Investigation report no. BI-534

| Summary |  |
| --- | --- |
| **Licensee** | Inner North East Community Radio Incorporated |
| **Station** | 3INR |
| **Type of service** | Community—radio |
| **Issue** | Encourage community participation |
| **Relevant legislation** | Paragraph 9(c) of Schedule 2 to the *Broadcasting Services Act 1992* |
| **Date finalised** | 9 December 2020 |
| **Findings** | Breach of subparagraph 9(c)(i) [encourage participation in operations of licensee] Breach of subparagraph 9(c)(ii) [encourage participation in selection and provision of programming]  |

Background

On 24 September 2019, the Australian Communications and Media Authority (the **ACMA**) received a complaint alleging that Inner North East Community Radio Inc (the **Licensee**) is not encouraging community participating in licensee operations or the selection and provision of programs.

On 23 October 2019, the ACMA commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the licensee’s compliance with the licence conditions at paragraph 9(2)(c) (encouraging community participation) of Schedule 2 to the BSA.

The Licensee

The Licensee has held a long-term community broadcasting licence (or equivalent) since December 1990, representing the General community interest in the Melbourne North East RA1 licence area in Victoria. The expiry date of the current licence is 6 December 2020.

Assessment and submissions

This investigation has considered the following material:

* the complaint received by the ACMA
* written submissions from the Licensee, dated 4 May and 5 November 2020.

Other sources are identified in this report where relevant.

Issue 1: Encouraging community participation in the operations of the licensee

Relevant licence condition

**Schedule 2**

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

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

[...]

(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;

Finding

The ACMA finds that the Licensee is not encouraging community participation in the operations of the Licensee, and accordingly it has breached subparagraph 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.

The ACMA’s Participation Guidelines state that 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’.[[1]](#footnote-2)

*Sound corporate governance practices*

The complainant stated:

There is only one woman on the Committee of Management of the station, out of 9 members, being none of the formal positions of President, Vice President, Treasurer or Secretary. This woman was nominated before the AGM and was unopposed. Before that, there was no woman on the committee.

The Participation Guidelines state:

Sound corporate governance practices give communities confidence that their community broadcasting services are managed appropriately. They also enable communities to have adequate input into the decision-making that affects their services.

Examples of sound corporate governance practices include:

* policies that require office holders to declare any potential conflict of interest and to refrain from deliberating or voting on issues in which they have an interest;
* measures to prevent the concentration of control in the hands of a few individuals (for example, using a range of committees, limiting the number of proxy votes that a member can exercise and having a limited renewable term for individuals holding positions on committees or the board); and
* procedures for complying with regulatory requirements that apply to the service and its organisational structure. These include:
	+ the licence conditions that apply to all community broadcasting services;
	+ the obligations that apply to companies and incorporated associations under relevant Federal, State and Territory legislation for holding meetings, keeping records, and lodging documents.

In its submission, the Licensee provided a copy of its Rules of Association (the **Rules**). The Rules establish that the Committee of Management (the **CoM)** is made up of between four and twelve members who are elected by ordinary members of the organisation for a period of three years, with one third up for election at every Annual General Meeting. The Rules grant the CoM the power to ‘direct all affairs of the Association’, including the control of funds; the election of the office bearers of the organisation (President, Vice-President, Secretary and Treasurer); the employment of paid staff; and the appointment of sub-committees from ‘within its own number’. Rather than specifying ‘a limited renewable term’ for committee members, the Rules do not place any restriction on the number of terms a committee member may serve.

The Licensee’s submission confirmed that there are currently ten members of the CoM, consisting of nine men and one woman. The ACMA notes that two of the current committee members’ terms have exceeded 20 years. In contrast, of the remaining eight committee members, five were first elected in 2019. There are currently two casual vacancies, for which the Licensee has submitted ‘there are no members who have come forward to fill’. The Licensee also submitted that although members ‘are invited to nominate for election’ to the committee, ‘usually there are fewer nominations than vacancies’ and it ‘has been many years since there was a contested election’. The ACMA acknowledges that community broadcasters can experience difficulty in getting their members to be active within the organisation, even when the rules of the organisation allow for participation.

