

Australian Communications and Media Authority

Submission to Department of Infrastructure, Transport, Regional Development, Communications and the Arts' sustainability review of the community broadcasting sector

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Executive summary

The Australian Communications and Media Authority (ACMA) manages radiofrequency spectrum, allocates and renews broadcasting licences, and regulates community broadcasting licensees under the regulatory framework established in legislation and through an industry-developed code of practice.

Community broadcasting has evolved into an increasingly diverse sector. It is timely to consider whether the current regulatory framework appropriately sustains a sector that represents such a broad variety of community interests.

To improve the sustainability of the community broadcasting ecosystem, targeted updates to the regulatory framework may be required. This would reduce compliance costs and provide the regulated cohort with a clear understanding of their obligations, the regulatory expectations and how the rules are applied.

Regulatory issues

In administering our regulatory remit and through interactions with stakeholders, we have identified possible regulatory issues arising from proposals or emerging practices directed at improving sector sustainability. These regulatory issues are summarised below and discussed in more detail in the submission.

Networking, participation and local content

We have observed an increase in networked programming between some stations, as well as increased collaboration and resource sharing. While collaboration can, in some circumstances, offer administrative and governance assistance, particularly to smaller licensees in dispersed locations, these initiatives may be at odds with those licensees' ability to comply with the requirement to encourage community participation and provide local content.

The community participation requirement applies to all community broadcasting services regardless of location. Levels of participation in regional and remote areas are typically significantly lower than in metropolitan areas, which is likely reflective of the smaller populations and lower membership numbers.

The existing regulatory regime permits the ACMA to take a range of contextual factors that we consider appropriate into account when considering compliance with participation licence conditions.

Sponsorship and advertising

We regularly receive complaints about advertising and sponsorship on community radio and have found a number of breaches of the relevant licence conditions.

We have also observed stakeholder concerns about the sponsorship and advertising compliance framework and calls by some in the community broadcasting sector to modernise those rules to improve sustainability. This has included a suggestion that limits on sponsorship announcements apply to a 24-hour period rather than per-hour limits. There are some practical issues arising from this that are discussed below, together with suggestions about where further regulatory clarification may be helpful.

First Nations licence category

Currently, Indigenous broadcasters are typically licensed as community broadcasters.

If a First Nations licence category was introduced through legislative change, including suitable transitional arrangements, only small changes would be required to the existing planning and licencing framework before being implemented by the ACMA.

Finding spectrum to plan new broadcasting services of any category is difficult in many metropolitan areas and some regional areas. There is greater spectrum availability in remote areas for planning new services.

There is also limited spectrum to allow for the rollout of digital radio broadcasting services and challenges for community broadcasters in the current legislated multiplex arrangements. It is open to community broadcasters to stream their services online and many already do.

Introduction

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and some online content in Australia.

The Department of Infrastructure, Transport, Regional Development, Communications, and the Arts (DITRDCA) is seeking views on funding, administration and legislation for the Community Broadcasting Program (CBP), and the Indigenous Broadcasting Program and Media Program (IBMP) to identify options to support sustainability of the sector and build station resilience. DITRDCA published a [discussion paper](#) in June 2024.

The scope of DITRDCA's consultation includes:

- how to increase sector sustainability, capability and capacity
- identifying emerging needs, for example, local news and disaster response
- a shared outcomes framework to help measure impact and inform decisions
- consideration of regulatory issues under the *Broadcasting Services Act 1992*
- First Nations broadcasting funding and licensing.

In July and August 2024, DITRDCA hosted a series of consultation workshops across Australia to provide stakeholders with an opportunity to share their views on sustainability issues, and is seeking input on 3 key priority areas:

1. CBP funding, structure and outcomes
2. Legislative and regulatory issues
3. First Nations funding and licensing.

The ACMA's submission is based on our observations of and communications with the community broadcasting industry through the exercise of the ACMA's regulatory responsibilities. These include considering applications for renewing, allocating and transferring community broadcasting licences, undertaking broadcast spectrum planning activities, considering complaints and enquiries, and investigating complaints.

We attended many of the consultation workshops, and associated discussions also informed this submission.

