

## REGULATION IMPACT STATEMENT

### BACKGROUND

1. The *Broadcasting Services Act 1992* (the Act) sets out a framework under which commercial radio licensees operate, including setting minimum amounts of local content required to be broadcast by regional licensees each business day. Where a licensee has been affected by a change in control referred to as a ‘trigger event’, the broadcaster must also maintain local staffing and production levels, provide minimum levels of specified local content such as news and information and comply with additional reporting requirements. The commercial radio industry has expressed concern about the burden that the provisions place on regional commercial radio broadcasters.

2. The proposed amendments are intended to reduce the regulatory burden on regional commercial radio licensees by modifying obligations under the Act to maintain existing levels of local presence and provide minimum amounts of ‘material of local significance’. The proposed amendments would also revise provisions relating to a trigger event.

#### *Local Content and Local Presence Requirements for Regional Commercial Radio*

3. The local content and local presence requirements for regional commercial radio licensees were introduced as part of the Government’s media reform package in 2006. The provisions aimed to ensure that commercial radio services in regional areas continued to provide local content and maintain a local presence in the event that control of a licence changed. Additional reporting requirements were introduced to enable the Australian Communications and Media Authority (ACMA) to monitor the levels of local content and ensure that licensees met their obligations to maintain a local presence following a trigger event.

4. Section 43C of the Act requires all regional commercial radio licensees to broadcast, between 5am and 8pm each business day, a specified minimum level of material of local significance. That level has been set at 3 hours for the majority of licensees, 30 minutes for licensees in small towns and licensees operating outside the broadcasting services bands, and 5 minutes for remote area licensees and those that provide predominantly racing radio content. The ACMA has defined ‘material of local significance’ as material that is hosted in, produced in, or relates to a regional commercial radio licensee’s licence area.

5. To ensure compliance with these requirements, regional commercial radio licensees must provide an annual report to the ACMA, keep audio records of local content broadcast and compile a local content statement for each business day.

6. In addition, section 43B and Division 5C of Part 5 of the Act require licensees subject to a ‘trigger event’ (the transfer of a licence, formation of a new cross-media group or a change of controller for a cross-media group) to meet additional local presence and local service requirements. The local presence condition requires regional commercial radio broadcasters to maintain in perpetuity the same level of local presence in terms of staffing and the use of studios

and other production facilities in the licence area that existed in the three months prior to a trigger event. These broadcasters must also provide:

- 5 bulletins per week of local news of at least 12.5 minutes per day;
- 5 weather bulletins per week;
- one community service announcement per week;
- emergency warnings as required; and
- a Local Content Plan that details how they will comply with their local content obligations, and report annually on their compliance with the Plan.

7. The statutory local content requirements are in addition to the obligations set out in the *Commercial Radio Codes of Practice and Guidelines* (the Code) which require commercial radio licensees to broadcast specific levels of Australian music. Under the Australia-United States Free Trade Agreement (AUSFTA), radio broadcasters cannot be required to transmit more than 25 per cent local content transmitted annually between 6am and midnight.

#### *Commercial radio industry*

8. There are 273 operational commercial radio licences in Australia, including 224 regional commercial radio licences across 102 regional licence areas. Of the regional licensees, 219 licences operate in the Broadcasting Services Bands and five broadcasters operate under licences issued under section 40 of the Act. Ownership of licences is generally highly concentrated. Commercial radio stations are owned by 32 operators, with around 80 per cent of stations formed into 12 networks.

9. The major commercial radio networks include:

Southern Cross Media Group (SCMG) owns and operates the largest commercial radio network in Australia. SCMG controls 68 regional commercial radio stations in New South Wales, Queensland, Victoria, South Australia, Western Australia and Tasmania, including two joint venture services with Austereo in Newcastle. The company was a subsidiary of the Macquarie Media Group but has since been separately floated on the Australian Securities Exchange. SCMG has merged with Austereo.

DMG Radio Australia (DMG) owns nine licences and operates stations in Sydney, Melbourne, Brisbane, Adelaide and the Central Coast of New South Wales. DMG has also entered into joint venture arrangements with ARN in the Brisbane and Perth markets. It is owned by the Daily Mail and General Trust Group in the United Kingdom.

Australian Radio Network (ARN) operates nine stations in metropolitan markets, including joint venture arrangements with DMG in Brisbane and Perth, and three stations in regional areas, including a joint venture with Austereo in Canberra. ARN is jointly-owned by APN News & Media and the US-based Clear Channel Communications.

