

## Investigation Report no. BI-600

Summary	
<b>Licensee</b>	Lake Macquarie FM Incorporated
<b>Station</b>	Radio Yesteryear (2OLD)
<b>Type of service</b>	Community Broadcasting
<b>Relevant legislation</b>	<i>Broadcasting Services Act 1992 (BSA):</i> <ul style="list-style-type: none"><li>&gt; Subparagraph 9(2)(c)(i) of Schedule 2 [encouraging participation in operations]</li></ul> <i>Community Radio Broadcasting Codes of Practice (the Codes)</i> <ul style="list-style-type: none"><li>&gt; Code 7 [complaints]</li></ul>
<b>Decision</b>	<ul style="list-style-type: none"><li>&gt; The Licensee did not breach subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.</li><li>&gt; No finding in relation to Codes 7.3(a) – (d) of the Codes.</li><li>&gt; No finding in relation to Code 7.4 of the Codes.</li></ul>

## Background

On 3 February 2021, the Australian Communications and Media Authority (**ACMA**) received a complaint (**Complainant**) in respect of Lake Macquarie FM Incorporated (**Licensee**).

The Complainant raised allegations which suggest that the Licensee was failing to encourage community participation in the operations of the service it operates and respond to complaints.

On 9 March 2021, the ACMA commenced investigation BI-600 under the *Broadcasting Services Act 1992* (**BSA**) into the Licensee's compliance with:

- > Subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.
- > Code 7 of the Community Radio Broadcasting Codes of Practice (**Codes**).

## The Licensee

The Licensee has held a long-term community radio broadcasting licence to represent the general community interest in the Lake Macquarie RA1 licence area since 2010, and operates the service known as 'Radio Yesteryear' (**2OLD**). The expiry date of the Licensee's current licence is 30 June 2025.

## Assessment and submissions

This investigation has considered the following material:

- > the complaint lodged by the Complainant with the ACMA on 3 February 2021 and subsequent information provided by the Complainant.
- > written submissions made by the Licensee on 14 May 2021, 9 June 2021, 18 June 2021 and 7 September 2021 (**Initial Submissions**).
- > the Licensee's application for renewal of community broadcasting licence 1150043, submitted to the ACMA on 20 June 2019.
- > written submissions made by the Licensee on 4 February 2022 and 21 February 2022 in response to the ACMA's Preliminary Investigation Report (**Preliminary Report Submissions**).

## Issue 1: Is the Licensee encouraging community participation in operations?

### Relevant licence condition

#### Schedule 2

#### Part 5 – Community broadcasting licences

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

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

[...]

- (i) the licensee will encourage members of the community that it serves to participate in the operations of the licensee in providing the service or services [...]

## Finding

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

## Reasons

There is a licence condition under the BSA which requires community broadcasting licensees to encourage members of the community that it serves to participate in its operations.<sup>1</sup>

The ACMA's [Community Broadcasting Participation Guidelines 2010](#) (the **Participation Guidelines**) note that in order to encourage community participation, licensees should take active steps to:

- > make the community aware of opportunities to participate in the service
- > be open and accessible to the community.<sup>2</sup>

The Complainant has made the following allegations:

- > The Licensee only informed a select few members about nominations to the management committee and the election results, and not the entire membership.
- > The Licensee is failing to respond to the Complainant's correspondence regarding:
  - o membership status
  - o information regarding the election of the management committee
  - o requests for station documentation
  - o discussion of station matters.
- > A clause was added to the Licensee's membership application form which subjects applicants to a six-month membership trial.
- > General members are not able to adequately participate in the operations of the management committee.

In order to assess the concerns raised by the Complainant, and to determine if the Licensee is encouraging participation in its operations, the ACMA has assessed the following matters:

### 1.1. Making the community aware of opportunities to participate in the service

- > How the Licensee promotes nominations to its management committee and informs members about management committee election results.

### 1.2. The openness and accessibility of the service to the community

- > How the Licensee communicates with members of the community.
- > Whether the Licensee has restrictions on membership.
- > General participation in management committee meetings.

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<sup>1</sup> BSA, subparagraph 9(2)(c)(i) of Schedule 2.

<sup>2</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 9.

## **1.1. Making the community aware of opportunities to participate in the service**

### ***Promoting nominations to the management committee and informing members about election results***

This investigation does not assess the validity of the election of the Licensee's management committee.

