

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Material of Local Significance – Regional Aggregated Commercial Television Broadcasting Licences) Direction 2013

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Purpose

The *Broadcasting Services (Material of Local Significance – Regional Aggregated Commercial Television Broadcasting Licences) Direction 2013* (the Direction) is made by the Minister for Broadband, Communications and the Digital Economy under subsection 171(1) of the *Broadcasting Services Act 1992* (BSA).

The Direction is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*.

The Direction directs the Australian Communications and Media Authority (ACMA) to investigate the operation and effectiveness of section 43A of the BSA. Section 43A requires the ACMA to impose licence conditions requiring commercial television broadcasters in regional aggregated markets to broadcast a minimum amount of material of local significance.

The ACMA's investigation must be completed within six months from the date of the Direction and the ACMA must provide the Minister with a written report on the investigation no later than 15 days from the completion of the investigation.

The Direction requires the ACMA, in conducting the investigation, to consider a range of specified matters.

Background

One of the objects of the BSA is to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance (paragraph 3(1)(ea)).

In furtherance of that object, section 43A of the BSA requires the ACMA to ensure that, at all times on and after 1 January 2008, there is in force a condition requiring each licensee of a regional aggregated commercial television broadcasting licence to broadcast to each local area - during such periods as are specified in the condition - at least a minimum level of 'material of local significance'.

A regional aggregated commercial television broadcasting licence is a commercial television broadcasting licence for a licence area that is listed in s. 43A(2), which specifies certain regional licence areas in New South Wales, Victoria, Queensland and Tasmania.

The ACMA has met its obligations under section 43A by making the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007*. That licence condition sets out a points-based quota system requiring all regional commercial television licensees in

the aggregated markets to broadcast minimum levels of material of local significance. Subject to certain exclusions, material of local significance is material broadcast to a local area that relates directly to the local area or otherwise to the licensee's licence area.

Subsection 171(1) of the BSA enables the Minister to direct the ACMA in writing to investigate any matter with respect to which the Parliament is given power to make laws by paragraph 51(v) of the Constitution, including:

- a) any matter that the Minister is satisfied should be investigated in the interests of the due administration of the BSA; or
- b) any matter relating to the future regulation or operation of a carriage service or content service.

It is a government priority to ensure that the regulatory environment will:

- promote the availability to audiences throughout Australia of television programs about matters of local significance; and
- to encourage providers of commercial broadcasting services to be responsive to the need for an appropriate coverage of matters of local significance.

Accordingly, the Direction directs the ACMA to investigate and report on the current operation and effectiveness of the section 43A local content provision.

In undertaking the investigation, that ACMA must consider a range of specified matters, including whether section 43A should be extended to apply to licensees operating in regional areas other than those currently listed in subsection 43A(2) (for example to licensees operating in regional areas in South Australia or Western Australia).

Details of the accompanying Direction are set out in [Attachment A](#).

Regulation impact statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the Direction (ref: 15032)

Consultation

The ACMA has been consulted in the preparation of the Direction.

Notes on Clauses

Clause 1 – Name of instrument

Clause 1 provides that the citation of the Direction as the *Broadcasting Services (Material of Local Significance – Regional Aggregated Commercial Television Broadcasting Licences) Direction 2013*.

Clause 2 - Commencement

Clause 2 provides that the Direction takes effect on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 - Definitions

Clause 3 is a definitions clause.

Clause 4 - Direction – Investigation relating to Local Content on Regional Commercial Television

Clause 4 is the main operative clause.

Subclause 4.1 requires the ACMA to investigate the operation and effectiveness of section 43A of the Act, and sets out associated timing requirements. The ACMA must complete the investigation no later than six months from the date of the Direction and must provide the Minister with a report on the investigation no later than 15 days from the completion of the investigation.

It is the Minister's intention to make the review report publicly available within 15 days of its receipt from the ACMA.

Subclause 4.2 sets out a non-exhaustive list of matters that the ACMA must consider in undertaking the investigation.

Paragraph 4.2(a) requires the ACMA to consider the importance of material of local significance to people living in regional areas of Australia.

Paragraph 4.2(b) requires the ACMA to consider whether people living in regional areas of Australia have adequate access to material of local significance provided via commercial television broadcasting services. This will involve subjective assessment of both the availability and demand for material of local significance, which may be different from area to area due to a range of local circumstances and factors.

Paragraph 4.2(c) requires the ACMA to consider the impact on people living in regional areas of recent and significant changes (if any) to the broadcast of material of local significance. Such changes might include, for example, closure of regional television stations or cessation of regional television news services.

Paragraph 4.2(d) requires the ACMA to consider how access to material of local significance can be maintained and enhanced for people living in regional areas of Australia.

Paragraph 4.2(e) requires the ACMA to consider whether other sources of local (or regional) information are available to people living in regional areas of Australia. This is intended to refer to local content available from sources other than commercial television, for example, online, radio or newspaper content.

Paragraph 4.2(f) requires the ACMA to consider the economic circumstances facing commercial television broadcasting licensees operating in regional areas of Australia.

Paragraph 4.2(g) requires the ACMA to consider whether section 43A should be extended to apply to commercial television broadcasting licensees operating in specified additional regional areas. An additional regional area is an area corresponding to a non-metropolitan licence area other than a licence area listed in subsection 43A(2). The intention is for the ACMA to consider whether the local content protections should be extended to some (or all) additional non-metropolitan licence areas, such as licence areas in South Australia or Western Australia.