

Explanatory Statement

Broadcasting Services Act 1992

BROADCASTING (HOURS OF LOCAL CONTENT) DECLARATION NO. 1 OF 2017

Issued by the authority of the Minister for Communications

Purpose

The *Broadcasting (Hours of Local Content) Declaration No. 1 of 2017* (the Declaration) is made by the Minister for Communications (the Minister) under paragraph 43C(3)(c) of the *Broadcasting Services Act 1992* (the Act).

The purpose of the Declaration is to declare the “applicable number” for the purposes of the application of subsection 43C(1) of the Act to specified classes of regional commercial radio broadcasting licences. The Minister may under “applicable number”.

The Declaration varies slightly from the *Broadcasting (Hours of Local Content) Declaration No.1 of 2007*, which is due to sunset on 1 October 2017, due to the 2012 inclusion of subsection 43C(2A) into the Act which provides that the licence condition does not apply to regional racing service radio licences, remote area service radio licences and subsection 40(1) licences.

Background

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

Subsection 43C(1) of the Act, inserted by the *Broadcasting Services Amendment (Media Ownership) Act 2006*, contains a safeguard relating to local content. It provides that the Australian Communications and Media Authority (ACMA) must ensure that there is a licence condition requiring regional commercial radio licensees to broadcast minimum levels of “material of local significance” (as defined in the licence condition imposed by ACMA). Each licensee is required to broadcast “at least the applicable number of hours” of material of local significance.

Subsection 43C(3) of the Act sets out the meaning of “applicable number” for the purposes of the application of subsection 43C(1). It provides a default applicable number of 4.5 hours, which licensees must broadcast during daytime hours each business day. Subsection 43C(3) further provides that the Minister may declare a different applicable number of hours to apply to regional commercial radio broadcasting licences generally (see s. 43C(3)(b)), or to specified classes of licence (s. 43C(3)(c)).

The Government decided that the diversity of the Australian regional commercial radio broadcasting landscape is such that a ‘one size fits all’ approach to the licence conditions that apply to regional commercial radio licensees is not appropriate. Instead, the required minimum amount of material of local significance should be determined by reference to the characteristics and circumstances of a licence. In 2007 the *Broadcasting (Hours of Local Content) Declaration No.1 of 2007* came into force declaring the following:

- an applicable number of 0.5 hours for the following classes of licences:
 - section 40 licences; and
 - small licences.
- an applicable number of 5 minutes for the following classes of licences:
 - racing service licences; and
 - remote area service licences.
- an applicable number of 3 hours for the all other regional commercial radio licences.

Since the original Declaration was made, remote area radio services, regional racing services and regional commercial radio services provided under subsection 40(1) licences have been excluded from the operation of the licence condition by the introduction of subsection 43C(2A). Consequently the prescription in the Declaration of 30 minutes and 5 minutes as the relevant applicable number for these services is now a vestigial requirement.

Presently, for licences in licence areas containing fewer than 30,000 people (small licences) the applicable number remains 30 minutes, while all other regional commercial radio licences retain an applicable number of 3 hours. The Declaration applies to a total of 201 licences.

Consultation

During the review of the Declaration consultation was undertaken with key stakeholders, the ACMA, which is responsible for the administration of the Declaration, and Commercial Radio Australia, which represents the interests of the commercial radio sector, to determine whether the Declaration remains fit for purpose. The parties agreed that the Declaration provided a practical and achievable framework for the smaller licences and avoided imposing an excessively high compliance 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].

The Statement of Compatibility with Human Rights for the Declaration is set out in **Attachment 1**.

Details of the accompanying Declaration are set out in **Attachment 2**.

ATTACHMENT 1

Statement of compatibility with human rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Broadcasting (Hours of Local Content) Declaration No. 1 of 2017

The Broadcasting (Hours of Local Content) Declaration No. 1 of 2017 (the Declaration) 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

Subsection 43C(1) of the Act requires regional commercial radio licensees to broadcast minimum levels of material of local significance. Each licensee is required to broadcast “at least the applicable number of hours” of material of local significance.

The Declaration sets out the applicable number for the relevant categories of commercial radio licence.

The Declaration varies slightly from the *Broadcasting (Hours of Local Content) Declaration No.1 of 2007*, which is due to sunset on 1 October 2017, due to the inclusion of section 43C(2A) in the Act which provides that the licence condition does not apply to regional racing service radio licences, remote area service radio licences and subsection 40(1) licences. Consequently, reference to those licences have been removed from the Declaration.

Human rights implications

No human rights issues were raised by the stakeholders during the consultation process.

The Declaration does 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 Declaration only deals with the administrative aspects under section 43C of the Act, and therefore does not directly engage the right.

Conclusion

The Declaration is compatible with human rights as it does not raise any human rights issues.

ATTACHMENT 2

Notes on Sections

Section 1 provides that the name of the instrument is the *Broadcasting (Hours of Local Content) Declaration No.1 of 2017*.

Section 2 provides that the Declaration will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 sets out the legislative authority under which the Declaration is made.

Section 4 repeals the *Broadcasting (Hours of Local Content) Declaration No.1 of 2007*. The 2007 Declaration was due to sunset, however, to avoid any confusion as to when the new (replacement) Declaration comes into operation, this repeal provision has been included.

Section 5 sets out the definition of key terms used in the Declaration. This includes definitions of the licence types which are mentioned in the Declaration.

Section 6 provides that for a licence that is a small licence, the applicable number is 30 minutes. For any other regional commercial radio licence, the applicable number is 3 hours. A note accompanies section 6 to remind readers that pursuant to section 43C(2A) of the Act, there is no applicable number for a remote area service radio licence, a regional racing service radio licence or a subsection 40(1) licence.