

Investigation report no. BI-563

Summary	
Licensee	Noosa District Community FM Radio Association Inc.
Station	4NSA
Type of service	Community – radio
Issue	Encourage community participation
Relevant legislation	Paragraph 9(2)(c) of Schedule 2 to the <i>Broadcasting Services Act 1992</i>
Decision	Breach of subparagraph 9(2)(c)(i) [encourage community participation in operations] No breach of subparagraph 9(2)(c)(ii) [encourage community participation in the selection and provision of programs]

Background

On 4, 7, and 19 May 2020 the Australian Communications and Media Authority (**the ACMA**) received complaints about Noosa District Community FM Radio Association Inc. (**the licensee**). These complaints indicated that the licensee was not encouraging community participation in operations, or in the selection and provision of programs.

On 9 August 2020, the ACMA commenced investigation BI-563 under the *Broadcasting Services Act 1992* (**the BSA**) into the licensee's compliance with the licence conditions at the following subparagraphs of Schedule 2 to the BSA:

- 9(2)(c)(i) [encourage community participation in operations].
- 9(2)(c)(ii) [encourage community participation in the selection and provision of programs].

On 26 November, 2 December, and 12 December 2020, the ACMA received more complaints which alleged that the licensee was not encouraging community participation in operations, or in the selection and provision of programs. On 10 February 2021, the ACMA decided to investigate the matters raised in these complaints as part of investigation BI-563.

Specific allegations made in the complaints outlined above (**the complaints**) are considered throughout this report.

The licensee

The licensee has held a long-term community radio broadcasting licence since July 2002, representing the general geographic area community interest in the Noosa RA1 licence area in Queensland. Its call sign is 4NSA, and its current licence expires on 30 June 2022.

On 3 January 2020, the ACMA finalised investigation BI-520 into the licensee's compliance with the licence condition at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA [encourage community participation in the selection and provision of programs]. The ACMA found no breach of this licence condition.¹

Assessment and submissions

This investigation has considered:

- the complaints received by the ACMA on 4, 7, and 19 May 2020
- the complaints received by the ACMA on 26 November, 2 December, and 12 December 2020
- written submissions from the licensee received by the ACMA on 13 October 2020, 1 December 2020, 7 December 2020, 10 December 2020, 2 March 2021, and 26 November 2021.
- written submissions from the licensee for investigation BI-520, received by the ACMA on 17 and 22 October 2019.

¹ [Investigation report BI-520](#), ACMA, accessed 22 September 2021.

Other sources are identified in this report where relevant.

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

Relevant provision of the *Broadcasting Services Act 1992*

Schedule 2—Standard conditions

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; and

[...]

Finding

The licensee is not encouraging community participation in its operations. Accordingly, it is in breach of subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Reasons

Every community broadcasting licensee must encourage members of the community that it serves to participate in its operations.²

The ACMA's Community Broadcasting Participation Guidelines (**the Participation Guidelines**) state that licensees should use a range of initiatives and measures to encourage community participation. No single activity or initiative alone is likely to result in compliance with the community participation requirement.³

In the ACMA's experience, licensees encourage community participation in their operations when they:⁴

- have sound corporate governance practices
- value and promote membership and volunteering, and

² BSA, subparagraph 9(2)(c)(i) of Schedule 2.

³ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 3, accessed 22 September 2021.

⁴ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 9, accessed 22 September 2021.

- have an effective and transparent committee structure.

Sound corporate governance practices

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.⁵

If members do not have access to the rules that set out a licensee's corporate governance practices, or have access to more than one set of rules and do not know which rules the licensee should follow, then their participation in operations could be limited.

Examples of sound corporate governance practices include:⁶

- 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)
- procedures for complying with regulatory requirements that apply to the service and its organisational structure, including the obligations that apply to incorporated associations under relevant State legislation for lodging documents.

Does the licensee operate under one registered constitution that is available to members?

The complaints allege that the licensee has not correctly registered its constitution with the appropriate regulator, and that it operates under more than one constitution.

