\text{Total number of minutes of racing content broadcast on the day on the broadcasting service} \times \frac{100}{\text{Total number of minutes of content broadcast on the day on the broadcasting service}}
\]

(3) For the purposes of this section, racing content means content that consists of:
5 At the end of subsection 43B(1)

Add:

Note: For transitional provisions, see Schedule 1 to the Broadcasting Services Amendment (Regional Commercial Radio) Act 2011.

6 After subsection 43B(1)

Insert:

(1A) The ACMA must ensure that, at all times after the commencement of Schedule 2 to the Broadcasting Services Amendment (Regional Commercial Radio) Act 2011, there is in force under section 43 a condition that has the effect of requiring that, if a trigger event for a regional commercial radio broadcasting licence occurs after the commencement of that Schedule, then, throughout the 24-month period beginning when the trigger event occurs, the licensee must maintain at least the existing level of local presence.

Note: A trigger event cannot occur in relation to a regional commercial radio broadcasting licence that was allocated under subsection 40(1): see section 50A.

7 After subsection 43B(4)

Insert:

(4A) The condition does not apply to a regional commercial radio broadcasting licence that is:

(a) a remote area service radio licence; or
(b) a regional racing service radio licence.

8 After subsection 43C(1)

Insert:

(1A) A licence condition imposed as a result of subsection (1) does not require a licensee (the relevant licensee) to broadcast material:

(a) if:

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

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

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

on a business day during that period; or

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

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

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

9 After subsection 43C(2)

Insert:

Exclusion of certain licences

(2A) The condition does not apply to a regional commercial radio broadcasting licence that is:

(a) a remote area service radio licence; or

(b) a regional racing service radio licence; or

(c) allocated under subsection 40(1).

10 Subsections 43C(4) to (4C)

Repeal the subsections, substitute:

(4) A declaration under paragraph (3)(b) or subparagraph (3)(c)(i) must not declare a number that exceeds 4.5.
(4A) Subsection (3) has effect subject to subsection (4B).

(4B) If the number worked out using the formula in subsection (4C) in relation to a regional commercial radio broadcasting licence exceeds 4.5, then:
   (a) if the number worked out using the formula in subsection (4D) in relation to the licence exceeds zero—that number is taken to be the applicable number for the licence for the purposes of the application of subsection (1) to the licence; or
   (b) otherwise—the condition does not apply to the licence.

(4C) The formula is as follows:

\[ \text{Unadjusted applicable number} + \text{Australian music number} \]

where:

**Australian music number** means the number of hours of Australian music that the licensee must broadcast each day in order to comply with a code of practice:
   (a) registered under section 123; and
   (b) that deals with Australian music.

**unadjusted applicable number** means the number that, apart from subsection (4B), is the applicable number for the licence under subsection (3).

(4D) The formula is as follows:

\[ 4.5 - \text{Australian music number} \]

where:

**Australian music number** means the number of hours of Australian music that the licensee must broadcast each day in order to comply with a code of practice:
   (a) registered under section 123; and
   (b) that deals with Australian music.

11 Subsection 43C(8)

Insert:
Schedule 1 Amendments commencing on the day after Royal Assent

1 Australian music means music performed by one or more persons who are citizens of, or are ordinarily resident in, Australia.

12 Subsection 43C(8)
Insert:

music does not include the following:
(a) music in advertisements;
(b) music in program promotions;
(c) music in station promotions;
(d) theme or bridging music.

13 After section 61CA
Insert:

61CAA This Division does not apply in relation to certain licences
This Division does not apply in relation to:
(a) a remote area service radio licence; or
(b) a regional racing service radio licence.

Note: This Division does not apply to a regional commercial radio broadcasting licence allocated under subsection 40(1): see section 50A.

14 Section 61CD
Before “If”, insert “(1)”.

15 At the end of section 61CD
Add:

(2) A licensee (the relevant licensee) is not required to meet any of the minimum service standards referred to in subsection (1):
(a) if:
   (i) the ACMA, by legislative instrument, specifies a period, in relation to one or more specified regional commercial radio broadcasting licensees; and
   (ii) the period does not exceed 5 weeks; and
   (iii) the licensees specified in the instrument consist of or include the relevant licensee;
   on a day during that period; or
(b) if the ACMA, by legislative instrument, specifies a period that does not exceed 5 weeks—on a day during that period; or

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

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

16 Transitional—local presence

Scope

(1) This item applies if there is in force a licence condition imposed as a result of subsection 43B(1) of the Broadcasting Services Act 1992.

