Investigation report no. BI-449

| Summary |  |
| --- | --- |
| **Licensee** | Clarence Valley Christian Broadcasters Inc |
| **Station** | 2CVC |
| **Type of service** | Community Broadcasting |
| **Relevant legislation** | *Broadcasting Services Act 1992* (BSA)   * paragraph 9(2)(b) of Schedule 2 to the BSA [representing community interest] * sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encouraging participation in the operations of the service] * paragraph 9(2)(d) of Schedule 2 to the BSA [providing the service for community purposes] |
| **Date Finalised** | 17 May 2019 |
| **Decision** | * did not breach paragraph 9(2)(b) of Schedule 2 to the BSA [representing community interest] * did not breach sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encouraging participation in the operations of the service] * did not breach paragraph 9(2)(d) of Schedule 2 to the BSA [providing the service for community purposes] |

Background

On 5 December 2018, the Australian Communications and Media Authority (the ACMA) received a complaint alleging that the licensee of 2CVC, Clarence Valley Christian Broadcasters Inc (the licensee), was not representing the Christian community interest of the licence area, was not encouraging community participation in the operations of the service and was not providing the service for community purposes.

On 21 December 2018, the ACMA commenced an investigation under section 170 of the *Broadcasting Services Act 1992* (the BSA) into the licensee’s compliance with the licence conditions at:

* paragraph 9(2)(b) of Schedule 2 to the BSA [representing community interest]
* sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encouraging participation in the operations of the service]
* paragraph 9(2)(d) of Schedule 2 to the BSA [providing the service for community purposes].

The licensee

The licensee has held a long-term community radio broadcasting licence to represent the Christian community interest in the Grafton RA2 licence area since April 2000. The expiry date of the current licence is 3 April 2020.

During the 2014 renewal of the licence, the ACMA asked the licensee to undertake certain actions to improve its operations and programming, particularly around community participation.

In 2016, the ACMA investigated a complaint about the service and found the licensee breached paragraph 9(2)(d) [not providing a service for community purposes]. It was noted that the licensee had been operating without a live broadcast facility for some 12 months, thereby limiting the capacity of the community to participate in the provision of the service. However, the ACMA decided not to pursue further action at that time following measures implemented by the licensee.

Submissions

This investigation has taken into account:

* the complaint received by the ACMA on 5 December 2018
* written submissions and documents provided by the licensee to the ACMA on 5 and 11 February 2019, 19 March 2019 and 1 April 2019.

Other sources are identified in this report where relevant.

Relevant licence conditions

**9 Conditions applicable to services provided under community broadcasting licences**

(2) Each community broadcasting licence is also subject to the following conditions:

[...]

(b) the licensee will continue to represent the community interest that it represented at the  
 time when the licence was allocated or was last renewed;

(c) the licensee will encourage members of the community that it serves to participate in:

(i) the operations of the licensee in providing the service or services […]

[...]

(d) the licensee will provide the service or services for community purposes.

Issue 1: Is the licensee continuing to represent the community interest?

Finding

The licensee did not breach paragraph 9(2)(b) of Schedule 2 to the BSA.

Reasons

Community broadcasting licensees are required to comply with the licence condition to continue to represent the community interest that they represented when the licence was allocated or last renewed. The community interest the licensee is required to represent is the Christian community interest, as indicated when the licence was last renewed in 2014.

The complainant has alleged that:

The decisions of the committee have made 2CVC irrelevant to the churches and Christian community. Consequently, lost the backing of Pastors Fraternal, the churches and the Christian community.

[…]

[the station] is now servicing the general community of Grafton as opposed to the Christian community according to 2CVC’s licensing conditions.

***Complying with the community representation requirement***

The ACMA’s community broadcasting participation guidelines (the guidelines) set out the ACMA interpretation of the phrase ‘community interest’, and state at page 4 that:

The [BSA] does not define ‘community‘ or ‘community interest‘ but services should:

… meet the needs of a local community or of a particular sector of the community. [page 23, Explanatory Memorandum to the *Broadcasting Services Bill 1992*]

For the purpose of community broadcasting, ‘community interest’ means the needs or interests of a group of people who:

* live or spend a substantial amount of time in a particular geographic area; or
* share an ethnic or cultural background; or
* share religious beliefs; or
* share, or identify with, some other particular characteristic or interest.

