Investigation Report no. BI-518 and BI-548



| Summary |  |
| --- | --- |
| **Licensee** | Multicultural Radio & TV Association of WA Inc |
| **Station** | 6EBA |
| **Type of service** | Community Broadcasting |
| **Issue** | Encourage community participation |
| **Relevant legislation** | *Broadcasting Services Act 1992* (BSA)* Subparagraph 9(2)(c)(i) of Schedule 2 to the BSA [which requires a licensee to encourage community participation in providing its service]
* Subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA [which requires a licensee to encourage community participation in the selection and provision of programs]
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| **Findings** | The Licensee:* Did not breach the licence condition imposed by subparagraph 9(2)(c)(i) of Schedule 2 to the BSA
* Did not breach the licence condition imposed by subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.
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Background

On 16 July 2019, the Australian Communications and Media Authority (**the ACMA**) received a complaint (**the** **First Complaint**) alleging that the Multicultural Radio & TV Association of WA Incorporated (**the Licensee**) has failed to encourage community participation in the operations of, or the selection and provision of programs by, the radio station operated by the Licensee, 6EBA FM (**the Station**).

On 21 November 2019, the ACMA received a further complaint (**the Second Complaint**) which also raised allegations that the Licensee was failing to encourage community participation in the operations of the Station, or the selection and provision of programs.

On 21 December 2019, 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:

* subparagraph 9(2)(c)(i) of Schedule 2 to the BSA (which requires that licensees encourage members of the community that it services to participate in the operations of the licensee in providing the service or services).
* subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA (which requires that licensees encourage members of the community that it serves to participate in the selection and provision of programs under the licence).

The Licensee

Since December 1990,the Licensee has held a long-term community radio broadcasting licence to represent the ethnic community interest in the Perth RA1 licence area. The expiry date of the current licence is 10 December 2025.

Assessment and submissions

This investigation has considered the following material:

* the First Complaint.
* the Second Complaint.
* written submissions and various documents provided by the Licensee to the ACMA on 8 October 2019 (**the Submissions**) including:
	+ the Multicultural Radio and Television Association of Western Australia (Inc). Constitution (**the Constitution**).
* the community broadcasting licence renewal application lodged by the Licensee on 31 March 2020 (**the Licence Renewal Application**).

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**

**Part 5 – Community broadcasting licences**

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

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

[...]

1. 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 has not 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 complaints included allegations that:

* The Station is being governed, in effect, by only two individuals.
* The Acting Station Manager is the primary decision maker at the Station and is the convenor of 4 subcommittees.
* The Station is refusing representatives selected by member organisations to attend annual general meetings (AGMs) unless they are authorised by the Station.
* The Station is failing to notify all members of AGMs.

These allegations suggested that control of operations at the Station is concentrated in the hands of a small number of individuals, and that the absence of sound corporate governance practice at the Station has resulted in the exclusion of members from AGMs. Both issues represent a concern that the Licensee is failing to encourage community participation in the operations of the Station.

The ACMA’s [Community Broadcasting Participation Guidelines 2010](https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf) (**the Guidelines**) provide guidance on how a licensee might encourage community participation in the operations of its services, and includes the following:

[…]

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.

[…]

Sound corporate governance practices […] enable communities to have adequate input into the decision-making that affects their services.

Examples of sound corporate governance practices include:

[…]

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

[….]

[…]

Licensees should aim to have a range of committees, make their members aware of how to nominate for committee positions, and have their committees meet regularly and keep appropriate records…

[…]

The community participation requirement means that participation in a service should be open to all within the licensee’s defined community interest.

If restrictions on membership are unreasonable, the licensee may not comply with the community participation requirement.

 […]

The ACMA notes that licensees should use a range of initiatives and measures to encourage community participation. However, no single activity or initiative alone is likely to result in compliance with the community participation requirement.[[1]](#footnote-2)

In assessing the complaints, and to determine if the Licensee is failing to encourage participation in its operations, the ACMA has assessed:

* The membership structure of the Licensee and the promotion of membership and volunteering by the Licensee.
* Whether members of the community can participate on the Station’s boards and subcommittees and the function of boards and subcommittees at the Station.
* Community participation at AGMs.
* Whether the Licensee has governance documents in place to support community participation.

**Membership structure and the promotion of membership and volunteering**

As outlined in the Guidelines, the ACMA considers membership to be one of the primary ways of encouraging community participation in the operations of a community broadcasting service, noting that members can participate in decision-making activities by way of:

* Attending and voting at meetings
* Nominating for membership of boards and committees
* Participating in boards and committees
* Proposing items of business for general meetings.

