

Explanatory Statement

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (COMMERCIAL RADIO BROADCASTING SERVICES) DIRECTION NO. 1 2007

**Issued by the authority of the Minister for Communications,
Information Technology and the Arts**

Purpose

The *Australian Communications and Media Authority (Commercial Radio Broadcasting Services) Direction No. 1 2007* (the Direction) is made by the Minister for Communications, Information Technology and the Arts (the Minister) under section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act). Section 14 of the ACMA Act provides that the Minister may give the Australian Communications and Media Authority (ACMA) written directions of a general nature in relation to the performance of its broadcasting, content and datacasting functions and the exercise of its powers relating to those functions.

The Direction requires ACMA to consider whether to exercise its power in section 26(2) of the *Broadcasting Services Act 1992* (BSA) to vary the relevant licence area plan (LAP) so as to include one or more additional commercial radio broadcasting licences where a change in control of a particular commercial radio broadcasting licence occurs and during the three year period from that change in control, there has been a change in program format of the service provided under that licence from broad general appeal to more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area.

The Direction also requires ACMA to consider whether to exercise its power in section 43(1) of the BSA to impose on a regional commercial radio broadcasting licence additional licence conditions that provide for minimum service standards for local news and information, local content plans and local presence requirements (consistent with Subdivisions B and C of Division 5C of Part 5 and section 43B of the *Broadcasting Services Amendment (Media Ownership) Act 2006* (the Act)) where there has been a change in the program format of the service provided under that licence from one of broad general appeal to one of more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area.

The Direction also requires ACMA to consider whether to exercise its power in section 26(2) of the BSA to vary the relevant LAP so as to include one or more additional commercial radio broadcasting licences where a regional commercial radio broadcasting licensee has not complied with a licence condition of the kind referred to in sections 43B or 43C of the Act, that ACMA has imposed on that licensee's licence, under section 43 of the BSA, or has not complied with the local news and information and local content plan requirements specified in Division 5C of Part 5 of the Act and

the consequences of the conduct which resulted in that non-compliance make it appropriate to consider the future planning of licences in that area.

Background

On 10 April 2003, the then Minister issued the *Australian Broadcasting Authority (Revisiting Radio LAPs) Direction No.1 of 2003* (the 2003 Direction). The 2003 Direction required the Australian Broadcasting Authority (ABA) to consider allocating a new commercial radio licence in an area where there had been an overall reduction in the number of commercial radio services of broad appeal in the three year period following a change in control of an existing commercial radio licence as a result of that service changing or narrowing its program format. Accordingly, the 2003 Direction sought to provide the ABA with a process of ensuring (subject to spectrum availability) that changes in control of commercial radio licences did not directly lead to a reduction in the number of commercial radio services of broad appeal available in any particular area.

On 18 October 2006, Parliament passed the Government's media reform legislation, including the *Broadcasting Services Amendment (Media Ownership) Act 2006*. Schedule 2 to the Act contains a number of protections aimed at ensuring local news and information on regional commercial radio is not reduced from current levels as the result of, or in association with, media industry restructuring. Schedule 2 to the Act will commence on 1 January 2008 if it is not proclaimed earlier.

The Government further proposes to provide ACMA with a process for ensuring that transactions made possible as a result of its ownership and control reforms do not adversely affect the number of commercial radio services available to regional Australians, in particular licence areas that are of broad appeal.

Accordingly, the Direction remakes and expands upon the 2003 Direction by providing ACMA with new processes for ensuring the ownership and control reforms do not contribute to a loss of local news and information in regional Australia or a reduction in the number of commercial radio services available in particular areas (metropolitan and regional) that are of broad appeal. The possibility that ACMA may provide for increased levels of competition should further promote regional commercial radio licensees' compliance with the protections in Schedule 2 to the Act and the Government's objective that the level of commercial radio services that are of broad appeal be maintained.

Accordingly, the Direction directs the ACMA to consider whether to exercise its power in section 26(2) of the BSA to vary the relevant LAP so as to include one or more additional commercial radio broadcasting licences where:

- there has been a change in control of a particular commercial radio broadcasting licence and during the three year period from that change in control a change program format from one of broad general appeal to one of more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area; or
- a regional commercial radio broadcasting licensee has not complied with a licence condition of the kind referred to in sections 43B or 43C of the Act, that ACMA has imposed under section 43 of the BSA, or has not complied with the local news and information and local content plan requirements specified

in Division 5C of Part 5 of the Act and the consequences of the conduct which resulted in that non-compliance make it appropriate to consider the future planning of licences in that area.

The Direction also requires ACMA to consider whether to exercise its power in section 43(1) of the BSA to impose on a regional commercial radio broadcasting licence additional licence conditions that provide for minimum service standards for local news and information, local content plans and local presence requirements where there has been a change program format from one of broad general appeal to one of more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area.

Notes on Clauses

Clause 1 provides for the citation of the Direction.

Clause 2 provides that the Direction will be registered on the Federal Register of Legislative Instruments, and will take effect on the day Schedule 2 of the *Broadcasting Services Amendment (Media Ownership) Act 2006* commences. Schedule 2 will commence on 1 January 2008, if not proclaimed sooner.

Clause 3 defines the terms used throughout the Direction.

Clause 4 revokes the *Australian Broadcasting Authority (Revisiting Radio LAPs) Direction No. 1 of 2003*.

Clause 5 requires ACMA to consider whether to exercise its power in section 26(2) of the BSA to vary the relevant LAP so as to include one or more additional commercial radio broadcasting licences in the following circumstances:

- (a) where a change in control of a particular commercial radio broadcasting licence occurs and during the three year period from that change in control, there has been a change in program format of the service provided under that licence from broad general appeal to more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area; or
- (b) where a regional commercial radio broadcasting licensee has not complied with a licence condition of the kind referred to in sections 43B or 43C of the Act, that ACMA has imposed under section 43 of the BSA, or has not complied with the local news and information and local content plan requirements specified in Division 5C of Part 5 of the Act and the consequences of the conduct which resulted in that non-compliance make it appropriate to consider the future planning of licences in that area.

Clause 6 requires ACMA to consider whether to exercise its power in section 43(1) of the BSA to impose on a regional commercial radio broadcasting licence additional licence conditions that provide for minimum service standards for local news and information, local content plans and local presence requirements (consistent with Subdivisions B and C of Division 5C of Part 5 and section 43B of the Act) where

there has been a change in the program format of the service provided under that licence from one of broad general appeal to one of more limited appeal and that change in program format has resulted in a reduction in the number of commercial radio broadcasting services that are of broad appeal in that licence area.

Consultation

ACMA has been consulted in making this Direction as this Direction directs ACMA to consider whether to exercise its powers under the BSA. Broader consultation with parties that may be potentially affected has not been undertaken as ACMA is expected to consult with these parties if and when it decides to exercise its powers under the BSA.