For a service representing a specific community interest, the guidelines state at page 5:

**Specific community interest**

* Focus is on the interests of a particular sector of the community within the licence area.
* Looks to serve those in the licence area who share or identify with a particular characteristic interest.

In the ACMA’s view, whether a service is continuing to represent its community interest, relates both to that service’s programming and the way in which the service identifies and monitors the needs of the community in the licence area.

In doing so, a licensee should take into account the nature and diversity of the interests of that community and other broadcasting services available in the licence area.

***Grafton RA2 licence area***

When asked to provide an overview of its community interest, the licensee referred to 2016 ABS Census details for the Clarence Valley, with 68.6% of the population reporting as Christian, the largest three denominations being 25.7% Anglican, 20.0% Catholic and 6% Presbyterian and reformed churches.

The Grafton RA2 licence area can receive a range of programming provided by other radio services, including:

* six national services: ABC Radio, ABC Classic FM, ABC News Radio, ABC RN, ABC Triple J and ABC North Coast
* two commercial services: Clarence Valley FM104.7 and 2GF
* one narrowcasting service: Vision Christian Radio.

***Programming***

Each community broadcasting service has a responsibility to provide programming of local significance to their community, particularly locally-produced programming that is not provided by other broadcasting services available in the licence area.

Based on the information provided, the weekly programming schedule comprises 84% music (141 hours) and 16% talk (27 hours).[[1]](#footnote-1) This compares favourably to the national averages of 88% and 12% respectively for a community broadcaster with a religious community interest.[[2]](#footnote-2)

The licensee stated that it has 4 on-air presenters (with 2 assistant presenters in training) broadcasting 24 hours of live content a week. As such, approximately 16% of the licensee’s local programming is broadcast live. The national average for a community radio station with a religious community interest is 31%.

The licensee’s live local programs as at 1 December 2018 were:

* ‘Morningside’ – described as music, information, features, weather and the CBAA suicide prevention project
* ‘Country Lunch Pack’ – described as today’s country music
* ‘Behind the Desk’ – described as a twice ‘weekly program feature’ hosted by two sports journalists
* ‘Total Country’ – featuring local musicians and promoting visiting country music artists.

The licensee submitted that it caters for its community of interest in the following ways:

* it regularly broadcasts for a number of Christian organisations, including Bush Church Aid, Christ Church Cathedral Grafton, Clarence Valley Anglican School, Connect Church, Diocese of Grafton, Grafton Education Board, Grafton Minister’s Association, Grafton Uniting Church, Salvation Army, St Vincent’s De Paul Society and St Andrew’s Christian School.
* a review of program schedule suggests that the the licensee broadcasts a spoken word program, the ‘Luke and Susie Show’, a syndicated Christian program broadcast by a number of Christian community services in Australia.
* Christian music tracks are broadcast every hour and that
* on-air resources provided by the Christian Media and Arts Alliance (CMAA) are also broadcast.

***Identifying community needs***

In order to continue to represent their community interest in a licence area, community broadcasting services must be responsive to community needs. Community broadcasting services remain responsive to audience needs when they identify and monitor those needs, encourage members of the community to provide feedback about programming, and respond by implementing appropriate programming changes.

Following its last renewal in 2014, the licensee was asked to complete a Community Consultation Strategy (CCS) and Structured Engagement Program (SEP) for the period 1 January 2017 to 3 April 2020. Minutes from general and board meetings for the period 1 January 2018 to 1 December 2018 indicate that the licensee has gone some way to implement these. For instance, minutes for the 2 July 2018 board meeting refer to a survey of local churches and congregations. The 16 July 2018 minutes indicate that 80 survey responses were received.

In its submission, the licensee indicated that it monitors community needs by:

* receiving input from an Advisory Council, including an Anglican school principal, an Anglican school student and two local business representatives
* attending meetings of the Grafton Ministers Association, which includes representatives from major protestant church groups
* participating in conferences held by the CMAA
* receiving input from station volunteers who have a wide range of church affiliations including many from both Catholic and Anglican backgrounds
* participating in community events, such as Australia Day events, the Loving Life Day, the Jacaranda Festival and SOULful Concert
* conducting a McNAir/CBAA Community Engagement Survey
* conducting a market research report on over 40 rural/regional stations (to be made available to the Board prior to 16 May 2019).