The Constitution and the License Renewal Application, state that the Licensee has four categories of membership:

1. Ethnic Broadcasting Member
2. Broadcasting Member
3. Associate Member
4. Life Member.

Pursuant to clause 5.1 of the Constitution, an Ethnic Broadcasting Member is defined as:

[…]

an ethnic group which is incorporated under the Corporations Act 2001 (Cth) or Associations Incorporation Act 2015 (WA) and which predominantly produces ethnic cultural and news programmes to be broadcast by the Station.

[…]

The category of Ethnic Broadcasting Member is the only membership category which carries voting rights (clause 5.1). Individuals and organisations that do not meet the Constitution’s definition of an Ethnic Broadcasting Member are able to apply for Broadcasting or Associate memberships (clauses 5.1, 5.3 and 5.4).

Clause 5.5 of the Constitution sets out that all membership applications are considered by the Licensee’s Council of Management (**the Council**).

While the ACMA’s preference is for community radio broadcasting services to have open membership policies[[2]](#footnote-3), whereby membership is automatic on application or the licensee may only refuse membership on the basis of specific and transparent criteria, there is no requirement for licensees to adopt such a policy. The membership policy adopted by the Licensee reflects a consortium model, whereby full financial membership is only open to an incorporated body representing an ethnic group in the community, and is not an uncommon membership structure adopted by community broadcasting licensees serving an ethnic community interest.[[3]](#footnote-4)

Based on the information submitted by the Licensee in its Licence Renewal Application, volunteer opportunities are afforded to all categories of the Licensee’s membership. The License Renewal Application indicated that,between 20 March 2019 and 20 March 2020, the number of financial voting members (Ethnic Broadcasting Members) had decreased from 39 to 36, and in the same periodthe number of non-voting volunteer members had increased from 228 to 262. The Community Broadcasting Association of Australia reports that the average number of financial members for a metropolitan community broadcaster is 552, and the average number of volunteers is 265.[[4]](#footnote-5) Noting that the structure of community broadcasters serving an ethnic community interest differs to most community broadcasters, the ACMA expects that the Licensee’s average number of financial members will be low in comparison to industry averages (which typically relate to individual memberships rather than membership by organisations).

There are a variety of ways in which a licensee can promote its membership, including, but not limited to: broadcasting on-air announcements, publishing information on its website, utilising social media (such as Facebook), and holding membership drives[[5]](#footnote-6). The Licensee included in its Submissions some of the means it has adopted to engage with the community, noting that:

[…]

6EBA forms partnerships with organisations […]. These partnerships promote the station and give access to people who may not have otherwise known about 6EBA or had the means to obtain a program with us. These partnerships help us forge relationships with others and introduce us to new groups. These groups also offer insight into the new and emerging communities and which groups would benefit from involvement at this stage, and which groups need to be involved.

[…]

Facebook has been a great medium to raise awareness of the station and ask for community participation and to interact with the public.

[…]

Our broadcasters also make on-air announcements in their language informing listeners that we would like new members to join us.

[…]

The station has recently spent money to obtain outside broadcast equipment so we can conduct outside broadcasts. Our membership would like to be present at different festivals and community events so that the wider community may learn about 6EBA.

[...]

The station also spent money to give the front of the building a facelift and to put speakers so the station could be heard 24/7. The local council (council of Vincent) was very keen on this. The station now stands out and people passing by knock on the door to enquire about us and get a program guide and other information of the station.

[…]

In both the Submissions and Licence Renewal Application, the Licensee provided a copy of the Station’s ‘Community Engagement’ policy. The policy notes that the Station will encourage membership amongst individuals, families, and local community groups in the licence area and invite said parties to participate ‘in all aspects of the station’s operation and broadcast*’*.

Additionally, the ACMA has reviewed [the Station’s website](https://www.6eba.com.au/faq/), which states the following in respect of members and volunteers:

[…]

If you are part of a CaLD (culturally and linguistically diverse) ethnic association with 25 or more financial members, and are representative of your language in the community, you may apply to the MRT of WA Inc. to become a Broadcasting member with a view to producing and presenting a radio programs to your community of interest.

[…]

Like any other community radio station in Australia 6EBA’s broadcasting members rely largely on the efforts of their own volunteers to maintain operations. Volunteers come from a wide range of backgrounds and volunteer for different reasons. Contact your organisation to become a volunteer. Volunteers directly involved in presenting radio programs need to be approved by Station Management and once authorised may apply to be a Broadcasting Associate, become registered on the station’s database and enrol in the training program.

[…]

If you are not directly involved in presenting the radio programs, there are many other ways you can offer assistance to your association and the station. Inactive volunteers are de-registered from time to time.

[…]

If you are from a CaLD (culturally and linguistically diverse) background and are interested in radio, we would be more than happy to introduce you to one of our member associations who speaks your language.