Regulatory framework

Background

The *Broadcasting Services Act 1992* (BSA) is intended to provide a regulatory environment that facilitates the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs.¹ Section 4 of the BSA sets out the regulatory policy, and paragraph (2)(a) of that section provides that:

the Parliament intends that broadcasting services ... be regulated in a manner that, ... enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.

Section 15 of the BSA establishes community broadcasting services as a category of broadcasting services that are provided for community purposes and are not operated for profit. This submission discusses the regulatory framework for community broadcasting as a combination of the licensing framework and the compliance framework.

Licensing framework

Before a community broadcasting service can be licensed, spectrum for the service is planned in a licence area plan (LAP) under section 26 of the BSA. The LAP planning criteria in the BSA to which the ACMA must have regard includes demographics, social and economic characteristics, technology developments and limitations, demand and spectrum availability. Section 23 of the BSA requires the ACMA to promote the objects of the BSA, which include a broad range of cultural, social, economic and industry development-focused outcomes, in addition to the economic and efficient use of spectrum.

There are 2 types of licences that the ACMA may issue under the BSA to authorise the community broadcasting category of broadcasting services:

- 'long-term' community broadcasting licences (CBLs), allocated under Part 6
- temporary community broadcasting licences (TCBLs), allocated under Part 6A.

A CBL can only be allocated where a long-term community radio service has been planned in a LAP. CBLs are allocated for 5 years, and the licensee can apply for the licence to be renewed. TCBLs are allocated for a period of up to 12 months and can not be renewed. However, TCBL licensees may apply for a subsequent TCBL.

There were 88 TCBLs in effect as at 4 July 2024. 81 of these have been in place for more than 3 years and 62 represent a First Nations community interest.

Under the existing legislation, the minister may direct the ACMA to give preference to a particular community interest, whether generally or in a particular licence area, when allocating a licence.²

Under section 34 of the BSA, the ACMA may make spectrum available for temporary community broadcasting purposes in certain circumstances.

According to our guidance,³ where there is no available LAP-planned service, spectrum may be made available for temporary community broadcasting services if:

¹ Subsection 3(1).

² [Subsection 84\(1\) of the BSA](#).

³ [Temporary community broadcasting licence guidelines](#), see pp. 3-4.

- a) the proposed service area is in a remote commercial radio licence area, or the service is in a remote Indigenous community, and
- b) the applicant represents an identified community interest and there is a clear case as to why that community interest would benefit from the proposed service, and
- c) spectrum is not scarce.

Applicants for CBLs and TCBLs must be companies registered in Australia, which includes incorporated associations, and must represent a community interest.⁴

Renewal of community broadcasting licences

The BSA requires licensees to submit a renewal application no earlier than 1 year before and no later than 26 weeks before the licence is due to expire (or no later than the time notified in writing to the licensee by the ACMA). We generally send notices reminding licensees to submit a renewal application.

Subsection 91(2A) of the BSA was repealed and replaced in 2022 to make the ACMA's discretion to refuse to renew a community broadcasting licence clear and confirm the renewal process is not a competitive process.⁵ Under the revised provisions, when considering applications for renewal, the ACMA may have regard to:

- a) the extent to which the service or services provided under the licence, if renewed, would continue to meet the existing and perceived future needs of the community within the licence area
- b) the nature and diversity of the interests of that community
- c) the extent to which the service or services provided under the licence, if renewed, would continue to provide material of local significance
- d) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area
- e) the capacity of the licensee to continue to provide the service or services
- f) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area
- g) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.⁶

Compliance framework

Community broadcasting licensees are subject to licence conditions set out in the BSA. The ACMA is responsible for monitoring the compliance of licensees with these conditions and has published [advisory guidelines](#) that explain the requirements of the BSA and the ACMA's expectations when applying those conditions.

Licensees are required to comply with the standard broadcasting licence conditions in Schedule 2 to the BSA, including those related to political and election matters, and with the specific conditions applicable only to community broadcasting licence services at clause 9 of Schedule 2 to the BSA.

⁴ Sections 79 and 96A of the BSA.

⁵ [Broadcasting Services Amendment \(Community Radio\) Bill 2022 Explanatory Memorandum](#).