The licensee is an association incorporated in Queensland.⁷ To be incorporated in Queensland, an association must lodge an application with the Queensland Office of Fair Trading (**the OFT**).⁸ An association incorporated in Queensland must register its rules (or constitution) with the OFT when it applies for incorporation. After incorporation, if it wishes to amend its rules, it must pass a special resolution at a general meeting and apply to register the amended rules with the OFT within three months of passing the resolution.⁹

On 13 October and 10 December 2020, the licensee provided the ACMA with a copy of its current constitution (**the constitution**). The constitution includes the following heading:

Revised Constitution 2009 [incorporating changes to sections 6.1 and 9 effective from 15 November 2018]

On 2 March 2021, in response to ACMA questions, the licensee made the following statements:

⁵ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 9, accessed 22 September 2021.

⁶ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 9, accessed 22 September 2021.

⁷ <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/check-a-licence-association-charity-or-register/check-a-charity-or-association#>, organisation number IA14662, checked 22 September 2021.

⁸ <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/set-up-an-incorporated-association>, accessed 22 September 2021.

⁹ <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/running-an-incorporated-association/rules-for-associations>, accessed 22 September 2021.

This is our only constitution.

Wherever our constitution is silent we refer to the Model Rules.^[10]

The latest change was submitted to the OFT after the member's ratified changes at the AGM 2018.

A current hardcopy is openly available at reception and an e-copy is emailed if requested.

The licensee could make the constitution more freely available to members by, for example, making it available on its website. However, based on the information provided, the ACMA considers that the licensee operates under one registered constitution that is available to members.

Does the licensee have adequate measures to prevent the concentration of control in the hands of a few individuals?

Management Committee

Subclause 11.2 of the constitution sets out a limited renewable term for individuals holding positions on the Management Committee. This term is approximately one year – i.e. from the date of the AGM at which the Management Committee members are elected to the date of the next AGM.

On 13 October 2020, the licensee submitted that, due to 'coupe attempt[s]' and Management Committee member resignations, it has had '4 presidents and 6 different committees within the last 4 years'. While this reflects some instability, it does not indicate that a few individuals have controlled the Management Committee for a long time.

Accordingly, based on the information provided, the ACMA does not consider that the Management Committee provisions of the constitution have allowed a concentration of control of the licensee to be in the hands of a few individuals.

Subcommittees

The complaints allege that 15 subcommittees are coordinated by the president. If the president controls the licensee's subcommittees then their effectiveness as a measure to prevent concentration of control may be compromised.

On 17 October 2019, the licensee provided an organisation chart for investigation BI-520, which states that the licensee has subcommittees for administration, grants, sponsorship, technical, direction and growth, programming, engagement, training, fundraising, marketing, social media, production, membership growth, and outside broadcast events.

Clause 16 of the constitution sets out measures to prevent the president, chairman, or subcommittee coordinator from controlling the decisions of any subcommittee. For example, subclause 16.3 sets out that people in those positions do not have a 'second or casting vote' if there is an equality of votes at a subcommittee meeting. Under clause 16.3, if there is an equality of votes then 'the question shall be deemed to be decided in the negative'.

¹⁰ Available at <https://www.publications.qld.gov.au/dataset/oft-incorporated-associations-forms-and-guides/resource/9a54beb5-8288-4ddd-847b-459a97822119>, accessed 22 September 2021.

On 10 October 2020, the licensee provided a 'sub-committee authority' policy. This policy provides measures to prevent the Management Committee from controlling decisions on matters that it has delegated to a subcommittee.

For example, clause 2 of the policy sets out that the Management Committee 'does not take first action on matters that it has delegated to a Sub-Committee, and does not debate those matters', unless specific conditions arise such as 'the Management Committee is of the opinion that the Sub-Committee has not addressed those matters adequately or in a timely manner'.

Clause 5 of the 'sub-committee authority' policy allows the Management Committee to bypass these measures and 'take a decision in matters normally the responsibility of a Sub-Committee if it considers that action to be appropriate'. However, based on the information provided, the Management Committee does not appear to be routinely making decisions that are normally the responsibility of a subcommittee.

Accordingly, based on the information provided, the ACMA considers that the licensee's use of its constitution and sub-committee authority policy does not, in practice, allow a concentration of control of the licensee to be in the hands of a few individuals.

Conclusion

Noting that the licensee operates under only one set of rules, and has adequate measures to prevent the concentration of control in the hands of a few individuals, the ACMA has found little reason to believe that the licensee does not have sound corporate governance practices.

Value and promote membership and volunteering

Membership is one of the primary ways of encouraging community participation in the operations of a service.¹¹

The ACMA's strong preference is for community radio broadcasting services to have open membership policies in order to encourage community participation.¹²

Does the licensee encourage open membership?