Austereo Group operates two commercial radio stations in each of the major state capital cities and in two regional markets in a joint venture with ARN (Canberra) and SCMG (Newcastle). Austereo is majority owned and controlled by Village Roadshow Group.

Fairfax Media operates two commercial radio stations in each of Melbourne, Brisbane and Perth and one station in Sydney. Fairfax Media also owns eight regional commercial radio stations and 12 narrowcast services. It is a public company and its major shareholder is John B. Fairfax. Fairfax Media recently sold its regional stations to Grant Broadcasters.

Broadcast Operations Group owns 35 regional radio licences and one metropolitan licence. It is owned by Bill Caralis.

Grant Broadcasters owns 28 regional radio licences and has five joint venture services with the privately owned Capital Radio Group (four regional licences and one metropolitan licence in Perth). It is a privately owned company.

### *Profitability of commercial radio*

10. In general, the commercial radio industry's financial performance is characterised by its consistent profitability. However, profitability varies across different segments of the industry. In 2008-09 – the most recent full financial year statistics available from the ACMA – FM services made a total profit of \$116.5 million, while AM services made around \$6.5 million. Metropolitan FM broadcasters were the most profitable sector of the industry, averaging \$1.4 million in profits per licence, with metropolitan AM licences averaging a loss of \$0.16 million per licence. In comparison, regional commercial radio broadcasting services made about \$82 million profit in 2008-09, with FM licensees making an average profit of \$0.59 million per licence and AM licensees averaging \$0.11 million per licence.

11. In 2007-08, the commercial radio industry received total revenue around \$1.04 billion. The total revenue in 2008-09 fell by around 5% to \$984 million. In the five metropolitan markets advertising revenue fell 4.47% in 2008-09, with the biggest fall in the Sydney market (10.8%). A CRA media release in October 2009 indicated that advertising revenue in the metropolitan markets fell by 5.67% in the first quarter of 2009-10 compared to the previous year, and by 3.8% for October 2009 compared to the same month in 2008. CRA has reported that the financial position of metropolitan radio broadcasters improved in 2010, with an increase of 7.8% to \$675 million for the calendar year. However, data from an advertising booking agency indicates radio advertising revenue continues to decline. This data showed radio advertising traded by media agencies declined 16.29% in March 2011 compared with the same period in 2010.

12. It should be noted that in about 77% of commercial radio licence areas that contain an AM service, the owning entity or group also controls the FM service in that area. These regional broadcasters typically run the AM and FM services from the same studio and office facilities. It is unclear how these broadcasters allocate costs between their AM and FM services but when taken together, it would appear that single-owner, two service markets can be a sound and profitable commercial proposition.

13. The ACMA collected \$23.8 million in licence fees from commercial radio broadcasters in 2008-09 (the same amount as in 2007-08).

## **PROBLEM IDENTIFICATION**

### *Overview*

14. The objectives of the Act include the provision of “appropriate coverage of matters of local significance” (subsection 3(1)(g)) and promoting “the availability to audiences throughout Australia of a diverse range of radio and television services” (subsection 3(1)(a)). These requirements are not met purely through the provision of commercial radio services, but through a range of broadcasting services available to regional communities, including those provided by the community and national broadcasting sectors of the industry.

15. There is evidence to suggest that local content is valued by regional audiences. The level of local content on regional commercial radio services has been reviewed a number of times, including by House of Representatives Standing Committee on Communications, Transport and the Arts in 2001 and the ACMA in 2007. The House of Representatives Inquiry identified concerns arising from levels of consolidation of ownership in the regional radio industry, the loss of independently owned local stations and an increase in networked, pre-recorded, automated and syndicated programming. These concerns were also reflected in a member of the public’s submission to the 2010 statutory review of the local content provisions. However, only two submissions to the review were received from members of the public despite the request for submissions being extensively advertised.

16. It was a Government priority to ensure that the liberalisation of the media regulatory framework did not lead to further reductions in local content on commercial television or commercial radio and that, where possible, concerns about diminishing levels of local content were addressed within a flexible regulatory framework. When introducing the media ownership changes in 2006, the Government intended to ensure that, should cross-media regional media companies emerge following the removal of cross-media restrictions, such companies, which would be operating across a number of markets and multiple media, continued to provide adequate local services to each licence area in which they operate.

