***Legislative Instruments Act 2003***

**Section 26 – Explanatory Statement**

***Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* made under the *Broadcasting Services Act 1992***

**Issued by the Australian Communications and Media Authority**

**Purpose and legislative basis**

On 21 September 2012,the Australian Communications and Media Authority (the **ACMA**) determined the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* (the **Instrument**).

The Instrument replaces the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007* (the **2007 Licence Condition**).

The ACMA determined the Instrument under subsection 43(1) of the *Broadcasting Services Act 1992* (the **BSA**) which provides that:

The ACMA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

**Background**

Since 2008, section 43C of the BSA has required the ACMA to ensure that there is in force under section 43 of the BSA a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable numbers of hours of material of local significance (the **local content obligation**).

The *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012 (*the **Amending Act***)* made some changes to the local content obligation, including exempting certain types of regional commercial radio broadcasting licences from the local content obligation and providing licensees with an annual five week ‘holiday’ from the local content obligation. To ensure that the licence condition required under section 43C remains consistent with the provisions of the BSA, the ACMA decided to determine the Instrument.

**Intended impact and effect of the Instrument**

The ACMA intends that the Instrument is consistent with the local content obligation under the BSA. In other respects, the Instrument is substantially the same as the 2007 Licence Condition, other than the removal of the non-operative note to section 6 of the 2007 Licence Condition.

**Consultation**

On 4 July 2012, the ACMA released a draft of the Instrument, seeking stakeholder and public comment on the proposed changes.

The ACMA also published the proposed changes in the Gazette.

Consultation on the draft closed on 3 August 2012.

The ACMA is satisfied that this consultation meets the requirements of both subsection 43(2) of the BSA and section 17 of the *Legislative Instruments Act 2003*.

**Regulatory Impact**

A regulation impact statement titled *Regulation Impact Statement – Amendments to Local Content and Local Presence Requirements for Regional Commercial Radio* was prepared by the DBCDE for the Review of the Local Content Requirements for Regional Commercial Radio. The Office of Best Practice Regulation (the OBPR) reviewed the regulation impact statement and assessed it as adequate under the Australian Government best practice regulation requirements - OBPR reference number 10943.

The OBPR advised that a separate Regulation Impact Statement on the Instrument was not required – OBPR reference number 13945.

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011,* a Statement of Compatibility with Human Rights has been prepared by the ACMA and is attached.

**NOTES ON INSTRUMENT**

**Section 1 – Name of instrument**

Section 1 provides that the name of the Instrument is the *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012*.

**Section 2 – Commencement**

Section 2 states that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Revocation**

This section revokes the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007.*

**Section 4 – Purpose and application**

Section 4 reflects amendments to the BSA by specifying that the Instrument does not apply to remote area service radio licences, regional racing service radio licences, or licences allocated under subsection 40(1) of the BSA.

**Section 5 – Definitions**

This section defines terms used throughout the Instrument.

The definition of ‘relevant business day’ takes into account the effect of subsection 43C(1A) of the BSA which was inserted into the BSA by the Amending Act. A ‘relevant business day’ on which a licensee must broadcast material of local significance is any business day other than a business day which falls during the period when a licensee is not required to broadcast material as a result of subsection 43C(1A) of the BSA.

That subsection provides an annual 5 week ‘holiday’ from the obligation to broadcast material of local significance.

Other terms used in the Instrument are defined in the BSA and have the same meaning as in the BSA.

**Section 6 – Meaning of *material of local significance***

Section 6 sets out the meaning of 'material of local significance'. The three ways in which a licensee may meet the obligation to broadcast material of local significance are unchanged from the 2007 Licence Condition.

**Section 7 – Definitions relating to material of local significance**

A licensee may meet the obligation to broadcast material of local significance in one of, or in a combination of, three ways – by broadcasting material that is 'produced in the licence area', 'hosted in the licence area' or which 'relates to the licence area'. The meaning of each of those terms is set out in section 7 and is unchanged from the 2007 Licence Condition.

**Section 8 – Licensee must broadcast material of local significance**

This section sets out the substantive requirement on licensees to broadcast the applicable number of hours of material of local significance during daytime hours on a relevant business day. (The applicable number of hours for licensees is set out in section 4 of the *Broadcasting (Hours of Local Content) Declaration No 1 of 2007*.)

**Section 9 – Annual reporting to the ACMA**

This section requires licensees to give to the ACMA a report each year about the licensee's compliance with the licence condition (subsection 9(1)) and requires that they must, if directed by the ACMA, publish records made for the purposes of section 9 (subsection 9(2)). The requirement is unchanged from the 2007 Licence Condition.