Membership is open if:¹³

- it is automatic on lodgement of a membership application form and payment of the membership fee; or
- a licensee can only refuse membership applications on the basis of specific, transparent and reasonable criteria, and there are adequate grievance or review mechanisms for rejected applicants.

Licensees which have rules permitting rejection of membership applications should have appropriate safeguards in place, including:¹⁴

- clear and reasonable criteria for rejection of membership applications; and

¹¹ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10, accessed 22 September 2021.

¹² [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 11, accessed 22 September 2021.

¹³ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10, accessed 22 September 2021.

¹⁴ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10, accessed 22 September 2021.

- a requirement to give rejected applicants reasons for the decision and information on review or appeal options. For example, a right of reply to a membership committee and/or right to appeal the rejection at a general meeting.

Licensees which have rules permitting the termination of memberships should also have appropriate safeguards in place, including:

- clear and reasonable criteria for terminating memberships; and
- a requirement to give terminated members reasons for the decision and information on review or appeal options.

Licensees should have clear and open procedures to ensure they follow up membership queries, process applications for membership, consider applications in a reasonable period of time, and notify applicants of the outcome of their application.¹⁵

The complaints allege that:

- clause 9 of the constitution does not allow a right of reply [against termination of, or rejection of application for, membership]
- the constitution has been changed to benefit the president
- membership applications have been rejected with no explanation or due process
- members that have raised concerns have not have their memberships renewed.

The ACMA understands that applications for membership of a community broadcasting licensee include applications for new memberships and applications for renewal of existing memberships.

Open membership – constitution

Eligibility to lodge a membership application

Subclauses 7.1 and 7.2 of the constitution set out that membership applications must be proposed, seconded and signed by two members or the licensee. Restricting the opportunity to apply for membership to people who have access to two existing members who will support their application creates a barrier to participation in operations and raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Clear and open procedures for considering membership applications

Subclause 15.1 of the constitution states that 'The Management Committee shall meet at least once every calendar month to exercise its functions'.

Subclause 7.4 states:

At the next meeting of the Management Committee after receipt of any application by the Secretary and the membership fee payable such application shall be viewed by the Management Committee which shall thereupon consider and determine upon the granting, rejection or

¹⁵ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10, accessed 22 September 2021.

deferment of the application providing that all applications are to be determined no later than the third management meeting after receipt of the application by the Secretary.

Subclause 7.6 states:

Upon acceptance rejection or deferment of an application for membership the Secretary shall within one month of the Management Committee's meeting give the applicant notice in writing of such acceptance rejection or deferment.

Under these subclauses, the licensee may spend a maximum of four months considering a membership application, and advise the applicant of its decision a maximum of five months after it is received. Depending on the volume and nature of membership applications received, the ACMA considers that this may be a reasonable maximum period of time to process and consider applications, and to notify applicants of the outcome. However, if the licensee were to routinely take the maximum amount of time permitted under the constitution to consider each application, this could pose a barrier to community participation in operations and would raise concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

In its preliminary report the ACMA identified a risk of indefinite deferral of an application under these subclauses. The licensee submitted that indefinite deferral was not possible under the constitution because subclause 7.4 states 'all applications are to be determined no later than the third management meeting after receipt of the application by the Secretary'. The ACMA understands that 'to be determined' requires the licensee to accept or reject all applications within the stipulated timeframe and therefore an indefinite deferral is not permitted.

Terminating memberships – majority decision of Management Committee

Where the licensee terminates a membership by majority decision of the Management Committee, the constitution provides that member with grievance or review mechanisms. The safeguards set out in the constitution for terminating memberships by majority decision of the Management Committee include:

- clear and reasonable criteria when the management committee will consider terminating a membership (subclause 8.2)
- a requirement to give the member concerned 'a full and fair opportunity of presenting his case' (subclause 8.3)
- the right for a member to appeal a decision to terminate their membership at a general meeting (clause 9).

The constitution does not explicitly state that the licensee must give the member concerned reasons for terminating their membership, nor an opportunity to respond to those reasons, as part of the 'full and fair opportunity of presenting his case'. However, based on the information provided (discussed under '**Open membership – practice**' below), this is in practice what the licensee appears to have done in most instances.