17. The Government considered the continued provision of these services was necessary on the basis of equity to ensure that regional and rural Australians received local content which reflected local identity and culture and was comparable to the services received in metropolitan areas.

18. In introducing the requirements for regional commercial radio, the Government recognised that imposing greater regulatory requirements on broadcasters would involve additional costs. The capacity of the regional media sector (particularly regional radio, the least profitable of the regulated media sectors) to meet additional obligations is ultimately linked to its commercial viability, including its capacity to achieve the economies of scale and scope that cross-media mergers could provide. The Government sought to balance these competing considerations when considering whether additional obligations such as local content requirements might be reasonably required and recognised that some subsequent modification may be needed. To this end, the regional localism provisions are required by section 61CT of the

Act to be reviewed at least every three years ('the local content review'). The first review was conducted in 2010 and a report of the review tabled in Parliament on 1 March 2011.

19. As part of the review process, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, released a discussion paper on 5 March 2010. A request for public submissions was published in 93 metropolitan and regional newspapers. A total of 15 submissions were received for the review; 11 from radio broadcasters and their industry associations, two from members of the general public, one from the community broadcasters' industry association and one from the Communications Law Centre at the University of Technology, Sydney.

20. With the growth of alternative media platforms and expanded regional services from the Australian Broadcasting Corporation, audiences now have access to a range of local information available on alternative platforms. However, the broad intent of the 2006 media ownership amendments and the equity concerns they attempt to address remain valid and reflect concern about a potential loss of localism in regional commercial radio services if minimum requirements are not prescribed. These concerns include licensees seeking to achieve cost efficiencies which may lead to a reduction in local content and a high level of syndication of content from metropolitan stations. The measures implemented in 2006 to ensure the provision of local content allow little flexibility for broadcasters in determining how to meet those requirements and as a result place a heavy regulatory and administrative burden on regional radio businesses.

#### *Local content requirements*

21. The commercial radio industry through its peak body, Commercial Radio Australia (CRA) which represents 98 per cent of commercial radio broadcasters, has raised a number of concerns about the significant effects of the provisions on regional commercial radio broadcasters. CRA's concerns include:

- the requirement for racing and remote area licensees to provide local content is unreasonable;
- requiring local content to be broadcast on business days reduces flexibility for operators that may be able to meet the requirement on weekends; and
- providing local content for 52 weeks of the year is unreasonable for smaller radio stations with limited staffing resources.

22. The Productivity Commission, in its *Annual Review on the Regulatory Burdens on Business* released in September 2009, noted that the objective of the regulatory provisions was to ensure a minimum amount of material of local significance is broadcast on regional commercial radio. However, it found that the obligations to meet the required level of local content are rigid and do not allow radio stations to tailor their local content to meet listener expectations. The Productivity Commission also noted that the reporting framework for regional commercial radio broadcasters was onerous.

23. In its submission to the Productivity Commission, CRA noted that the estimated annual legal costs of complying with the local content requirements was \$25,000 per regional radio station, and \$50,000 for radio stations required to comply with the trigger event related reporting

requirements. The ACMA reported in its Local Content Levels Investigation (2007, page 4) that “the cost of complying with a requirement to broadcast 12.5 minutes of local news each business day is estimated at \$12,000–60,000 per annum, representing as much as 15–26 per cent of the profit of some licences”.

24. Licensees concerns about the operation of the provisions were considered as part of the local content review. In submissions to the review a number of regional broadcasters commented that the compliance burden for the local content and local presence provisions was considerable and affected the ability of operators to do core functions such as programming, engineering, sales and administration. Many of the submissions called for greater flexibility in meeting the requirements for ‘material of local significance’ and argued that the requirement to broadcast local content for all 52 weeks of the year did not take into account factors such as annual leave for staff. A number of submissions called for local content broadcast on weekends to contribute to their minimum requirement. However, this has the potential to reduce local content levels on weekdays. The current provisions do not prevent broadcasters from providing local content on weekends.

#### *Local presence requirements*

25. A regional commercial radio licence affected by a trigger event must maintain local presence and meet minimum standards for local news and information. The obligation requires a licensee to indefinitely maintain the level of staffing and use of local studios and production facilities that existed in the three month period prior to a trigger event, as well as providing specific levels of news and information content each week. The local content broadcast to fulfil this requirement can contribute to the material of local significance requirements for all regional commercial radio licensees in section 43C of the Act.