**Section 10 – Records**

Section 10 sets out the requirement that a licensee make an audio record of the applicable number of hours of material of local significance that it has broadcast in the licence area during daytime hours on a relevant business day. The requirement does not apply during the period specified in section 43C(1A) of the BSA. Licensees must retain records made under section 10 for up to 60 days from the date of broadcast unless the ACMA specifies a longer period (subsection 10(2)) and must provide the audio record to the ACMA if requested to do so (subsection 10(3)).

Subsection 10(4) is a transitional provision and provides that a licensee who was required under the 2007 Licence Condition to make a record must continue to comply with that requirement as though the 2007 Licence Condition was still in force.

**Section 11 – Material of local significance – local content statements**

This section requires a licensee to compile a 'local content statement' in relation to the material of local significance that it has broadcast in its licence areas during daytime hours on a relevant business day.

Licensees can comply with the obligation to compile a local content statement by either setting out the regular program schedule for each day of the week or by listing programs (or parts of programs) broadcast on each relevant business day that are material of local significance (subsection 11(2)). Subsections 11(3) and 11(4) set out what matters must be recorded in each type of local content statement.

Licensees must also ensure that their local content statements are available to the public by either publishing the statement on their website or by giving a copy to a person on request (subsection 11(5)). The Licensee must also give the ACMA a copy of the local content statement on request (subsection 11(6)). Licensees must keep a copy of a local content statement for either 18 months or another period specified by the ACMA in writing (subsection 11(7)).

Subsection 11(8) is a transitional provision and provides that a licensee who was required under the 2007 Licence Condition to make, keep and publish a local content statement must continue to comply with that requirement as though the 2007 Licence Condition was still in force.

**Section 12 – The ACMA may conduct a review at any time**

Section 12 states that the ACMA may review the operation and scope of the conditions specified in the Instrument at any time. It may do so at the request of the Minister or a licensee, at the request of any other person affected by the Instrument or on its own initiative (subsection 12(2)). This provision is unchanged from the 2007 Licence Condition.

**Statement of Compatibility with Human Rights**

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

***Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012***

This Legislative Instrument is 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**

Licensees of regional commercial radio broadcasting licences must broadcast a prescribed number of hours of material of local significance (sections 43 and 43C of the *Broadcasting Services Act 1992* (the **BSA**)). The ACMA has set out the ways in which a licensee can meet that obligation in a legislative instrument.

The *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2012* (the **Instrument**)replaces the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007* (the **2007 Licence Condition**).

The Instrument defines ‘material of local significance’ and specifies, in accordance with the BSA, that the obligation to broadcast prescribed levels of material of local significance does not apply to regional racing service radio licences, remote area service radio licences and licences allocated under subsection 40(1) of the BSA. The Instrument also reflects Parliament’s intention that the obligation to broadcast material of local significance does not apply for the five week period per annum specified in subsection 43C(1A) of the BSA.

The Instrument, like the 2007 Licence Condition, requires licensees to report to the ACMA on the licensee’s compliance with the Instrument and to place on the licensee’s website a local content statement recording the material of local significance it has broadcast, and to, where requested, make that statement available to a person on request.

Other changes from the 2007 Licence Condition effected by the Instrument are of a minor nature and are largely directed at reducing the compliance burden on licensees.

**Human Rights Implications**

The Instrument engages the following human rights:

*Freedom of expression*

Under the *International Covenant on Civil and Political Rights* (the **ICCPR**), any measures that restrict freedom of expression must be necessary and proportionate to the legitimate aims being sought.

The Instrument engages the right to freedom of expression in only a limited way. It requires affected regional commercial radio broadcasting licensees to broadcast the applicable number of hours of material of local significance during daytime hours on each relevant business day. Material of local significance is defined in the Instrument as material that is hosted in, produced in or relates to, the licence area of the regional commercial radio broadcasting licence.

Licensees of commercial radio broadcasting licences have a responsibility to ensure that commercial radio services in regional areas continue to provide local content to regional radio listeners in those licence areas.

Imposing these obligations on regional commercial radio licensees is proportionate and reasonable as it does not place restrictions on the kinds of information or ideas licensees disseminate The Instrument is therefore consistent with Article 19 of the ICCPR in that the obligations imposed by the Instrument insofar as they may restrict freedom of expression reflect Parliament’s intention and are necessary to ensure that the rights of regional radio listeners are respected.

**Conclusion**

The Instrument is compatible with human rights and to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.