This investigation assesses how the Licensee promoted nominations to the management committee and informed members about election results, noting that both these actions relate to how the Licensee encourages members of the community to participate in operations of the service.

The [Participation Guidelines](#) note that:

*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.<sup>3</sup>*

In order to ensure compliance with the BSA licence condition to encourage the community to participate in operations, licensees should afford members and volunteers the opportunity to participate in the election of, or seek nomination to, its management committee.

Active steps should be taken by a licensee to encourage participation in its management committee, such as promoting the election of the management committee via: on-air broadcasts, the station website, social media profiles, station newsletters.

As noted above, the Complainant alleged that the Licensee:

- > only informed a select few members about nominations to the management committee, and not the entire membership.
- > only informed a select few members about the management committee election results, and not the entire membership.

The Licensee advised the following in its Initial Submissions:

*We are abiding by all required regulations regarding notification of elections for committee.*

*We advertised on air, on our web page and in a letter sent out to all members. After a period of 21 days, we have received only seven nominations for the vacant positions and as per our constitution, supplied when we renewed our licence last year and registered with Fair trading march 2015.*

*"If no other nominations received other than the positions vacant then they shall be deemed elected". This has been confirmed by Fair Trading as correct procedure and was communicated to all members by mail out.*

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<sup>3</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 17.

*Lake Macquarie Fm 97.3 engaged our membership via emails to membership and with Facebook and web page [www.lakemacquarie.fm](http://www.lakemacquarie.fm) also over the air regarding our license renewal and our recent Committee enlistment.*

*Postal nomination forms posted out in March 2021 to all financial members.*

*Only Seven nominations were received for the positions, therefore those were deemed elected as per our constitution .*

*A mail out to all Financial members to notify of the positions filled and copies of our financial audit.*

While the Licensee provided no copies of the emails, letters, website posts or Facebook posts advertising the opening of nominations to its management committee, the ACMA notes the following.

- > The Complainant acknowledged that:
  - 'A note appears on the website stating that nominations are now open and a nomination form is available only by collecting from the station or by phoning them. This has not been sent to the member database.'*
- > The Licensee provided a copy of the nomination for management committee form for its election held in the first quarter of 2021, which notes there are seven positions open for nomination (Chairperson, Vice-Chairperson, Secretary, Treasurer and three casual committee members) and that nominations are open to financial members only.

Both the Licensee and the Complainant have indicated that information regarding nominations to the management committee was, at one point, advertised via the 2OLD website.

While it would be ideal for nominations to the management committee to be promoted by the Licensee through various means, a failure to do so, in and of itself, does not amount to a breach of the licence condition to encourage operations in the participation of the service.

The ACMA also notes that postal nominations forms were posted out to all members after the complaint was received by the ACMA.

In respect of how the Licensee informed its members about the results of the election of its management committee, the Complainant advised that only a select few members were advised. The Licensee has advised that all members were informed via mail out.

The ACMA was not provided with a copy of the mail sent to the members regarding the management committee election results. However, information regarding the management committee is available on the 2OLD website (<https://www.lakemacquarie.fm/committee/>).<sup>4</sup>

The ACMA notes an email dated 3 March 2021 that the Licensee sent in regard to the results of the management committee election. The email notes that 'information regarding the financial status of the station and a report of events since the last AGM will be posted out to financial members by the end of March'.

The Licensee noted in the Preliminary Report Submissions that:

- > During the Licensee's last mail out for the recent AGM, all nomination forms were included, as well as end of year financial statements (as was done in March 2021).

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<sup>4</sup> <https://www.lakemacquarie.fm/committee/> last accessed 4 May 2022.

- > It has implemented new ways for people to become more involved in the station, and is broadcasting promotions on air on a regular basis to encourage involvement of listeners.
- > It is assessing ways to update its website to provide information regarding volunteering opportunities at 2OLD and including more relevant information about 2OLD.

***Conclusion – Making the community aware of opportunities to participate in the service***

Based on the above analysis, the ACMA does not consider that the manner in which the Licensee promoted nominations to its management committee and informed members about the election results raises overall concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

The ACMA nonetheless recommends the following processes:

- > Informing all members on the same date regarding management committee election results.
- > Including a 'Volunteer' section on its website which provides information to the community regarding volunteer opportunities at 2OLD.

