

Regulatory issues in the community broadcasting sector

- 4.1 This chapter examines the major regulatory issues affecting the community broadcasting sector.
- 4.2 The chapter examines general licensing issues including licence allocation, licence breaches and complaints.
- 4.3 The chapter also examines the significant issue of sponsorship in the sector.

Licensing

- 4.4 Many submissions raised licensing issues as a significant problem to be addressed by inquiry.
- 4.5 Some submissions claimed that community broadcasters have difficulty in interpreting regulations. The Northern Territory Department of Corporate and Information Services discussed difficulties broadcasters face regarding the interpretation of legislation:

The current legislation is complex for broadcasters to interpret. It is also open to subjective opinion and decision making ... interpretation of licence conditions and seeking opinions from the ACMA attracts a fee from those least likely to be able to afford it ... application [of the legislation] lacks consistency and is open to widely differing interpretations and applications.¹

1 Northern Territory Department of Corporate and Information Services, *submission no. 13*, p. 2.

Transparency of decision making

4.6 Several submissions to the inquiry raised the issue of transparency of the regulator's decision making processes.

4.7 DIMA called for increased transparency in the licence allocation process:

The need for transparency and fairness in the allocation of licenses is illustrated by an incident in 2001 in relation to the allocation of three community licenses to serve Sydney by the Australian Broadcasting Authority. The decision to grant one of the licences to a particular Islamic charity was severely criticised as a political decision by a competing body which claimed broader community representation of mainstream Australian Muslims. Other groups were also not supportive of the decision. The licensee did, however, go on to provide successful programming. This case indicates that there are community sensitivities in this area and that there is a need for transparency of decision-making.²

4.8 CTV Perth also raised the issue of decision making transparency:

The process of the granting of the licences to local community televisions appears lacking the clear transparency and accountability in its decision making process.³

4.9 PCR FM suggested that ACMA may not be fully aware of how the sector functions. PCR-FM, through recent experience gained in particular court cases, suggested that ACMA's lack of understanding and appreciation of the fundamental principles pertaining to the sector has emerged.⁴

4.10 PCR FM also suggested that ACMA may not be completely objective in its decision making processes:

Documents acquired under the FOI reveal a subjective rationale having been applied to our specific case and demonstrate the dangers of allowing ACMA to remain unaccountable to anyone.⁵

2 DIMA, *submission no. 93*, p. 4.

3 CTV Perth, *submission no. 99*, p. 11.

4 PCR FM, *submission no. 32*, p. 2.

5 PCR FM, *submission no. 32*, p. 2.

4.11 PCR FM suggested that correspondence received from the Minister for Communications, Information Technology and the Arts indicated a level of autonomy and unaccountability on the part of the ACMA. PCR FM explained:

The letters reflect a pro format response provided by ACMA to the Ministers' Offices and once again promote a notion of little accountability.⁶

4.12 PCR FM claimed that, in a new environment where boundaries between emerging and existing technologies may overlap, it becomes vital that the discretionary powers of ACMA be controlled without affecting its autonomy.⁷

4.13 PCR FM suggested that this could be achieved by giving CBAA or an equivalent body a greater co-regulatory role within the system applying to the community broadcasting sector. PCR FM described CBAA:

It is a peak organisation that understands the effects of modern technologies on the community radio sector, is answerable to its members, and above all is totally immersed in the values promulgated by its Code of Practice. The input of the CBAA must be formalised and more than just advisory or rhetorical.⁸

4.14 Several passionate submissions to the inquiry cited recent decisions regarding licence allocations as examples of poor ACMA decision making processes. For example, Doris Freris explained:

... I believe that a great injustice has been committed by the [ACMA]. They have committed this not just once but twice in the last three and a half years by licensing Radio Rhema Gosford. My impression is that this has been blatant discrimination against the migrant communities and PCR FM. I can only logically conclude that this has occurred because of corruption through the payment of either bribes, spiritual favour or promise or capitulation to foreign interests. It has not been for the building of harmonious communities or Australian equality.⁹

6 PCR FM, *submission no. 32*, p. 2.

7 PCR FM, *submission no. 32*, p. 2.

8 PCR FM, *submission no. 32*, p. 2.

9 Doris Freris, *submission no. 10*, pp. 1-2.

- 4.15 Doris Freris also recommended that an independent person should rule on licensing disputes:

With regard to community radio and disputes either between the radio and the bureaucracy or the radio members and the ruling committee, I believe that some sort of ombudsman should be readily available to arbitrate in disputes. Obviously such a person would have to demonstrate a total lack of bias to anyone other than humanity.¹⁰

- 4.16 When asked if its licence allocation process is transparent and accountable, ACMA stated:

I believe so, yes. It is a public process. We put material out in public ... we give a report in which we set out our comparative assessment of the applicants ... it is publicly available ... they can get a statement of reasons from us.¹¹

- 4.17 With regard to ACMA decisions, PCR-FM stated that it has:

... no right of appeal under the BSA 1992 thereby restricting any challenge to ACMA's reasons behind its decision to allocate a licence. The BSA gives wide discretionary powers to the Authority.¹²