Information provided by the licensee indicates that it is responding to needs identified. The licensee stated that a priority need identified from the above actions was to increase local news and sports content. The licensee has established a ‘cross-promotional engagement with the local daily newspaper’ and has acquired the sponsorship rights for the local men’s and women’s AFL competitions. As of February 2019, a live and locally produced program featuring a senior sports editor was also added to the program schedule.

The licensee also indicated that further adjustments will be made to the programming schedule based on community feedback, stating that:

Depending on intellectual property conditions and studio production constraints, there will be the introduction of a weekday ‘devotional’ spot for the Christian community of interest (featuring David Reay, St Albans Church, Sydney) and a local ‘Spiritual Matters’ column (for social media and voice-over during a ‘Songs of Praise’ segment on Sundays) by Rev Chris Sparkes (Uniting Church) who writes a weekly column for DEX.

Additionally, the licensee indicated that it is also ‘considering proposals for either live-to-air or recorded programs covering music of the 1980s and a children’s Bible story series entitled “Are we there yet?”’ The licensee has submitted that ‘new presenters and programming initiatives are likely to be implemented before 30 June 2019.’

***Conclusion***

The licensee stated that it intends to ‘reach a wide community with Christian based massages and music of faith and hope’ rather than ‘impose a “narrow” Christian community emphasis on the stations programming and operations’. In taking this approach, the ACMA does not consider that the licensee is necessarily seeking to represent the general geographic area community interest, as the complainant has alleged.

The licensee appears to use a number of mechanisms to identify the needs and interests of the Christian community in Grafton RA2 (including by engaging with local ministries) and is taking steps to implement changes to its program schedule based on needs and interests identified.

The licensee is the only community service in the Grafton RA2 licence area, and its community interest (the Christian community) accounts for the majority of the population (close to 70%) in the licence area. As such, the inclusion of content with a general appeal in its program schedule, such as local news and sports information, may legitimately fulfil a need within the Christian community in the licence area. The ACMA notes that the licensee broadcasts this content alongside more specifically Christian material, such as talk, music, interviews and Community Service Announcements (CSAs).

The production and broadcast of live and local content is one of the primary ways for a community broadcaster to represent its community interest. The licensee has indicated a number of proposals to increase live-to-air content which are proposed to be implemented by June 2019. The ACMA expects that the licensee will prioritise greater local and live content in its Strategic Plan for the next licence period.

The ACMA considers that the licensee did not breach paragraph 9(2)(b) of Schedule 2 to the BSA.

Issue 2: Is the licensee encouraging participation in the   
 operations of the service?

Finding

The licensee did not breach paragraph 9(2)(c)(i) of Schedule 2 to the BSA.

Reasons

It is a condition of all community broadcasting licences that the licensee must encourage members of the community that it serves to participate in the operations of the licensee in providing the service or services.

The complaint included several allegations, including that:

* recommendations of sub-committees are considered advisory only
* all sub-committees have been effectively disbanded
* membership was not advised of a decision to postpone the November 2018 AGM until two days before
* the reasons provided for the deferred AGM were inadequate, namely that the membership database needed updating due to a late notice to members of renewal of membership and the need to have a membership campaign prior to Christmas
* membership renewal advice was not sent out to members
* despite the Secretary’s extended absence, no one was appointed to take responsibility for these functions.

As is stated in the guidelines, the ACMA considers the obligation to encourage participation requires that licensees take active steps to:

* promote the service to the community
* be open and accessible to the community
* invite the community to participate in the service
* offer a range of ways in which people can participate in the service
* make the community aware of the opportunities to participate in the service.[[3]](#footnote-3)

In the ACMA’s experience, licensees encourage community participation in their operations when they have sound corporate governance practices, value and promote membership and volunteering, and have an effective and transparent committee structure. However, no single activity or initiative alone is likely to result in compliance with the community participation requirement.