The Licensee noted in correspondence of 4 April 2022 that a process had begun to adopt the recommendations made by the ACMA, and that it will include a section in its web page to inform people on how to be involved as a volunteer

**1.2. The openness and accessibility of the service to the community**

***1.2(a) Communicating with members of the community***

In order to provide a service that is open and accessible to the community, licensees should maintain active communication with members of its community. This involves responding to correspondence it receives from both members of the licensee organisation and non-members about the service.

*The Complainant's membership status*

The Complainant has alleged that the Licensee has failed to respond to correspondence they sent to the Licensee.

The ACMA notes that the Complainant provided a copy of an email sent to the Licensee on 11 January 2020 which notes that they will be 'leaving the station'. The Licensee responded to the Complainant on 12 December 2021 noting that the Complainant's email of 11 January 2020 was accepted as a membership resignation and accordingly the Complainant has not been a financial member since 11 January 2020.

The ACMA does not resolve membership disputes. The Licensee and Complainant should refer to the dispute resolution policy in the Licensee's constitution in respect of member disputes. If the Licensee and Complainant are unable to resolve a dispute through the means afforded in the Licensee's constitution, each respective party may wish to seek independent legal advice.

In the correspondence from the Licensee to the Complainant, dated 12 December 2021, the Licensee stated that the Complainant's letter of resignation had been submitted to the ACMA which has accepted this resignation. As stated above, the ACMA does not resolve individual

membership disputes and does not have any role in accepting whether or not a person has resigned their membership.

The ACMA makes no finding in respect of whether or not the Complainant is, or is not, a member of the Licensee.

#### *Requests for station documents*

The Complainant has alleged that the Licensee has failed to respond to correspondence they have sent to the Licensee in relation to requests for the following station documents:

- > the constitution
- > minutes of meetings (committee meetings, AGMs and SGMs) from 2020 and 2021
- > treasurer reports and financial statements for 2019/2020
- > a list of the Licensee's members
- > documents relating to the Licensee's application for renewal of its community broadcasting licence lodged with the ACMA in 2015 and 2019.

The Licensee advised the following in its Initial Submissions:

*We do make available all documentation to all members of our association on request.*

*The only request we have received for information was for committee minutes, These are available to financial members.*

Irrespective of membership status, licensees should respond to queries from members of the community they represent (e.g. financial members, volunteers and members of the community in the licence area) regarding access to station documents.

The ACMA recognises that certain documents of the Licensee may be considered commercial in confidence, personal, private or confidential in some circumstances, and accordingly it may be appropriate not to make them available to non-members of the station. However, documents that would ordinarily be made available to the general public (such as a station's constitution and station policies) should be made available to members of the community in the Lake Macquarie RA1 licence area who request them (irrespective of their membership status). This could be achieved if the Licensee makes its constitution and station's policies available on the 2OLD website.

Governance documents (such as the Licensee's constitution) are an important way for members and potential members to understand their rights within the organisation (e.g. the constitution will outline the procedure by which the management committee is elected and the voting rights of a member) while internal station documents (such as meeting minutes and financial reports) provide confidence to members that the service is being managed appropriately.

Failures to respond to members of the community regarding access to station documents may indicate that a licensee is not remaining open and accessible to the community. Under Code 1.2 of the Codes, community broadcasting licensees are expected to have written corporate governance policies and procedures that support management and financial operations<sup>5</sup>. Providing members of the community with access to these types of documents is relevant to encouraging community participation in operations.

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<sup>5</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 10.

The ACMA notes that section 40 of the Licensee's constitution (which was provided by the Licensee to the ACMA in June 2019 as part of the Licensee's application for renewal of its long-term community broadcasting licence) stipulates that: records; books; other financial documents; the constitution; and minutes of all committee meetings and general meetings, must be open to inspection to the Licensee's members.

Despite the Licensee advising the ACMA it has made contact with the Complainant regarding access to station documents, the Licensee has not provided evidence which confirms this. In the absence of such evidence, the ACMA is of the view that the Licensee did not communicate with a specific member of the community regarding a valid enquiry for station documents.

