



COMMERCIAL RADIO AUSTRALIA

**SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS**

COMMUNITY BROADCASTING INQUIRY

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EXECUTIVE SUMMARY

- Commercial Radio Australia and its members support the unique role of the community radio sector in Australia in contributing to the diversity of programming choices available for Australian audiences. This is a key object of the *Broadcasting Services Act 1992 (BSA)*. We believe that Australian audiences have been well served by community stations that focus on providing diversity through musical and spoken word programming not generally found on commercial radio stations and that the continued success of the sector will depend on the extent to which it can continue to provide that type of grassroots programming.
- Under the BSA each of the different broadcast sectors (commercial, national, community and narrowcasting) are licensed, funded and operated in different ways. As well as contributing to programming diversity, this structural diversity is designed to ensure that valuable broadcasting spectrum is used efficiently. Each of the sectors is also subject to different levels of regulation and barriers to entry under the BSA.
- The concept of serving a “community interest” is a central feature of the licensing and operation of community broadcast stations but the term is not defined in the BSA. ACMA and the ABA have always issued community licences to either geographic communities (general community licences) or to community groups representing a special interest. This model reflects an allocation system that pre-dates the enactment of the BSA and was developed at a time when there were limited numbers of radio services available to Australian audiences. Geographic community licences were used to introduce basic radio services to areas that were not served adequately or at all by other radio services.
- The BSA addressed this problem by removing the previous impediments to the licensing of new services and this has had the effect of significantly increasing the number of overall radio services across Australia today. As such, the need to issue geographic or general community licences no longer exists. However, special interest community licences are still relevant because they focus on specific needs that are not otherwise catered for by other services in a licence area.
- Unlike community licences issued to satisfy special interests, geographic or general community licences do not necessarily impose any clear obligations on licensees with respect to formats. We also believe that geographic or general community licences can have the effect of forcing licensees to focus on the types of programming that appeals to large aggregate audiences (in the same way that commercial radio stations do) rather than for specialised programming needs that are not already catered for by other broadcasters. The same arguments can also apply to community licences that are issued to demographic groups as demonstrated by the ABA’s 2004 investigation into Perth youth community broadcaster 6YMS (Groove FM).
- We recommend that a list of designated categories of community interests be prescribed in the BSA and that ACMA be given the power to declare further categories after appropriate community and industry consultation. In accordance with

the purpose of community stations, that list would take into account community interests that are not adequately catered for by the other broadcast sectors. We also recommend that general or geographic community licences be grandfathered over time.

- The term “community purposes” is also central to the operation of community stations but is not defined in the BSA. ACMA has stated that the services provided by a licensee includes the totality of the programming, operation and management of the service by a licensee. For community stations this means the broadcasting of programs that meet the needs of the relevant community interest as well as the opportunities for members of the relevant community to participate in the operations of the community station. The participation of volunteers from the relevant community is important in ensuring that the programming on the station satisfies the needs of the relevant community interest and that the service is operated on a not-for-profit basis. These principles should therefore be enshrined in a definition of the term community purposes in the BSA.
- The ABA has previously stated that the BSA requires it to issue community licences to satisfy programming interests that are not being met by the programs of existing broadcasters, or other media, in the relevant licence area. However, some of the community licences currently on issue do not necessarily impose any clear obligations on their licensees with respect to programming formats. Therefore, we believe that the definition and licence conditions for community services should be amended to state that all community licensees must provide programming that is not intended to appeal to the general public and which is not otherwise provided by the other broadcasters in the relevant licence area.

1. ABOUT COMMERCIAL RADIO AUSTRALIA

Commercial Radio Australia is the industry body for commercial radio *broadcasting* stations in Australia. Commercial Radio Australia has 252 members and as such represents approximately 98% of the commercial radio broadcasting industry in Australia.

We welcome this opportunity to comment on the House of Representatives Standing Committee on Communications, Information Technology and the Arts (**Committee**) *Inquiry into Community Broadcasting (Inquiry)*. The views in this submission represent the views of all our members.

2. OUR SUPPORT FOR THE COMMUNITY RADIO SECTOR

Commercial Radio Australia and its members support the unique role of the community radio sector in Australia. As the Committee is aware, community radio broadcasters operate in a radio landscape that includes commercial broadcasters (our members), national broadcasters (ABC and SBS) and commercial narrowcasting radio services.

Under the *Broadcasting Services Act 1992 (BSA)*, each of these different broadcast sectors has a unique contribution to make to the overall diversity of radio services available to Australian audiences. This is consistent with the leading object of the BSA (found in section 3(1)(a)) which states that Parliament intended that the BSA would “promote the availability to audiences throughout Australia of a **diverse range** of radio and television services offering entertainment, education and information.”