The ACMA notes that the Rules allow for the election of any ordinary member to the CoM. Although two committee members appear to have served more than eight consecutive terms, 50 per cent of the committee are currently serving their first term. The ACMA notes that within the context of rules that provide regular opportunities for ordinary members to stand for election to the committee of management, it remains a matter for the ordinary members of the organisation, both as nominees and as electors, to increase their participation and representation, including that of women, on the committee.

Although the Licensee submitted that its Rules included a ‘limited renewable term’ for CoM members – that is, a period of three years that can be extended through re-nomination and re-election – the ACMA’s Participation Guidelines contemplate a ‘limited renewable term’ to place limits on how many times a committee or board member’s term can renewed, with the objective being to expand the number of people who fill such positions.

The complainant also stated:

A casual vacancy on the Committee of Management arose at the time of the [2019] AGM and was filled during the afternoon by another male member despite the presence and possible availability of several women station members.

This is not evidence that the Licensee denied any woman the opportunity to participate in its governance. The complainant has also suggested that women were not ‘stepping up to participate’ because they ‘do not feel supported or encouraged’, alleging that women at the Licensee had ‘experiences of hostility, discourtesy and even direct personal attacks’.

The ACMA is not in a position to ascertain the extent to which the internal culture of the Licensee’s organisation impacts on the degree to which women wish to participate in its governance. Nevertheless, the licence condition requirement to encourage community participation is relevant to one of the largest demographic categories of the Licensee’s general community of interest – women (who were 51.7 per cent of the licence area population in the 2016 Census). The absence of formal obstacles to female participation may not be sufficient where the participation of women is low, and a more pro-active approach may be needed. In that regard, the ACMA notes that the committee currently has two casual vacancies which provides an opportunity to increase female representation on the CoM.

In its submissions dated 5 November 2020, the Licensee indicated that ‘since mid-2019’ it had invited four women to join the CoM.

The Licensee also provided information about the number of women who had served on the CoM since it began operations in 1988. This information indicated that at times there had been as many as five women sitting on the CoM (2002 to 2004). However, the information also indicated that since 2005 there has only been one year in which more than one woman sat on the CoM (in 2010, when there were two female CoM members).

The ACMA notes that, although not the subject of this investigation, Code 2.5 of the Community Broadcasting Code of Practice 2008 (the **Code**), requires that licensees’ activities and behaviour will ‘oppose and break down prejudice’ on the basis of gender, as a way of promoting and encouraging community participation.

The participation of women outside of the CoM – on the Licensee’s sub-committees and other working groups – is addressed below. The participation of women in programming is considered under Issue 2.

*Dispute resolution*

One way in which a licensee can promote membership and volunteering is by implementing an effective internal dispute resolution policy. This promotes the orderly settlement of internal conflict amongst and between members, volunteers and the licensee’s management. The ACMA noted to the Licensee in 2015, when it last renewed its licence, that it should review the requirements of the Code and implement all policies and procedures that are required. This includes policies and procedures to effectivity deal with internal conflict (Code 1.5). In its assessment of the Licensee’s application for renewal of its licence at that time, the ACMA identified the lack of a dispute resolution policy (and other corporate governance policies) as potentially impinging on the Licensee’s capacity to deliver the service.

The complainant has alleged:

One other woman […] actually complained to the committee formally about the way she had been treated by [X – a member of the CoM] on a particular occasion. The complaint was dismissed by the committee, and the reason given was that [redacted due to privacy concerns] and that [X]’s impolite behaviour was not considered to warrant an apology. The Committee of Management has not shown leadership in this matter.

[…]

[Y] had cause to complain in July 2019 about [X’s] manner of interacting with her and the COM found that complaint unsubstantiated. [Y] says that the current management methods at the station are inappropriate. Detailed policies about personal treatment and rights have not been adequately adopted and publicised; the position of the women at the station is institutionally, (and in some cases personally) under attack.

It is not the ACMA’s role to investigate the outcome of individual internal disputes or to act as a mediator or arbitrator in conflict between parties. However, the ACMA notes that an internal dispute resolution policy that has been ratified by and circulated amongst members, helps to provide confidence to members that their complaints will be dealt with appropriately.