[…]

The ACMA is of the view that the Licensee has an appropriate membership structure in place, and is utilising various means appropriate for a community broadcaster serving an ethnic community interest, to actively encourage members of the community in the licence area to join the Station as either a member or volunteer.

**Can community members participate on boards and subcommittees?**

Sound corporate governance practices are essential in ensuring that a community broadcasting service is being managed effectively and enabling members of the community to have adequate input into the decision-making impacting the licensee’s service.

One manner in which community broadcasters practice sound corporate governance is through the use of various committees.[[6]](#footnote-7) Committees are a means of ensuring control of the licensee’s operations is not concentrated in the hands of a small group of individuals. The ACMA has assessed the Licensee’s various decision making bodies in order to determine whether or not the Licensee encourages participation in the operations of the Station.

*The Council*

Clause 11 of the Constitution states that the affairs of the Licensee will be managed exclusively by the Council. The Council is to consist of four Office Bearers (a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer), and no less than two, but no more than five, ‘other persons’. The term ‘other persons’ is not defined in the Constitution and is referred to as an ‘ordinary Council Member’ through the Constitution.

Clause 11.2 states the powers of the Council. These powers include carrying on the business of the Licensee, to give binding directions on any persons or committees acting on behalf of the Licensee, and to appoint non-voting advisors (Legal Advisory, Financial Advisor, Radio Engineer and Station Manager) to the Council when necessary.

Clause 21.1.5 of the Constitution states that to be eligible for election to the Council as anordinary Council Member, the person nominated must have been a representative of a Broadcasting Member for a continuous period of not less than 12 months immediately preceding their nomination as a Council Member, and must be nominated by the Broadcasting Member which they represent*.* To be eligible for election as an Office Bearer, the person nominated must have served on the Council as an ordinary Council Member or as an Office Bearer for a period of not less than 12 consecutive months immediately preceding their nomination.

The election of Councillors takes place at the Biennial General Meeting (clause 11.10).Each Council Member shall hold the position for two years or until the annual general meeting (AGM) at which Councillors are elected (clause 11.11), and may be eligible for re-election. A member has the right to be elected to the office of Chairperson for a maximum of three consecutive terms, unless no other nominations are available (clause 12.3). These limits help to make sure that operations of the service are not concentrated in the hands of a small number of individuals over time.

There is a risk that the term of a Council member could be indefinite if an AGM, at which Councillors are elected, is not held. While this is unlikely, the ACMA recommends that the Licensee amend clause 11.11(a) of the Constitution to specify that Council members will hold their position for no longer than *the earlier of* 2 years or until the next AGM at which Councillors are elected.

The following details regarding the Council were provided in the Submissions:

* As of October 2019, the Council comprised of nine members (four office bearers and five ordinary council members).
* The names of the Council members, their prior time served on the Council, and the AGM at which they were elected to the role.

In accordance with clause 11.11 of the Constitution, no employee of the Licensee sits on the Council. The Submissions state that there are five staff employed by the Licensee: the Station Manager, the Accounts Manager, an Office Clerk, a Broadcast Engineer and an IT Consultant.

The election of the Council at the AGM held on 4 August 2019 resulted in four new Councillors, who had not previously served on the Council, being elected. This indicates that the Licensee is encouraging participation in its operations by affording all members the opportunity to participate in an important aspect of the Licensee’s operations.

In respect of the Council’s decision-making powers, the ACMA has reviewed the following minutes that were provided by the Licensee in its Submissions:

* Minutes of the Council’s Meeting held on 29 July 2019.
* Minutes of the Council’s Meeting held on 27 August 2019.
* Minutes of the Licensee’s Special General Meeting held on 24 June 2019.
* Minutes of the Licensee’s AGM held on 6 October 2018.
* Minutes of the Licensee’s AGM held on 4 August 2019.

As noted above, the First Complaint suggests that the Station is being governed, in effect, by two individuals. In review of the above minutes, the ACMA notes the following:

* ‘Motions on notice’ are afforded to the Licensee’s members as per the Constitution. Motions are presented to the Council and voted on by Council members.
* The Chairman consults the membership on some AGM agenda items (e.g. amendments to the Constitution and appointment of the Station auditor) prior to the Council voting on the matter.
* The Council makes decisions on affairs of the Association (e.g. operation of subcommittees, financial reporting, member and volunteer enquiries, and the hiring of staff for the Station).
* Staff of the Station, members, and volunteers attend Council meetings as guests.

This indicates that the Council appears to be the peak decision-making body in governing the Station, and that the Licensee is adopting sound corporate governance practice by affording the wider membership opportunities to participate in the Council’s decision making.