The role of community radio broadcasters differs from each of the other radio sectors. That role is closely aligned to the way in which community radio licenses are allocated. That is, on the basis of merit to non-profit organisations which ACMA considers will best serve the needs of a particular “community interest” whose needs are not catered for by the other broadcasters in a licence area.¹

We believe that Australian audiences have been well served by community radio stations that focus on providing diversity through musical and spoken word programming not generally found on commercial radio stations. Members of local communities across Australia have also benefited from the opportunity to participate as volunteers in the operations of their local community stations. It’s also evident that commercial radio stations have benefited from these arrangements since they employ many people who started their radio careers as volunteers in community radio stations.

We believe that the continued success of the community broadcasting sector will depend on its ability to continue to increase programming choices for Australian audiences by providing unique and grass roots programs that complement the programming provided by the other broadcast sectors.

¹ ABA, (2000), “Allocation of Community Broadcasting Licences: Guide to applying for a licence” published at www.acma.gov.au

3. THE IMPORTANCE OF STRUCTURAL DIVERSITY BETWEEN THE SECTORS

The structural diversity amongst the different radio broadcast sectors is a fundamental aspect of broadcasting regulation in Australia. It contributes to the diversity of radio services and programs but also ensures that broadcasting services bands (**BSB**) spectrum - a valuable and finite public resource – is used efficiently.

By structural diversity we mean the key differences amongst the various categories of broadcasters (commercial broadcasting, national, community and narrowcasting) such as differences in the way their licences are allocated, the different sources of funding for each sector and any programming restrictions or mandates that apply to each sector. It would be an inefficient use of the BSB spectrum to have high levels of overlapping programming amongst these different sectors.

An examination of all aspects of this structural diversity shows that the BSA contains a number of carefully crafted regulatory trade-offs. For example, the commercial radio broadcast sector is considered to be the radio sector with the greatest capacity to influence community views. As such, commercial radio broadcasters are subject to higher barriers to entry and higher levels of regulation than the other radio sectors but are not subject to programming restrictions and are entitled to a greater security of tenure.

Conversely, narrowcast services are considered to have the least capacity to influence community views and so are subject to the lowest barriers to entry and the lowest levels of regulation (i.e. class licences) but they are subject to restrictions in terms of programming choices and a lower level of security of tenure. Community broadcasters sit somewhere in between these two extremes.

For the reasons stated above, we believe that it is important that this structural diversity is maintained. So, for example, **community stations which receive free access to broadcasting services band spectrum should continue to be funded primarily through membership fees (this provides evidence that a licensee represents an actual community interest) with the current limits on sponsorship announcements (no more than 5 minutes per hour) also maintained.**

In the following sections of this submission, we have provided a number of recommendations for changes to certain aspects of the policy framework for community radio broadcasters. These proposals are not inconsistent with our support for the community broadcast sector. Rather, they are designed to provide greater clarity in relation to key concepts such as a “community interest” and “community purposes” which are not defined in the BSA.

We believe that as well as promoting greater programming diversity, the proposed changes will serve two other purposes. Firstly they will promote better decision making for ACMA when it’s called upon to exercise its discretion in either allocating or renewing a community broadcast licence. Secondly they will establish clearer regulatory guidance to those involved in running community stations and so promote compliance and enhance the regulatory enforcement activities of ACMA.

4. SOME REFORM PROPOSALS

4.1 Proposed definition “community interest”

The concept of serving a “community interest” is one of the central features of the licensing and operation of community broadcast stations. ACMA issues community broadcast licences to non-profit organisations that represent a community interest.² Each community licensee must also ensure that it continues to represent the community interest that it represented at the time when the licence was allocated or last renewed.³

Although the term community interest is used in the BSA, it is not defined by that legislation. The concept has evolved over time through licensing practices which pre-date the enactment of the BSA in 1992. Our view is that the historical reasons behind some of those licensing practices are no longer valid.

ACMA (and the ABA before it) has stated that it considers that the most useful definition of a community to be one that is broad and takes into account links of a social, historical or cultural kind.⁴ In practice the ABA and ACMA have always issued community licences on the basis of 2 models: either **geographic** (or general) community licences and **special interest** community licences.

According to the chapter on the history of the community broadcast sector in the CBAA's Handbook, this approach replicates the way in which community radio licences were first allocated in 1978. Geographic community licences are analogous to the former class “C” (for community) category of community licenses while special interest communities stations are analogous to the former class “S” community licences.

The CBAA Handbook states that:

“Community’ public stations had a charter to provide a community service, designed to serve a geographical area, and provide for participation by a variety of community groups and interests in that area. ‘Educational’ licensees were usually affiliated with a university and carried high educational content, and ‘Special Interest’ stations served a clearly defined interest group eg. musical, sporting, ethnic, religious, etc. (In 1985, educational stations were brought under the umbrella of “Special interest”)⁵

During this period, which pre-dates the enactment of the BSA, Class “C” licences were used as a way to introduce basic radio services into geographic areas (particularly rural and sub-metropolitan areas) that were not served at all or were inadequately by either the commercial or national broadcasters then in existence.