The complaint indicates that there is a mechanism by which members’ complaints may be brought before the CoM and the ACMA notes that the Licensee provided a copy of its ‘Policies and Procedures on Internal Conflict’ as part of its 2020 licence renewal application. From the Licensee’s submissions to the ACMA dated 5 November 2020, it appears that the policy was formulated subsequent to the actions that gave rise to this complaint.

This policy document places general responsibility for managing disputes in the hands of a CoM-appointed ‘Disputes Officer’ and ultimate responsibility for resolving internal conflict on the CoM itself. It also states that in cases where ‘the Committee of Management is unable to resolve the dispute, a decision will be made on the necessity of mediation or conciliation by a third party’, although it does not specify the criteria by which such a decision will be made. The policy does not specify how disputes involving a member of the CoM are to be managed.

*An effective and transparent committee structure*

The complainant’s allegations regarding committees related to the CoM and the programming sub-committee. The allegations regarding the CoM were dealt with above and the operation of programming sub-committee is discussed under Issue 2.

Based on the Licensee’s submissions, the ACMA makes the following general observations about the Licensee’s other sub-committees and ‘working groups’.

The Licensee appears to operate two classes of sub-committee. The first class is recognised in the Rules.

This class of sub-committee is made up of members of the CoM and appointed by that committee. These sub-committees cannot take decisions which incur any ‘liability or commitment’ on behalf the Licensee and must submit recommendations for any matters requiring decision by the CoM. The CoM may co-opt people to these subcommittees from outside the organisation, but in an advisory capacity only. The Rules are silent with regard to ordinary members’ participation on these sub-committees.

The Licensee has submitted that there are currently three of this class of sub-committee – one of each concerning Administration, Governance and Technical. These are comprised entirely of male members of the CoM. The Licensee has not advised of any co-opted persons acting in an advisory capacity.

The second class of sub-committee are groups referred to both as ‘working groups’ and also colloquially as ‘sub-committees’ and are not recognised in the Rules. There appear to be six such groups, each comprised of CoM members and ‘volunteers approved by CoM’:

* community engagement (currently one CoM member, one vacancy)
* marketing sales and promotion (currently two CoM members, one vacancy)
* membership development and retention, relations and benefits (currently two CoM members, four vacancies)
* outside broadcast development and implementation (currently three CoM members, four vacancies)
* presenter training (including curriculum development) (three members (including one CoM member), two vacancies)
* programming oversight, development and presenter liaison (currently seven members (including two CoM members)

The ACMA notes that of the eighteen filled positions on these working groups, eleven are occupied by CoM members; and four of the six working groups contain only CoM members. Overall, just three of the eighteen positions are occupied by women – with no women included in the seven-member programming working group.

Vacancies in the working groups were regularly advertised in ‘The President’s Report’ in the 2019 editions of Licensee’s quarterly newsletter, ’96.5 Inner FM News’.

As noted above, the working groups do not appear to be the class of sub-committees recognised formally in the Rules, given the inclusion of ordinary members/volunteers and the distinction made in the Licensee’s submission. They appear to have been established following the development of the Licensee’s *Strategic Plan 2018-2021*, a copy of which was provided to the ACMA. This document includes a detailed list of the tasks to be completed by each of the working groups/subcommittees, to achieve their nominated goals. The Strategic Plan indicates that many working group tasks are referred to the CoM for approval.

By making many operational decisions the direct responsibility of the CoM, which acts on recommendations received from ‘portfolio’ bodies appointed by the CoM and led by members of the CoM, the Licensee has concentrated operational decision-making in too few hands. This means that the functions and activities of the sub-committees and working groups – the key vehicles for community participation in the operations of service – are too tightly controlled by the CoM.

The Licensee’s submissions dated 5 November 2020 stated:

The reason that 3INR created Working Groups was that the use only of sub-committees was actually an impediment to encouraging greater participation in its operations.

As Working Groups do not have the authority to make binding decisions they are viewed as advisory only, thereby overcoming constitutional requirements. It is unfair and against the principles of good governance of corporations to say that “the [Licensee] has concentrated operational decision-making in the hands of a few”.