The First Complaint raised concerns that the Acting Station Manager is one of the individuals governing the Station. The Acting Station Manager presented the ‘Acting Station Manager’s report' at a meeting of the Council held on 27 August 2019. The report advised the Council on matters such as the ‘daily running of the station’, program enquiries, potential new volunteers, and technical issues. This report also recommended the continued removal of convenors from subcommittees, as this allows all members of the Station’s subcommittees to chair a meeting, noting that ‘*all members are equal*’. The Acting Station Manager appears to consult the Council on various matters expected of the role, indicating that they are not acting alone in governing the Station.

The ACMA is of the view that the Council provides a mechanism used by the Licensee to encourage community participation in the Station’s operations, and to make sure that decision-making regarding the Station is not dictated by one or two individuals.

*Subcommittees*

The Licence Renewal Application and Submissions state that there are nine subcommittees which operate at the Station and report to the Council. These subcommittees include the:

1. Disputes subcommittee.
2. Programming and Training subcommittee.
3. Finance subcommittee.
4. Constitution, Policies and Procedures subcommittee.
5. Social and Fundraising subcommittee.
6. Building and Maintenance subcommittee.
7. Women’s subcommittee.
8. Youth subcommittee.
9. Senior’s subcommittee.

The Licensee has noted in the Submissions that it encourages members to join the Station’s subcommittees by way of emails, social media posts, on-air announcements, station functions and meetings. The Licence Renewal Application included a copy of an online advertisement calling for volunteers to join the Station’s various subcommittees.

In reviewing the minutes of AGM and Council meetings, the ACMA notes that subcommittees formed the basis of meeting agenda items, indicating that the subcommittees provide members with a say in the running of the station. The minutes of the Council meeting held on 29 July 2019 note that new members of the Station have joined subcommittees. Furthermore, minutes of the Council meeting held on 27 August 2019 indicate that subcommittee members were in attendance at that Council meeting as guests.

The Licensee has advised in its Submissions that members of the Station, staff of the Station, and the Council, have worked alongside the Community Broadcasting Foundation to establish governance guidelines for the subcommittees which fall within scope of the ‘Station rules, BSA licence conditions and other relevant broadcast law.’ The Licensee has advised that its subcommittee guidelines state that:

[…]

The sub-committees are open to all levels of membership, as per the MRTA Constitution.

Professional business people may sit in a sub-committee, strictly as a volunteer, corresponding with their field of expertise.

There should always be a link to the Station Manager and MRTA Council. The Station Manager shall sit on all sub-committees and a minimum of 1 Councillor shall be in all sub-committees. Ensuring transparency on all levels.

The Chairman of the MRTA of WA Inc will hold an ex-officio position on the following Sub-committees: Disputes/Programming and Training/Finance/Constitution, Policies and Procedures.

The sub-committees shall report back to the Station Manager and MRTA Council. Information may then be made available to broadcasters and membership categories through: AGM/SGM/Broadcaster Meetings/On air announcements & programming/social media/print media.

The sub-committees shall be advertised via appropriate means. For example: On-air announcements, newsletters, website, Facebook and training.

The Licensee noted in its Submissions that there is no hierarchy within subcommittees and that responsibilities (e.g. chairing meetings, writing reports, attending meetings of the Council where required) within each of the subcommittees are shared amongst members.

In its Submissions, the Licensee provided a list of all subcommittee members. Consistent with the Station’s subcommittee guidelines, the Station Manager and one Council member sit on all subcommittees. The ACMA notes that individuals from various member groups (Ethnic Broadcasting Members, Broadcasting Members, Associate Members and volunteers) sit on the subcommittees, indicating that the current structure does not appear to be discouraging members from joining the subcommittees and taking an active role in the Licensee’s operations.

The ACMA is of the view that the Licensee appears to be taking measures to actively encourage participation in the Station subcommittees.

**Community participation at AGMs**

*General meetings – attendance and voting rights*

The Constitution does not set out who can attend an AGM. However, clause 24 of the Constitution sets out the voting rights of members of the Licensee at a general meeting.

Clause 24.1 states that each Broadcasting Member present in person at a general meeting is entitled to a deliberative vote. It is unclear why this is different from the description of Broadcasting Member in paragraph 5.1 of the Constitution, which states that members in this category shall have no vote. The ACMA recommends that the Licensee amend the Constitution to clarify this apparent inconsistency.

Clause 24.2 states that an Ethnic Broadcasting Member which is a body corporate may appoint a natural person, whether or not he is a member, to represent it at a particular general meeting or at all general meetings.