⁶ Subsection 91(2A) BSA.

Key licence conditions relevant to this submission include:

- prohibition on broadcasting advertising (paragraph 9(1)(b) of Schedule 2 to the BSA)
- continue to represent the community interest (paragraph 9(2)(b) of Schedule 2 to the BSA)
- encourage participation in operations and programming (paragraph 9(2)(c) of Schedule 2 to the BSA)
- provide the service for a community purpose (paragraph 9(2)(d) of Schedule 2 to the BSA)
- not operate the service for profit (paragraph 9(2)(e) of Schedule 2 to the BSA)
- generally, not provide the service outside its licence area (subclause 9(2A) of Schedule 2 to the BSA)
- not broadcast sponsorship announcements for more than 5 minutes per hour (or 7 minutes per hour for TV licensees) (subclause 9(3) of Schedule 2 to the BSA).

Community broadcasting licensees are also subject to rules in the industry-developed [Community Radio Broadcasting Codes of Practice](#), which set out the guiding principles, policies for programming and the operational standards for licensees. The codes include requirements relating to:

- meeting community interests, diversity and independence
- material not suitable for broadcast
- Indigenous programming
- Australian music
- sponsorship
- complaints handling.

ACMA observations

Our observations relate to 2 of the 3 key priority areas identified in the discussion paper:

1. legislative and regulatory issues
2. First Nations funding and licensing.

We also make observations about the digital radio regulatory framework as it applies to community broadcasting.

1. Legislative and regulatory issues

The impact of licence conditions on sustainability

We are generally made aware of compliance concerns through direct complaints and licence renewal applications.

Broadcasters found to have breached licence conditions often voluntarily take action to rectify the non-compliance and/or make future non-compliance less likely. In addition to the usual administrative costs associated with maintaining and renewing a broadcasting licence, licensees may incur additional costs to provide training or meet other compliance reporting requirements.

The ACMA generally publishes [investigation reports](#) following investigations into community broadcasting licensees.

Licence renewals

As at 4 July 2024, there were 360 active long-term community radio broadcasting licences subject to renewal every 5 years, with an average of 72 due for renewal each year.

Views expressed at DITRDCA's consultation workshops indicated that licensees welcomed our streamlined renewal process introduced in 2023.

When we consider applications to allocate, renew or transfer community broadcasting licences, if we identify areas where operations should be improved to reduce the risk of compliance concerns, we may assign actions for the licensee to complete.

Some licensees have informed the ACMA that the COVID-19 pandemic, natural disasters (including bushfires and floods requiring community rebuilds), and economic factors have affected their ability to complete assigned actions related to both membership and community participation.

Not for profit

The Explanatory Memorandum (EM) to the Broadcasting Services Bill 1992 states:

Community broadcasters differ from other broadcasting services in that they have a local focus and role in attracting local community participation in broadcasting. This community participation is a crucial element which must be satisfied in order to qualify for the grant of a community licence.⁷

We have observed some community radio services moving towards an operational model that includes a strong focus on generating sponsorship income.

⁷ [Broadcasting Services Bill 1992 Explanatory Memorandum \(austlii.edu.au\)](#), p. 54.

Paragraph 15(b) of the BSA provides that community broadcasting services are services that are not operated for profit or as part of a profit-making enterprise. The licence conditions include a requirement that the licensee will not operate the service(s) for profit or part of a profit-making enterprise. The EM to the Broadcasting Services Bill 1992 recognised that:

... some community broadcasters may have a modest operating surplus at the end of a financial year” and provides “that in itself would not exclude such a service from the category. So long as those surpluses are utilised for the continued operation of the service, ... this criterion will be satisfied.⁸

This allows us a degree of flexibility in applying the not-for-profit licence condition at paragraph 9(2)(e) of Schedule 2 to the BSA (the NFP condition). We have developed extensive guidance material to assist licensees understand how we will interpret and apply the NFP condition from a regulatory perspective. Our [Community broadcasting not-for-profit guidelines](#) recommends carefully considering how revenue is generated and distributed, and emphasises that care must be taken to ensure commercial arrangements do not risk breaching the licence conditions.