The ACMA does not accept the Licensee’s reasoning is based in sound governance practices. The concentration of control may discourage, rather than encourage, the participation of other members in the operations of the Licensee. The ACMA acknowledges the need for the CoM to retain sole power to incur liabilities and to make commitments to external parties, but cannot see why the working groups could not be constituted and appointed in other ways, for example through direct appointment by the ordinary members of the organisation. The ACMA also notes there is scope for the working groups to have increased decision-making responsibilities. It remains open to the Licensee to amend its Rules if it considers that the current provisions prevent developing more substantive roles for its working groups.

Membership of the President’s Advisory Working Group (PAWG) appears to be even more limited and closely controlled than the other sub-committees (both formal and informal), in that it is open only to those invited to join. The PAWG is described in ‘The President’s Report’ in the June 2019 edition of the Licensee’s newsletter:

Deputy President […], and myself, are seeking assistance and ideas we can put to the CoM for consideration and development for the future of our Station. The PAWG consists of long-term Members who’ve been invited to get together every couple of months just to discuss ideas and maybe make recommendations to the CoM for future implementation.

Vacancies on the PAWG, in contrast to the ongoing vacancies on the other working groups, were not advertised.

Although the ACMA is not aware of any formal barriers to women participating in the operations of the Licensee, female participation in the Licensee’s management and sub-committees is low and the Licensee has provided no evidence of efforts being made to increase it.

*Conclusion – Issue 1*

In summary, there is a high degree of formal and informal control exerted by the CoM over the operations of the Licensee through the membership and decision-making processes of its advisory working groups and subcommittees. This can have the effect of discouraging ordinary members and volunteers, including women, from taking a more active role within the organisation. The ACMA notes the difficulty the Licensee appears to be experiencing in filling the vacant ordinary-member positions on its working groups and the lack of woman on the CoM. In cases where a dispute arises from actions taken or a decision made by a member of the CoM, the Licensee’s internal dispute policy lacks clarity in how such a dispute is to be managed.

Taking these matters into account, the ACMA finds that, at the time of the complaint, the licensee did not have corporate governance practices that gave the community it served adequate input into the decision-making that affected the community broadcasting service and therefore was not encouraging community participation in its operations.

Accordingly, the ACMA finds that the Licensee has breached the licence condition at subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Issue 2: Encouraging community participation in the selection and provision of programs

Relevant licence condition

**Schedule 2**

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

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

[...]

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

[...]

(ii) the selection and provision of programs under the licence

Finding

The ACMA finds that the Licensee is not encouraging community participation in the selection and provision of programs under the licence, and accordingly, has breached subparagraph 9(2)(c)(ii) 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 selection and provision of programs under the licence.

*Selection of programs*

As noted above, the complainant raised concerns about the operation of the programming sub-committee:

It was stated at the Annual General Meeting by [X] and as appearing in the AGM report to members, that [X] has established a Programming Sub-Committee comprised of [X], [Z], and an anonymous group of 5 presenters appointed by [X]. It was stated that decisions taken by [X] in relation to programming were ratified by this committee (after having been taken by him presumably); under further questioning the position on this issue was amended to ‘all decisions were taken by’ this committee. No appeal or dialogue is possible under such circumstances, which seems to be against the principles of democracy and transparency …

[…]

… the evaluation of her show was apparently undertaken by an anonymous programming committee reporting to [X] who made the decision to remove the presenter, probably an all-male committee which did not implement the need for adequate women’s representation as a programming principle.

The Participation Guidelines provide the following guidance on how a licensee might encourage community participation in the selection of programs:

Licensees encourage community participation in program selection by providing opportunities for their communities to have a say in programming decisions.

Licensees do not encourage community participation in program selection where all programming decisions are concentrated in the hands of one individual (station manager or program coordinator, for example) or a small group.

[…]

A common way to encourage collective decision-making about programming is for licensees to establish a program committee.

Licensees need to give some thought to the membership of their program committee. Program committee membership should not be unreasonably restricted to certain individuals, such as board members.

Program committees with restricted membership are:

* unlikely to give the community adequate opportunity to participate in program selection; and
* at risk of their program schedule not representing their community interest.