*Delegates attending AGMs*

In its Submissions to the ACMA, the Licensee noted that there is a rule in place that only two delegates may attend an AGM. The ACMA notes the following information that was provided in the Submissions:

* Since 1990, a rule has been in place that only two delegates of member groups are permitted to attend AGMs (**the** **Delegate Rule**).
* The Delegate Rule was discussed with member groups and passed as a motion through the Council.
* Since the Delegate Rule has been adopted, it has been raised yearly at broadcaster meetings, where it has not been a concern with members.
* The Delegate Rule has been submitted by the Licensee in its applications to the ACMA for renewal of its community broadcasting licence, and the ACMA has not provided any negative feedback regarding the rule.

The Licensee stated in its Submissions that:

[…]

Our members want the ability to pick who will represent them at our annual general meetings. By making it open to all, that gets taken away from them.

The convenor of the member group always attends the AGM, unless absent, and the convenor with their committee picks the second delegate.

The member groups, broadcasters, MRTA Council and staff have always agreed that if every volunteer attended it would make the process a lot harder with the size of the membership. This would be counterproductive.

In 2017 the constitution was changed, and the broadcasting categories were separated. In 2018 only the ethnic broadcasting members could attend.

In 2019 the current Station Manager brought this to the attention of the MRTA council and all broadcasting members were able to attend the AGM.

[…]

The ACMA has received no complaints regarding the Delegate Rule. The Constitution does not include the Delegate Rule and this appears to be a rule that was passed by the Council, after discussion with member groups, and has been implemented by the Licensee. The ACMA recommends that the Licensee amend its Constitution to formally adopt the Delegate Rule, to make sure the operation of the rule is transparent. The process of formally adopting the rule would also provide an opportunity to ensure the members of the organisation are comfortable with its operation, and the inclusion of any appropriate constraints or safeguards relating to the rule that members would like to see.

*Authorised delegates attending AGMs*

The First Complaint included copies of emails sent from the Acting Station Manager to an Ethnic Broadcasting Member regarding the representative selected by an Ethnic Broadcasting Member to attend the Licensee’s AGM.

The Acting Station Manager stated in an email that:

[…]

As you are aware, [person x] is not a broadcaster at this station. Only authorised volunteers may attend the AGM, therefore [person x] will be denied access. Authorised volunteers are more than welcome to attend if they respond as per our paperwork that all authorised broadcasters received. In fact the MRTA council encourages attendance and we have sent multiple emails to [person x] broadcast team.

[…]

The Acting Station Manager stated in a subsequent email that:

[…]

The MRTA of WA Inc. has already informed you that [person x] cannot attend the AGM. We have asked your broadcasters to attend, and they have declined in writing. Security will not allow any unauthorised people into the AGM.

[…]

The ACMA has reviewed the Constitution and notes that no clause stipulates that only delegates authorised by the Licensee may attend the Licensee’s AGM, or afford the Licensee rights to approve an Ethnic Broadcasting Member’s AGM representative. Clause 24.2 of the Constitution states that:

An Ethnic Broadcasting Member which is a body corporate may appoint in writing a natural person, whether or not he is a member, to represent it at a particular General Meeting or at all General Meetings.

Irrespective of an individual’s status as a broadcaster or a member, should an Ethnic Broadcasting Member of the Licensee appoint an individual in writing to attend the Licensee’s AGM on its behalf, there are no grounds on which the Licensee can reject this appointment. Based on the email evidence provided, the Ethnic Broadcasting Member has acted within the rights afforded to it in the Constitution.

While clause 25 of the Constitution permits the Licensee to alter or rescind the rules of the Constitution by way of special resolution, no evidence has been provided from the Licensee to the ACMA which suggests clause 24.2 has been altered or rescinded to permit the Licensee to ‘authorise’ the representatives selected by Ethnic Broadcasting Members to represent it at the Licensee’s AGMs.

The ACMA notes that the Licensee included in its Submissions copies of the ‘Notice of Annual General Meeting’ for Ethnic Broadcasting Members and Broadcasting Members in respect of the AGM held on 4 August 2019, both of which state that ‘a total of 2 delegates can attend the AGM’.

AGMs are of significance to both members and licensees as they permit members to have a say in decision-making related to the operations of the licensee (through the ability to vote for boards and committees and propose items of business) and serve as a means for licensees to encourage community participation in its operations.

Clause 24.2 of the Constitution allows for an Ethnic Broadcasting Member which is a body-corporate to appoint in writing a natural person, whether or not a member, to represent it at a particular general meeting or all general meetings. Under the Constitution, Ethnic Broadcasting Members have the right to be represented at a general meeting by a natural person of their choice. By preventing [person x] from representing an Ethnic Broadcasting Member, the Licensee has impeded this right, but it has not deprived the Ethnic Broadcasting Member of its right to participate in the operations of the licensee by exercising its right to vote at a general meeting. Another representative could have been appointed by the Ethnic Broadcasting Member as its voting representative (or delegate). Accordingly, this action by the Licensee, although inconsistent with a provision of its Constitution, did not in itself amount to a contravention of subparagraph 9(2)(c)(i) in Schedule 2 to the BSA.