The Commissioner of the Australian Charities and Not-for Profits Commission (ACNC) maintains a register of charities and not-for-profit entities. While all registered charities are required to be not-for-profit entities, not all community broadcasting licensees are registered charities. Registration with ACNC as a charity may assist licensees demonstrate they are a not-for-profit entity. However, under the BSA, such registration is not sufficient to automatically meet the not-for-profit licence condition (paragraph 9(2)(e) of Schedule 2 to the BSA).

Networking between community broadcasting licensees

Collaboration and governance, administration and control

In addition to the licence condition that requires licensees to encourage participation in the operation of the service (subparagraph 9(2)(c)(i) of Schedule 2 to the BSA), the Community Radio Broadcasting Codes of Practice are also directed to encouraging community participation in providing the service⁹ and the general operations of the licensee.¹⁰

Based on recent renewal applications, we have observed a number of collaborative arrangements between licensees.

One strategy adopted by some smaller licensees is having another organisation offer administrative and governance support by providing advice and resources, particularly where licensees represent the same community interest.

This arrangement may assist smaller licensees across dispersed locations to collaborate and share resources and expertise relating to governance, technical capacity, strategic goals, and administration, by providing for the centralised processing of applications for renewal and making ongoing payments, such as apparatus licence fees. These organisations may draw on the expertise and strategies of larger established stations in a range of operational areas including programming, fundraising and sponsorship.

We have observed through a number of recent renewal applications from licensees representing the same community interest, a high degree of similarity in formatting, structure,

⁸ [Broadcasting Services Bill 1992 Explanatory Memorandum](#), Clause 15 p. 24.

⁹ [Community Radio Broadcasting Codes of Practice Code 2.1.](#)

¹⁰ [Community Radio Broadcasting Codes of Practice Code 2.2.](#)

content and phrasing, including for governance matters such as 5-year objectives and major challenges.

It also appears that the assistance provided through administration and governance support arrangements extends, in some instances, to programming content.

However, we have not identified significant improvements in administrative efficiency among licensees that we are aware of participating in administration and governance support arrangements. For example, in the last 2 years, licensees in such arrangements have submitted late licence renewal applications, missed licence renewal payments, and in one case, submitted a renewal application that incorrectly included the details of another licensee.

Some of the collaboration we have observed between licensees has potential to inhibit or restrict community participation opportunities, particularly in relation to corporate governance practices and outsourcing the development of policies. This poses a risk within the existing regulatory settings where the licence conditions require licensees to encourage members of the community to participate in the operations of the licensee.

The current legislation does not clearly address how collaboration initiatives, including those that may be directed at improving sustainability, should operate consistent with legislative requirements that are aimed directly at community participation and meeting the needs of specific communities within the licence area.

We are not aware of situations where one person is able to exercise control over more than one community broadcasting licence in the one licence area. However, we are aware of a number of situations where one person (whether an individual or a licensee organisation) could potentially control or significantly influence a number of community broadcasting licences in multiple other licence areas. This may inhibit opportunities for participation by members of the local community if it creates centralised decision making.

Further legislative clarification would provide more regulatory certainty. This is particularly the case where increased collaborative administration and governance support for community broadcasting licensees extends to board membership and programming decisions being made by parties external to the licensee.

Collaboration and local content

Subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA requires licensees to encourage members of the community to participate in the selection and provision of programs under the licence.

In 2018,¹¹ the BSA was amended to insert a new assessment matter for allocating and renewing CBLs, relating to the provision of material of local significance. The EM to the Bill stated the amendment was:

... intended to encourage local participation and the provision of locally relevant content, in recognition of the important role that community radio broadcasters have in providing a voice to local communities and informing local communities through coverage of the issues that affect them.¹²

¹¹ [Broadcasting Legislation Amendment \(Foreign Media Ownership, Community Radio and Other Measures\) Act 2018](#).

¹² [Broadcasting Legislation Amendment \(Foreign Media Ownership and Community Radio\) Bill 2017 – Explanatory Memorandum](#), p. 22.