Licensees may give program committees a range of responsibilities, for example, to:

* develop and implement programming policies and procedures;
* publicise the procedure for making programming applications;
* accept and consider programming applications;
* collectively decide the programs that best reflect the needs of the community;
* ensure the program schedule remains diverse and reflects the needs of the community;
* oversee surveys of the community interest‘s programming preferences;
* revise program schedules to incorporate new programs; and
* negotiate program proposals with applicants.

As noted above, the Licensee advised in its submission to the ACMA, dated 5 May 2020, that a seven-member working group was responsible for programming oversight. The Licensee’s Strategic Plan identified a Programming and Quality Committee (also referred to as the Programming Working Group), whose goals included bringing ‘continuous, measurable improvement to the variety of programs and the standard of presentation at the station’. Under the Strategic Plan, this was to be achieved by undertaking a number of tasks, including developing programming guidelines and reviewing and adjusting the program schedule.

Reporting on a response given to a question at the 2019 AGM, the Licensee’s President wrote in the Licensee’s newsletter:

All program changes during 2019 were decided by the PWG [Programming Working Group] after consideration of relevant circumstances and the best interests of the radio station. […] As President, I chair the PWG and the CoM [Committee of Management]. All programming decisions are reported to the next CoM meeting for approval.

Despite the Programming Working Group having been tasked to ‘revise program schedules to incorporate new programs’, the Licensee has provided no details about processes by which new program proposals are encouraged or accepted from the community or members.

The Licensee submitted that its 57 presenters, with ‘the extreme diversity in the range of those programs’, makes it inconceivable that the Licensee was not adequately encouraging participation in the provision of programs. However, the ACMA’s concerns have arisen from the lack of information about how new program ideas are accepted or developed. The ACMA does not consider that the number of presenters is, by itself, a critical metric by which a Licensee can determine that it is effectively encouraging community participation in the development of new programming on the service.

No details about the programming guidelines have been provided to the ACMA even though the Licensee’s 5 May 2020 submission indicated that the guidelines were to be finalised in November 2018. It appears from the Licensee’s submission that new program proposals originate in the working group and are approved by the CoM, although the details of the process of selection and the criteria for approval of new programming were not provided.

The Licensee also submitted that the recommendations of the Programming Working Group ‘have not been known to not receive approval by the Committee’. Noting that the CoM does not have a record of rejecting recommendations of the Programming Working Group, it is unclear why programming decisions must be routinely taken to the CoM. The point was made under Issue 1, that the ACMA does not accept the reasoning that the routine involvement of the CoM in these matters is based on sound governance practices. The concentration of control may discourage, rather than encourage, the participation of other members. Decentralising programming decision-making to the Programming Working Group would not remove ultimate authority from the CoM, should the need arise, but could streamline decision-making and create more meaningful participation for those members of the Programming Working Group. The ACMA does not agree with the Licensee’s submission that the involvement in programming decisions of the 9 members of the CoM, together with the 7 members of the Programming Working Group, is sufficient evidence of diversified decision-making.

The ACMA considers that the Licensee’s processes for overseeing programming on the service are less transparent than is required to comply with the licence condition at sub-paragraph 9(2)(c)(ii) of Schedule 2 to the BSA, that licensees must encourage community participation in the selection and provision of programs. As programming decisions are the responsibility of the CoM, acting on recommendations received from a body appointed by the CoM and chaired by the President of the Licensee, the ACMA considers that this inappropriately concentrates decision-making power about programming in too few hands and that the community is therefore not adequately encouraged by the Licensee to participate in the selection of programs broadcast under the licence.

The ACMA also notes that CoM members aside, the Licensee’s submissions of 5 May 2020 confirmed the complaint that the identities of the other members of the programming committee were hidden from members. The ACMA can see no valid reason why this should have been so but acknowledges the Licensee’s later submission that the identities of members of the Programming Working Group are now disclosed. Membership of the programming sub-committee should be open and transparent.

*Provision of programs*

The Participation Guidelines note that licensees can encourage community participation in the provision of programming by:

* giving members of the community an opportunity to produce and present programs
* being open to new programming ideas from the community
* ensuring any airtime fees are reasonable and the procedure for deciding access to airtime is fair and transparent.

Opportunities to produce and present programs

The complaint alleged:

Examination of the weekly programming indicates that of the station’s broadcast hours (excluding overnight recorded music), approximately 15% are programmed by women, and 85% are programmed by men.