*Notifying members of AGMs*

The Second Complaint included an allegation that the Licensee failed to notify some of its members of the 2019 AGM.

Clauses 20.5 and 20.6 of the Constitution details the AGM notice requirements that the Licensee is subject to. Under these provisions, the Secretary is required to give members no less than 28 days’ notice of an AGM, and, to specify in the notice; ‘*when and where’* the AGM will be held, particulars of business to be discussed, and the order in which business will be discussed.

The Submissions included copies of the ‘Notice of Annual General Meeting’ that the Licensee advised were issued to Ethnic Broadcasting Members and Broadcasting Members regarding the AGM held on 4 August 2019. In compliance with the Constitution, the notices indicate the date, time, location, and agenda of the AGM, and included an ‘RSVP’ slip for members to complete. The notice included the comment ‘delivered via Station Mailbox and email’. The ‘RSVP’ slip on the Ethnic Broadcasting Member form requires members to note the name of the ‘Registered Voting Delegate’ and ‘Registered Second Delegate’, and the ‘RSVP’ slip on the Broadcasting Member form requires those members to note the ‘Registered First Delegate’ and ‘Registered Second Delegate’.

The ACMA is of the view that the measures the Licensee has in place to notify members of AGMs adhere to the Constitution.

**Does the Licensee have governance documents to support community participation in its operations?**

The Licensee submitted various governance documents in its Submissions and Licence Renewal Application. The ACMA has assessed the policies most relevant to encouraging participation in its operations.

The Constitution appears to have been drafted in a manner that is appropriate for community broadcasters, supporting community participation through provisions which afford members of the community rights to sit on the Council, ensure decision making powers are afforded to the Council, provide for a quorum at AGMs, limit the tenure of Council members, and outline grievance procedures for members in respect of membership disputes.

The Community Engagement Policy states that the Station ‘relies on members of the community for its ongoing operation, administration and on-air programming’ and proceeds to stipulate how the Licensee will involve the community in its operations, including examples such as on-air announcements encouraging new members to participate in station operations, encouraging members to seek nomination to the Council and subcommittees, and articulating and developing strategies that encourage participation in operations.

The Rights and Responsibilities of Volunteers Policy outlines that the Council has a responsibility to volunteers to ‘ensure that all station democratic processes are adhered to and that you are consulted in major decision-making processes’ and ‘ensure that you are aware of station democratic processes and are encouraged to participate in them’.

The Disciplinary Action and Dismissal of Volunteers Policy indicates that the Licensee encourages community participation in its operations by way of affording volunteers the right to challenge any proposed expulsion from the operations of the Licensee. Affording review rights to members is viewed as an important aspect of ‘open membership’.

The ACMA is of the view that the Licensee has appropriate governance documents in place which encourage community participation in the operations of the Station.

**Conclusion**

The ACMA considers that compliance with the licence condition at sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA relates to the ability of the community to have input to and involvement in the decision making that affects the provision of a licensee’s service.

The ACMA observes that that the Licensee:

* Promotes membership and volunteering opportunities.
* Encourages members to participate in various subcommittees and for election to the Council.
* Has governance documents in place to support community participation.

The ACMA recommends that the Licensee amend its Constitution to:

* Amend clause 11.11(a) of the Constitution to specify that Council members will hold their position for no longer than the earlier of 2 years or until the next AGM at which Councillors are elected.
* Formally adopt the Delegate Rule.
* Remove the discrepancy between clauses 5.1 and 24.1.

The ACMA also recommends that the Licensee ensures that it does not take action inconsistent with its Constitution.

Nevertheless, the ACMA is not satisfied that the Licensee has breached sub-paragraph 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**

**Part 5 – 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 is of the view that the Licensee has not breached paragraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Reasons

The First Complaint included allegations that:

* Control of presenter training and testing, and the programming subcommittee, is in the hands of the Acting Station Manager.

The Second Complaint included allegations that:

* The Licensee did not follow procedure when deciding to take a program off air.

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 provided under the licence.

The Guidelines outline various ways in which a licensee can encourage community participation in the selection and provision of programs, and state that:

[…]

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.

Licensees demonstrate that they are encouraging their community to participate in the provision of programming when they have good numbers of volunteer producers and presenters. Giving members of the community an opportunity to produce and present programs is a concrete way for licensees to demonstrate that they have encouraged community participation in the provision of programming.