26. The ACMA advises that there have been 154 trigger events affecting 90 regional commercial radio broadcasting licences from 4 April 2007 (when the provision was introduced) to 13 April 2011. Fifty licensees were affected by a single trigger event and 40 licensees were subject to multiple trigger events during this period. These broadcasters are now required to comply with the additional local news and information, local presence, recordkeeping and reporting requirements that the industry states are onerous and expensive, and which the Productivity Commission stated can seriously affect the operation of regional radio stations, preventing them from responding to changes in technology, local labour markets and product market conditions. In its annual review report, the Productivity Commission also asserted “stations subject to this trigger event provision are likely to be at increased risk of business failure because of the constraints of their ability to respond to changing circumstances” (page 167).

27. The submissions from regional broadcasters to the local content review noted that the local presence, local news and information and reporting requirements adversely affected the operation and value of their businesses and were a disincentive for broadcasters to operate at any level above the required minimum standards due to the risk that they would be forced to operate at that higher level in perpetuity. Submissions to the review also argued that the requirements were inflexible because they did not take into account the economic impacts on licensees; the

viability of a business; or technological changes that affect operating practices. Some licensees labelled the provisions counterproductive, saying they discouraged operators from increasing staff numbers. Regional licensees, the Productivity Commission and industry groups also consider the trigger event provisions inequitable as they may not apply to all stations in a competitive market.

28. A number of licensees provided examples of the effect of the trigger event provisions on their business operations. These included:

- (a) A Western Australian broadcaster noted that finding temporary replacements for staff in smaller regional centres when they took leave was difficult. It also said the company had been reluctant to employ new staff at its radio stations even though there was a need for more as it feared being locked into the higher staffing level indefinitely; and it had turned down a sponsorship offer for new local programming because it would have been unable to reduce its use of local studios and production facilities if a trigger event occurred and sponsorship ceased, leaving the licensee to pay for the additional local content even if it could not afford to do so.
- (b) SCMG highlighted the onerous nature of the reporting requirements, saying it was required to prepare 68 annual compliance reports under section 43C of the Act and 44 annual compliance reports for Local Content Plans and the local presence licence condition. Preparing these reports required input from radio station managers, local program directors and production staff before being collated and verified by the company's head office and legal staff. It said the process required the full resources of the SCMG legal group for one month per year.
- (c) Another broadcaster noted that when a sales representative at one of its smaller stations took maternity leave and could not be replaced with another sales person it was forced to take on a temporary employee for general administrative duties to retain its staffing level as required under the trigger event provisions. The combination of reduced sales revenue and the additional staffing cost contributed to an operating loss for the station.
- (d) The provisions were also a factor in a licensee's decision not to proceed with the purchase of two bankrupt radio stations in a neighbouring licence area as it would have been unable to make the operational changes necessary to prevent further business losses.

#### *'Trigger event' definition*

29. A trigger event occurs under subsection 61CB(1) of the Act when there is a transfer of a regional commercial radio licence. However, the media ownership regulatory framework is built around the concept of *control* set out in Schedule 1 to the Act. Therefore, subsection 61CB(1) is inconsistent with this principle as it relates to transfer, and not a change in *control*, of a regional commercial radio licence. The sale of a company from one media owner to another would not result in the transfer of the licence as such (it is still owned by the company) but could result in a change of control. Therefore, the trigger event provisions may not be activated even though a change of control has occurred.

30. While recognising that the trigger event provisions may not be activated even when a change in control occurred, some regional broadcasters, in submissions to the local content review, argued that the trigger event definition was too broad. They said the provisions

inadvertently captured a number of transactions that did not affect the control of a commercial radio licence. Examples included shareholding changes in Ireland for the parent company of a joint-venture partner in two regional stations creating two trigger events in two months, and the merging of two licence areas by the ACMA creating a trigger event for the single operator.

31. Licensees argued that the definition for a trigger event should be limited and should not include intergenerational changes in family-owned companies, partner buyouts, corporate restructures that do not change the ownership of a licence, or changes to a licence area that are outside their control.

## **OBJECTIVES**

32. The proposal to amend the Act is aimed at minimising the compliance costs for regional commercial radio broadcasters in meeting their obligations to provide a minimum level of local content and at providing greater flexibility for these broadcasters to meet the local content and local presence requirements, in a way that is consistent with Australia's free trade agreement obligations.