Terminating memberships – unanimous decision of Management Committee

In contrast to a person whose membership is terminated by majority decision of the Management Committee, the constitution does not give a person whose membership is terminated by unanimous decision of the Management Committee the right to appeal the decision at a general meeting (subclause 9.1). This right was removed when the licensee passed a motion to change the constitution at a general meeting on 21 September 2018.

The licensee would strengthen its open membership safeguards by reinstating the right of a person whose membership is terminated by unanimous decision of the Management Committee to appeal the decision, for example at a general meeting. The constitution does provide such a person with some appropriate process protections, though they are not review mechanisms. The safeguards set out in the constitution for terminating memberships by unanimous decision of the Management Committee include:

- clear and reasonable criteria when the management committee will consider terminating a membership (subclause 8.2)
- a requirement to give the member concerned 'a full and fair opportunity of presenting his case' (subclause 8.3)

As noted above, the constitution does not explicitly state that the licensee must give the member concerned reasons for terminating their membership, nor an opportunity to respond to those reasons, as part of the 'full and fair opportunity of presenting his case'. However, based on the information provided (discussed under '**Open membership – practice**' below), this is in practice what the licensee appears to have done.

Refusing membership applications – majority decision of Management Committee

Subclause 7.8 of the constitution gives applicants whose application for membership has been rejected by the Management Committee 'the same rights of appeal as if it were termination of a membership pursuant to Clause 9 of these rules'.

Clause 9 sets out grievance or review mechanisms for refusing membership applications by majority decision of the Management Committee. These include:

- the right for the applicant to appeal a decision to refuse their membership application at a general meeting (clause 9)
- if the applicant appeals the decision at a general meeting, they 'shall be given the opportunity to fully present' their case (subclause 9.3).

However, based on the information provided, the licensee's criteria for the rejection of membership applications are not transparent. The constitution does not set out any such criteria. Nor does it require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options – although, based on the information provided (discussed under '**Open membership – practice**' below), the licensee appears to have done so in some instances. The absence in the constitution of these open membership safeguards raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Refusing membership applications – unanimous decision of Management Committee

Where a membership application is refused by unanimous decision of the Management Committee, the constitution does not:

- set out criteria for the rejection of membership applications
- require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options
- set out any review or appeal rights to applicants whose applications are refused by unanimous decision of the Management Committee.

The absence of these safeguards, in particular the absence of any review or appeal options for these applicants, raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

On 1 December 2020, the licensee provided its reasons for proposing that the rights of appeal for terminated members and rejected membership applicants be removed if the decision was a unanimous decision of the Management Committee. The licensee's reasons included references to previous internal conflict.

Community radio broadcasting licensees must have written policies and procedures in place to effectively deal with internal conflict,¹⁶ and it appears that the licensee may have amended its constitution in an attempt to deal with internal conflict. However, any policies and procedures that a licensee puts in place to deal with internal conflict should do so without breaching its licence conditions.

Conclusion: Open membership – constitution

For the following reasons, and based on the information provided, the ACMA's finding is that the constitution does not support open membership:

- The constitution restricts the opportunity to apply for membership to people who have access to two existing members who will support their application. This creates a barrier to participation in operations.
- The licensee's criteria for the rejection of membership applications are not transparent. The constitution does not set out any such criteria. Nor does it require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options.
- Where a membership application is refused by unanimous decision of the Management Committee, the constitution does not set out criteria for the rejection of membership applications, require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options, or set out any review or appeal rights to applicants whose applications are refused by unanimous decision of the Management Committee.

Open membership – practice

Where the licensee decides to terminate memberships or reject applications to renew memberships, appropriate safeguards should apply to encourage open membership.

On 13 October 2020, the licensee submitted that, since 1 May 2019, it had received 98 applications to renew existing memberships and 24 applications for new memberships. The licensee also provided minutes of meetings at which a decision was made to accept or reject these applications, and copies of correspondence with membership applicants about the decision to reject their applications.

In one instance, the Management Committee decided unanimously not to renew a membership. The licensee provided the applicant with reasons for this decision. However, it did not provide information on review or appeal options. Accordingly, based on the information provided, the ACMA considers that, when deciding not to renew this membership, due to the absence of review or appeal rights, the licensee did not encourage open

¹⁶ Community Radio Broadcasting Codes of Practice 2008, Code 1.5.

membership. This raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

In another instance, the licensee based its decision to reject a membership application on its assessment of the applicant's suitability to fill their preferred role at the station. Making a decision to reject a membership application based on this criterion does not encourage community participation in operations. This denies the applicant the opportunity to participate in the licensee's operations by taking on other roles, or having an input into decision making (by voting at AGMs, for example). The licensee also did not provide the applicant with information on review or appeal options. Accordingly, based on the information provided, the ACMA considers that, when deciding to reject the membership application, the licensee did not encourage open membership and did not encourage community participation in operations.