**Training of programming volunteers**

In response to the ACMA’s request for information surrounding the process by which programming volunteers are trained, the Licensee provided the ACMA with copies of various training materials in respect of ‘presenters’ and ‘console operators’, consisting of:

* Volunteer presenter theory training booklet (handout 1 and 2).
* Volunteer presenter theory assessment.
* Volunteer presenter theory assessment marking key.
* Panel operator manual.
* Recorded assessment form for console operators.
* Theory tests for console operators (booklets 1, 2 and 3).
* Answers to theory tests for consoler operators (booklets 1, 2 and 3).

The Licensee’s training materials appear to provide volunteers interested in presenting, and console operating, roles with sound guidance of how to perform those roles. Additionally, the Licensee’s provision of training indicates that the Licensee is investing time and resources in training volunteers to ensure they are prepared to undertake presenter and console operator roles.

The ACMA has reviewed the assessments and tests for presenters and console operators and the corresponding answers and marking keys/guides, and is of the view that they do not appear to provide a means for the Station to subjectively grade participants’ answers in a manner that would be considered improper. The Licensee stated in its Submissions that:

[…]

All broadcasters are assessed as per the provided assessments and their corresponding marking keys.

If there is a language barrier, volunteer translators are obtained (unless community obtains an accredited translator), and allowances are made if they struggle with writing in English or have a disability/impairment.

[…]

The Submissions and Licence Renewal Application noted that there was a team of eight individuals responsible for training and assessing volunteers, which included the Acting Station Manager and Chairperson of the Council. The Licensee stated in its Submissions that:

[…]

All current volunteers/staff have a background in training, are fluent in English and all speak languages other than English. They all have a passion for broadcasting and teaching others those skills. This current team has come together to provide a fair and comprehensive training for all broadcasters and are currently looking at improving the training courses available, including re-developing the refresher courses for broadcasters.

[…]

The Licensee’s website[[7]](#footnote-8) also provides advice to the community in respect of presenter training, console operation training for new presenters and refresher training for console operators.

The ACMA is of the view that the training materials and method of testing, establishment of an experienced training team, and making information regarding training readily available to the community via the Station website, indicate that that the Licensee is actively taking steps to encourage participation in the Station’s programming.

**Programming decisions**

In considering the extent to which the Licensee is encouraging participation in the selection and provision of programming, the ACMA considered whether it had a transparent process for programming decisions.

Programming committees are an important way for members of the community to have a say in the running of a service. As noted above in Issue 1 (see ‘Can community members participate on boards and subcommittees?’), the Licensee has a ‘Programming & Training’ subcommittee which reports to the Council. The Licensee’s current programming subcommittee comprises of the Acting Station Manger, the Council Chairman, one ordinary council member, one Ethnic Broadcasting Member and two Broadcasting Members. The structure of the Licensees’ subcommittees permits widespread community involvement, as evident in the non-Council members who sit on the programming and training subcommittee.

Minutes from the Council’s meetings of 29 July 2019 and 27 August 2019, provided by the Licensee in its Submissions, indicate that programming matters are presented to the Council. The minutes from the Council meeting of 27 August 2019 indicate that the Acting Station Manager raised with the Council new program enquiries the Station had received.

The ACMA has reviewed the Constitution and notes that no clauses govern decisions by the Licensee to remove a program. However, the Licensee’s Access User Contract entered into with Ethnic Broadcasting Member’s does outline the powers of the Station in respect of which programs are broadcast.

The Second Complaint alleges that the Licensee did not follow 'proper procedures' when deciding to remove an Ethnic Broadcasting Member’s program. The ACMA has reviewed the minutes of Council, and of the general and special meetings of the Licensee in 2018 and 2019, and notes that no determination was made by the Council to take an Ethnic Broadcasting Member’s program off-air.

The ACMA has reviewed correspondence provided in the Second Complaint which indicates that a decision was made to suspend an Ethnic Broadcasting Member’s program and provided reasons for that decision including an invitation for the member to resume broadcasting when the issue was resolved.

The Licensee’s Access User Contract Includes grounds for restricting or cancelling airtime. The ACMA is of the view that the existence of this policy, of itself, does not amount to failing to encourage participation in the selection and provision of programs at the Station.

The Guidelines state that where a licensee decides to reduce or remove a presenter’s airtime, the Licensee 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 is of the view that the Licensee appears to be encouraging participation in programming decision making and has acted in an appropriate manner when making decisions regarding members programs. The ACMA recommends that the Licensee provide further information regarding the process for appointing members to the programming subcommittee, noting that the Constitution and the Licensee’s website make no references to this subcommittee.

