

## Investigation report no. BI-562

Summary	
<b>Licensee</b>	Albany Community Radio Inc
<b>Station</b>	6CRA
<b>Type of service</b>	Community broadcasting- radio
<b>Relevant legislation</b>	<p>Schedule 2 of the <i>Broadcasting Services Act 1992</i></p> <p>Paragraph 9(2)(b) [the licensee will continue to represent the community interest that it represented when it applied for its licence]</p> <p>Paragraph 9(2)(c) [the licensee will continue to encourage community participation in the selection and provision of programs and the operations of the service]</p>
<b>Decision</b> <b>4 April 2021</b>	<p>No breach- Paragraph 9(2)(b) [the licensee will continue to represent the community interest that it represented when it applied for its licence]</p> <p>Breach- Paragraph 9(2)(c) [the licensee will continue to encourage community participation in the selection and provision of programs and the operations of the service]</p>

## Background

On 22 July 2020, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into compliance by Albany Community Radio Inc (ACR) with the licence conditions at paragraphs 9(2)(b) and 9(2)(c) of the BSA, that require ACR to continue to represent the community interest that it represented when its licence was last renewed, and to encourage community participation in the selection and provision of programs and the operations of the service.

ACR holds a long-term community broadcasting licence to represent the general geographic community interest in the Albany RA2 licence area. It has held this licence since 26 January 1988. The expiry date of the current licence is 26 November 2022.

In December 2020, after the ACMA had received ACR's submissions in relation to this complaint, the ACMA was advised that the management committee for ACR had resigned and a new management committee had been appointed.

## Submissions

This investigation has considered issues raised in a complaint received by the ACMA on 25 June 2020 and submissions made by the former management committee submitted on 11 August 2020. The information submitted by the former management committee is dated between April 2019 and July 2020. Other sources are identified in this report where relevant.

## Issue 1: Does the licensee continue to represent the community interest that it represented when it applied for its licence.

### Relevant licence condition

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

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

[...]

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

## Finding

The ACMA's view is that ACR did not breach the licence condition at paragraph 9(2)(b) of the *Broadcasting Services Act 1992* requiring that it continue to represent the community interest that it represented when it applied for its licence.

## Reasons

All community broadcasting licensees are required to comply with the licence condition to continue to serve the community interest that it represented when it applied for the licence.

The ACMA's community participation guidelines (the guidelines) set out the ACMA interpretation of the phrase 'community interest', and stated at page 4 that:

The Act does not define 'community' or 'community interest' but services should:

...meet the needs of a local community or of a particular sector of the community.

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

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

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

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

ACR holds a community broadcasting license to serve the general community in the Albany RA2 license area. To determine whether ACR is continuing to represent its community interest, the ACMA wrote to it on 29 July 2020, seeking relevant information.

The information provided by ACR is extracted in this report where relevant.

### **Licence area**

The ACMA has considered the demographic information for Albany RA2 and found that the population there is predominantly:

- English speaking with 86.6% speaking only English at home. Other languages spoken are broadly spread, and the next largest language group is South east Asian (Filipino, Indonesian and Tagalog totalling 1.10%).
- Australian born, with 73.2% born in Australia, 7.8% born in England, 1.9% born in New Zealand.
- Christian at 47.3% (Anglican 16.5%, Catholic 12.1% and Presbyterian 2.9%) with the next largest group identifying as no religion at 38.9% or religious affiliation not stated 11%.

The general community in Albany RA2 is spread across various ages:

- 25% of people in Albany are aged under 19,
- 14% are aged between 20 and 34,
- 18.5% are aged between 35 and 49,
- 21.5% are aged between 50 and 64 and 16% are aged between 65 and 79,

Three percent of the general community in the licence area identifies as of Aboriginal or Torres Strait Island descent.

### **Does the broadcast program reflect the community interest?**

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

In its submission ACR has not provided information about the needs of the general community in Albany RA1, nor how it meets those needs, despite being requested by the ACMA. Instead, it has described the area geographically, 'as an arc from Albany to Denmark, Mt Barker Tunney and Bremer Bay'.

