



**SUBMISSION BY COMMERCIAL RADIO AUSTRALIA**

**Joint Select Committee on Broadcasting Legislation**

**Inquiry into potential areas for further reform of Australia's  
broadcasting legislation**

**5 April 2013**

Commercial Radio Australia (**CRA**) welcomes the opportunity to comment on the Joint Select Committee on Broadcasting Legislation's inquiry into potential areas for further reform of Australia's broadcasting legislation (**Inquiry**).

CRA is the peak national industry body for Australian commercial radio stations. CRA has 260 members and represents approximately 99% of the commercial radio broadcasting industry in Australia.

CRA's comments relate to the third item in the Committee's terms of reference - on-air reporting of ACMA findings regarding broadcasting regulation breaches. CRA refers to this as "the proposal" in its submission and makes no comment in relation to the other two items in the terms of reference.

The commercial radio industry strongly urges the Committee to reject the notion that free-to-air broadcasters should be forced to broadcast the ACMA's breach findings as part of their programming. Any attempt to prescribe broadcast content should only be undertaken in exceptional circumstances, where there is a clear public benefit sufficient to justify the intrusion into press freedom. These circumstances have not been shown to exist.

### **Summary**

CRA's primary comments are:

1. The ACMA has at its disposal numerous means of communication, including the ACMA website, press releases, public fora and social media, all of which it employs regularly. These outlets make the ACMA's decisions publicly available and widely accessible. It should rely on these sources to communicate its messages, rather than expecting free publicity from free to air commercial broadcasters.
2. In addition to the ACMA's own communications, the commercial radio industry already broadcasts a weekly announcement publicising the existence of the Codes and their operation. The public is thus informed of the applicable regulatory framework and may choose to contact the ACMA to find out further details of any specific investigation or breach.
3. It would not be appropriate for commercial radio broadcasters – all of whom have paid substantial sums of money to licence their use of public spectrum – to be forced to provide valuable airtime, free of charge, to the ACMA so that it may broadcast its investigation findings.
4. The implied constitutional protection of political communication could be threatened by an attempt to force licensees to broadcast the ACMA's breach findings free of charge. The commercial radio industry would strongly resist any government intrusion into the freedom of the press to promote public discussion of political matters.
5. The forced publication of decisions may also contravene the laws of natural justice by eroding the right to a fair hearing. The broadcaster may disagree with the ACMA's decision or may have instigated court or tribunal proceedings against the decision, yet would be forced to broadcast information supporting the decision that it is contesting.
6. Commercial radio broadcasters already are subject to an extremely high level of regulatory burden. No further regulatory burdens should be imposed without clear evidence that the public interest justifies the imposition of the burden on industry.
7. No evidence has been proffered to support the adoption of such a policy. It is unclear what this measure is seeking to achieve. Nor is it clear on what basis the suggestion has been made. This appears inconsistent with the Government's commitment to evidence-based regulation.

### **No need for such regulation**

8. There is no need for Government to adopt such a draconian measure. The ACMA is well equipped with outlets through which it may communicate, including the internet, social media,

press conferences, press releases and public fora. The ACMA regularly uses all of these forms of communication.

9. Following a complaint, it would be typical for the ACMA to take the following steps:
  - following the alleged breach, the ACMA may announce its intention to investigate, using the ACMA website and press releases;
  - once the investigation is completed, the ACMA publishes its decision on the ACMA website where it is permanently and publicly accessible<sup>1</sup>; and
  - the ACMA may then decide to send out a press release notifying the public of its decision.
10. In high profile cases, media outlets pick up on the ACMA press releases and publicise the decisions, which are often subject to extensive press coverage and commentary. In addition to this, it would be open for the ACMA to publicise the decision in any other way it considers appropriate, including by advertising in the media.
11. In addition to the ACMA's own publicity, the commercial radio industry already broadcasts a mandatory weekly announcement publicising the existence of the Codes. The announcement briefly summarises the content of the Codes, outlines how to make complaints, and explains that the Codes are registered by the ACMA.<sup>2</sup>
12. Commercial radio listeners are therefore aware not only of the existence of the Codes, but also of the ACMA's role in administering the Codes. Listeners may contact the ACMA if they wish to find out further detail regarding any breaches or investigations.