The BSA provides that for the purpose of paragraph (2)(b) of section 84 of the BSA, material is of local significance if:

- (a) it is hosted in the licence area of the proposed licence; or
- (b) it is produced in the licence area of the proposed licence; or
- (c) it *relates to* the licence area of the proposed licence.¹³

The meaning of 'relates to' the licence area is not defined in the BSA. The EM explains this was:

... in order to provide the ACMA with flexibility to adapt it over time as appropriate in the community radio context.¹⁴

The EM further states:

... material could relate to the licence area if it relates to a person, community organisation or event in the licence area or to a social, economic, political or cultural issue as it affects the geographic area or a community within the licence area.

Data from the Community Broadcasting Association of Australia's (CBAA) community broadcasting sector 2018 programming and technology survey indicates that the average amount of locally produced content broadcast per 168-hour week in rural and remote areas is below that produced in metropolitan, suburban and regional areas.¹⁵

Metropolitan licence area populations range from approximately 1.3 million to 5.7 million people, while at the other extreme, remote licence areas are typically under 1,000 and can be less than 100 people.

We provide [guidance](#) to assist licensees understand the participation licence conditions and the importance of local content to the compliance framework for community broadcasting. That guidance includes encouraging licensees to limit their reliance on international, syndicated, satellite or filler programs.

We have observed a number of networked programming measures across community broadcasters. These include:

- sharing programs produced by local presenters among a number of licensees in different licence areas
- engaging presenters who travel between licence areas to record programming
- engaging centralised presenters who produce programming relevant to a specific community interest that then can be tailored to a licence area by editing in local news and weather bulletins, community service announcements or talk segments
- using a hub and spoke model where the hub broadcaster (for example, a remote Indigenous media organisation) is connected online to multiple broadcasting services (for example, remote Indigenous broadcasting services). Programming can be sent and received, enabling syndicated content to be provided to members of the network and local content from members to be fed back into the network for use by other broadcasters. Maintenance issues not related to equipment can also be resolved online.¹⁶

¹³ Subsection 84(3) of the BSA.

¹⁴ [Broadcasting Legislation Amendment \(Foreign Media Ownership and Community Radio\) Bill 2017 – Explanatory Memorandum](#), p. 45.

¹⁵ From [Community Broadcasting Sector Programming & Technology Survey Report](#), p. 12.

¹⁶ CAAMA News, <https://www.caama.com.au/2021/10/11/wan-network-a-win-for-local-caama-content/> CAAMA website accessed 27 August 2024.

- combining a large amount of networked content with locally produced music playlists
- using news updates sourced from a networked provider combined with station specific programming.

CBAA provides a subscription service, the Community Radio Network (CRN), which enables community broadcasters to share news, talk, music and entertainment programs. Community broadcasters can use the service as a fall-back to cover unforeseen issues, as an overnight service or generally to complement an existing program schedule. Subscribers can also submit their own local programs for CRN consideration and use by other subscribers.

National Radio News (NRN) is a subscription news service available to community broadcasters. NRN is produced by CBAA in partnership with Charles Sturt University (from its Bathurst campus) and delivers news bulletins to subscribers.

These examples demonstrate that there is a wide variety of existing collaborative arrangements that affect the delivery of local content and the extent of local participation. Any changes to the regulatory regime directed to supporting greater collaboration between licensees need to be considered against the competing requirements of promoting local content, local participation and local control.

Community participation levels in different locations

CBAA data shared with the ACMA (February 2023) demonstrates that the average number of members and the median subscriber number of community broadcasting licensee organisations in remote and regional licence areas are significantly lower than in sub-metropolitan and metropolitan licence areas, and this is typically reflected in information provided by licensees when applying for licence renewal. This is likely to be the result of the smaller populations and lack of facilities in regional and remote areas. However, we have observed licensees in metropolitan areas with relatively low membership numbers and, conversely, licensees in regional areas with relatively high membership numbers.

Table 1: Average number of members of community broadcasting licensee organisations

Metropolitan	Sub -metro	Regional	Remote
550	234	90	54

Source: CBAA (2023).

The community participation licence conditions apply to all services, regardless of location, the community served, or the size of that community.