Conclusion: Open membership – practice

Based on the information provided, the ACMA's finding is that the licensee did not encourage open membership when making two membership decisions.

Do members have a say in decision making?

Membership is one of the primary ways of encouraging community participation in the operations of a service. 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, and proposing items of business for general meetings.¹⁷

SGM scheduled for 15 December 2019

Licensees should invite all members to attend and vote at general meetings. If licensees do not do this, then their members' ability to have a say in decision-making is significantly limited.

The complaints allege that the licensee did not invite members to attend a SGM which was scheduled to be held on 15 December 2019.

On 22 February 2021, the ACMA asked the licensee if it held a SGM in December 2020 and, if so, how it encouraged its members to attend this SGM.

On 2 March 2021, the licensee made the following statement:

The members who had requested the meeting resigned on the 12th December prior to the meeting. Consequently, the SGM was cancelled.

The Secretary sent out multiple emails to invite all members to attend. The date and invitation were published on the various station notice boards.

The invitation was extended and announced verbally to all members at the AGM and another email sent out after the AGM to all members asking to register attendance due to COVID restrictions.

A list of attendance register was made available at reception or to the Secretary account by email.

¹⁷ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10, accessed 22 September 2021.

The licensee could have used more methods to invite members to the SGM scheduled for 15 December 2020, such as publicising the date, time and location of the SGM on its website and social media accounts.

However, based on the information provided, the ACMA considers that the licensee used adequate methods to invite members to the SGM and this does not raise concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Members' say – constitution

Clause 4 of the constitution states that 'Members voting rights commence 3 months after their membership application has been approved by the Management Committee'.

This clause does not allow all members to have a say in decision-making. Restricting the right to vote at general meetings to those people who have been members of the licensee for three months or more creates a barrier to participation in operations and raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Conclusion: Do members have a say in decision making?

On balance, considering the specific case of the methods the licensee used to invite members to the cancelled SGM in December 2020, and the provisions of the constitution relating to delayed voting rights, the ACMA is concerned that members do not have an adequate say in the licensee's decision making.

Conclusion: Value and promote membership and volunteering

For the following reasons, and based on the information provided, the ACMA's finding is that the extent to which the licensee values and promote membership and volunteering raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA:

- The constitution does not support open membership due to a lack of provisions for a right of reply and other defects.
- The licensee did not encourage open membership when making two membership decisions.
- Clause 4 of the constitution does not allow all members to have a say in decision-making. It restricts voting rights to people who have been members for at least three months.

Have an effective and transparent committee structure

Committees are an important way in which members and other people in the community served by the licensee's service can have a say in the running of the service. 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. Smaller stations tend to have voluntary committees where members participate freely without the need for nominations and election to committee positions.¹⁸

On 2 March 2021, the licensee submitted the following information about its subcommittees in response to ACMA requests for information:

¹⁸ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 17, accessed 22 September 2021.

- **how 4NSA encourages participation in its subcommittees,**
all members are invited to participate and join the sub-committees. If a member shows an interest in joining a subcommittee and there is no vacancy the coordinator usually invites the interested party to come along and check it out.
- **how 4NSA encourages members to join subcommittees.**
We talk to members regularly any day when we meet at the station and encourage to participate if they show an interest.
- **the number positions on each subcommittee**
Each subcommittee has a different number of members, a minimum of 2 and with programming being the largest subcommittee it has 5 members at present.
- **how subcommittee members are appointed or elected / whether any subcommittee members also hold other positions at 4NSA, such as management committee member.**
Members are appointed by showing interest in that particular work area.
Programming and training consist of members of the MC 20% and non-MC members 80%.
Sponsorship and Production has 10% and 90% non-MC members.
Reception has 10% and 90% non-Mc-members.
Accounting is 100% MC member.
Fire Warden and H&S are General Member.
- **how subcommittee decisions are made?**
Decisions are made democratically at subcommittee meetings and presented to the Secretary and the MC [Management Committee].