***Management Committee***

The licensee’s constitution provides for a management committee consisting of four office bearers (the president, vice-president, treasurer and secretary), where an individual may hold up to two offices, at least three ordinary members and up to two Independent Directors to be appointed by the four office bearers. Management committee members are elected annually and may be eligible for re-election at the following AGM. There is no limit on the number of consecutive terms a management committee member may serve.

The licensee indicated that, as at 1 December 2018, it had four active members on its management committee: the president, secretary, treasurer and one ordinary member.

The licensee’s constitution allows for the management committee to appoint members to fill casual vacancies until the conclusion of the AGM next following the date of the appointment.[[4]](#footnote-4)

***Sub-committees and advisory bodies***

In the ACMA’s view, sound corporate practices which prevent the concentration of control in the hands of a few individuals, help ensure transparency and enable communities to have adequate input into the decision-making that affects their services.

The licensee indicated that, as at 1 December 2018, it had five sub-committees responsible for Planning & Finance, Governance, Human Resources & Volunteers, Programming & Technical and Sales & Marketing. A review of board minutes for the period 1 January 2018 and 1 December 2018, indicates that these sub-committees formed the basis of Board meeting agenda items and, therefore, appear to have been operational.

Based on the licensee’s submission, two of its sub-committees (the Planning & Finance and Governance sub-committees) consisted exclusively of board members. However, the Human Resources & Volunteers, Programming & Technical and Sales & Marketing sub-committees also included non-board members; the Sales & Marketing sub-committee being the only sub-committee to include non-station member volunteers.

The licensee has stated that it attracts community involvement on sub-committees using ‘recorded and live-to-air invitation announcements, in its newsletters and through social media’.

The ACMA notes that the licensee intends to re-align its committees ‘to better meet the vision and mission of the station’, although it is not clear, from the information provided, what this will entail. Between 1 January 2018 and 1 December 2018, the licensee enabled community participation from non-management committee members in decision-making on a number of sub-committees, and kept records of this involvement.

Additionally, the licensee has also indicated that it receives input from an Advisory Council, consisting of representatives from the local community (an Anglican school principal, an Anglican school student and two local business representatives). The licensee has stated that Council members are appointed by invitation of the management committee and serve a maximum of three years.

***Membership***

As is stated in the Guidelines, the ACMA considers membership to be one of the primary ways of encouraging community participation in the operations of the service. This is because members can have a say in decision making by:

* attending and voting at meetings
* nominating for membership of boards and committees
* participating in boards and committees
* proposing items of business for general meetings.[[5]](#footnote-5)

As such, it is the ACMA’s strong preference for community broadcasters to have open membership. The licensee’s constitution provides for open membership by including adequate review mechanisms for rejected applicants and specifying that membership may only be rejected if:

* there are reasonable grounds to believe that the applicant would not abide by the rules and objectives of the association; or
* required by law; or
* the applicant has been convicted of an indictable offence; or
* there are reasonable grounds to believe that the applicant would pose a security risk to the members or the premises of the association.

The ACMA notes that membership at the licensee has fluctuated, decreasing from 141 members between 1 July 2017 and 1 June 2018, and is currently lower than the national average of members for a community broadcasting service with a religious community interest:254 members.[[6]](#footnote-6)

The January 2019 board meeting minutes indicate that there were 102 non-renewals for 2017-2018 which, the licensee submitted, was because it failed to send membership renewal notices until December 2018 following the resignation and unplanned leave of two staff members.

In response to the ACMA’s preliminary view, the licensee stated that:

Ordinary membership continues to ebb and flow, as is the case in most community or club organisation […] but the experience of other radio stations is that there are no easy answers to maintaining or growing membership in rural communities as generational change occurs.

Although the ACMA appreciates the pressures placed on smaller licensees, particularly in regional and remote areas, it is the ACMA’s view that maintaining a stable membership base is key aspect of encouraging community participation in the operations of the licensee in providing the service.

The ACMA notes that between 1 July 2018 and 1 December 2018, 4 new membership applications were received and all 4 were accepted, indicating that the licensee was implementing open membership, according to its constitution.