The ACMA has considered whether ACR is meeting its community interest by reviewing its program schedule and comparing it with the program schedule provided by ACR at its last renewal, in the context of the demographic information outlined above.

The programming schedule for the week supplied (10 August 2020), is loosely filled in but suggests the amount of local programming has reduced since ACR's renewal application in 2016. In the supplied schedule, 57% of programming broadcast by ACR was local. This is slightly less than the national weekly average for local programming for regional community broadcasters (62%)<sup>1</sup>, and than the amount of local programming ACR had on its schedule when it last renewed its community broadcasting licence in 2016 (62.5%).

ACR's program includes special interest programs such as 'Saturday sports snippets with Hutch', the 'Dutch program' and several specialised music programs such as 'Rock across the ages boy blue', 'Jukebox with Sophia', 'Sounds of the 60's with Julie', 'Bakelite radio with John S', and 'Classics with Heather'.

When compared to the broadcast schedule supplied when the license was last renewed in 2016, ACR's current programming contains fewer special interest programs. At that time, in addition to the music-based programs it currently provides, the schedule included the following special interest programs: the RAPID Gang organised by and for people with disabilities; the Noongar Aboriginal hour; a program for service veterans; religious programming and Talking newspapers (a program for the vision impaired drawn from local papers).

The use of programming from services outside a licence area is not uncommon among community broadcasters. Nonetheless community licensees must assess and determine that any externally sourced content would be of interest to its community in deciding what, how much and when it should broadcast this programming.

ACR rebroadcasts programming from other sources in the evenings (from 9 pm on Saturday to Wednesday, 8 pm on Thursday and 5 pm on Fridays) until 6 am the following day, and at various times during the day (on Saturday from 6 to 10 am, and midday to 2 pm, and on Sunday from midday to 3 pm and from 5 to 7 pm). It has described this externally provided programming as 'Satellite' or 'Curtin Radio.' The ACMA understands this refers to programming rebroadcast from Community Broadcasting Association Australia's (CBAA) CRN and Curtin FM. Curtin FM is a community radio broadcaster licensed to the Curtin University of Technology to represent the educational interest in Perth RA1. ACR rebroadcasts 46 hours per week from CRN and 25 hours per week is sourced from Curtin FM.

ACR has stated that it switches to programming sourced from Curtin during the day if there is a gap in the schedule for its daytime program or if a presenter falls ill. It has said that it does this because it has received complaints from listeners about programming from eastern states. Additionally, it has said that the broadcast of programming from Curtin radio is with the cooperation and backing from Curtin, and CBAA.

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<sup>1</sup> CBAA Programming and Technology Survey 2018 Pg 12

The CBAA's satellite service is created to be of general interest to community radio listeners across a range of license areas. This contrasts with the Curtin FM service that is required to have been created specifically for the community of Perth RA1 and represents the educational interest. As a result, there is some doubt whether the programming provided by Curtin FM would be better suited to the Albany community licence area than the programming provided by CBAA.

The ACMA's assessment of ACR's supplied schedule considered the source, the amount, and the type of programming to decide whether the programming provided in that week was likely to meet the general community interest in Albany RA2. Overall, the schedule contained slightly less local programming than the national average, and the amount of special interest programming was less than in 2016 when it last submitted its license renewal application. The programming sourced from outside the licence area was largely sourced from CBAA. However, on balance given the demographics of the license area, the scheduled programming is consistent with representing the general interest in Albany RA1.

### **Identifying community needs**

To represent its community interest a licensee must have mechanisms to identify the needs of its community on a regular and ongoing basis. There are many ways that a licensee can identify the needs of its community. This can include audience and broader community surveys, focus groups or forums, and requests for feedback either on air, online, or through other communications with the broader community. Some licensees make use of their members' and presenters' own interactions with the community to gauge community needs.

