



Australian
Communications
and Media Authority

Investigation report no. BI-530

Summary	
Licensee	Queanbeyan Community Radio QBN FM Incorporated
Station	QBN FM
Type of service	Community broadcasting—radio
Issue	Encourage participation in the operations of the service and the provision of programs
Relevant legislation	Licence conditions set out at paragraph 9(2)(c) [encourage community participation in the operations of the service and the selection and provision of programs] of Schedule 2 to the <i>Broadcasting Services Act 1992</i>
Date finalised	23 March 2021
Decision	Breach of paragraph 9(2)(c) [encourage community participation in the operations of the service and the selection and provision of programs] of Schedule 2 to the <i>Broadcasting Services Act 1992</i>

Background

On 5 September 2019, the Australian Communications and Media Authority (the **ACMA**) received a complaint about Queanbeyan Community Radio QBN FM Incorporated (the licensee). As this complaint concerns compliance with a licence condition, it may be made to the ACMA directly.¹

The complaint raises a number of wide-ranging issues and involves documents and audio recordings.² The complaint alleged, amongst other things, that because of the conduct of the licensee's Committee of Management (CoM):

- between August and November 2018, over fifteen presenters resigned and most members of the 2017 CoM left the licensee
- the licensee's volunteer presenters are not allowed to provide presenter services to another community radio station, and
- a number of members were suspended, then expelled, from the licensee.

The complaint also made allegations about the manner in which the provisions of 2QBN's constituting document (*Queanbeyan Community Radio QBN FM Incorporated Memorandums and Articles*, '**the Articles**') are applied. For example, the complainant raised concerns about the licensee's adherence to its internal conflict resolution provisions and the validity of its general meetings.

On 1 October 2019, the ACMA commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into the licensee's compliance with the licence conditions set out at paragraph 9(2)(c) (encouraging community participation in the operations of the service and the selection and provision of programs) of Schedule 2 to the BSA.

The licensee

At the time of the complaint, the licensee had held a long-term community radio broadcasting licence (SL1150158), representing the general community interest in the Queanbeyan RA1 licence area in New South Wales between April 2000 and April 2020. Since 8 April 2020, the licensee has provided a service under a temporary community broadcasting licence.

Assessment and submissions

This investigation has taken into account the written complaint received by the ACMA and submissions from the licensee provided on 30 October 2019, 12 December 2019 and 22 December 2020.

Other sources are identified in this report where relevant.

¹ Section 147 of the BSA

² In investigating this matter, the ACMA only took into consideration relevant material and the investigation did not take into account consideration of the audio recordings received from the complainant.

Issue: Encourage participation

Relevant licence conditions

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; and
- (ii) the selection and provision of programs under the licence.

Finding

The ACMA finds that the licensee did not encourage members of the community that it serves to participate in the operations of the licensee and the selection and provision of programs under the licence, and accordingly it has breached the licence condition set out at paragraph 9(2)(c) 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 and the selection and provision of programs.

The ACMA's Participation Guidelines (the Guidelines) state that, to encourage participation licensees should 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, and
- make the community aware of opportunities to participate in the service.³

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'.⁴

Similarly, licensees can encourage community participation in the selection and provision of programs with mechanisms for the community to make program requests and to involve members in the selection of programs. The Guidelines note: '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'.⁵

³ The ACMA's 'Community Broadcasting Participation Guidelines', www.acma.gov.au, p9

⁴ Ibid

⁵ Ibid, p19

Sound corporate governance practices

The complaint included several allegations, including that the operations of the service are concentrated in the hands of a small group of members, including those who comprise the CoM

The 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.⁶

In its submission, the licensee provided a copy of its Articles and its Policies and Procedures Manual (Policies Manual).

- The Articles provide the framework for the [licensee], including the objects of the [licensee] which, amongst other things is to operate a community broadcasting service in such a manner as to satisfy the needs of the community and foster and encourage participation by all members of the community. The Articles provide membership eligibility and categories, and the constitution of the CoM, which includes 4 office bearers and 3 ordinary members, elected each year at the annual general meeting. The Articles grant the CoM the power to 'control and manage the affairs of the [licensee]'.
- The Policies Manual provides information about the station's governance including the formation of various sub-committees, general instructions around the operation of the station (music library, security precautions, on-air behaviour etc), and the licensee's policies for presenters, volunteers and conflict resolution.

The licensee did not provide, to the ACMA, policies that require office holders to declare any potential conflict of interest or to refrain from deliberating or voting on issues in which they have an interest.

