

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Hours of Local Content) Regulations 2017

Issued by the Authority of the Minister for Communications

Purpose

The *Broadcasting Services (Hours of Local Content) Regulations 2017* (the Regulations) are made under paragraph 217(1)(a) of the *Broadcasting Services Act 1992* (the Act).

The purpose of the Regulations is to prescribe an alternate definition of “daytime hours” for the purpose of section 43C of the Act and an alternate definition of “prime-time hours” for the purposes of Division 5C of Part 5 of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The Act provides for the regulation of broadcasting, datacasting and online services. Subsection 217(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

In 2006 the Government made a number of significant changes to the framework regulating the Australian broadcasting and media sector, including amending foreign and cross media ownership restrictions and introducing a range of countervailing safeguards to provide ongoing protection for local content.

Section 43C of the Act is one such local content safeguard. It provides for the Australian Communications and Media Authority (ACMA) to impose a licence condition on regional commercial radio licensees requiring them, since 1 January 2008, to broadcast a minimum level of material of local significance during daytime hours on business days.

Subsection 43C(8) of the Act provides a number of definitions for the purpose of the section, including a definition of “daytime hours”. The Act defines “daytime hours” as those from 6 am to 6 pm each day unless another time is prescribed.

Division 5C of Part 5 of the Act imposes minimum service standards on regional commercial radio broadcasting licensees in circumstances where a “trigger event” has occurred (see below). Section 61CA of the Act provides a definition of “prime-time hours” for the purposes of Division 5C of Part 5. The Act defines “prime-time hours” as those from 6 am to 10 am each day, unless another time is prescribed.

In 2007 the Government considered it desirable that the span of “daytime hours” for the purpose of section 43C of the Act be extended from 6 am – 6 pm to the span of 5 am – 8 pm and made the 2007 Regulations to this effect. This amendment eased the compliance burden on licensees by accommodating existing coverage patterns and business practices.

A second safeguard aimed at providing protection for local content on radio in regional areas is contained in Division 5C of Part 5 of the Act. That Division imposes minimum service standards on regional commercial radio broadcasting licensees in circumstances where a “trigger event” has occurred. A trigger event occurs when there is a transfer of a regional commercial radio licence, when a licence becomes part of registrable media group or when there is a change in controller of a registrable media group (see section 61CB of the Act).

The minimum service standards require the licensee to provide content including local news and weather bulletins, local community service announcements and emergency warnings. Local news and weather bulletins must be broadcast during prime-time hours on at least five days during the week.

Inconsistency between local content obligations (arising under the section 43C of the Act licence condition) and minimum service standard obligations (arising from trigger events under Division 5C) create the potential for undue regulatory burden. Material that is broadcast in order to meet the minimum service standards imposed by the “trigger event” provisions is also expected to be able to be counted towards the section 43C local content requirement. Inconsistency between the hours in which both minimum quotas must be met would create an undesirable regulatory burden.

Consequently, in 2007 the Government considered it desirable that the definition of “prime-time hours” be consistent with the definition of “daytime hours”.

The 2007 Regulations sunset on 1 October 2017, and after consultation, the Government determined that the Regulations should be remade on substantially the same terms.

Consultation

During the review of the 2007 Regulations, consultation was undertaken with key stakeholders, the ACMA, which is responsible for the administration of instruments made under the Act, and Commercial Radio Australia, which represents the interests of the commercial radio sector, to determine whether the 2007 Regulations remain fit for purpose. The parties agreed that the 2007 Regulations provide a practical and achievable framework for holders of a regional commercial radio broadcasting licence and avoided imposing an excessive regulatory burden.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business, the economy, or individuals [OBPR reference 22351].

Notes on Regulations

Details of the accompanying Regulations are set out in Attachment 1.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment 2.

Notes on Sections

Section 1 provides that the name of the Regulations is the *Broadcasting Services (Hours of Local Content) Regulations 2017*.

Section 2 provides that the Regulations will commence on the day after they are registered on the Federal Register of Legislation.

Section 3 provides that the Regulations are made under the authority of the *Broadcasting Services Act 1992*.

Section 4 provides that the instruments specified in a Schedule are amended or repealed as set out in the Schedule.

Section 5 provides that “Act” for the purposes of the Regulations means the *Broadcasting Services Act 1992*.

Section 6 prescribes times for the beginning and end of the definition of “daytime hours” in subsection 43C(8) of the Act. Section 6 prescribes the beginning as 5 am each day and the end as 8 pm each day.

Section 7 prescribes times for the beginning and end of the definition of “prime-time hours” in section 61CA of the Act. Section 7 prescribes the beginning as 5 am each day and the end as 8 pm each day.

Schedule 1 – Repeals

Part 1 provides that the Regulations repeal the *Broadcasting Services (Hours of Local Content) Regulations 2007*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Broadcasting Services (Hours of Local Content) Regulations 2017

The *Broadcasting Services (Hours of Local Content) Regulations 2017* (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Licence conditions under the *Broadcasting Services Act 1992* (the Act) regulate a range of matters relating to broadcasts. Australian content (including Australian content in advertising) on commercial television and radio is regulated by compulsory standards determined by the Australian Communications and Media Authority (ACMA) which are largely designed to provide a local content safeguard. Section 43C of the Act is one such local content safeguard. It provides for the ACMA to impose a licence condition on regional commercial radio licensees requiring them to broadcast a minimum level of material of local significance during daytime hours on business days.

Subsection 43C(8) of the Act provides a number of definitions for the purpose of the section, including a definition of “daytime hours” and “prime-time hours”. The Act defines “daytime hours” as those spanning from 6 am to 6 pm each day. Section 61CA of the Act provides a definition of “prime-time hours” as those from 6 am to 10 am each day.

The purpose of the Regulations is to prescribe an alternate definition of “daytime hours” for the purpose of section 43C of the Act and an alternate definition of “prime-time hours” for the purposes of Division 5C of Part 5 of the Act.

The Regulations are in substantially the same terms as *Broadcasting Services (Hours of Local Content) Regulations 2007*, which sunset on 1 October 2017.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (two of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination. Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life. The local content licensing requirements under the Act, which require regional commercial radio licensees to broadcast a minimum level of material of local significance during daytime hours on business days, engage (and promote) the right to protect freedom of expression and the right to participate in cultural life. However, the Regulations only deal with the administrative aspects under section 43C and 61CA of the Act, and therefore do not directly engage the right.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.