A licensee should also have a mechanism to ensure that the needs of its community identified as described above are considered in programming decisions and that it is responding to the needs of its community. The use of a programming committee that includes members of the community that are not members of the licensee is one way that this can be achieved.

The ACMA asked ACR for 'a description and evidence of the methods used to identify and monitor the needs of its community of interest'. ACR stated that 'it keeps in touch with the public by initiating outside broadcasts', however it noted that following the onset of COVID-19 it was no longer able to undertake such broadcasts. It also stated, 'that on an increasing number of our programmes, presenters are asking for feedback and requests.'

At last renewal ACR identified that it sought input from its community of interest, through outside broadcasts but also through a Facebook page, its website, and a monthly publication 'Soundwaves'. A sample of 'Soundwaves' was provided, and the ACMA found it was one suitable method of seeking input on programming and on the views of its announcers.

Reference to a programming policy in making programming decisions can also ensure that agreed matters are considered by decision makers. Neither the management committee, nor programming subcommittee meeting notes suggest the use of or reliance on a programming policy in relation to programming decisions.

The ACMA considers that the mechanisms used by ACR to monitor the needs of the Albany community are not strong. When a licensee identifies the needs of their community through a small number of ad hoc interactions (though outside broadcasts, and on-air requests for feedback) between some members and the community, there is a risk that the information that it receives is not broadly representative of the total community that it represents. Though it is possible to use ad-hoc feedback to inform decisions about programming and meet the needs of the community, ACR did not indicate, and programming minutes did not suggest, the ACR recorded community feedback or considered and prioritised this feedback in programming decisions.

## Conclusion – Issue 1

The ACMA considers that compliance with the licence condition at paragraph 9(2)(b) of the *Broadcasting Services Act 1992* requires the licensee to identify and monitor the needs of the community in the licence area, and for its programming to reflect those activities.

The ACMA asked ACR to provide information about its community but ACR did not articulate who its community of interest is or how it serves its community of interest. While its programming is consistent with representing the general interest in Albany RA1, it does not have strong mechanisms to seek information about the needs of its community.

It is the ACMA's view that, on balance, ACR does continue to represent the community interest it represented at its last renewal. However, ACR has room to improve its mechanisms for identifying and monitoring the needs of the community.

## Issue 2: Does the licensee encourage community participation in the selection and provision of programs and the operations of the service.

### Relevant licence condition

#### 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:  
[ ... ]

(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

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

## Finding

The ACMA's view is that ACR breached the licence condition at paragraph 9(2)(c) requiring the licensee to encourage community participation in the selection and provision of programs and the operations of the service.

## Reasons

All community broadcasting licensees are required to comply with the licence condition to encourage community participation in both the operations of their service and in the selection and delivery of their programming. Compliance with these licence conditions is a key characteristic of community broadcasting services.

### A. Community participation in operations

In the ACMA's experience, licensees encourage community participation in their operations when they have sound corporate governance practices, value and promote membership and volunteers, and have an effective and transparent committee structure. These practices enable communities to have adequate input in the decision making that affects their services.

## **Sound corporate governance practices**

The ACMA considered whether ACR has sound corporate governance practices in 2019, in the context of investigation BI-488, and found that ACR's policies and procedures were sound, overall. In the published report it nonetheless drew attention to several matters which, if addressed, were likely to better encourage participation in the operation of its service. These included the following.

- Membership practises would be improved if the constitution provided that in the event where an application for membership is rejected, a rejected application should be provided the reasons he/she was unsuccessful, in writing, and offered a right of reply with appeal.
- The membership of sub-committees should be reviewed to enable participation by members that do not sit on the management committee.
- The licensee should review its volunteer policy to provide clear information about volunteers' roles and responsibilities and the responsibilities of the organisation to its volunteers.

In initiating the current investigation, the ACMA asked ACR for a copy of any policy that has been amended since April 2019 when it last made a submission to the ACMA for investigation BI-488. The licensee did not submit any amended policies and procedures.