***Volunteers***

Promoting opportunities for volunteers to participate in the operations of the service, is another way in which licensee can encourage community participation in the operations of the licensee in providing the service.

The national average of volunteers for a community broadcasting service with a religious community interest is 46 volunteers.[[7]](#footnote-7)

The licensee has indicated that, as at 1 December 2018, it has 50 active volunteers, with a total of 160 volunteers on its database. Of the 50 active volunteers, the licensee indicated that these include seven management committee members, one administration volunteer, four sales and marketing volunteers, one engagement manager (social media, digital news letter and member services), four presenters and two trainee presenters. The licensee’s submission also indicates that at least two interns have been hosted at the station between 1 January 2018 and 1 December 2018.

The ACMA notes that the number of on-air presenters has decreased since the licence was lasted renewed in 2014, when the licensee reported 15 on-air presenters. The ACMA expects licensees to make ongoing efforts to encourage and retain regular volunteer on-air presenters and considers that this is an area in which the licensee could improve

The licensee appears to be making some efforts to encourage participation from youth within the community:

* The licensee emphasised the role of its School of Community Radio and Media Foundation (SCRAM) as a central component of community participation. The licensee described SCRAM as a scholarship and internship program ‘to engage and encourage young people of the community to showcase their talents and develop their musical and related performance skills’. However, based the information supplied, since 2016 the foundation has supported three interns, with only one completing ‘a series of production projects’.
* A review of the minutes of the management committee meeting indicates that ‘several’ youth volunteers were involved periodically during 2018 with a program called *Youth Chat*.

***2018 Annual General Meeting***

The licensee’s constitution provides for an annual general meeting (AGM) to be held:

1. within 6 months after the close of the association’s financial year [being the 30 of June], or
2. within such later time as may be allowed by the Director General or prescribed by Regulation.

Based on the available information, the licensee had called an AGM for 22 November 2018. This AGM appears to have been deferred at the 15 November 2018 management committee meeting until February 2019, with membership advised of the deferral on 20 November 2018. The licensee has indicated that the reason for the delay was due to ‘the financial accounts not being available’.

In response to the ACMA’s preliminary view, the licensee provided a copy of NSW Office of Fair Trading’s approval for an extension of time to hold the Association’s annual general meeting, no later than 16 May 2019. This document indicates that the licensee applied for the extension on 1 March 2019, after the commencement of this investigation.

***Conclusion***

The ACMA considers compliance with the licence condition relates to the ability of the community to have input and involvement into the decision making that effects their service. The ACMA considers that licensees need to take active steps to invite and promote opportunities in their services.

The ACMA notes that the licensee does have appropriate governance structures in place, namely a management committee with five sub-committees, open membership provisions, and an additional Advisory Council. These structures appear to have been operational between 1 January 2018 and 1 December 2018 and, based on the available evidence, appear to have enabled participation from the community in decision making activities of the service.

While the licensee does not appear to be restricting community participation in its operations, there is considerable room for improvement in the manner in which it promotes those opportunities and invites that participation from the broader Christian community, particularly in promoting membership, which has significantly reduced, and opportunities for on-air presenters, which have decreased since last renewal. In this regard, the ACMA notes that the licensee has indicated that prior to 30 June 2019, it plans to conduct a membership campaign, implement new program and presenter opportunities, as well as hold its AGM.

However, on balance and based on the available evidence, the ACMA considers that the licensee did not breach paragraph 9(2)(c)(i) of Schedule 2 to the BSA.

Issue 3: Is the licensee providing the service for community   
 purposes?

Finding

The licensee did not breach paragraph 9(2)(b) of Schedule 2 to the BSA.

Reasons

Section 15 of the BSA defines a community broadcasting service, as including one that is provided for community purposes. The associated licence condition at paragraph 9(2)(d), requires community broadcasting licensees to provide a service for community purposes.

The complainant alleged that:

Other than [the president’s] project SCRAM community involvement is basically non-existent.

[…]

For the last two-plus years, the station as of November 13th did or does not have any fully completed studios or production/voice over suite. I am advised that there has been a flurry of activity on the studios since November 15th. The reason cited around the office: The license renewal will require proper studios. […] I am advised that until the week of November 12th, all programming was open air basically as the studios did not have any doors fitted, and the studio windows though fitted, were only temporarily in place.