- 4.18 When asked if there is a way that licence applicants can challenge an ACMA decision without having to resort to lengthy and expensive legal proceedings, the ACMA stated:

No; there is no appeal on the merits to the AAT [Administrative Appeals Tribunal]. There is only review on the law to the Federal Court under the ADJR Act [the *Administrative Decisions Judicial Review Act 1977*].¹³

- 4.19 ACMA clarified:

... the decisions to revoke a licence or impose a new condition are both appellable to the AAT, but the decision on [licence] allocations is not.¹⁴

10 Doris Freris, *submission no. 10*, p. 2.

11 ACMA, *transcript of evidence 29 November 2006*, pp. 23-24.

12 PCR FM, *submission no. 32*, p. 3.

13 ACMA, *transcript of evidence 29 November 2006*, p. 24.

14 ACMA, *transcript of evidence 29 November 2006*, p. 24.

- 4.20 ACMA added significant problems and delays would occur if licence allocation was subject to the AAT:

... if you had 18 applicants in Sydney for three licences, what were the odds of it going to the AAT? You can add an extra year or two. That is a decision for the parliament if you want to do that, but it would mean the final decision was made not by [ACMA] but by AAT.¹⁵

- 4.21 ACMA stated that most licences have been allocated and its focus is now on renewing licences and keeping those licensees accountable:

... three years ago we were allocating 20 or 30 community licences a year ... I think in the last couple of years we have been allocating more like two or three a year. We have finished; not quite, but we have nearly finished. We could spend a lot of time shutting doors on allocation. In a lot of ways, I think that the thinking behind the renewals power was that we have come to the end of when a free new channel was the answer to every government's problem, dispute or inadequacy with the community broadcasting sector in a town. Now we have come to a time where you have got a pretty scarce resource; there are not a lot of alternatives in most places, so let us make sure that the incumbents are accountable. I guess that is where we are putting our resources and energy. But there are still occasionally new licences planned and there are still occasionally allocation processes.¹⁶

- 4.22 ACMA discussed the options available to it in dealing with regulation breaches:

We can do a whole range of stuff. Depending on how bad the breach is and whether there are statutory requirements ... we use a whole range of stuff from discussions with them, so that they have voluntary undertakings. That is our preferred method of operation because it lets them craft the solution to achieve the outcomes. We have at times put conditions on particular cases ... which [may include] reporting.¹⁷

- 4.23 ACMA added:

Our experience of our capacity to impose active conditions is that we are quite hamstrung. I would say that we are quite

15 ACMA, *transcript of evidence 29 November 2006*, p. 24.

16 ACMA, *transcript of evidence 29 November 2006*, p. 24.

17 ACMA, *transcript of evidence 29 November 2006*, p. 26.

conservative in anything we do other than voluntary undertakings. So the risk I think you are going to have, of being aggressively intrusive on our part, is lesser than it might appear on paper. When our powers have been tested in this field, they have generally been shown to be relatively limited.¹⁸

4.24 ACMA discussed some specific cases and how those cases affected the way in which its decisions are subsequently made:

There was a case three or four years ago with regard to a commercial radio station in Ipswich, Queensland, which we felt was going well beyond its licence area. We tried to impose conditions on them to make them an Ipswich station, which we felt they were. The AAT told us we could not do that. Of course, we then built that understanding of our powers into all our decisions. There was the case with Groove in Western Australia where we have been involved in quite lengthy litigation with them over the conditions we tried to impose. I think we are probably close to an agreement ... with them whereby we will take something that is less intrusive. So we build those into our understanding of what we can do.¹⁹

4.25 ACMA further discussed how it imposes conditions and the implications for broadcasters and ACMA:

I guess that threat of AAT review has always made the regulator very cautious to ensure that it does what it should have done anyway – that is, take account of the costs or the unreasonableness of any measure it proposes ... there is a very real risk that if we push a station too far over a condition, it will challenge it in the AAT. It will get bogged down there for years, potentially, and we may have our decision overturned. And it is quite resource intensive, not just for them but for us.²⁰

4.26 ACMA explained that it could impose a condition on a licence at any time during the licence period.²¹

18 ACMA, *transcript of evidence 29 November 2006*, p. 27.

19 ACMA, *transcript of evidence 29 November 2006*, p. 27.

20 ACMA, *transcript of evidence 29 November 2006*, p. 28.

21 ACMA, *transcript of evidence 29 November 2006*, p. 26.

4.27 ACMA explained further:

After an investigation and findings, if people do not adhere to those we can revoke that licence at the end of the day, but that is a very long process.²²

4.28 ACMA added that, in limited circumstances, another path involved prosecution.²³

4.29 When asked how it acts upon complaints made to it about particular community broadcasters, ACMA stated:

If there is a complaint that there has been a breach of an issue dealt with in a code of practice – an example of that might be racial vilification – then our co-regulatory scheme means that we tell them to go and complain to the station. We will assist them to do that ... if they are dissatisfied with the response then they have a right to complain to us and get the issue resolved and settled. That is how the co-regulatory scheme works on code issues.²⁴