The enactment of the BSA in 1992 ushered in some fundamental changes to the broadcasting environment. Firstly it introduced an additional category of radio services (narrowcasters) and consolidated those which were already in existence. Secondly it

² s 80(1)(b), *Broadcasting Services Act 1992 (BSA)*

³ Schedule 2, Part 5, cl 9(2)(b), BSA

⁴ ABA (2005), “Guide to the Allocation of Temporary Community Broadcasting Licences-Radio”, p. 2.

⁵ Published at <http://www.cbaa.org.au/>

removed some the previous impediments to the licensing of new radio services resulting in an explosion in the number of new services

In 1992, there were 130 community radio services, 2 national radio services, approximately 150 commercial radio broadcast services and no narrowcasting radio services. The number of licensed radio services has increased dramatically in the intervening years. According to the ABA's 2004-05 Annual Report, the following licences were on issue as of 30 June 2005: 261 commercial radio BSB licences, 13 commercial non-BSB licences, 359 community radio licences (a large number of which are general/geographic licences)⁶, 209 planned open narrowcasting services. In addition there are 5 ABC services and 2 SBS services as well as over 1700 low power open narrowcasting transmitter licences issued by the former Australian Communications Authority.

Australian audiences are now well served in terms of the number and choice of radio services available. As such, the conditions which gave rise to the issuing of general or geographic community licences no longer exist and all new community radio licences should now be issued to special interest groups only. This is consistent with the fact that community licences are supposed to be issued to serve programming interests of a community that are not being met by existing broadcasters, or other media, in a licence area.

Another problem with geographic communities is that they contain within them many different sub-groups of people with different interests some of which are already catered for by existing broadcast services in a licence area. Further, a general or geographic community radio licence does not impose clear obligations on licensees with respect to program formats. This can result in situations where a licensee is able to broadcast programs that are also broadcast, for example, on a commercial radio service, without breaching it's licence conditions. This was illustrated by the comments of the Federal Court in *3AW Southern Cross Radio Pty Ltd v Inner North East Community Radio Inc* (1994) ATPR 41-313.

The same arguments apply equally to community interests that are identified by reference to demographic groups (e.g. "youth"). This was demonstrated by the ABA's findings after its investigation into the licensee of Perth youth community station 6YMS (Groove FM). After that investigation, the ABA imposed additional licence conditions on the licensee after it found that it was no longer representing the community interest it represented at the time the licence was allocated (i.e. "Perth youth") and was not encouraging members of that community to participate in the operations of Groove FM.

While we agree with the ABA's findings, we believe that the evidence in the investigation report points to a more fundamental problem – i.e. that the ABA's decision to allocate the licence to the applicant in the first place was questionable. The licensee's application, as extracted in the investigation report, contained the statement that "the community of youth is very diverse and has many subdivisions which have their own unique needs" and also

⁶ A recent survey commissioned by ACMA called *Survey of the Community Radio Broadcasting Sector 2002-03* notes that 169 (approximately 65%) of 262 community stations surveyed are licensed to general community interests.

acknowledged that a demographic breakdown, while useful, does not necessary capture all the cultures and sub-cultures that exist in the youth demographic.⁷

We believe that issuing a whole of licence area community broadcasting licence to a 'geographic community' or a 'demographic group' (both of which contain many different sub-groups with different interests and needs), has the effect of forcing the relevant licensee to focus on the types of programming that appeals to large aggregate audiences (in the same way that commercial radio stations do) rather than focussing on specialised needs of a community interest which are not being met by other broadcast services in the licence area.

In the 6YMS investigation, DMG Radio Australia (the owner of a Perth commercial radio station) presented evidence to the ABA of the high levels of overlaps in the music broadcast on 6YMS with that broadcast on DMG's Perth station.

To overcome these issues, we suggest that designated categories of community interests be prescribed in the BSA and that ACMA be given the power to declare further categories after appropriate community and industry consultation. That power should be limited to those community interests for which there is inadequate provision by commercial and other services in a licence area. Such determinations could be made disallowable by including a reference to this power in section 19 of the BSA.

For the reasons stated above, the existing geographic or general interest community licences should be "grandfathered".