As such the ACMA considers that the policy documents previously supplied continue to represent ACR's current policies and are likely to generally meet the requirements of corporate governance documents that support community participation in operations. This includes the policies relevant to the requirement to encourage participation: the Community Participation, Committee, Volunteer Management and Governance policies.

However, the ACMA has analysed the memos and correspondence between management committee members and minutes of management committee meetings that have been submitted in this investigation and identified specific issues of concern. These documents provide a partial view of ACR's implementation of these policies and practises and suggest that, despite the policies being generally sound, overall, the corporate governance issues identified in investigation BI-488 appear not to have been addressed and so remain of concern.

### **Is membership restricted?**

The ACMA considers membership of the licensee organisation to be one of the primary ways of encouraging community participation in the operations of the service. Members can have a say in decision-making through:

- > 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 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 based on specific and transparent criteria. However, no single activity or initiative alone is likely to result in compliance with the community participation requirement.

A licensee's constitution provides the framework and powers for the management committee to manage the operations of the organisation. This includes the objects of the organisation,

and rules related to the appointment of the committee members, and the general membership.

As noted above, investigation BI-488 identified the concern that ACR's constitution does not require that the committee give reasons for rejecting an application or any right of reply. This can be a concern because limited transparency around membership decisions can restrict community access to membership and participation.

To consider how the constitution is applied to ACR's assessment of membership applications the ACMA has reviewed the licensee's membership numbers and the management committee minutes it supplied. The minutes include the period from April 2019 to July 2020.

The minutes documented the management committee's approval of membership applications in this period and showed that during that time eleven membership applications were accepted, one was rejected, and three were placed on hold as they could not be contacted. This suggested that in most cases the management committee approved membership applications, and generally where they did not it was due to the applicant being uncontactable.

However, the minutes also suggested that there were some inconsistencies in ACR's approach to assessing membership applications. While most applicants were interviewed before a decision was made about their membership applications, some membership applicants were not interviewed. An interview, even if informal, may present a hurdle to membership. An unevenly applied decision process, including which people are and are not interviewed, can also create real or perceived perceptions of a lack of transparency.

Though the constitution contains the rules related to the suspension or termination of memberships, and disciplinary action and mediation, the management committee minutes do not record that these processes, including providing a right of reply, were followed in relevant cases. The minutes record that some members subsequently disputed the legality of associated decisions.

The ACMA also considers the number of members of a licensee as an indicator of the level of community participation in that licensee. In response to the ACMA's request for information about the number of members and where they reside, ACR stated that it has 46 current members, and that all but two reside in the licence area. This is significantly less than the national average for a regional broadcaster which is 134<sup>2</sup>, and significantly less than ACR had at its last renewal (submitted in December 2016) when it had 152 members.

In summary the management committee minutes raise concerns regarding whether membership in ACR is open because transparency around membership is limited in the following ways: its constitution does not require that rejected membership applications are given reasons or any process for the decision to be reviewed; its application process does not consistently apply the use of interviews before accepting an application; the use of interviews can present a barrier for some applicants; its management committee minutes do not document that constitutional requirements regarding suspension and terminations process have been applied; and its membership numbers are quite low in comparison to the national average.

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<sup>2</sup> *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.



## **Can community members participate on boards and committees?**

ACR's rules provide for a Management committee consisting of four office holder roles and two ordinary committee members. Under its constitution board members are required to be appointed by election at an AGM, or to fill a casual vacancy.

After receiving submissions from ACR in August 2020, in December 2020 the ACMA was advised of the resignation of all the management committee, and the election of an entirely new committee. The minutes and memos of the former management committee for the period April 2019 to July 2020 were submitted to the ACMA.

Submissions from the former committee showed that shortly after ACR held its AGM in December 2019, three Board members resigned including the Vice Chair, and Treasurer and leaving three people on the board. Two new interim committee members were appointed to maintain quorum and these unelected appointments were ultimately extended to the next AGM held in December 2020. This meant a long period of nearly a year in which the management committee comprised only three elected members.