4.30 ACMA explained further regarding complaints about breaches of law:

If the breach is about a mandatory standard, a condition or a requirement of law, the complainant has a right to come to us and have a complaint that there has been a breach investigated without recourse to the station.²⁵

4.31 When asked what the response would be regarding a complaint concerning sponsorship issues, ACMA stated:

That is a legal issue because that is in their mandatory licence conditions, so the commercial station does not have to go to the community service first, it can come direct to us. The mere fact that they allege that requires us to investigate and report back to them. We would then proceed to do that – of course giving natural justice to the station.²⁶

4.32 ACMA explained that the station in question is not informed of who made the complaint:

Quite often complainants ask that their identity be kept quiet, and we would respect that. The reason, at the very broadest, we would

22 ACMA, *transcript of evidence 29 November 2006*, p. 26.

23 ACMA, *transcript of evidence 29 November 2006*, p. 27.

24 ACMA, *transcript of evidence 29 November 2006*, p. 28.

25 ACMA, *transcript of evidence 29 November 2006*, p. 28.

26 ACMA, *transcript of evidence 29 November 2006*, p. 28.

respect that is that in general when you are a law enforcement body it is in your interest that people bring complaints to you and not be afraid to do that for whatever reason.²⁷

- 4.33 ACMA also discussed the nature of some complaints and how community broadcasters deal with them:

... I would say that complaints by commercial broadcasters against community broadcasters are things that only happen to a minority – and probably not a very large minority – of community broadcasters. I would say that we do sometimes see a situation where one individual or group is responsible for a large number of complaints about a particular service. I can see that that puts the service in question under a lot of pressure.²⁸

- 4.34 When asked if it was looking at ways of reducing legal costs and litigation in the sector, ACMA explained:

Under the present law we do have an obligation to investigate every time. We have a discretion not to investigate a complaint which is frivolous, vexatious or an abuse of process, but those are very high tests.²⁹

Committee comment

- 4.35 The Committee will not comment on particular decisions made by ACMA as that is not the purpose of this inquiry.
- 4.36 The Committee acknowledges that some community broadcasters have an issue with the way ACMA allocates licences, and the way it handles licence renewals and complaints.
- 4.37 The Committee recognises that meeting particular obligations required by ACMA and the *Broadcasting Services Act 1992* is the responsibility of community broadcasters.
- 4.38 During the inquiry the Committee was impressed with the professionalism of ACMA and its commitment to the sector. However, the Committee is of the opinion that there is scope for ACMA to improve its dealings with licensees.

27 ACMA, *transcript of evidence 29 November 2006*, p. 28.

28 ACMA, *transcript of evidence 29 November 2006*, p. 31.

29 ACMA, *transcript of evidence 29 November 2006*, p. 31.

- 4.39 The Committee recommends that ACMA substantially improves its transparency with regard to complaint handling and decision making processes.
- 4.40 The Committee also recommends that ACMA improve communications with community broadcasting licensees. This should be achieved by the development and implementation of extension services that allow community broadcasters access to ACMA officers. ACMA should also increase awareness of its processes through workshops and campaigns for the sector.

Recommendation 9

The Committee recommends that the Australian Communications and Media Authority:

- **substantially improve its transparency with regard to community broadcasting complaint handling and decision making processes**
- **improve communications with community broadcasting licensees**
- **develop and implement extension services that allow community broadcasters to access Australian Communications and Media Authority officers**
- **increase awareness of its processes through workshops and campaigns directed towards the community broadcasting sector.**

Sponsorship

- 4.41 Many submissions to the inquiry claimed community broadcasting stations are having significant problems concerning sponsorship guidelines.
- 4.42 Some stations are still breaching regulations by one or more of the following:
- **broadcasting material that would be considered advertising**

- broadcasting sponsorship announcements without appropriate tags
- broadcasting more than the five minutes per hour sponsorship announcement limit.

Sponsorship and advertising

- 4.43 CBAA discussed sponsorship and the regulations that relate to sponsorship:

We as an industry body are charged with the responsibility to come up with codes of practice that are registered with the regulator. It is a common misinterpretation that we get to set the rules for sponsorship. We do not because, as you know, sponsorship is black letter inscribed in the BSA. They have existed in that form since 1992 ... there is certainly no groundswell to have that part of the act revised from our quarter. Getting back to the regulatory framework, there is a frustration and a lack of clarity and transparency in how those provisions ... are interpreted and applied by the regulator.³⁰

- 4.44 CBAA explained how the current sponsorship guidelines came about:

In 2003, [ACMA] put out a set of specific guidelines for advertising and sponsorship for community broadcasters – in other words, how to draw the line. This is right off the tail end of the cash-for-comment stuff that swept through the commercial radio industry. Obviously issues about the dividing line between what is valid editorial comment and what is advertorial or advertising were and are live issues in commercial radio, for goodness sake, let alone community radio, where the rigours you would imagine should be applied fairly strongly.³¹

- 4.45 CBAA suggested that the sponsorship guidelines are not helpful and added that community broadcasters have fallen foul of the guidelines:

We believe that the guidelines that were issued in 2003 are not as helpful as they might be ... there has been a recent spate, if that is the word, of regulatory investigations and breaches found against a small handful of community stations that have somehow been found guilty of advertising.³²

30 CBAA, *transcript of evidence 31 May 2006*, p. 18.

31 CBAA, *transcript of evidence 31 May 2006*, p. 18.

32 CBAA, *transcript of evidence 31 May 2006*, p. 18.

- 4.46 Melbourne's 3RRR also expressed concern over recent ACMA findings relating to sponsorship in the sector:

There has to be a very pragmatic view of the sector. If it is self-funded then there are only two primary areas for that to come from – sponsorship and listener subscriptions. I think some of the ACMA findings recently are quite bizarre in that regard. For example, a finding that an interview with an artist about an upcoming show in a regional area was contravening sponsorship because it was promoting their show. Well, hello – why else do people go on radio? That would wipe out 80 per cent of Triple R's interviews, because everybody has a CD out or a gig or a show coming up; that is why you are going in to talk to the local media. It is a bizarre finding.³³

- 4.47 Western Radio Broadcasters discussed the difficulties of determining what sponsorship is:

Another difficulty that we face is the definition of sponsorship announcement. I believe the sector, on the whole, and ACMA need to work vigorously on this ... we do at times have difficulties defining what a sponsorship announcement is. For example, if we interview an up-and-coming Australian artist and then mention where they are appearing or if they have a CD available for sale, under the current guidelines I believe that this is a sponsorship announcement. Until such time as we can receive further clarification surrounding this issue, we have put a halt to all such interviews to protect the licence of Western Radio Broadcasters Inc.³⁴

- 4.48 Radio Logan also discussed the difficulties of determining what sponsorship:

One of the main issues experienced by community radio stations is differentiating programming from advertising. Many stations have been taken to task by the ACMA or had 'Show Cause' notices because something said in a program has been interpreted as advertising ... we have a regular Morning Magazine show running for 3 hours Monday to Friday. An important part of this show is interviews with various organisations in the local community. Some of these interviews are with local artists, or local book authors or even a local business that may have important

33 3RRR, *transcript of evidence 24 May 2006*, pp. 11-12.

34 Western Radio Broadcasters, *transcript of evidence 20 July 2006*, p. 55.

information for the community. As soon as the whereabouts of the business is mentioned, or the availability of a CD or book, this then becomes an advertisement. There does not seem to be any leeway. We feel there should be more latitude when it comes to differentiating programming to advertising.³⁵

- 4.49 ACB also raised the issue of promotion of local music and events, including interviews, book reviews and CD giveaways:

The decision against 2SWR-FM by ACMA regarding the interview being advertising sent shockwaves throughout our members. Almost every week the ACB is now being asked by its members about what they are allowed to broadcast. As Christian stations we want to do book reviews, we want to do interviews and promote and encourage Christian music, especially Australian Christian music. We want to give away film tickets to family friendly movies or concerts, we want to help charities and we firmly believe that our community of interest wants their station to be doing this as well.³⁶

- 4.50 ACB suggested that its members are subject to onerous compliance burdens:

The very sector in Australian broadcasting – community radio – with the least amount of resources, with an expectation to use volunteers and to serve a community of interest, has compliance burdens put on it that commercial broadcasters, who seem to have plenty of resources, do not even think twice about.³⁷

- 4.51 ACB added:

We are also finding that in the sector there is very little help available. For instance, if we were to ring ACMA and ask for an opinion, we would not be able to get one. Sometimes that is distressing because the only way we find out that we are in breach is when a complaint is lodged.³⁸

- 4.52 Mr Shane Moore, a community broadcaster with a number of stations, explained difficulties in promoting local music:

Specifically, the scenario is the one in which a program presenter wishes to present a 'gig-guide', i.e. an enumeration of bands, or

35 Radio Logan, *submission no. 47*, p. 2.

36 ACB, *transcript of evidence 6 September 2006*, p. 4.

37 ACB, *transcript of evidence 6 September 2006*, p. 5.

38 ACB, *transcript of evidence 6 September 2006*, p. 5.

DJs, or concerts, or other public performances which may be of interest to listeners ... the rulings by the Authorities seem to suggest that such enumerations could be construed to be advertisements, because the performers generally make some profit from performing ... but they have not 'sponsored' the station.³⁹

4.53 Mr Moore added:

It would be very difficult in general to contact each individual performing group/ solo-artist to ask them to make a 'sponsorship' payment to the station, and would sound silly to then say about each act 'sponsors of the station', yet this is what the recent breach rulings seems to suggest is meant to occur.⁴⁰

4.54 Mr Moore sought clarification on whether gig guides were construed as advertising, and if so, asked:

... that the community broadcasting license conditions in the Act be re-worded to allow for some form of non-sponsored gig guides to be aired.⁴¹

Tagging announcements

4.55 Several submissions to the inquiry called for a change in how sponsorships are tagged, or for dropping the tag requirement altogether.