In accordance with the ACMA's usual practice to encourage community broadcasting licensees to make available a copy of their renewal application to members of the licence area community, the ACMA recommends that 2OLD make available copies of its licence renewal applications (excluding commercial in confidence, personal, private or confidential information) to any member of the community in the Lake Macquarie RA1 licence area who should request them. This could be achieved, for example, by making these documents available on the 2OLD website.

As noted above, the Licensee advised in the Preliminary Report Submissions that it has made financial statements available to financial members.

#### *Requests for information regarding the election of the management committee and AGM*

The Complainant provided a copy of an email sent to the Licensee dated 1 March 2021 in which the Complainant sought information from the Licensee regarding the AGM and noting that nomination forms for the management were now available via the 2OLD website. The Complainant advised that they received no response from the Licensee to this email.

AGMs are an important aspect of membership, as they permit members to have a say in decision-making at the station (by way of proposing items of business at an AGM).<sup>6</sup>

#### **Conclusion 1.2(a) – Communicating with members of the community**

Based on the above, the ACMA considers that the Licensee's approach to communication with the Complainant regarding membership matters indicates that the Licensee did not communicate effectively with a specific member of the community. However, the ACMA has not identified any concerns about the Licensee's communication with the wider community it serves.

#### **1.2(b) Restriction on membership – six-month membership trial**

The [Participation Guidelines](#) note that:

*If restrictions on membership are unreasonable, then the licensee may not comply with the community participation requirement. [...] Any membership restrictions should be reasonable and licensees should ensure there are other opportunities for involvement by non-members from the broader community.<sup>7</sup>*

The Complainant has alleged that a clause has been added to the Licensee's membership application form which subjects applicants to a six-month trial.

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<sup>6</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 10.

<sup>7</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 12.



On 12 July 2021, the ACMA reviewed the Licensee's 2021 membership application form that is accessible via the Licensee's website.<sup>8</sup> There is no clause on the form which subjects membership applicants to a six-month trial.

The ACMA also reviewed the Licensee's 2020 membership application form and constitution that was submitted to the ACMA on 20 June 2019 as part of the Licensee's application for renewal of its community broadcasting licence, and notes that there was no clause in the membership form or the constitution which subjects membership applicants to a six-month trial.

The ACMA is of the view that a membership trial has the potential to create a barrier to participation in operations; for example, where a new membership applicant who is on a membership trial is not afforded voting rights.

Should the Licensee consider adopting a membership trial, the ACMA would recommend that it ensure the membership trial does not stand to restrict the ability of the member to participate in the operations of the 2OLD service

***Conclusion 1.2(b) – Restriction on membership – six-month membership trial***

Based on the above, the ACMA does not consider that the Licensee's current membership application form raises concerns about compliance with subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

***1.2(c) General member participation in management committee meetings***

The Complainant has alleged that the Licensee's management committee:

- > Do not afford non-committee members in attendance at committee meetings the opportunity to speak (they may attend to only observe).
- > Do not advise members of when management committee meetings are being held.

The Licensee provided copies of management committee meeting minutes for the period January 2020 to June 2021. The ACMA notes that non-management committee members have been in attendance at some of the meetings and have been noted as speaking before the management committee.

As noted earlier in this report, committees are an important way in which members and other people in the community can have a say in running the station.<sup>9</sup>

The ACMA notes that the Licensee provides a feedback form on its website. The ACMA acknowledges the Licensee's Initial Submissions which note that:

- > Engagement with the community has been 'scaled back due to Covid', but prior to this there was 'regular engagement with the community in supporting local events...'
- > Information regarding the service is made available to the community by way of on-air announcements and via the 2OLD website.

The Licensee advised in the Preliminary Report Submissions that all members are able to attend meetings and are able to speak.

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<sup>8</sup> <https://www.lakemacquarie.fm/membership/>, accessed 12 July 2021.

<sup>9</sup> [Community Broadcasting Participation Guidelines 2010](#), ACMA, 2010, page 17.

### ***Conclusion 1.2(c) – General member participation in management committee meetings***

The ACMA is of the view that the Licensee's management committee meetings function in an appropriate manner that encourages participation in the operations of its service.

### **Conclusion – The openness and accessibility of the service to the community**

While the ACMA notes that the Licensee appears to have failed to communicate effectively with the Complainant, the ACMA has not identified any concerns about the Licensee's broader communications with the wider community, restrictions on membership or general member participation in management committee meetings.

