



SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017

Reference to the Senate Environment and Communications Legislation Committee

5 January 2018

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the Committee's inquiry into the *Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 (Bill)*.

We set out our comments below.

1. Implementation of legislation

The commercial radio industry welcomes the effort to create a level playing field amongst competing media platforms, through the imposition of equivalent restrictions on gambling advertising during live sports.

Accordingly, CRA maintains that the rules applicable to the commercial radio industry under the Commercial Radio Code of Practice (**CRA Code**) should come into effect no earlier than the date on which the Bill comes into force.

To do otherwise would unfairly penalise the commercial radio industry. It would also fail to achieve the Government's stated policy objectives, as advertisers would simply move their advertising onto the unregulated platforms.

In the interests of fairness and efficacy, the restrictions must come into force across all platforms at the same time.

2. Simulcasts of commercial radio broadcasts

CRA welcomes the inclusion of sections 3(1)(e) and 4 of Schedule 8 in the Bill, which exempt online simulcast services provided under a commercial radio broadcasting licence.

This is a significant exemption for the commercial radio industry, without which the commercial radio industry would face substantial practical difficulties. We outline these difficulties below, to add context for the Committee.

Following a Full Federal Court decision several years ago, simulcasts are no longer treated as broadcasts under the *Broadcasting Services Act 1992 (BSA)*. Instead, simulcasts are treated as online communications.

Without the exemption in the Bill, commercial radio broadcasters' simulcasts would be subject to the legislation applicable to online content service providers. Additionally, the originating broadcast would be subject to the new gambling provisions to be incorporated in the CRA Code.

As the vast majority of broadcasts are also transmitted by simulcast it would effectively mean that broadcasters would need to comply with the provisions of both the Bill and the CRA Code when producing the originating broadcast. They would not otherwise be able to transmit the broadcast online without risking a breach of the Bill.

This would create numerous practical difficulties.

- Broadcasters would need to observe two sets of regulation, differently worded and no doubt with different nuances and possibly substance. Each would have a wholly different regulatory status (legislation and Code).
- It is unclear how the ACMA would process complaints and treat breaches. A broadcaster could find itself the subject of two investigations, one under the Bill, and the other under the CRA Code.
- It could lead to two sanctions being imposed upon the broadcaster in relation to the same content (in respect of its simulcast and its broadcast).

CRA is pleased that the Bill avoids these difficulties through the inclusion of sections 3(1)(e) and 4 of Schedule 8.

3. Section 125A

The proposed section 125A appears to duplicate the existing section 125 of the BSA, which already provides a broad power for the ACMA to determine standards in certain circumstances (inadequacy or non-existence of provisions in the CRA Code).

There is no need for a further provision that repeats the ACMA's existing powers. This is contrary to the Government's deregulatory policy and may create confusion and uncertainty for broadcasters and the ACMA as to the scope of the existing section 125.

We suggest that the proposed section 125A specifically excludes commercial radio broadcasters.

Alternatively, if there are areas of section 125A that the Committee believes are not already covered by the existing section 125, then these aspects may be expressly applied to commercial radio broadcasters. If no such areas exist, then a complete exclusion would be appropriate.

4. Explanatory matter and record keeping (sections 125A(6) and (7))

CRA is particularly concerned about sub-sections (6) and (7) in section 125A. These provisions, if included in a Standard imposed under section 125A, would impose a significant additional burden upon commercial radio broadcasters.

Explanatory matter

Section 125A(6) states that a gambling promotion program standard may make provision for explanatory matter to be provided by the licensee 'in a manner specified in the standard'.

Any mandatory 'explanatory matter' impacts disproportionately on the commercial radio industry. Radio has only audio as a means of conveying information, so mandatory messages break into its programming and entirely remove the station's ability to broadcast other content.

This differentiates radio from other media, such as pay and free to air television, which can include mandatory information as text on the screen, while continuing to broadcast the substantive content.

Record keeping

Section 125A(7) states that a gambling promotion program standard may make provision for record keeping.

Commercial radio is already extremely heavily regulated, particularly in relation to local content compliance reporting. The imposition of further record keeping requirements on commercial radio would impact heavily on the industry, particularly affecting stations in regional and rural areas, which already frequently operate with few staff and stretched resources.

The nature of the commercial radio industry – many small, sparsely staffed stations spread across Australia – differentiates it from other media. The imposition of additional record keeping requirements is likely to have a more significant impact on commercial radio than it might on a differently structured industry.

Recommendation

As stated in 3 above, our preference is for commercial radio to be entirely exempt from section 125A, on the basis that the provision duplicates the powers granted in section 125 of the BSA.

However, if the Committee is minded to recommend the maintenance of section 125A in its current form, then we urge it to recommend the exclusion of commercial radio from the provisions relating to explanatory matter and record keeping. This can be achieved by deleting sections 125A(6)(b) and 125A(7)(b).

Accordingly, the matters of explanatory matter and record keeping would then be issues that the ACMA may choose to consider – with proper consideration of matters applicable

specifically to the commercial radio industry – when exercising its powers under the existing section 125 of the BSA.

5. Parity between online and broadcast service exemptions

CRA would like to see an acknowledgement of the need for parity between exemptions applicable to the online and broadcast platforms in the Bill.

Any exemptions granted to online providers under the broad exemption categories should also be granted to commercial radio broadcasters. CRA is concerned that newly granted online exemptions could otherwise lead to regulatory bypass for sections of the online industry.

We note that provisions regarding individual and class exemptions are provided at sections 15 and 16 of the Bill. We would like to see clear decision-making criteria included in section 16, to ensure that a consistent approach is taken to exemptions across all platforms.

This is of practical necessity in relation to broadcasts communicated non-contemporaneously online (which are not subject to the simulcast exemption). It also prevents online service providers from benefitting from a broader class of exemptions than commercial radio broadcasters.

If any online service exemptions cannot be applied to broadcasters in an equivalent manner, then they should not be permitted under the Bill.

6. Definition of gambling service

The definition of ‘gambling service’ at section 18 does not include exemptions for Government sanctioned lotteries, keno, trade promotions and horse, harness and greyhound racing.

We suggest that express exemptions for such services are included, to avoid confusion and to be consistent with the approach taken in the CRA Code.

Please contact Joan Warner, on _____, for clarification on any aspect of this submission.