4.56 Upper Goulburn FM stated:

We need more flexibility in the way we are allowed to promote activities and items of interest for which we receive no return, remuneration, or kickbacks. The line between advertising and information needs to be black and white. If we are receiving nothing in return for it, then it's not a Sponsor and not classified as advertising.⁴²

4.57 Upper Goulburn FM explained that:

The word 'Sponsor' should remain if only to indicate the current announcement is a paid announcement of which the station is receiving a return, remuneration or kickback. Everything else not

39 Shane Moore, *submission no. 50*, p. 4.

40 Shane Moore, *submission no. 50*, p. 4.

41 Shane Moore, *submission no. 50*, p. 4.

42 Upper Goulburn FM, *submission no. 44.1*, p. 3.

'tagged' 'Sponsor' then the station is not receiving a return, remuneration or kickback.⁴³

4.58 Upper Goulburn FM added:

The word 'Sponsor' should also be able to be used for a group of sponsor's announcements when they are aired as a group, instead of having to 'tag' each announcement in the group. They should be able to be 'tagged' at the start or the end of the group.⁴⁴

4.59 Family Radio discussed its view of tagging announcements:

We cannot see the value in having to tag every sponsorship announcement with 'station sponsor' or 'our sponsor' to avoid breaching our licence conditions. Our audience knows we depend on financial support from sponsors and that we run sponsor announcements to obtain financial support for the station. It goes without saying. The tag serves no purpose and is both a significant compliance burden, and represents a significant risk to our licence if we inadvertently omit the tag. In our view, the requirement to tag should be repealed and community radio should be permitted to broadcast advertisements, within the limitation of the existing 5 minutes-per-hour rule.⁴⁵

4.60 Radio KLFM remarked on the difference between sponsorship and advertising:

It is usually obvious when a paid announcement is being run ... we submit that community radio listeners are just as well able to discern an advertisement as are commercial radio listeners. Therefore the need for tagging, and the difference between sponsorship and advertising, seems to be an unnecessary legal technicality that provides the principal source of complaints against community radio licensees for breaching the BSA.⁴⁶

4.61 Radio KLFM queried the technical legal difference between sponsorship and advertising:

Our experience is that for all intents and purposes the general listener (and sponsor/advertiser) does not see any difference between an advertisement broadcast on commercial radio and the

43 Upper Goulburn FM, *submission no. 44.1*, p. 3.

44 Upper Goulburn FM, *submission no. 44.1*, p. 3.

45 Family Radio, *submission no. 36*, p. 8.

46 Radio KLFM, *submission no. 82*, p. 11.

same announcement broadcast on community radio with the words station sponsor (or similar) added.⁴⁷

4.62 Radio KLFM added:

It seems that a lot of ACMA time and resources are used to enforce a very technical legal difference between an advertisement and a sponsorship announcement. Could these scarce resources be better employed elsewhere?⁴⁸

4.63 ACB suggested that its members are trying to serve their community of interest, and advocates that:

... [community service announcements], either paid or unpaid, from registered charities, religious organisations or not-for-profit incorporated associations should be allowed and, indeed, encouraged on community stations and should not be considered sponsorship, which was clearly intended in the first place to allow community stations to raise operational revenue from commercial sources.⁴⁹

Possible solutions

4.64 Mr Peter James, a lawyer that has acted for several community broadcasters, outlined some proposed changes that would make compliance less onerous for broadcasters and ACMA.

4.65 In summary, Mr James' submission called for three changes:

- Permitting advertising - no more tagging. The removal of the prohibition against community broadcasting licensees broadcasting advertisements, while retaining the existing limitation of five minutes per hour (radio) or seven minutes per hour (television). That hourly limitation would need to be modified to apply to advertising, rather than sponsorship announcements and this submission suggests it be moved to the Code of Practice).
- ACMA power to make determinations and grant exemptions. The introduction of a power for ACMA to issue binding determinations about sponsorship (if that is retained) and advertising (regardless of whether the first submission is accepted) and about the five or seven minutes per hour limit and codes of practice. The ACMA should also be

47 Radio KLFM, *submission no. 82*, p. 11.

48 Radio KLFM, *submission no. 82*, p. 12.

49 ACB, *transcript of evidence 6 September 2006*, p. 4.

given the power to exempt in appropriate circumstances, where the interests of the station's community of interest would not be damaged by doing so. Both determinations and exemptions might be specific to a licensee or to a class or all licensees.

- Move the five or seven minute limit to the Codes of Practice. The existing limitation of five minutes per hour (radio) or seven minutes per hour (television) should be removed as a schedule 2 licence condition and instead should form part of the Community Broadcasting Code of Practice (where most other important content restrictions currently are placed, such as restrictions on vilification), which is consistent with the approach used for commercial broadcasting.⁵⁰

4.66 Mr James stated that these measures would:

- remove significant compliance risk from a meaningless restriction (sponsor tagging)
- enable the ACMA to assist community broadcasters to comply (through the determinations and exemption power), rather than limiting its role to investigating and punishing non-compliance
- ensure the limitation on the volume of advertising is placed with other content regulation (in the Code of Practice), so that licensees have one source for their content regulatory compliance and so advertising restrictions are not irrationally elevated in importance above other important content regulation (such as vilification).⁵¹