The licensee could improve the transparency of the process by which members can join its subcommittees. For example, it could set terms for subcommittee members, and formally call for nominations to join each subcommittee at the end of each term. However, the licensee does have a range of committees and invites all members to participate in these subcommittees.

Conclusion: Effective and transparent committee structure

Based on the information provided, the ACMA does not consider that the licensee's committee structure raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Conclusion: Issue 1

Based on the information provided, the licensee has some initiatives and measures in place that encourage community participation in its operations. For example, measures to prevent the concentration of control in the hands of a few individuals include the constitution setting out a limited renewable term for individuals holding positions on the Management Committee.

However, as outlined above, there are several ways in which the licensee does not encourage community participation in its operations – particularly concerning encouraging open membership. These concerns include the following matters.

- The constitution restricts the opportunity to apply for membership to people who have access to two existing members who will support their application. This creates a barrier to participation in operations.
- The licensee's criteria for the rejection of membership applications are not transparent. The constitution does not require the licensee to give a membership

applicant the reasons for a decision to refuse their application and information on review or appeal options.

- Where a membership application is refused by unanimous decision of the Management Committee, the constitution does not set out criteria for the rejection of membership applications, require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options, or set out any review or appeal rights to applicants whose applications are refused by unanimous decision of the Management Committee.
- The licensee did not encourage open membership when making two membership decisions.
- The constitution does not allow all members to have a say in decision-making. It restricts voting rights to people who have been members for at least three months.

The ACMA's finding is that these areas of concern discourage participation in the licensee's operations, and that the licensee is in breach of subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Issue 2: Encouraging community participation in program selection and provision

Relevant provisions of the *Broadcasting Services Act 1992*

Schedule 2—Standard conditions

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:

[...]

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

[...]

Finding

The licensee is not in breach of the licence condition to encourage community participation in program selection and provision set out at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Reasons

Every community broadcasting licensee must encourage members of the community that it serves to participate in program selection and provision.¹⁹

The complaints allege that a select number of members control programming, presenter's fees discourage community engagement, and the president has put locks on studio doors and has the only keys.

Program selection

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.²⁰

Concentration of control

As noted in Issue 1 above, on 2 March 2021 the licensee submitted that subcommittee decisions are made democratically at subcommittee meetings and presented to the secretary and management committee, and that only a minority of members of the programming subcommittee (two out of five) are also members of the Management Committee.

The ACMA also asked the licensee to provide the following specific information about its programming subcommittee.

- How the licensee encourages its members to express an interest in joining its program subcommittee.
- The process by which the licensee's members could join the program subcommittee.

In response to both questions, on 2 March 2021 the licensee referred the ACMA to its submissions to investigation BI-520, made on 4, 22 and 25 October 2019. After considering those submissions, the ACMA stated the following in investigation report BI-520:²¹

It is considered 4NSA encourages participation in the selection of programming through a programming committee. However, there is scope for the licensee to make its operations more transparent and its programming committee more diverse by formalising its process for appointing members to the committee and introducing terms. It is noted that 4NSA's current programming committee is made up of members that have already been selected over many years as presenters, board members, or who are fulfilling other roles, potentially limiting 4NSA's opportunity for broader community input.

The licensee has not indicated these matters have been subsequently addressed. There is still scope for the licensee to make its operations more transparent and its programming committee more diverse by formalising its process for appointing members to the committee and introducing terms.

However, based on the information provided, the ACMA makes the following findings:

¹⁹ BSA, subparagraph 9(2)(c)(ii) of Schedule 2.

²⁰ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 19, accessed 22 September 2021.

²¹ [Investigation report BI-520](#), ACMA, pages 3-4, accessed 22 September 2021.

- The licensee encourages collective decision-making about programming through accepting expressions of interest from members to join the programming subcommittee
- Programming decisions are not all concentrated in the hands of one individual or a small group.

Conclusion: Program selection

The ACMA has not identified serious concerns about the extent to which the licensee encourages community participation in program selection.

Program provision

Giving members of the community an opportunity to produce and present programs is a concrete way to demonstrate that the licensee has encouraged community participation in the provision of programming.²²

Licensees encourage community participation in program provision when they are open to new programming ideas from the community.²³ The ACMA considers that the process for individuals to propose program they may wish to present can demonstrate that a licensee is encouraging community participation in the provision of programming.