⁶ The ACMA's 'Community Broadcasting Participation Guidelines', www.acma.gov.au, p9

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The licensee does appear to have in place some measures directed to preventing the concentration of control. The Articles limit the number of proxy votes that a member can exercise (5) and require elections for members of the CoM each year. However, the Articles do not place any restriction on the number of terms a committee member may serve. This has the potential for one or more persons to have a role in the management of the station for extended periods and may prevent other members of the community the opportunity to participate in the operations of the station in such a role. In its submission to the ACMA of 30 October 2019, the licensee reported the composition of the CoM, as voted at its annual general meeting (AGM) of September 2019. It is made up of 6 members each with less than 5 years' experience as a committee member and the President with 20 years' experience as a committee member.

The licensee has policies in place for 7 sub-committees (finance, grants, membership, occupation health and safety, programming, sponsorship and training). However, at the time of the complaint to the ACMA, and in the context of the licensee's licence renewal application and submissions of October and December 2019, the licensee had only provided the ACMA with information related to its programming sub-committee, which comprised:

- 2 members of the CoM (the President and the station manager), and
- an ordinary member, who is also a presenter.

This did not conform with the licensee's programming sub-committee policy document that states the committee should comprise only one member of the CoM or the station manager, and 3 other members of the licensee. The non-conforming situation increases the control of members of the CoM.

In its submission of 12 December 2019, the licensee addressed the matter of concentrated control, stating:

The administration, management, programming etc, are all allocated to members of the Committee and the Station Manager so there is cohesion and unity amongst all the volunteers without causing any unrest.

The ACMA does not consider 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, and the selection of programming for the service. The stated intention of not 'causing any unrest' suggests that governance, administration, management, programming etc. may be conducted in a way to minimise differences of opinion and dissent from the views of members of the CoM.

In relation to the licensee having procedures in place for complying with regulatory requirements, the ACMA requested, in the context of its licence renewal assessment, that the licensee provide a copy of its community participation policy. A copy of this policy was not provided. As a result, the ACMA has no evidence that the licensee had a community participation policy in place at the time of the complaint.

On 23 March 2020, the licensee advised the ACMA that it had formed 7 sub-committees: finance, grants, membership, occupation health and safety, programming, sponsorship and training. It also advised it had amended the composition of its programming sub-committee, which now includes one CoM member and one non-CoM member. These actions reduced the potential risk that one or 2 members of the CoM have an undue level of control over the operations of the station. However, the composition of the programming sub-committee remains non-conforming with the sub-committee policy without an additional 2 ordinary members.

The licensee also supplied a copy of its Community Consultation Strategy (CCS), covering the period January 2020 to December 2024 (requested by the ACMA on 6 September 2019). The purpose of this document is to better assist the licensee in meeting its licence condition obligations by identifying and monitoring community needs and interests. While the sub-committees and the CCS were not in place at the time of the complaint, it is noted that the

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licensee has subsequently taken active steps to improve its governance practice and provide for greater opportunities for members to participate.

The ACMA has not been provided with evidence that, at the time of the complaint, the licensee had sound corporate governance practices in place to give the community it serves adequate input into the decision-making that affects the community broadcasting service.

Open membership provisions

The ACMA considers membership to be one of the primary ways of encouraging community participation in 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.⁷

The ACMA's strong preference is for community radio broadcasting services to have open membership policies and practices. Membership is open if it is automatic on application or if a licensee may only refuse membership on the basis of specific and transparent criteria.⁸

The licensee's Articles provide that the CoM considers applications for membership as soon as possible after they are received. The CoM may reject an application if:

- a. there are reasonable grounds to believe that the applicant would not abide by the rules and objectives of the licensee
- b. it is required by law
- c. the applicant has been convicted of an indictable offence
- d. there are reasonable grounds that the applicant would not abide by the Community Broadcasting Code of Practice, or
- e. there are reasonable grounds to believe that the applicant would pose a security risk to the members, property or premises of the licensee.

To understand the licensee's application of its membership rules the ACMA has reviewed the licensee's membership information, and reviewed minutes from its September 2019 AGM. On 12 December 2019, the licensee submitted that it had 223 financial members. This is an increase of 41 members compared to its membership at the time of its last licence renewal in 2015 (182) and above the national average of 115 members for a general community broadcasting service in a regional licence area.⁹

The licensee was not in a position to provide minutes of its AGMs held in 2017 and 2018. The licensee was able to supply notes taken at the AGM on 30 August 2018 by the current station manager, showing 6 members resigned from their committee positions at that meeting and a new committee was elected.