4.67 Radio KLFM stated that:

The current restrictions on community broadcasters broadcasting sponsorship/advertisements are complex and have acted to restrict the ability of community broadcasters to interact with and promote their community, including local business and to be more self funded.⁵²

4.68 Radio KLFM also outlined some recommendations for improving the sponsorship regulation situation:

- that the current prohibition on community broadcasters broadcasting advertisements be repealed
- that the current distinction between advertisement and sponsorship be removed to help simplify and clarify the regulations and to help remove the major source of complaints against community radio licensees

50 Peter James, *submission no. 52*, pp. 1-2.

51 Peter James, *submission no. 52*, p. 2.

52 Radio KLFM, *submission no. 82*, p. 14.

- that the current limits on community broadcasters broadcasting sponsorship announcements/advertising be removed and the level of sponsorship/advertising broadcast by each station be determined by that station and its community of interest
- that if recommendation three is implemented there be a graded set of licence fees for community broadcasters.⁵³

The need for clarity

4.69 Many submissions called for the clarification of sponsorship guidelines for the community broadcasting sector.

4.70 CBAA stated:

The point is that we do want some transparency and clarity. If, as a result of our analysis of these recent decisions, we go back to the regulator and they say, 'No, sorry, this is the valid determination,' I do not know that we will have the legal resources to test it in court, which is where you would have to take it. So you might be hearing from us if we feel that they do have a narrow, onerous or unclear interpretation of the dividing line between advertising and sponsorship. I hope that is clear.⁵⁴

4.71 Western Radio Broadcasters discussed the sector and the need for assistance:

I will go back to the fact that community broadcasting is about volunteerism and I believe that government and government departments need to keep that very much in mind. If I were to go to ACMA now and ask, 'What are the sponsorship guidelines?' I think I might get told in reply, 'The act is there; I think you should read it.' That is fine. We can read the act and I suppose we could get 50 different QCs to give us an opinion on it and they would all be different. We are treading through a mine field ... we need to try to work through this area because it is tough and it is a restriction that is being placed on us. It is not about blatant advertising.⁵⁵

53 Radio KLFM, *submission no. 82*, p. 14.

54 CBAA, *transcript of evidence 31 May 2006*, p. 19.

55 Western Radio Broadcasters, *transcript of evidence 20 July 2006*, p. 66.

4.72 ACB also called for clarity concerning sponsorship:

There is ambiguity. We find that the word 'sponsorship' is not even defined. ACB, on behalf of all of our members, would like to see that resolved so that there is no further ambiguity.⁵⁶

4.73 ACB added:

... the act is very ambiguous in terms of what is promotional content, what is community content and what is community promotional content. In the act there is no definition of advertising. There is no definition of a community of interest. ACMA cannot give you advice about what it is because they do not really know either. If there is a complaint it usually takes eight weeks to resolve. It could cost you \$10,000 to \$20,000 to defend your position for something that in effect is actually a trivial issue.⁵⁷

4.74 ACB discussed how onerous compliance can be for its members:

Two days ago I received a sponsorship policy document that one of our members had put out. It runs for 12 pages of single-spaced text. It is to, step by step, give announcers a heads-up. It says: 'If you do an interview, make sure you don't do this and don't do that. If you're doing a book review, be careful not to mention this.' Remember that a lot of our announcers are not paid; they are volunteers. If we had a professional commercial announcer come in and give them 12 pages of information and say, 'Go and do an hour's shift and make sure you don't make any mistakes because you could make us lose our licence,' it would not make for good broadcasting. You cannot do good programming when you are under that sort of pressure.⁵⁸

4.75 Family Radio claimed that ACMA guidelines regarding sponsorship announcements were inconsistent and recommended a review of the guidelines.⁵⁹

4.76 Family Radio added:

It would greatly assist community radio if the ACMA were empowered to issue binding rulings and exemptions about

56 ACB, *transcript of evidence 6 September 2006*, p. 5.

57 ACB, *transcript of evidence 6 September 2006*, p. 5.

58 ACB, *transcript of evidence 6 September 2006*, pp. 5-6.

59 Family Radio, *submission no. 36*, p. 8.

specific sponsorship or advertising issues. That would give more regulatory certainty.⁶⁰

ACMA

4.77 ACMA explained the difficulty of sponsorship and advertising for the community broadcasting sector:

A key issue for any community sector in any country is how it funds itself. If you look at countries around the world, you will see that they are on a continuum between: 'No advertising allowed; go and find some other way of doing it,' and 'You can advertise and, if you get the governance right, that's all that's important. You have to be not-for-profit and all those sorts of things.' We are somewhere in the middle.⁶¹

4.78 ACMA explained further:

What we actually have is a prohibition on advertising as a condition and a series of dispensations to put in what is, in effect, advertising or promotional material, which is very wide. If you have any legal training, that should be immediately signalling complex issues, because it means that as soon as a community service wanders out of these wide dispensations it finds itself breaching the fundamental condition that it is not allowed to advertise.⁶²