#### **Increased financial and regulatory burdens on broadcasters**

13. It would not be equitable for commercial radio broadcasters to be forced to give further free airtime to the ACMA, particularly bearing in mind the existing obligation to make weekly Codes announcements.
14. Commercial radio broadcasters pay substantial amounts for their broadcasting licences. They have no sources of revenue other than the revenue they obtain by advertising. Accordingly, any legislation that forces commercial radio broadcasters to give away valuable airtime to the ACMA, free of charge, will have a significant impact on broadcasters and should not be taken lightly.
15. This financial burden particularly affects regional broadcasters. Of the 260 CRA commercial radio member stations, 220 are regional broadcasters, many of which struggle to make profit in regional and remote areas of Australia. These stations offer a valuable service to the community, have few assets other than airtime and are already struggling to cope with the regulatory and reporting burdens placed upon them, particularly in relation to local content and local presence.
16. The benefit afforded to the community through placement of free ACMA announcements appears to be negligible, and is not supported by any clear evidence. By contrast, the burden imposed on broadcasters as a result of such a proposal is significant. This has the potential to erode time spent producing and presenting programming – particularly in regional areas where one member of staff often fulfils several functions within the station – and may negatively impact on the listening community.

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<sup>1</sup> [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_90147](http://www.acma.gov.au/WEB/STANDARD/pc=PC_90147)

<sup>2</sup> Code 7.2, Commercial Radio Codes of Practice.

**Erosion of the implied constitutional protection of political communication**

17. The implied constitutional protection of political communication could be threatened by an attempt to force licensees to broadcast the ACMA's breach findings. The proposal may not be constitutionally valid.
18. The implied right to freedom of public discussion of political communication allows individuals to make their own political judgments. The Courts have interpreted political communication broadly, and this freedom therefore applies to communication on a wide range of political matters.
19. In the High Court case of *Australian Capital Television v Commonwealth* (1992) 177 CLR 106, the High Court held that a law that required broadcasters to broadcast political advertisements free of charge was invalid, as it breached the implied right to freedom of political communication.
20. The commercial radio industry strongly urges the Committee to consider the constitutional validity of this proposal in detail, before affording a statutory authority the right to broadcast, free of charge, its own findings on public spectrum.

**Contravention of laws of natural justice**

21. The forced publication of decisions may also contravene the laws of natural justice by eroding the broadcaster's right to a fair hearing.
22. The broadcaster may disagree with the ACMA's decision or may have instigated court or tribunal proceedings against the decision, yet would be forced to broadcast information supporting the decision that it is contesting. This has the clear potential to influence the outcome of any appeal, and could prejudice the broadcaster's position.
23. The commercial radio industry will strongly oppose this proposal, as one that may threaten broadcasters' ability to seek a fair review of the decision of a statutory authority. The Committee should look very carefully at this issue before considering any proposal that would force licensees to broadcast the ACMA's breach findings free of charge.

**The proposal is contrary to the Government's commitment to evidence based policy**

24. The commercial radio industry has seen no evidence to explain the ACMA's need:
  - (a) to force licensees to publicise the ACMA's breach findings on commercial radio; and
  - (b) to obtain such publicity free of charge.
25. Both of the above elements would need to be fully justified with supporting evidence – and the legal issues outlined above explored – before the proposal could be seriously considered.
26. It is not presently clear what this proposal is intended to achieve, nor what harm it is intended to cure. The commercial radio industry submits that this is not a solid foundation on which to introduce a new policy, particularly one that has the clear potential to place additional financial and administrative burdens on commercial radio broadcasters.