Additionally, the people holding two key management committee positions, the Chair and Secretary, resided outside of the licence area. Residing outside the licence area reduced the opportunity for these people to be involved in the day-to-day operations at ACR, limited their ability to interact with the general community, volunteers, presenters, and members, and increased their reliance on key administrative people. This potentially reduced the opportunity for participation by community members in the licence area.

Further, ACR submitted that it no longer has a finance and programming subcommittee. It submitted that the programming subcommittee was disbanded in February 2020 and that although calls for volunteers for the programming committee were made of the membership in July 2020, no response was received. No information was supplied about the future of ACR's finance committee.

ACR has commented that it is not required to have any subcommittees. While there is no specific requirement in the BSA or the Community Radio Broadcasting Codes of Practice for specific subcommittees, nonetheless they present an important opportunity for the community and membership to participate on the operations of a licensee, and the ACMA encourages the use of a range of committees for this purpose. When the ACMA last assessed ACR's community participation in 2019 (investigation BI-488) it had a finance and a programming subcommittee. That it no longer has them presents a reduction in the opportunity for the community to participate in the board or committee at ACR.

From the documents supplied there were several factors that combined to reduce opportunities for participation in boards and committees at ACR in period considered between April 2019 and July 2020. These were the long amount of time that unelected board members held positions on the management committee, the location in which some board members lived, and the lack of subcommittees.

## **Does the licensee provide other opportunities for volunteering in operations?**

In the ACMA's experience community broadcasters encourage community participation in their operations when they value and promote volunteering. They should take active steps to invite the community to participate in its operations, and to offer a range of ways in which they can participate.

ACR's submissions state that the local community 'are not interested in participating in operations and programming, and that the large size of the radio license area and the sparse population makes participation difficult'. This statement does not indicate that ACR is actively

encouraging participation in operations to a great extent. No evidence is provided that the local community 'are not interested' in participating. ACR has further stated that it makes on air requests for volunteers.

On 24 August 2020, the licensee had 9 volunteers participating in the operations (administration and management) of its services. By way of comparison, when the ACMA last considered ACR's compliance with the licence condition (investigation BI-488) it had 13 volunteers participating in operations. This presents a reduction in the number of operational volunteers.

ACR offers opportunities for members of the community to volunteer and takes some steps to encourage and support their participation at the service. However, the licensee's responses indicated that it may not be taking significant steps to attempt to comply with the licence obligation to encourage participation in operations, in part on the grounds that people in the local community 'are not interested in participating'.

### **Summary: community participation in operations**

ACR has room to improve its corporate governance practices. It has not addressed the ACMA's recommendations from its last investigation BI-488 to improve its corporate governance practices to support community participation. Other concerns relate to whether membership is open, evidence of a reduction in opportunities to participate in the board and committees of ACR since 2016, ACR's view that members of its community are not interested in participating in its operations, and the low number of members and operational volunteers. Based on these considerations, the ACMA's view is that ACR is not encouraging community participation in its operations.

## **B. Community participation in programming**

The ACMA considers that to encourage community participation in programming, licensees should have mechanisms to receive program requests and to involve members in the selection of programs.

In its submissions ACR has stated only that 'on an increasing number of programs, presenters are asking for feedback and requests'. Asking for feedback and requests is an important and simple way to encourage program requests. However, there is room for ACR to substantially strengthen its mechanisms to seek and encourage program requests from its community.

The number of program proposals received by a licensee can be an indication of the degree of community participation in its service. ACMA asked ACR for the number of program proposals that it received in the last six months but ACR did not respond to this question.

A common way to encourage community input into decision making about programming is for licensees to establish a programming committee. ACR submitted that it was not required to have a programming committee under its constitution and that its programming committee had been disbanded in February 2020. It further advised that programming decisions were being made by the management committee. The ACMA understands that the management committee at that time comprised only five committee members. The reliance on the management committee represents a relatively restricted group of people making decisions about programming at ACR.