[…]

The studio complex is not finished and there is nowhere to conduct training.

The BSA does not define ‘community purposes’. Relevantly, the ordinary meaning of those terms in the *Macquarie Dictionary* include:

**community**

**1.** all the people of a specific locality or country: the new transport service is for the benefit of the whole community.

**4.** a group of people within a society with a shared ethnic or cultural background, especially within a larger society: the Aboriginal community; Melbourne's Greek community.

**purpose**

noun **1.** the object for which anything exists or is done, made, used, etc.

Taking into account these definitions in the context of paragraph 9(2)(d), it is considered that the purpose or object of a community broadcasting service must be directed at the people in a locality, or the people within a society with a shared ethnic or cultural background.

The *Explanatory Memorandum* to the *Broadcasting Legislation Amendment Bill (No.2) 2002*, which added paragraph 9(2)(d) to the BSA, sheds light on the purpose behind this licence condition. It states that the licence condition is intended to:

[…] reinforce the community and not-for-profit nature of the community broadcasting sector, consistently with the definition of "community broadcasting services" in paragraphs 15(a) and (b) of the BSA. The licence conditions reinforce the distinction between community and commercial broadcasting, and ensure that the licensee is focused on servicing the needs of the relevant community.

When assessing compliance with this provision, the ACMA has equated the term ‘community purposes’ with a licensee’s representation of its community interest and whether there is community participation in the operations and programming of the service.

***Community Interest***

The ACMA has considered the matter of the licensee’s representation of its community interest at Issue 1 and is satisfied that the licensee is representing the Christian community interest.

***Community Participation in Operations***

The ACMA has considered the matter of community participation in the operations of the service at Issue 2 and considers that there is community participation in the operations of the service.

***Community Participation in Programming***

Following the ACMA’s September 2016 investigation into the same licence condition, the licensee indicated that it had at least one functional studio operating for members and volunteers to record and present a total of 21 hours (12.5%) of live to air programming per week. The licensee indicated that it expected live programming to account for 25% of total programming by March 2017.

The ACMA, notified the licensee on 21 June 2017 that it was expected that the licensee would report an increase in live-to-air programming at the next renewal (due in April 2019). The licensee was also asked to keep the ACMA informed of when the studio became fully operational.

Based on the information supplied for this investigation, it appears that the licensee has not reached its intended target of 25% live programming (42 hours per week) and the broadcast facilities remain incomplete.

The licensee has stated that:

The station relocated to street-level CBD premises in August 2015, requiring a complete rebuild of its leased premises to include sound proofed studios, air-conditioning and re-equipped with cabling, STL, internet links and IT support. It still operates with a leased ‘live-to-air’ panel and has only recently (late 2018) been able to install customised windows and doors to the production and live-to-air studios.

Our street-level studios still require some timber-panelling and acoustic amelioration work which should be completed by end May 2019.

Despite remaining incomplete, however, the licensee has confirmed that the studios can be and are used for live-broadcasts, including all voice-over production and most interviews, including live-to-air interviews.

On the available evidence, it appears that the licensee does have studios which can be used for live broadcast and does make provision for some community participation in the provision of programs.

***Conclusion***

The licensee is providing a service for community purposes and is not in breach of paragraph 9(2)(d) of Schedule 2 to the BSA.

1. Magazine-style programs are split evenly between music and talk formats. [↑](#footnote-ref-1)
2. *Community Broadcasting Sector Programming & Community Development Census* (June 2017), page 17. [↑](#footnote-ref-2)
3. *ACMA’s* *Community Broadcasting Participation Guidelines 2010,* page 9. [↑](#footnote-ref-3)
4. The licensee indicated that, as of 1 April 2019, vacancies have been filled on the management committee. [↑](#footnote-ref-4)
5. *ACMA’s* *Community Broadcasting Participation Guidelines 2010*, page 10. [↑](#footnote-ref-5)
6. Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year (October 2017), page 20. [↑](#footnote-ref-6)
7. From Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year (October 2017), page 34. [↑](#footnote-ref-7)