Automatic sunsetting of legislative instruments—
Broadcasting Services (Meaning of Local) Instrument 2007 Consultation paper

OCTOBER 2017
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Background

Under Part 4 of Chapter 3 of the Legislation Act 2003, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on 1 April or 1 October, on or after the 10th anniversary of their registration. This is an automatic process applying to most legislative instruments regardless of their particular content.

The following legislative instrument made by the Australian Communications and Media Authority (the ACMA), which is due to sunset in the near future, is the:

<table>
<thead>
<tr>
<th>Name of instrument</th>
<th>Sunset date</th>
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<tr>
<td>Broadcasting Services (Meaning of Local) Instrument 2007</td>
<td>1 April 2018</td>
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The ACMA has formed the preliminary view that this instrument is operating effectively and efficiently and, as such, continues to form a necessary and useful part of the legislative framework. Accordingly, the ACMA proposes to remake it in a new instrument prior to the sunset date referred to above without any significant changes, so that its ongoing effect is preserved.

The ACMA proposes to remake the instrument with only such minor necessary changes as are referred to below and to retitle it:

Brief details of what the legislative instrument does

Broadcasting Services (Meaning of Local) Instrument 2007

The Broadcasting Services (Meaning of Local) Instrument 2007 (2007 Instrument) was made by the ACMA under subsection 61CC(1) of the Broadcasting Services Act 1992 (BSA).

The 2007 Instrument defines the meaning of the expression ‘local’ for the purposes of the local news and information requirements (the local content rules) set out in Division 5C of Part 5 of the BSA for specified commercial radio broadcasting licensees.

The purpose of the 2007 Instrument is to provide certainty about the meaning of ‘local’ for commercial radio broadcasting licensees.

The 2007 Instrument was made in 2007 following the commencement of the local content rules for commercial radio licensees on 1 February 2007.
Proposed changes to the legislative instrument

Broadcasting Services (Meaning of Local) Instrument 2017

The proposed Broadcasting Services (Meaning of Local) Instrument 2017 (Draft Instrument) has been drafted to replace and make minor changes to the 2007 Instrument. The Draft Instrument includes the following minor changes:

> A Note has been included after section 5 (Purpose and application of instrument) of the Draft Instrument to make it clear that the Draft Instrument does not apply to a remote area service radio licence (consistent with paragraph 61CAA(a) of the BSA); a regional racing service licence (consistent with paragraph 61CAA(b) of the BSA); or regional radio broadcasting licence allocated under subsection 40(1) of the BSA (consistent with section 50A of the BSA).

The purpose of this change is to provide clarification on the operation of the instrument. This approach is consistent with other instruments for regional radio local content.

Additionally, the Draft Instrument includes:

> minor editorial changes

> some consequential changes to some section references, which reflect the consolidated numbering in the Draft Instrument

> new provisions to reflect current drafting conventions for legislative instruments.
Request for comment

Comments are sought from the public on the ACMA’s proposal to remake the legislative instrument referred to above, without any significant changes, on the basis that it is operating effectively and efficiently.

Making a submission

Submissions should be directed to:

By email: localcontentradio@acma.gov.au
By mail: Manager
Diversity, Localism and Accessibility Section
Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building NSW 1230

The closing date for submissions is COB, Friday 17 November 2017.

Each submission should specify:

> the name of the individual or organisation making the submission
> their contact details (such as a telephone number, postal address or email address).

Electronic submissions in Microsoft Word or Rich Text Format are preferred.

A submitter may claim confidentiality over their name or contact details (see Publication of submissions below) or may make a submission anonymously or through use of a pseudonym (see Privacy below).

Effective consultation

The ACMA is working to enhance the effectiveness of its stakeholder consultation processes, which are an important source of evidence for its regulatory development activities. To assist stakeholders in formulating submissions to its formal, written consultation processes, it has developed Effective consultation—a guide to making a submission. This guide provides information about the ACMA’s formal written public consultation processes and practical guidance on how to make a submission.

Publication of submissions

In general, the ACMA publishes all submissions it receives, including any personal information in the submissions (such as names and contact details of submitters). The ACMA prefers to receive submissions that are not claimed to be confidential. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material (including any personal information) over which confidentiality is claimed and provide a written explanation for the claim.

The ACMA will consider each confidentiality claim on a case-by-case basis. If the ACMA accepts a claim, it will not publish the confidential information unless authorised or required by law to do so.
**Release of submissions where authorised or required by law**

Any submissions provided to the ACMA may be released under the *Freedom of Information Act 1982* (unless an exemption applies) or shared with various other government agencies and certain other parties under Part 7A of the *Australian Communications and Media Authority Act 2005*. The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example, under a court subpoena). While the ACMA seeks to consult submitters of confidential information before that information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

**Privacy**

The *Privacy Act 1988* (the Privacy Act) imposes obligations on the ACMA in relation to the collection, security, quality, access, use and disclosure of personal information. These obligations are detailed in the *Australian Privacy Principles*.

The ACMA may only collect personal information if it is reasonably necessary for, or directly related to, one or more of its functions or activities.

The purposes for which personal information is being collected (such as the names and contact details of submitters) are to:

- contribute to the transparency of the consultation process by clarifying, where appropriate, whose views are represented by a submission
- enable the ACMA to contact submitters where follow-up is required or to notify them of related matters (except where submitters indicate they do not wish to be notified of such matters).

The ACMA will not use the personal information collected for any other purpose, unless the submitter has provided their consent or the ACMA is otherwise permitted to do so under the Privacy Act.

Submissions in response to this paper are voluntary. As mentioned above, the ACMA generally publishes all submissions it receives, including any personal information in the submissions. If a submitter has made a confidentiality claim over personal information that the ACMA has accepted, the submission will be published without that information. The ACMA will not release the personal information unless authorised or required by law to do so.

If a submitter wishes to make a submission anonymously or through use of a pseudonym, they are asked to contact the ACMA to see whether it is practicable to do so in light of the subject matter of the consultation. If it is practicable, the ACMA will notify the submitter of any procedures that need to be followed and whether there are any other consequences of making a submission in that way.

Further information on the Privacy Act and the ACMA’s privacy policy is available at [www.acma.gov.au/privacypolicy](http://www.acma.gov.au/privacypolicy). The privacy policy contains details about how an individual may access personal information about them that is held by the ACMA, and seek the correction of such information. It also explains how an individual may complain about a breach of the Privacy Act and how the ACMA will deal with such a complaint.