The Community Broadcasting Participation Guidelines also highlight that licensees that encourage community participation in program selection are more likely to have diverse program schedules. They emphasise that the proportion of live and local programs that originate from within the licence area are a good sign of a licensee that encourages

community participation in programming. As noted, in the week for which the broadcast program was supplied, 57% of programming was local. This is slightly less than the national average for regional broadcasters of 62%, suggesting room for improvement in the program schedule.

ACR has said that all its local programming is live, meaning that 57% of its programming is live, or 100% of its local programming. This is a higher proportion of local programming being live than the average for a regional broadcaster. According to the Community Broadcasting Association Australia's 2018 Programming and Technology Survey, on average among regional broadcasters 70% of local content was broadcast live.

The community broadcasting guidelines further state that the 'number of volunteers, producers and presenters may also be an indication of the extent to which licensees encourage program provision'.

The ACMA considers that the number of presenters is a useful measure of community participation in programming. At the time of making its submission, on 24 August 2020, ACR had 21 presenters with 3 to be trained. By way of comparison when the ACMA last considered ACR's compliance with the licence condition, in May 2019, it had 25 presenters, representing a reduction in programming participation. The management committee minutes also indicate that between May 2019 to August 2020 there was a recurring concern from members about the need for more presenters. Despite this concern, neither ACR's submissions, nor its management committee minutes, refer to any new or planned activities to attract more presenters.

In 2019 ACR submitted that it was considering opening new studios in other parts of its licence area. The ACMA noted that this would facilitate additional access points with which the community could participate in the service. The complaint to the ACMA raises concerns about the discontinuation of this proposal.

Management committee meeting minutes since April 2019 indicate that plans were well progressed and an additional studio in Mt Barker was in use and was supported by the relevant local council and local business. However, these plans were discontinued. On balance, although the establishment of another studio would have provided an opportunity to increase community participation at ACR, its discontinuation did not reduce, overall, the levels of presenters participating in programming.

### **Summary: community participation in programming**

The broadcast program reflects a good level of 'live and local' content. However, because of the cessation of the programming committee, there are limited opportunities for community to be involved in programming in ACR. The limited opportunities for community involvement, lower than average proportion of local programs, and the station's submission that the local community is 'not interested in participating' in programming strongly suggest that the licensee is not encouraging community participation in programming. Based on these considerations, the ACMA's view is that there is little evidence of the steps the licensee is taking to encourage participation in programming.

### **Conclusion – Issue 2**

Compliance with the licence condition at paragraph 9(2)(c) of the *Broadcasting Services Act 1992* requires licensees to encourage members of the community it serves to participate in operations and in programming and to use a range of initiatives and measures to do so.

ACR's submissions suggest that, at the time of the complaint its membership numbers had reduced, its committee structure and composition are less representative of its community of interest, and that transparency around some membership decisions is limited. They further

suggest that ACR has limited activities to encourage members of the community, such as outside broadcasts and on-air requests. There is little evidence of the steps the licensee is taking to encourage participation in programming.

It is the ACMA's view that at the time the complaint was made the licensee did not encourage members to participate in operations and programming.

## **Licensee response**

As noted above in December 2020 the ACMA was advised of the resignation of all the management committee, and the election of an entirely new committee. The ACMA provided a copy of its findings to the new management committee at ACR in a Preliminary Report in April 2021. In response to the findings the licensee stated that it agreed with the assessment made by the ACMA. It advised that it had undertaken measures to address issues identified in the Preliminary Report, including:

- Relaunching specialised programs and stopping the broadcast of programs from Curtin FM
- Appointing a program manager, and a programming sub-committee
- Plans to develop a questionnaire about programming and launching a bi-monthly newsletter
- Drafting a new constitution, Code of Conduct and Policy and Procedure for Disciplinary Action and Dismissal of volunteers to address concerns identified in the Preliminary investigation report
- Working with CBAA to develop policies and procedures to improve compliance, as necessary.

Though they have no bearing on the outcome of this investigation, the ACMA notes and acknowledges the steps taken by the licensee to rectify the issues raised in the Preliminary Report.