We adopt a broad interpretation of participation in the operations of the service and participation in the selection and provision of programs, when assessing whether a licensee is complying with the community participation licence conditions.¹⁷ We consider a range of contextual factors, including the demographics in the licence area compared to the national average, the number and type of community and other radio services available in the licence area, the community interest represented by the licensee, and the population of the licence area.

¹⁷ Paragraph 9(2)(c) of Schedule 2 to the BSA.

Social media reach and listener data as part of participation

When we assess applications for renewal, we consider a range of factors that indicate a licensee's engagement with the community, including their use of social media to promote their programs, ask for feedback from the community or share local news. This is relevant to the licensee's capacity to comply with the licence participation condition at paragraph 9(2)(c) of Schedule 2 to the BSA.

Sponsorship and advertising

We have observed in applications for renewal that sponsorship is one of the major sources of funding for community broadcasters, along with government funding, subscriber contributions, philanthropic donations and membership fees (in varying proportions). These funding sources are often supplemented by other activities, including fundraising events and donations. A small number of licences are held by large organisations with a funding base that extends beyond the broadcasting service.¹⁸

We receive complaints from a range of sources, including other radio broadcasters operating in the same area as the community broadcaster, that allege breaches by community broadcasters of the advertising licence condition and/or sponsorship limit licence condition. We exercise discretion under s.149 of the BSA to determine which complaints should be investigated.

The licence conditions prohibit licensees from broadcasting advertisements¹⁹ and identify circumstances in which a licensee will be taken not to have broadcast an advertisement.²⁰

The BSA does not provide a definition for an advertisement. The ACMA relies on court consideration of the meaning of the term 'advertising', including the consideration by the High Court in the context of the *Broadcasting Act 1942*.

To assist licensees, we have guidance on what constitutes advertising and how complaints about advertising are assessed.

Since 1 July 2019, we have considered 24 complaints that licensees have breached the advertising licencing condition in paragraph 9(1)(b) of Schedule 2 to the BSA.²¹ During the same period, 15 investigations found a licensee breached this licence condition.

The licence conditions also prohibit licensees from broadcasting sponsorship announcements for more than a total of 5 minutes each hour of broadcasting for community radio and 7 minutes each hour of broadcasting for community television.²²

Since 1 July 2019, the ACMA has considered 15 complaints that licensees have exceeded the 5-minute time limit for sponsorship announcements in paragraph 9(3)(b) of Schedule 2 to the BSA. During the same period, 6 investigations resulted in a breach finding.

We are aware, through stakeholder engagement and DITRDCA's consultation workshops, of industry uncertainty around the provisions for the timing and nature of material of an advertising character and the difference between community service announcements,

¹⁸ For example, Vision Australia, universities that hold community broadcasting licences, and community organisations that provide community services beyond the radio service.

¹⁹ Subclause 9(1)(b) of Schedule 2 to the BSA.

²⁰ Clause 2(2) of Schedule 2 to the BSA.

²¹ *The licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in this clause.*

²² Subclause 9(3) of Schedule 2 to the BSA.

community promotional material and sponsorship announcements. Legislative specificity may reduce confusion in both the commercial and community sectors about what is and is not allowed and may assist the community broadcasting industry, commercial broadcasters, and the regulator.

Discussion at a number of DITRDCA's consultation workshops suggested there be a change to the time limit to allow greater flexibility throughout a 24-hour period. However, such a change may present some implementation challenges for licensees and the regulator. Under the licence conditions, when we investigate an allegation that the 5-minute per hour sponsorship limit has been exceeded, we generally request a recording from the licensee and listen to the specific hour(s) in which the condition was allegedly breached. Our community broadcasting sponsorship guidelines explain how we calculate the allowable minutes within any hour of broadcast being taken from the start of each hour.

The introduction of a 24-hour cap, as suggested in some of the DITRDCA consultation workshops, would require the ACMA to seek copies of, and then listen to, the full 24-hours of broadcast material to determine whether the cap was breached. As a result, the introduction of a flexible time period with an overall cap may have resourcing implications for the ACMA and/or have impacts on the timeliness of investigations. In some circumstances, providing a full 24-hours of broadcasting material (or more) may pose challenges for licensees.