## **OPTIONS**

33. Four options with respect to the future of the local content, local presence and trigger event requirements for regional commercial radio licensees are considered:

- (a) to make no change to the existing provisions in the *Broadcasting Services Act 1992*;
- (b) to abolish the local content, local presence and trigger event provisions in the *Broadcasting Services Act 1992*;
- (c) to amend only the local content requirements in section 43C of the *Broadcasting Services Act 1992*; and
- (d) to amend the local content, local presence and trigger event provisions in the *Broadcasting Services Act 1992* to reduce compliance requirements, increase flexibility in meeting the requirements and refine the operation of the trigger event related provisions.

## **IMPACT ANALYSIS**

Option (a): to make no change to the existing local content and local presence provisions in the *Broadcasting Services Act 1992*

34. While this option would continue to service the principle of providing equitable access to local content for regional audiences, it also requires regional commercial radio licensees to continue to comply with the current obligations imposed by the material of local significance and local presence provisions and reporting requirements that the industry and Productivity Commission submits are onerous and damaging to regional commercial radio businesses.

35. As noted in paragraph 23 above, the cost of complying with the current regime is estimated at \$12-60,000 for the production of local content and \$50,000 for legal costs associated with the trigger event provisions. These costs represent a significant proportion of the potential



profit of some licensees, particularly noting that regional commercial radio broadcasters are the least profitable segment of the commercial radio industry. Regional commercial FM licensees achieved an average profit of \$0.59 million per licence in 2008-09 (the most recent figures available from the ACMA) and AM licensees averaged \$0.11 million per licence.

Option (b): to abolish the local content, local presence and trigger event provisions in the *Broadcasting Services Act 1992*.

36. This option would abolish sections 43B, 43C and Division 5C of Part 5 of the Act, thereby removing the requirement for all regional commercial radio licensees to provide minimum amounts of local content; and for licenses affected by a trigger event, there would be no requirement to maintain local presence and provide additional local news and information.

37. The advantage of this option is that it would remove all regulatory and compliance requirements for regional commercial radio broadcasters which are associated with the provisions. Regional commercial radio broadcasters would no longer be *required* to provide minimum levels of local content (except for Australian music under the Code of Practice) or use local staff and studios and production facilities. This would allow broadcasters to immediately centralise their operations into one location and reduce operating costs.

38. The disadvantage of this option is that it may eliminate a significant proportion of local content and the use of local staff and studios and production facilities for regional commercial radio broadcasters, potentially alienating regional radio stations from their listeners. Residents in regional areas could lose access to local news, community information and emergency information, and radio station staff in the local communities could be transferred to a central location.

39. While it would be difficult to quantify the value placed on local content across all of Australia's regional communities, the underlying principle of equity of access and comparable access to tailored media services which reflect local identity and culture remains unmet by this option. Moreover, given the very limited amount of spectrum available in many regional areas, the opportunity for the market to self-correct through the provision of additional services dedicated to providing local content is extremely limited.

Option (c): to change only the local content requirements in section 43C of the *Broadcasting Services Act 1992*.

40. This option would retain the current material of local significance and local presence provisions in the Act, and make no change to the 'trigger event' definition, but would amend the statutory minimum local content requirement so that the requirement to produce Australian music in the Code is taken into account in the overall local content obligation imposed.

41. Under this option, the level of local news and information and local presence would continue at (at least) the current minimum level required under the Act, thus placing regional communities at no further disadvantage.

42. The main disadvantage for broadcasters of this option is that it would leave in place most of the inflexible and onerous requirements in relation to local content and local presence, as well as the existing, costly reporting and compliance requirements on regional broadcasters. The trigger event definition would continue to apply only to a transfer of a regional commercial radio licence (retaining the inconsistency that currently exists in the Act) and, where trigger events are outside the control of a licensee, that licensee would continue to be required to comply with the additional local presence, local content and reporting requirements after the trigger event occurs. There would be small reductions in the amounts of local content required where broadcasters provide high levels of Australian music under the Code requirements.

43. Like option (a) above, the cost of complying with the current regime is estimated at \$12-60,000 for the production of local content and \$50,000 for legal costs associated with the trigger event provisions. These costs represent a significant proportion of the potential profit of some licensees, particularly noting that regional commercial radio broadcasters are the least profitable segment of the commercial radio industry. Regional commercial FM licensees achieved an average profit of \$0.59 million per licence in 2008-09 (the most recent figures available from the ACMA) and AM licensees averaged \$0.11 million per licence.