The ACMA understands, following the 2018 meeting, a new CoM made decisions to suspend, and then terminate, the membership of former committee members and other members. Based on the evidence before it, the ACMA is aware the grounds for the CoM's decisions are contested.

⁷ Ibid p10

⁸ Ibid p11

⁹ *Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year*, report prepared on behalf of the CBAA by Survey Matters, October 2017, page 20

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The ACMA's role is not to assess the merits of the CoM's decision. Rather, the ACMA has reviewed the Articles to ensure they are appropriate for a community broadcasting licensee and that they provide appropriate safeguards for members. The Articles provide the CoM with the power to suspend or expel members on certain disciplinary grounds including where it has received a complaint from one member of the licensee that another member has persistently and wilfully acted in a manner prejudicial to the interests of the licensee. The committee may, by resolution, expel the member if it is satisfied that the facts alleged in the complaint have been proven. The Articles also set out the process for disciplining members including that: following such a CoM decision, written notice is to be given to the member; that there will be a delay before the expulsion takes effect (7 days or until an appeal is heard); and the member has a right of appeal which is decided upon by members present at a general meeting. In this respect, the ACMA notes that the CoM acted within the power granted by the Articles and the CoM appears to have followed the appropriate procedures as set out by the Articles.

Notwithstanding this view, the ACMA observes that expulsions of members should be a last resort. Such action may discourage volunteers and members of the community from greater participation in the station and may not reflect open membership practices.

Dispute resolution

One way a licensee can promote membership and volunteering in the service 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 licensee has a Conflict resolution policy (as required under Code 1.5 of the Code and clause 12 of its Articles). The policy provides a process for dispute or conflict resolution which includes the notification of concerns to the station manager or president. Having followed this process, if one party is still not satisfied, the CoM reserves the right to make a final decision on the matter.

The complainant has made allegations about conduct of various individuals of the CoM which the licensee has disputed.

It is not the ACMA's role to investigate the outcome of individual internal disputes or to act as a mediator or arbitrator in conflicts between parties.

However, effective internal dispute resolution policies and procedures facilitates membership and volunteering, therefore in assessing the licensee's licence renewal application, the ACMA requested confirmation that the internal conflict matters had been resolved through those internal dispute resolution mechanisms. The licensee submitted:

There have been no internal conflicts within the Station among any volunteers since the AGM held in August 2018, when the previous Committee was voted out. [...]

There was a group of previous volunteers who supported the previous Committee of Managements actions however they have now all moved on and are no longer involved with 2QBN as members or volunteers and they all made the decisions without coercion from anyone still at the station.

In contrast, the complainant has provided letters dating from May and July 2019, on licensee letterhead, that inform members of suspensions, then expulsions (discussed above, under 'Open membership').

Based on the evidence before the ACMA, the licensee appears to have addressed a conflict between members through the expulsion of members involved in the conflict, rather than taking steps to resolve the conflict.

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In response to the ACMA's preliminary investigation report, the licensee states, 'The current [CoM] has followed all the guidelines of the Policies and Procedures in dealing with those who want to bring this radio station into disrepute'. Continuing, 'At all times [the President] and [Station Manager] have maintained a high level of professionalism and a high regard for our volunteers, the community, our sponsors, our technicians and our listeners.'

The ACMA understands that differences of opinion can exist within the membership and volunteers of community broadcasters. However, expulsion of members should be a last resort as a means of resolving such conflicts.

In addition, it is reasonable to expect that a sound dispute resolution process would provide for a person involved in a dispute who also holds a decision-making position in relation to that dispute, to both declare any potential conflict of interest and to refrain from deliberating or voting on issues in which they have an interest. It is also reasonable to expect that conflict resolution procedures should require concerns relating to conflict with the station manager or president be taken to another member of the CoM.

The ACMA considers that the licensee's dispute resolution procedures have failed to cater for a situation where it may not be appropriate for complainants to notify concerns to the station manager or president. This has potentially created additional barriers for other members of the community, possibly discouraging them from participating in the operations and programming of the service.

Mechanisms for encouraging community participation

On 9 October 2019, the ACMA requested the licensee to, amongst other things, provide a description of methods and activities it had undertaken in the previous 6 months to encourage community participation in operations and programming.

On 30 October 2019, the licensee's submission noted:

[O]ur involvement with the community and groups is extensive, eg: The Lions Clubs in the region; The Rotary Clubs; Salvation Army; Uniting Church; View Clubs; Anglican Church; The Country Womens Association; Funeral notices; Birthday notices; Community Group Fundraisers; Queanbeyan Hospital fundraisers; [Probus]; Lost dogs & cats; School fetes and other celebrations; local football clubs; promote for the Queanbeyan Palarang Regional Council "The Q" (which is an entertainment centre); What's on in the area provided by the Queanbeyan Palarang Regional Council; the list is endless and ongoing. We also interview and promote local and national musicians and their music, provide giveaways for concerts and other events in the area.