Proposed definition of "relevant community interest"

"Relevant community interest" means:

- (a) in relation to licences allocated before the day upon which this amendment takes effect, the relevant community interest identified by ACMA at the time the licence was allocated or last renewed whichever event occurs last, and
- (b) in relation to licences granted on or after the date this amendment comes into effect, one or more from the following list of approved community interests:
 - (i) a religious interest, representing a principal religion or religions in a licence area;
 - (ii) an indigenous interest;
 - (iii) a print media handicapped interest;
 - (iv) an ethnic interest principally broadcasting in a foreign language;
 - (v) a specific youth interest, not catered for by other broadcasting services;
 - (vi) a specific senior citizen interest, not catered for by other broadcasting services;
 - (vii) classical music interests, and
 - (viii) such other similar specific interests for which there is not adequate provision by other broadcasting services as determined by notice in the Gazette by ACMA, after industry and community consultation.

⁷ ABA, (2004), *Investigation into Youth Media Society of Western Australia Inc, licensee of community radio broadcasting service Groove 101.7 FM Perth*, p. 70.

4.2 Proposed definition of “community purposes”

The definition and licence conditions for community broadcasters state that community broadcasting licensees will operate their services for “community purposes”. However, these words are not defined in the BSA.

We believe that this is a failure of the BSA because the concept of serving community purposes is a crucial to the proper operation of a community broadcasting service.

ACMA’s view is that the service provided by a licensee is not just confined to the programs broadcast but is the totality of the programming, operation and management of the service by the licensee.⁸

In other words, **the operation of a service for community purposes goes to the way in which the service is operated (including the opportunities for members of the community to participate in those operations) as well as the broadcasting of programs that meet the needs of the relevant community interest.**

The participation of volunteers from the relevant community is important in ensuring that the programming on a community station satisfies the needs of that relevant community, that the service is operated on a not-for-profit basis and that the management of the station is not taken over by people who are intent on using the service for purposes that are contrary to the licence. This was a problem that was identified by the ABA in the 6YMS investigation where it found that, amongst other things, the management of 6YMS did not encourage members of the relevant community to participate in the operations of the station.⁹ Similar findings were made after the 2001 investigation into Sydney Youth Radio Inc, the licensee of the community radio service known as Wild FM.¹⁰

We propose the following definition for “community purposes” which enshrines the principles enunciated by ACMA.

Suggested definition of “community purposes”

community purposes in the context of the operation of a community broadcasting service means:

- (a) the broadcasting of programs that serve the needs of the relevant community interest identified by ACMA at the time the licence was allocated or last renewed which ever event occurs last; and
- (b) the provision of reasonable opportunities for volunteers from the relevant community to fully participate in the programming, operations and management of that service as well as in the membership of the entity providing that service.

⁸ Ibid., p. 17.

⁹ http://www.aba.gov.au/newspubs/news_releases/archive/2004/150nr04.shtml

¹⁰ ABA (2001), *Investigation report: A report of the investigation by the Australian Broadcasting Authority into Sydney Youth Radio Inc and Sydney Gay and Lesbian Broadcasters Inc.*

4.3 Programming diversity should be specifically enunciated

Sub-section 84(2)(a) of the BSA provides that in deciding whether to allocate a community licence, ACMA has to have regard to (amongst other things):

“the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence;”

The ABA has previously stated that in its view, the expression “needs of the community” refers to the programming interests of the community that are not being met by the programs of existing broadcasters, or other media, in the licence area.¹¹

As discussed above, the issuing of general geographic community licences (a historical anomaly) or demographic (e.g. youth) based community licences does not always impose clear obligations on licensees with respect to programming and has sometimes led to outcomes that are inconsistent with sub-section 84(2)(a).

In the 3AW case, the Federal Court (while not expressing a final view) held that the operation of a community licence for community purposes was satisfied by the broadcasting of programming of popular appeal (i.e. AFL games). In other words, that the licensee was not required to broadcast programs that appealed to just the relevant community. As long as the programming on the station satisfied the needs of the relevant community interest, it did not matter that it also had appeal to other people generally.

We believe that this is consistent with section 84(2)(a) requirement that community radio licences are supposed to be issued to satisfy programming interests of the community that are not being met by the programs of existing broadcasters. To correct this, **we believe it is necessary to include within the definition and licence conditions of community broadcasting services, a requirement that the relevant licensee has to provide programs that are not intended to appeal to the general public and that are not otherwise provided by the other broadcasters in the relevant licence area.**

¹¹ *Supra* n1, p. 13

Section 15 (proposed amendments to the definition of community broadcasting services)

Community broadcasting services are services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
 - (iii) **when considered in the context of the service being provided, do not appear to be intended to appeal to the general public; and**
 - (iv) **that are not otherwise provided by other broadcasters in the relevant licence area.**
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

Proposed additional licence condition (Part 5, Schedule 2)

9(1) Each community broadcasting licence is subject to the following conditions:

.....

- (#) **the licensee will provide programs that:**
 - (v) **when considered in the context of the service being provided, do not appear to be intended to appeal to the general public; and**
 - (vi) **that are not otherwise provided by other broadcasters in the relevant licence area.**