Option (d): to change the local content and local presence provisions in the *Broadcasting Services Act 1992* to reduce compliance requirements, increase flexibility in meeting the requirements, reduce the instances that create a trigger event, and provide a time limit for the restrictions on staffing and production.

44. This option would amend the Act to allow regional commercial radio broadcasters to meet their local content requirements with greater flexibility (providing local content on 47 weeks per year), to reduce the recordkeeping and reporting requirements, to refine the trigger event definition to ensure consistency with the control provisions in the Act, and reduce the local staffing and production requirements to 24 months following a trigger event.

45. The proposed changes would provide greater flexibility for regional commercial radio licensees in meeting their obligations to ensure minimum amounts of locally relevant content is available to regional audiences. They also aim to overcome industry concerns that the current lack of flexibility is having a negative impact on regional radio businesses and their viability. Retaining the provisions while providing licensees with greater flexibility achieves a balance between reducing the compliance burden and maintaining the principle of equity to ensure that regional and rural Australians receive local content which reflects local identity and culture.

46. The introduction of a 24 month sunset provision on the local presence obligations would substantially reduce the long term regulatory and compliance requirements currently faced by the industry. Under the current provisions the local presence requirements apply indefinitely. This results in many regional licensees being unable to benefit from improved technical or business practices and discourages innovation in regional radio businesses. A 24 month period is preferred to the Productivity Commission's recommendation to abolish the provision, as it would provide new licensees with an opportunity to gauge community expectations before making changes.

47. The introduction of a sunset provision would also significantly reduce compliance costs for licenses affected by a trigger event. Compliance costs – estimated by one broadcaster as

\$50,000 per licence per year in legal fees and, according to the ACMA, \$12,000-60,000 per year to comply with the local news requirement – are likely to be substantially reduced or eliminated after the 24 month period has expired. This is because, while licensees can voluntarily retain the same level of local presence, the requirement to do so will cease, along with the requirements to report on compliance with the obligations. Similarly, for those licences affected by a trigger event before the proposed amendments, the obligations will cease 24 months after the commencement of the legislation.

48. Amendments to the trigger event definition would provide consistency with the other control provisions in the Act and exclude from the scope of the definition (and the resulting obligations) events that are outside the control of the licensee in specific circumstances. It would also provide the ACMA with a limited discretion to determine the extent to which the trigger event provisions apply so as to avoid or reduce unintended consequences arising from specific involuntary events.

49. As with option (c) above, this option would also vary the local content requirements in section 43C so that the Code requirement to provide minimum levels of Australian music is taken into account in determining the overall content obligation. Amendments to the local content requirements are likely to lead to reduced costs for some regional commercial radio licensees. The amendment will reduce, but not remove, the local content requirement and will apply differently depending on the extent of each broadcaster's Australian music obligation under the Codes of Practice. As a result, the reduction in compliance costs will also differ. Licensees no longer required to provide local content in addition to Australian music, will benefit from corresponding cost reductions and substantially reduced legal costs associated with compliance. Other licensees will benefit to varying degrees and, for some, there are unlikely to be any cost reductions as their local content obligations will not change.

50. The amendments will exempt remote commercial radio broadcasters, regional commercial radio broadcasters primarily providing racing services, and regional radio services operating outside the Broadcasting Services Bands (that is, those licensed under section 40 of the Act) from the local content requirements. The measures will also exempt remote commercial radio broadcasters and regional commercial radio broadcasters primarily providing racing services from the local presence and additional local news and information requirements imposed after a trigger event has occurred. This is expected to eliminate both the compliance cost and the cost of producing such material for these categories of broadcasters.

51. The disadvantage of this option is that, over time, it could potentially lead to a reduction in the level of local presence. However, evidence from the ACMA indicates that where licensees are not affected by a trigger event (and therefore not required to maintain a local presence) they are nonetheless still likely to meet their local content quotas by broadcasting locally hosted and produced, locally hosted, or locally produced content.