Condition

(2) The condition has effect, in relation to a trigger event that occurred before the commencement of this item, as if the requirement to maintain at least the existing level of local presence after the occurrence of the event were instead a requirement to maintain at least the existing level of local presence throughout the period:

(a) beginning when the trigger event occurred; and

(b) ending 24 months after the commencement of this item.

(3) The condition has effect, in relation to a trigger event that occurs during the period:

(a) beginning at the commencement of this item; and

(b) ending at the commencement of Schedule 2;

as if the requirement to maintain at least the existing level of local presence after the occurrence of the event were instead a requirement to maintain at least the existing level of local presence throughout the 24-month period beginning when the trigger event occurs.

(4) The condition does not apply in relation to a trigger event that occurs after the commencement of Schedule 2.
Schedule 1  Amendments commencing on the day after Royal Assent

Exception—remote area service and regional racing service radio licences

(5) The condition does not apply to a regional commercial radio broadcasting licence that is:
    (a) a remote area service radio licence; or
    (b) a regional racing service radio licence.
Schedule 2—Amendments commencing on Proclamation

Broadcasting Services Act 1992

1 Subsection 6(1)

Insert:

*de facto partner* of a person has the meaning given by the *Acts Interpretation Act 1901*.

2 Subsection 6(1)

Insert:

*near relative*, in relation to a person, means:

(a) a parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister of the person; or

(b) the spouse of the first-mentioned person.

3 Subsection 6(1) (definition of *spouse*)

Omit “within the meaning of the *Acts Interpretation Act 1901*”.

4 Subsection 6(1)

Insert:

*stepchild*: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the *stepchild* of the person if he or she would be the person’s stepchild except that the person is not legally married to the partner.

5 Subsection 6(1)

Insert:

*step-parent*: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the *step-parent* of the person if he or she
Schedule 2  Amendments commencing on Proclamation

would be the person’s step-parent except that he or she is not legally married to the person’s parent.

6 Subsection 6(3)
After “(1)”, insert “and the definition of near relative in subsection (1)”.

7 Subsection 43B(1)
Repeal the subsection.

8 At the end of paragraph 61CB(1)(b)
Add “and”.

9 After paragraph 61CB(1)(b)
Insert:

(c) the transfer occurred before the commencement of this paragraph;

10 After subsection 61CB(1)
Insert:

Change in control of licence

(1A) For the purposes of this Division, if either of the following events (a control event) happens after the commencement of this subsection:

(a) a person starts to be in a position to exercise control of a regional commercial radio broadcasting licence;

(b) a person ceases to be in a position to exercise control of a regional commercial radio broadcasting licence;

the control event is a trigger event for the licence.

(1B) Subsection (1A) does not apply to a control event if:

(a) the control event is attributable to a transfer of shares from one person (the first person) to another person (the second person); and

(b) there is no consideration for the transfer; and

(c) the second person is a near relative of the first person.

Note: For near relative, see subsection 6(1).
(1C) Subsection (1A) does not apply to a control event if the control
event is attributable to circumstances beyond the control of each
person who was, immediately before the control event occurred, in
a position to exercise control of the regional commercial radio
broadcasting licence concerned.

(1D) The regulations may provide for exemptions from subsection (1A).

11 After subsection 61CB(2)

Insert:

(2A) Subsection (2) does not apply to a registrable media group that
comes into existence after the commencement of this subsection
only because the ACMA varies, under section 29, the designation
of a licence area.

(2B) Subsection (2) does not apply to a registrable media group that
comes into existence after the commencement of this subsection
only because the ACMA makes or varies a determination, under
section 30, of the licence area population of a licence area.

(2C) The regulations may provide for exemptions from subsection (2).

12 At the end of section 61CB

Add:

(4) Subsection (3) does not apply to a change of controller of a
registrable media group if the change of controller is attributable to
circumstances beyond the control of each person who was,
immediately before the change occurred, a controller of the
registrable media group.

(5) The regulations may provide for exemptions from subsection (3).

13 Transitional—local presence

(1) The repeal of subsection 43B(1) of the Broadcasting Services Act 1992
by this Schedule does not affect the continuity of a condition imposed,
before the commencement of this item, as a result of that subsection.
(2) Subitem (1) is enacted for the avoidance of doubt.
(3) Subitem (1) does not prevent the revocation, under section 43 of the
Broadcasting Services Act 1992, of the condition.