On 12 December 2019, when asked specifically about how the licensee undertook these activities and the methods used to monitor the needs of the community, the licensee noted it:

[a]nnounces on air how to become a member, the AGM which was held in September, if a community group is holding an event to contact us. Notices are read out regularly during the day.

[...]

Community Groups and Not for Profit organisations contact the Station Manager either by phone or email with information of upcoming events and these are read out at the station. The phone number is read out numerous times per program for people to make contact, we have a facebook page, which is constantly monitored and seems to be working for the community to feel connected with the volunteers at the station.

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The groups who have contacted 2QBN and taken advantage of the services provided have all given very positive feedback about the process we have currently working.

These submissions indicate that the licensee has a level of community engagement that promotes its ability to broadcast community service announcements, solicits local content and otherwise invites the community to make contact with the station. However, many of the activities identified by the licensee are relatively passive, reliant on community organisations or members approaching the licensee, rather than providing evidence of the licensee proactively encouraging and facilitating engagement.

The Guidelines suggest licensees can actively encourage participation by identifying community groups that are not represented in the program schedule and encouraging and helping those groups to produce programs. The Guidelines also provide for ways the licensee can identify community needs through the use of sub-committees or surveys or facilitating discussions with community groups and representatives through a medium such as the station website. The ACMA was not provided with evidence suggesting that these proactive examples of mechanisms are a part of the licensee's practices. As discussed above (under 'Sound corporate governance practices'), at the time of the complaint to the ACMA, the licensee had one sub-committee, concerned with programming. The licensee has also not undertaken surveys of the community for some time. In its licence renewal application in 2019, the licensee noted:

The committee realises the importance of an official survey but feel talking with our listeners at our broadcasts as well as the requests and comments on our Guestbook on our website and phone calls to the station certainly inform us of their satisfaction and improvement they think would improve 2QBN FM.

As at 23 September 2020, the licensee did not appear to have a functioning website since at least the time of the complaint to the ACMA. At that time the URL <http://qbnfm.com.au/>¹⁰ informed visitors:

QBNfm Will be back soon!

Sorry for the inconvenience but we're performing some maintenance at the moment. If you need to you can always contact us [embedded link to admin@qbnfm.com.au], otherwise we'll be back online shortly!

The lack of a functioning website limits the community's ability to participate in the licensee's operations and programming, and its access to governance information (such as policies and procedures), membership information (such as a membership application form, members' entitlements and membership fees) and information about opportunities for the community to participate in the licensee's activities (such as vacancies, making program suggestions and upcoming meetings).

The licensee noted that its Facebook page is 'constantly monitored and seems to be working for the community to feel connected with the volunteers at the station'. The ACMA confirmed the licensee has an active Facebook page.¹¹ The ACMA does not have information about how the licensee used social media at the time of the complaint to the ACMA. As at 23 September 2020, the page had 353 followers and 17 reviews. This is an increase of 71 followers in the 7 months to September 2020. Activity on the page in that time is sporadic. In the 3 months to 28 February 2020, the activity was limited to 8 posts from the licensee and 5 'visitor posts'. In the 3 months to 23 September 2020, the activity was limited to 7 posts from

¹⁰ Accessed 23 September 2020

¹¹ <https://www.facebook.com/qbncommunityradio.com>, accessed 23 September 2020

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the licensee to which listeners/members responded. These posts related to power outages affecting broadcast functionality, status updates about its streaming service, the announcer line-up for the day and requests for songs.

As at September 2020, there was no online access to:

- a membership application form
- any invitation to the community to become members
- information about how to become a member of the licensee
- other membership information.

In response to the ACMA's preliminary investigation report, the licensee disputed the impact of not having a website and noted that:

The website has been an ongoing issue, but at no time has this disadvantaged anyone, due to the fact our station number is given out on air by every presenter at every shift. The email addresses for the station and the station manager are given out on air, the number for the President is given out on air ...Our President is a very accessible figure within the community as he sits in various coffee shops during the week, visits our sponsors and is relentless in ensuring 2QBN is running at its best.

[...]

It may appear our facebook page doesn't have much of an impact in our community, but as we are a large country town, having over 350 followers is very substantial. The availability of our phones is especially positive as our listeners can call and be in direct contact with the presenter on air.