4.79 ACMA discussed the nature of sponsorship for the sector:

The main dispensation it has – you have probably heard all this from the community sector too – is on sponsorship announcements, which can be promotional. There is not much difference between them and ads, but the act does not use the term 'ad', so we always insist that they have to have a tag. We do not mind if they otherwise sound like ads.⁶³

4.80 ACMA discussed what it communicates to the sector and feedback it has received:

We are saying, 'What is a simple one that they can understand?' We say, 'It has to have to a tag which acknowledges a sponsor.' That is relatively simple because, in the end, it comes down to

60 Family Radio, *submission no. 36*, p. 8.

61 ACMA, *transcript of evidence 29 November 2006*, p. 12.

62 ACMA, *transcript of evidence 29 November 2006*, p. 12.

63 ACMA, *transcript of evidence 29 November 2006*, p. 12.

tracking it with a stopwatch. Where I think they have run into difficulties in the last year or two has been around community promotional material, and certainly we have received a fair bit of feedback about that recently.⁶⁴

- 4.81 ACMA admitted that the regulations are complex and stated that it publishes guidelines for the sector:

I do think that it is very hard to get the very small organisations that often run community stations to understand and administer really complex law that lawyers can struggle with. So we have always promulgated and, in the past, periodically updated a guideline on the promotion and sponsorship of a community station.⁶⁵

- 4.82 ACMA discussed problems raised regarding sponsorship guidelines, particularly in recent times:

What we have learned over the last six months ... is that the sponsorship guidelines are out of date and that there is a lot of confusion, particularly around the issue of community promotion: where it adjoins sponsorship and where it becomes illegal advertising.⁶⁶

- 4.83 ACMA stated that it has:

... undertaken to the sector to work with the CBAA ... to update the guideline to take account of recent decisions of our investigation team which have caused real concern.⁶⁷

- 4.84 ACMA also admitted that it has:

... recognised and affirmed to the sector that we have allowed the guideline to get out of date and that we want to work with them to update that.⁶⁸

Sponsorship limits

- 4.85 There has been some debate regarding the level of sponsorship community broadcasters should be allowed.

64 ACMA, *transcript of evidence 29 November 2006*, p. 12.

65 ACMA, *transcript of evidence 29 November 2006*, p. 12.

66 ACMA, *transcript of evidence 29 November 2006*, p. 12.

67 ACMA, *transcript of evidence 29 November 2006*, p. 12.

68 ACMA, *transcript of evidence 29 November 2006*, p. 12.

- 4.86 Currently, community broadcasters are prohibited from carrying advertising, but may broadcast up to five minutes (radio) or seven minutes (television) of sponsorship announcements per hour (Schedule 2, Part 5, 9(3)(a) and 9(3)(b) of the BSA).⁶⁹
- 4.87 Submissions to the inquiry revealed that some broadcasters felt that the five minutes per hour limit for community radio is sufficient, while other stations feel an increase would help them significantly.
- 4.88 Griffith University's Centre for Public Culture and Ideas suggested that:
- The sector is under increasing pressure from policy-making bodies to increase sponsorship and income levels, which is affecting the content and operations of many stations.⁷⁰

Increase the limit

- 4.89 Some stations suggested increasing the sponsorship limit.
- 4.90 ArtSound FM recommended:
- ... increasing the current limit of 5 minutes of sponsorship messages in any hour to 6, thereby providing a modest but vital increase to community radio's revenue generating capabilities.⁷¹
- 4.91 Sydney's Radio2000 recommended that sponsorship time should increase from five minutes per hour to seven minutes per hour to be in par with CTV.⁷²
- 4.92 GVCR recommended that consideration should be given where a need can be demonstrated for an increase in sponsorship limitations.⁷³
- 4.93 Community Radio Coraki asked:
- ... what if the Federal Government were to increase the sponsorship announcement per hour from five minutes to six minutes. That would provide stations with a potential 20% revenue increase.⁷⁴

69 ACMA, *submission no. 115*, p. 5.

70 CPCI, *submission no. 89*, p. 5.

71 Artsound FM, *submission no. 28*, p. 4.

72 Radio2000, *submission no. 64*, p. 5.

73 GVCR, *submission no. 97*, p. 1.

74 Community Radio Coraki, *submission no. 22*, p. 8.

Keep the limit at five minutes per hour

- 4.94 Some stations suggested that the five minutes per hour level of sponsorship for community radio is adequate.
- 4.95 Bay and Basin FM stated that its management and membership:
... does not have an issue with a 5-minute limit to sponsorship or tagging of these announcements as sponsorship. This fortunately is one of the good differentiating factors of Community Radio over Commercial Radio. Current regulations in this area still allow Community Radio to gather sufficient sponsorship.⁷⁵
- 4.96 PMBA believes that stations should rely less on sponsorship:
One of the greatest threats to, and perhaps one of the greatest failures of, the community radio sector is that of widespread dependence on sponsorship. While our station stands out as being fiercely independent of the demands of sponsors, we believe there is a trend in community radio to pander to the desires of sponsors. It would greatly improve the independence of the community radio sector if stations could be encouraged to diversify their income sources away from a heavy reliance on sponsorship.⁷⁶
- 4.97 PMBA added:
Our sponsorship policy ensures that we have minimal sponsorship messages (usually less than 1 minute per hour) and that they are almost exclusively music/arts related promotions. Our membership and our community of interest expect us to maintain our independence from commercial pressures.⁷⁷
- 4.98 Mr Darce Cassidy, a private individual, stated that:
Advertising is now the single largest source of funds for community broadcasters, and on average accounts for 32% of income. However at 2TEN in Tenterfield, it accounts for 80% of income. It is not surprising therefore Dr Kitty van Vureen, in her study of community stations in regional areas, concludes that 2TEN takes commercial broadcasting as its source of reference.⁷⁸