The licensee submitted a weekly program guide, which was marked ‘updated Feb 2020’. This guide indicated that at that time there were 64 individual slots for hosted programs – that is, programs other than the pre-recorded ‘music overnight’ – constituting 123.5 hours (or 74 per cent) of the total weekly programming of 168 hours. Of these 64 programs, eight (or 12.5 per cent) appeared to have female hosts, comprising 14.5 hours (or 12 per cent) of the total hours of hosted programming on the service. In addition to these programs, one program indicated it had part-time female participation (hosting one show per month).

Seven of the 64 hosted programs, totalling 10 hours of broadcast time, did not identify any individual presenters.

The Licensee’s submission, dated 5 November 2020, included information that 11 of its 57 (19%) presenters were women, and that this compared favourably with an average of 25% across a sample of ten community broadcasting services. The ACMA is not aware of the basis upon which the ten community services used for this comparison were selected but notes that research published in 2017 by the Community Broadcasting Association of Australia found that across the sector, 40% of volunteer on-air roles were occupied by women.[[2]](#footnote-3)

The complaint alleged that in 2019, the Licensee had removed two of the programs it had at that time that were presented by women:

While all the women at the station work hard to make their programs of high listening value, their input and opinion has not been sought by […], and decisions have been made in a secretive and high-handed fashion. Of the ten female-presented programs at the station (including the school-girls’ weekly program), two have been summarily and arbitrarily terminated by […], with no offer of a substitute time.

The complaint also alleged that the Licensee had conducted ‘compulsory interviews’ with presenters in ‘an atmosphere of authoritarian and dictatorial micromanagement’ in which ‘many presenters felt devalued and disrespected’. These interviews, the complainant alleged, ‘put presenters under the personal pressure of an obscure scrutiny as to why these were conducted and what might happen after’. The complaint included a copy of internal correspondence that indicated that one presenter had been taken off-air, without notice, ‘effective immediately’, to make way for a different program.

The ACMA’s Participation Guidelines state that although licensees are able to make programming decisions that affect presenters or program providers, by reducing their airtime or cancelling a program, licensees that reduce or remove a presenter‘s airtime should:

* have a valid reason for making the change to the program schedule (for example, to incorporate a new program for which there is a demonstrated community need);
* have a procedure for making changes to the program schedule and follow that procedure; and
* where possible, make reasonable efforts to identify and offer alternative arrangements to the affected presenter or program provider.

The ACMA notes that the Licensee’s Presenter’s Agreement (considered further below) states that airtime is at the ‘absolute discretion’ of the CoM. The Presenter’s Agreement does not establish a procedure for making changes to the program schedule nor does it set out any obligation on the part of the CoM to explain to affected presenters its reasons for removing access to airtime, to give adequate notice, or to offer alternatives.

Presenter training

The complainant alleged that one female presenter had been taken off-air with ‘no offer of supportive training’ and ‘no assistance offered to remedy the presumed ‘defects’ of the program’.

The Licensee’s 2018-21 Strategic Plan identified a personnel development task of providing refresher/upgrade training for existing presenters. The Licensee submitted that this was to be completed by November 2018, with multiple training sessions delivered to maximise participation. Topics identified for inclusion in the refresher training included interview techniques, on-air telephone usage, handling equipment failures and outside broadcasting.

The Personnel Development Committee (PDC), which oversaw the implementation of the training component of the strategic plan, was also responsible for reporting to the Programming and Quality Committee (P&QC) those existing presenters who did not attend the refresher training. The P&QC is responsible for the ‘allocation of presenter on-air time’. It is not clear from the Licensee’s submission how many presenters attended refresher training or if there were any consequences for those presenters who did not attend.

The Licensee also submitted that three members are currently responsible for training new presenters and that video training materials are being developed to assist with this process.

The Licensee further noted in its submissions that presently, ‘3INR’s refresher/upgrade training has been postponed until after the COVID-19 restrictions are eased’.

Presenter Agreement

The complaint alleged:

The new presenter agreement was disclosed to presenters after the presenters’ meeting following the AGM in August 2019 with one month to sign or be taken off air which meant that there could be no discussion of its contents at either the AGM or the immediately following presenters’ meeting. Now each presenter has the jeopardy of ‘sign or go’.