The introduction of a requirement comparable to the existing requirement for licensees to retain copies of political material for a period of 6 weeks may assist in ensuring that appropriate recordings are maintained.

2. First Nations funding and licensing

Introduction of a new First Nations licence, distinct from community broadcasting

Section 8B of the BSA provides that the ACMA may determine an Indigenous community to be a remote Indigenous community for the purposes of the BSA. The Broadcasting Services (Remote Indigenous Community) Determination 2022 (the 8B determination) was remade in 2022 with minor changes, including the addition of a further 14 Indigenous communities.

For licensees listed in the 8B determination, the BSA provides more flexible advertising restrictions – allowing the broadcast of advertisements for which the licensee does not receive consideration in cash or kind.

We provide a streamlined licence renewal and licence transfer process for long-term community radio broadcasting licensees that provide services to remote Indigenous communities included in the 8B determination. Licensees in areas listed in the 8B determination are required to provide a short summary of the station's programming and how it encourages participation.

Indigenous community radio broadcasters

At August 2024, there are 153 community radio broadcasting services where the licensee represents an Indigenous or Torres Strait Islander community interest. Of these:

- 91 are long-term community radio broadcasting services
 - 79 serve communities listed in the 8B determination
- 62 are temporary community radio broadcasting services
 - 56 serve communities listed in the 8B determination

- 14 of the temporary services are in areas where a long-term service has been planned.

First Nations licence category

If a First Nations licence category was introduced through legislative change, the ACMA could implement it within the existing planning framework. The transitional arrangements for such a change would need to be carefully considered, taking into account the ACMA's statutory obligations, including to consult widely on changes to legislative instruments such as licence area plans.

We note that there is limited or no spectrum available in metropolitan areas to issue new wide-area broadcasting licences, due to spectrum congestion. This is also the case in many regional areas. If a First Nations licence type was introduced, it is likely spectrum would not be available to plan for new First Nations services in some of these areas. There is greater spectrum availability in remote areas for planning new services.

If a First Nations licence category was introduced and a First Nations broadcaster wished to provide a service on available spectrum, we would consider planning the spectrum in the relevant LAP, taking into account the planning criteria in Part 3 of the BSA. As LAPs are legislative instruments, we would be required to consult publicly before making that spectrum available.

In this context, it may be worth exploring whether the desired outcomes of a First Nations licence type could be achieved by modifying the requirements of community broadcasting licences for First Nations licensees, in relation to requirements such as participation, sponsorship and programming. For licensees in remote areas, this could be achieved using the 8B determination by modifying the regulatory requirements for community broadcasting licensees to whom the determination applies.

3. Other matters – observations about the digital radio regulatory framework as it applies to community broadcasting

Digital radio is established in capital cities, with only limited regional rollout (Mandurah and the Gold Coast).

We are aware that community broadcasters in some regional areas are interested in commencing digital services ahead of the commercial services.

There is limited spectrum available for digital radio services in Australia. The digital radio framework was designed to fit the existing, licence area planned, wide-area radio broadcasting services into a limited amount of spectrum. We have allotted a certain number of channels available for digital radio and the number of channels dictates the number of multiplexes available to operate services.

Under the regulatory framework for digital radio, community radio broadcasting licensees with the same licence area as the commercial radio licence area (or deemed to be the same by legislation or the ACMA) have a pathway to provide digital radio services.

Community radio broadcasting licensees share a digital radio multiplex transmitter with the commercial radio broadcasting licensees for the area. All eligible community radio broadcasting licensees are entitled to share a two-ninths allocation of the capacity of a digital radio multiplex transmitter.

Due to limited spectrum, 'sub-metro' community radio broadcasting licensees (if their licence areas are not deemed to be the same as the commercial radio licence area) are not entitled to provide digital services. Under the framework, there is no access for community radio broadcasting licensees if their licence was allocated after the digital start-up day for a licence area and the licence is allocated for transmission in analog mode only.

Our view is that the joint venture process required by legislation to form the foundation digital radio multiplex transmitter licence holder presents challenges for community radio broadcasting licensees as they cannot initiate digital rollout without the participation of the commercial radio broadcasting licensees. It is open to community broadcasters to stream their services online, and many already do.