To encourage community participation, licensees should take active steps to be open and accessible to the community.²⁴ Having a studio that is readily accessible for members and volunteers is also an important component of encouraging participation in programming.

The licensee’s program proposal process

On 17 October 2019, the licensee made submissions to the ACMA for investigation BI-520 about its program proposal system. On 1 December 2020 the licensee submitted that this program proposal system had not changed since making those submissions in October 2019.

On 13 October 2020, the licensee submitted that it had received 132 program proposals in the previous 12 months, 131 of which were approved and one of which was ‘revoked’ because the proposer had not returned from NSW to Queensland due to COVID-19 related border closures. The licensee also submitted that it had ‘about 50 volunteer presenters’, 42 of which were ‘actively presenting their program’.

On 1 December 2020, the licensee clarified that 32 of these proposals were for new programs that had not been broadcast in the previous 12 months, and 100 were for programs that were continuing from the previous four-month block, as summarised below.

Block	Continuing programs	New programs
2 September to 5 January 2020	37	10
6 January to 3 May 2020	35	11

²² [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 20, accessed 22 September 2021.

²³ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 21, accessed 22 September 2021.

²⁴ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 9, accessed 22 September 2021.

4 May to 7 September 2020	28	11
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Based on the information provided, and as noted in investigation report BI-520, 4NSA's programming process includes some features that could act as an impediment or disincentive to people making a proposal and could diminish community participation in the provision of programs in the future. For example:

- a member of the community must pay membership (either \$70 or \$35 concession) and undertake six weeks of training (costing \$160 or \$90 concession) before being able to make a program proposal
- the licensee charges a \$55 presenter fee per block.

However, in the ACMA's experience, 42 is a high number of active presenters for a community broadcasting licensee in a regional area, and 32 is a high number of new program proposals in the space of 12 months. This indicates a high level of community engagement, that the licensee is open to new programming ideas from the community, and that membership, training, and presenter fees are not currently acting as a disincentive to community engagement.

Accordingly, the licensee's program proposal process, including the requirement for presenters to pay fees, does not raise serious concerns about encouraging participation in program provision.

Are the licensee's studios accessible to members and volunteers?

On 13 October 2020 the licensee submitted the following information:

We have 3 studios

Studio 1 – Live to air. This studio is never locked

Studio 2 – Available for all presenters for pre-production, live interviews, training, and a variety of other uses for presenters. These studios are never locked. There is a studio booking register system for members to book this studio out if they require use of it.

Studio 3 – This is our production studio where all our promotion recordings are made, overnight programs and other 'in house' recordings that we produce. It also holds all our library data and spare parts and storage of technical equipment. This studio is locked. Any presenter may use this studio by booking it on request with the production manager, librarian, or management but it is generally not required as anyone eligible can book studio 2.

Based on the information provided, only one of the licensee's three studios is locked, and this studio may be booked. This indicates that members and volunteers are not prevented from participating in program provision by being denied access to the licensee's studios.

Accordingly, based on the information provided, the ACMA does not consider that accessibility to the licensee's studios raises concerns about compliance with subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Conclusion: program provision

Based on the analysis above, the ACMA has not identified any concerns about encouraging community participation in the provision of programs.

Conclusion: Issue 2

Based on the information provided, the ACMA has not identified any serious concerns regarding the extent to which the licensee encourages members of the community it services to participate in program selection and provision. Accordingly, the ACMA's finding is that the licensee is not in breach of subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Agreed actions

On 26 November 2021, the licensee advised the ACMA of the following actions that it has taken, or will take, in response to the ACMA's preliminary report:

- Its members voted to amend the constitution at a SGM on 21 September 2021, and it has submitted the amended constitution to the OFT for approval.
- It will make the amended constitution available on its website.
- The amendments include:
 - > setting out the grounds for rejecting a membership application
 - > removing the requirement that membership applications be proposed, seconded and signed by two members or the licensee
 - > providing rejected membership applicants with the reasons for the rejection on request
- It will advertise the details of upcoming general meetings in the local newspaper.
- Regarding the three-month waiting period before new members may vote at general meetings, it will propose a new approach to members.
- It will reconsider the provisions of the constitution that do not provide a right of appeal to membership applicants whose applications are rejected by unanimous decision of the management committee.

The ACMA notes steps taken by the licensee to address the breach finding. The ACMA will monitor the licensee's progress towards completing the above actions.