**Encouraging participation in station programming**

The Licensee stated in its Submissions that:

[…]

we run on-air campaigns asking not only for members to join us for programs, but to join our sub-committees

[…]

6EBA always encourages members and the wider community to engage with us not only as broadcasters but as members of our sub-committees. We always remind them via email, social media, on-air announcement and in person at functions and meetings. These avenues are always open to them.

[…]

A social media post inviting volunteers to join the Licensee’s various subcommittees was provided by the Licensee in its Licence Renewal Application.

The ACMA considers that the program proposal process can demonstrate that a licensee is encouraging community participation in the provision of programming. The Licensee’s programming and training subcommittee is responsible for assessing program proposals and making programming decisions (such as selecting and scheduling programs).

The Licensee submitted in the Licence Renewal Application that three program proposals had been received between October 2019 and March 2020, and that all three proposals were approved and had commenced broadcasting. While, in the ACMA’s experience, this is a low number of program proposals for community broadcasters considered generally, the ACMA also notes that the Licensee represents the ethnic community interest, and that the Licensee’s programming schedule indicates that there are a high number of programs (including, but not limited to, Arabic, Burmese, Croatian, Dutch, Greek, Korean, Macedonian and Vietnamese language programs) produced and presented (with as many as 170 presenters on air in one week) by a variety of Ethnic Broadcasting Members.

With respect to how the Licensee promotes member and volunteer opportunities in the Station’s programming, the Licensee stated in the Licence Renewal Application that ‘over the last 2 years, to expand our programs and diversity, we have opened up program membership to individuals and other groups.’ The ability for individual members to become involved in programs despite the Licensee adopting a consortium group membership structure indicates that the Licensee has taken positive steps to include individual members of the community in the licence area.

The Licensee’s submissions noted that the Station will run on-air campaigns calling for member groups to propose programs. The Licensee’s website includes information as to how a community group or individual member can become involved in the production and presenting of programs. The website notes:

[…]

If you are part of a CaLD ethnic association with 25 or more financial members and are representative of your language in the community, you may apply to the MRTA of WA Inc. to become a Broadcasting member with a view to producing and presenting a radio programs to your community of interest.

[…]

A broadcasting member of the MRTA of WA Inc. can apply for airtime to broadcast in their language to their community of interest. In the granting of airtime many factors are considered.

[…]

Volunteers directly involved in presenting radio programs need to be approved by Station Management and once authorised may apply to be a Broadcasting Associate, become registered on the station’s database and enrol in the training program. […] If you are not directly involved in presenting the radio programs, there are many other ways you can offer assistance to your association and the station.

[…]

Only volunteers who are approved ‘Broadcasting Associates’ are permitted to be directly involved in presenting radio programs, and only affiliation organisations with 25 or more financial members are permitted to make program proposals to the Licensee.

[…]

The ACMA is of the view that the Licensee is actively encouraging the community to participate in programming and that the ability for only ‘Ethnic Broadcasting Members’ with 25 or more financial members to submit program proposals is not a restrictive policy given the consortium membership model adopted by the Licensee, and the community interest represented by the licensee.

**Conclusion**

Based on the information available, the Licensee appears to have a strong level of community involvement in its programming, reflected in the high number of programs produced and presented by various Ethnic Broadcasting Members, and measures in place to afford opportunities to members of the community to become involved in various aspects of the Station’s programming.

The ACMA recommends that the Licensee make available to its members further information regarding the process for appointing members to the programming subcommittee, noting that the Constitution and the Licensee’s website make no references to that subcommittee.

The ACMA is of the view that the Licensee is not in breach of subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

1. ACMA, ‘*Community Broadcasting Participation Guidelines*’, 2010, <https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf>. [↑](#footnote-ref-2)
2. ACMA, ‘*Community Broadcasting Participation Guidelines*’, 2010, <https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf>. [↑](#footnote-ref-3)
3. ACMA, ‘*Community Broadcasting Participation Guidelines*’, 2010, <https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf>. [↑](#footnote-ref-4)
4. Community Broadcasting Association of Australia, ‘*Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year’*, October 2017. [↑](#footnote-ref-5)
5. ACMA, ‘*Community Broadcasting Participation Guidelines*’, 2010, <https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf>. [↑](#footnote-ref-6)
6. ACMA, ‘*Community Broadcasting Participation Guidelines*’, 2010, <https://www.acma.gov.au/sites/default/files/2019-12/Community%20Broadcasting%20Participation%20Guidelines%20-%20Print%20enabled.pdf>. [↑](#footnote-ref-7)
7. 6EBA FM Radio, Training (2017) <<https://www.6eba.com.au/training/>>. Accessed 24 September 2020. [↑](#footnote-ref-8)