75 Bay & Basin FM, *submission no. 38*, p. 1.

76 PMBA, *submission no. 121*, p. 4.

77 PMBA, *submission no. 121*, p. 2.

78 Mr Darce Cassidy, *submission no. 58*, p. 5.

4.99 Mr Cassidy discussed broadcasters' dependence on sponsorship or advertising:

Such is the lure of advertising that community broadcasters are calling out for more, and are regularly and persistently breaking the guidelines relating to the limitation of advertising on community radio. Advertising is limited to five minutes per hour, but this requirement is regularly flouted. In fact breaches of the restrictions on advertising on community radio is the complaint most frequently upheld by the Australian Broadcasting Tribunal in relation to radio. Findings against community radio stations for breaches of the sponsorship/advertising rules account for just over a quarter of all breaches by all radio stations in Australia.⁷⁹

4.100 When asked if five minutes per hour of sponsorship announcements is sufficient for the sector, Melbourne's 3RRR stated:

I think five minutes is okay. We have a policy at Triple R of four – we stayed with the old one – but I think five minutes is fine. No-one is running anywhere near that other than in a few popular programs. If we could run five minutes an hour for 10 hours a day we would be in a totally different circumstance. I cannot see any need for that to be increased. I know there is an argument in community television that it should be higher and I cannot see any need for that either. I think five minutes for non-commercial not-for-profit services is absolutely adequate and gives us a good level of self-funding.⁸⁰

4.101 NEMBC also considered the five minute limit to be adequate, particularly in light of the benefits to the community a station serves:

The moment you start forcing stations to sell their time in order to make ends meet, that works at the expense of community input. We have agreed as a sector that four or five minutes per hour ought to be the very maximum. We have noticed that people under pressure are forced to sell time and, by doing so, deny the community greater access.⁸¹

79 Mr Darce Cassidy, *submission no. 58*, p. 5.

80 3RRR, *transcript of evidence 24 May 2006*, p. 12.

81 NEMBC, *transcript of evidence 20 July 2006*, p. 34.

Committee comment

- 4.102 The Committee considers that the current limits of five minutes per hour of sponsorship announcements for community radio, and seven minutes per hour for community television, are sufficient for the sector.
- 4.103 The Committee is also of the opinion that the sponsorship tagging requirement should remain as part of the sponsorship regulations for the sector.
- 4.104 The Committee recognises that a significant amount of information on sponsorship guidelines for the sector exists for broadcasters to utilise. For example, the CBAA Handbook describes in great detail what stations can and cannot do.
- 4.105 The Committee also recognises that ACMA has provided extensive advice on sponsorship guidelines.
- 4.106 The Committee urges all community broadcasters to take advantage of the detailed material provided by the CBAA and ACMA.
- 4.107 ACMA's participation in events like the CBAA annual conference is a significant measure of its willingness to provide extension service to the sector.
- 4.108 However, the Committee feels that ACMA could be more active in the provision of advice to community broadcasters.
- 4.109 By ACMA's own admission, the sponsorship guidelines need to be updated. The Committee acknowledges that ACMA has pledged to work with the sector to update the sponsorship guidelines, and trusts that this will occur in the next 12 months.
- 4.110 The Committee trusts that a revised set of sponsorship guidelines and increased awareness in the sector will lead to a significant decrease in regulation breaches.
- 4.111 The Committee believes that broadcasters should be able to contact ACMA for an opinion on an issue, or have the ACMA contact a particular broadcaster regarding a complaint, rather than a station merely receiving a breach notice.
- 4.112 The Committee recommends that the Australian Government, in particular, ACMA, clarify community broadcasting sponsorship guidelines and provide detailed explanatory material concerning broadcaster responsibilities.

- 4.113 The Committee also recommends that ACMA provide significant extension support to stations regarding sponsorship guidelines, and significantly increase its awareness raising workshops and campaigns in community radio forums.

Recommendation 10

The Committee recommends that the Australian Government, through the Australian Communications and Media Authority, clarify community broadcasting sponsorship guidelines and provide detailed explanatory material concerning broadcasters' responsibilities.

The Committee further recommends that the update of sponsorship guidelines should be completed by 30 June 2008.

Recommendation 11

The Committee recommends that the Australian Communications and Media Authority:

- **provide significant extension support to community broadcasting stations regarding sponsorship guidelines**
- **significantly increase its awareness raising workshops and campaigns in community broadcasting forums.**