The ACMA notes that at the time of the publication of this report the website for the service was fully functional, providing information about membership.

The Articles provide for a Membership standing sub-committee, comprising one member of the CoM and 3 other members of the licensee. The responsibilities of the sub-committee include making recommendations about how the licensee can actively recruit community members and entities who have an interest in community radio and raise the community's awareness of the role of the licensee and what it can offer to the community. The function of such a committee would be one mechanism that would actively encourage participation. At the time of the complaint to the ACMA, based on the licensee's licence renewal application and submissions of October and December 2019, the licensee did not have a Membership standing sub-committee in operation.¹²

As at 12 December 2019, the licensee had 25 volunteers (4 non-presenters on the CoM and 21 presenters). The licensee notes:

The administration, management, programming etc, are all allocated to members of the Committee and the Station Manager so there is cohesion and unity amongst all the volunteers without causing any unrest. All volunteers are involved when we have

¹² In April 2020, the licensee updated the ACMA on the formation of its sub-committees, including a Membership sub-committee comprising one CoM member and 2 non-CoM members.

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community events organised if that is something they wish to participate in or even have time to do so.

The licensee also estimated the president, station manager and program manager volunteer 50 hours a week to the station collectively.

The licensee's number of volunteers as at December 2019 had decreased by at least 15 when compared to information provided at the time of its last licence renewal in 2015 (40 volunteers plus other temporary voluntary assistance). Its number of volunteers was also below the national average of volunteers in a regional licence area (40).¹³

The ACMA notes the complaint alleged that the CoM:

... ruling does not allow QBN FM volunteer presenters to provide presenter services to another community radio station. [...] In the past three months at least four volunteer presenters have resigned and left QBN FM under these circumstances.

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 has reviewed the licensee's presenter policy and a copy of its Presenter Agreement. These documents set out the rights and responsibilities of presenters and the licensee to the presenter. Neither of these documents suggest the licensee has a formal process that prohibits a presenter participating in other community groups, including another community radio station.

However, in response to the ACMA's preliminary investigation report, the licensee states:

We do not have any internal arguments or fighting, our presenters only volunteer at our station, we do not stop presenting from volunteering at other radio stations, however, if they do they will not be able to present on QBN FM 96.7, this decision was made by the members at an AGM, and by a CoM in 2016. The Sponsors of QBN FM 96.7 were not happy with hearing any of our presenters on other community radio stations, and as such this decision was made, given their financial support is paramount to the survival of QBN FM 96.7.

[...]

The Committee of Management encourages involvement from the community, no member of the community or volunteers are prevented from access to information regarding the programs played by the volunteer presenter on at the time, no presenter in training is asked to be responsible for any costs other than getting to the radio station for training. You have included "other community broadcasters" in your interpretation, but this is not in our Policies and Procedures and as such is irrelevant.

The ACMA's interpretation of the licence condition, as stated in the Participation Guidelines and irrespective of what is stated in the licensee's Policies and Procedures, is that any restriction on membership should be reasonable. In the ACMA's view such action by the licensee discourages presenters from being involved with other community groups, including

¹³ *Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year*, report prepared on behalf of the CBAA by Survey Matters, October 2017, page 34

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other community broadcasters. Therefore, this restriction is likely to be unreasonable, acting as a barrier towards the licensee encouraging community participation.

On balance, and despite the potential adherence to some aspects of the Participation Guidelines the ACMA's view is that, at the time of the complaint and considering all mechanisms used by the licensee to encourage community participation, the licensee had insufficient mechanisms to actively encourage community participation in its operations and programming.

Conclusion

The ACMA considers that compliance with the licence condition at paragraph 9(2)(c) of Schedule 2 to the BSA involves the provision of opportunities for the community to have input to and involvement in the decision making that affects the licensee's service. The ACMA considers that licensees need to take active steps to invite and promote participation in and engagement with their services.

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.

Licensees can encourage community participation in the selection and provision of programs with mechanisms for the community to make program requests and to involve members in the selection of programs.

It is the ACMA's view that, at the time the complaint was made, the licensee did not have sound corporate governance practices, including those designed to avoid conflicts of interest, and offered only limited opportunities for the community to participate in the operations and programming of the service. The ACMA also considers the licensee's methods for encouraging community participation were inadequate. These methods did not encourage active participation in the operations of the station, nor in the direct production of the programs of the station (for example presenting programs).

Taking these matters into account, the ACMA's view is that, the licensee breached the licence condition at paragraph 9(2)(c) of Schedule 2 to the BSA, in that the licensee did not sufficiently encourage community participation in the operations of the service and the selection and provision of programs.