The complaint drew particular attention to two clauses: (1) presenters’ personal liability for damage to station premises or equipment, and (2) a prohibition on the broadcast of unauthorised promotional material.

The Licensee has submitted that the Presenter Agreement was approved by the CoM in July 2019 and was based on the Community Broadcasting Association of Australia’s (CBAA) pro-forma agreement.

The ACMA’s Participation Guidelines note that presenter agreements should not:

* prevent the community from having reasonable access to program provision
* prohibit presenter involvement with other community groups or
* require presenters to undertake expensive training before they can go on air.

The ACMA considers that presenter agreements are important as they provide an explicit and transparent set of arrangements that govern the participation of volunteers and members as presenters of programs. This allows presenters to clearly understand their obligations with respect to the licensee but also to have clearly outlined the undertakings that the licensee agrees to with respect to the presenter. The ACMA notes that the Licensee’s Presenter Agreement is almost exclusively focused on the obligations of the presenter: recording attendance, behaviour on station premises, payment of fees, maintenance of broadcast standards, and compliance with rules of presentation.

There appear to be no reciprocal obligations on the Licensee – for example, a right of appeal or right to be heard regarding decisions made about compliance with the agreement, an obligation on the Licensee to provide reasons for revocation of permission to broadcast programs or to consider alternate timeslots. The ACMA acknowledges the Licensee’s submission that it will review its presenter’s agreement with regard to the issue of reciprocal rights for presenters.

The ACMA also notes that the Licensee disputes the complainant’s allegation that the Presenter Agreement was not subject to a consultation process prior to its implementation. The Licensee has submitted that ‘[p]resenters were provided with the proposed agreement and allowed a month to consider it and discuss with the relevant committee members’.

The ACMA understands that the CBAA does not have a pro-forma presenters’ agreement but rather directs its members to the ‘rights and obligations of volunteers’ section in the Code and provides examples from other community broadcasters. The ACMA could not identify any provisions in the CBAA sample agreements it considered that made presenters liable for any damage to equipment or premises, as is the case with the Licensee’s presenter agreement. With respect to this provision, the Licensee has submitted:

In order to avoid or deter continuation of incidents which had occurred as a result of which studio facilities and equipment were being damaged by presenters or their guests, it was determined that presenters acknowledge formally their (existing legal) obligation to compensate 3INR for any such damage.

The Licensee maintains that this provision is ‘fair, reasonable and necessary’.

*Conclusion – Issue 2*

The Licensee has submitted that it is willing to ‘enhance its structure, committees and documented policies’ and the ACMA welcomes that undertaking. At the same time the Licensee has submitted that it does not believe that such actions would increase community participation. The ACMA notes that encouraging community participation is not only about numbers of volunteers and presenters, it is also about the quality of the participation that is open to those who do volunteer and present. The ACMA considers that decentralising decision-making, where it is appropriate to do so, and ensuring that the right internal policies are in place that support the activities of volunteers and members, are equally important to encouraging community participation.

The ACMA considers the level of female participation in the provision of the Licensee’s programs – 12.5 per cent of hosted programs which represents 12 per cent of hosted programming time – is too low. From the complaint received by the ACMA, which refers to the cessation during 2019 of two programs hosted by women, it appears that even this low level may be decreasing.

The ACMA also considers that the processes by which programming is decided are not transparent nor sufficiently inclusive of members. Members, volunteers and the community should have a clear view of and have an ability to contribute to decisions about how airtime on the Licensee’s service is allocated.

For these reasons, the ACMA finds that the Licensee does not encourage community participation in the selection and provision of programs on its service and has breached subparagraph 9(2)(b)(ii) of the BSA.

1. See the ACMA’s ‘Community Broadcasting Participation Guidelines’, [www.acma.gov.au](http://www.acma.gov.au), p9. [↑](#footnote-ref-2)
2. See <https://www.cbaa.org.au/sites/default/files/media/CBAA%202017%20Financial%20Health%20of%20Community%20Radio%20Survey%20FINAL.pdf> , page 35. Accessed 10 November 2020. [↑](#footnote-ref-3)