*Proposed amendments under option (d)*

52. The proposed amendments to the Act will:

- (a) reduce the number of weeks in which broadcasters must provide the regulated amounts of local content and the amounts of local news and information after a trigger event (that is, particular changes in ownership and control) from 52 to 47 weeks per year;
- (b) exempt:
  - i. broadcasters primarily providing racing services;
  - ii. remote broadcasters; and
  - iii. radio services licensed under section 40 of the Broadcasting Services Act 1992 ('the Act')from the local content requirements;
- (c) exempt:
  - i. remote broadcasters; and
  - ii. broadcasters primarily providing racing servicesfrom the local presence and additional local news and information requirements imposed after a trigger event;
- (d) include in the categories of trigger events changes in control of regional radio broadcasting licences;
- (e) exclude from the categories of trigger events:
  - i. intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence;
  - ii. the formation of a new registrable media group that is created only due to significant population shifts within a licence area or changes to boundaries of a licence area; and
  - iii. internal corporate restructures where the ultimate controller does not change;
- (f) provide the Australian Communications and Media Authority with discretion to determine the extent to which the trigger event provisions apply so as to avoid or reduce unintended consequences; and
- (g) reduce to 24 months the period over which the local presence and reporting requirements apply to regional commercial radio licensees after a trigger event, with transitional arrangements where trigger events have previously occurred and review the requirements at least once every three years.

53. The amendments will also reduce the regional local content requirements in section 43C of the Act.

## **CONSULTATION**

54. CRA, in its role as the peak industry body representing 98 per cent of commercial radio broadcasters, has brought to the attention of the Minister for Broadband, Communications and the Digital Economy and the department the impact of the current local content, local presence and trigger event related provisions and the costs incurred in meeting the reporting requirements. CRA has requested that Sections 43B, 43C and Division 5C of Part 5 of the Act be amended or

abolished to make the local content and local presence requirements more flexible and to reduce the compliance burden on regional commercial radio broadcasters and the amendment were developed in close consultation with CRA. The industry's concerns are reflected in its submission to the Productivity Commission review. CRA's views were also considered in relation to the proposed amendments of section 43C of the Act.

55. The Department of Broadband, Communications and the Digital Economy has also consulted with the ACMA regarding the local content and local presence requirements and the trigger event provisions of the Act. The ACMA has provided information on the compliance process for regional commercial radio broadcasters and has recommended that a number of the existing provisions in the Act be amended to provide greater flexibility for licensees and reduce reporting requirements.

56. A public submissions process was undertaken as part of the statutory review of the provisions in 2010. Fifteen submissions were received from the broadcasting industry, organisations and members of the public.

## **CONCLUSIONS AND RECOMMENDED OPTION**

57. Option (a) is to make no change to the existing local content and local presence provisions. This option requires regional commercial radio licensees to continue to comply with the current requirements that the industry and Productivity Commission submits are onerous and damaging to regional commercial radio businesses.

58. Option (b) is to abolish the local content, local presence and trigger event requirements in the Act, which would allow regional commercial radio broadcasters in Australia's highly concentrated market to provide a centralised, networked service to all licences in their control without any content that directly relates to their regional licence areas. This option has the potential to substantially reduce operating costs for radio broadcasters but could leave regional communities without access to local content. While there would be an economic benefit to regional broadcasters, the proposal would not meet the policy objective for regional commercial radio services to provide a minimum amount of content that is relevant to the communities they serve.

59. Option (c) is to reduce the local content provisions for regional commercial radio broadcasters regarding 'material of local significance'. This option would maintain the existing local content, local presence and trigger event provisions, with only minor changes for some licensees, including the onerous reporting arrangements for regional commercial radio licensees.

60. Option (d) is to amend the Act to make the local content obligations more flexible, to reduce the reporting requirements for regional broadcasters, to refine the trigger event definition to ensure consistency with the control provisions in the Act, provide exemptions from the trigger event consequences in some circumstances, and to reduce the local presence requirements resulting from a trigger event from perpetuity to 24 months. This option would reduce the ongoing regulatory compliance costs for regional radio broadcasters and provide greater flexibility in meeting the local content requirements.

61. Option (d) is recommended as it would achieve a reduction in the regulatory burden for regional commercial radio licensees but would maintain the broad policy objective of ensuring a minimum level of local content and local presence for commercial radio services in regional areas. The amendments will not prevent regional radio licensees from broadcasting more than the amount of local content required under the Act.

## **IMPLEMENTATION AND REVIEW**

62. Option (d) would be implemented by amending sections 43B and 43C and Division 5C of Part 5 the *Broadcasting Services Act 1992* and related statutory instruments.

63. The Government will monitor the effects of the amendments to the *Broadcasting Services Act 1992* and review the new arrangements as part of the regular statutory reviews required under Section 61CT of the Act.