## **Conclusion: Issue 1**

While the ACMA has identified areas for improvement in the Licensee's communications with the Complainant, this itself does not demonstrate that the Licensee is failing to remain open and accessible to the wider community. Furthermore, the ACMA notes that the Licensee is making the community aware of opportunities to participate in the operations of the service.

In summary, the ACMA is of the view that the Licensee is not in breach of subparagraph 9(2)(c)(i) [encouraging participation in operations].

## **Issue 2: Did the Licensee breach Code 7 of the Community Radio Broadcasting Codes of Practice?**

### **Relevant code provisions**

#### **Codes of Practice**

#### **Code 7**

[...]

7.3 We will ensure that:

- (a) complaints will be received by a responsible person in normal office hours and receipt is acknowledged in writing,
- (b) complaints will be conscientiously considered, investigated if necessary, and responded to substantively as soon as possible,
- (c) complaints will be responded to in writing within 60 days of receipt, as required by the Act, and the response will include a copy of the Codes, and
- (d) complainants are advised in writing that they have the right to refer their complaint about a Code matter to ACMA provided they have first:
  - (i) formally lodged their complaint with the licensee in writing, and
  - (ii) received a substantive response from the licensee and are dissatisfied with this response, or have not received a response from the licensee within 60 days after making the complaint.

A written complaint or response can be a letter, fax, or email.

7.4 A responsible person of the licensee will maintain a record of complaints and responses for at least two years from the date of the complaint.

[...]

## Finding

The ACMA makes:

- > no finding in relation to Codes 7.3(a) – (d) of the Codes.
- > no finding in relation to Code 7.4 of the Codes.

## Reasons

### **7.3(a) Was the complaint received by a responsible person and acknowledged in writing?**

Code 7.3(a) requires licensees to acknowledge in writing the receipt of complaints.

The Complainant provided copies of complaints which they advised were emailed to the Licensee via email on 10 March 2021 and 15 May 2021.

The ACMA sought submissions from the Licensee regarding compliance with Code 7 of the Codes. The Licensee advised in its Initial Submissions that it had received no complaints in the last two years from any member of the public, and that it had responded to the Complainant regarding their membership status and request for certain station documents via text message and phone calls. Neither copies of the text messages nor a file note of the phone call were provided.

The Licensee advised in the Preliminary Report Submissions that the Complainant's emails of 10 March 2021 and 15 May 2021 were never received by the Licensee.

As noted in the Codes, written complaints and responses can be a letter, fax, or email. In order to make findings under Code 7 of the Codes, the ACMA must be satisfied that there has been an effective complaint made to the Licensee (that is, the complaint is in writing and has been received by the Licensee).

In the absence of being able to confirm whether the Licensee received the Complainant's emails of 10 March 2021 and 15 May 2021, the ACMA is unable to conclude that the Licensee was under an obligation to acknowledge the respective complaints in writing.

For the above reasons, the ACMA makes no finding in relation to Code 7.3(a) of the Codes.

### **7.3(b) Does the Licensee conscientiously consider complaints, investigate complaints if necessary, and responded to complaints substantively as soon as possible?**

Code 7.3(b) requires licensees to consider complaints conscientiously, investigate them if necessary, and respond substantively as soon as possible.

In the absence of being able to confirm whether the Licensee received the Complainant's emails of 10 March 2021 and 15 May 2021, the ACMA is unable to determine if the Licensee has failed to conscientiously consider, investigate (if necessary) and respond to the respective complaints.

For the above reasons, the ACMA makes no finding in relation to Code 7.3(b) of the Codes.

### **7.3(c) Does the Licensee respond to complaints in writing within 60 days of receipt, as required by the Act (and include a copy of the Codes)?**

Code 7.3(c) requires licensees to respond to complaints in writing within 60 days of receipt.

The Licensee has advised the ACMA that it received no complaints in the last two years, and accordingly did not receive the Complainant's complaints of 10 March 2021 and 15 May 2021.

In the absence of being able to confirm whether the Licensee received the Complainant's emails of 10 March 2021 and 15 May 2021, the ACMA is unable to conclude that the Licensee was under an obligation to respond to the respective complaints within 60 days of receipt.

For the above reasons, the ACMA is of the view that there is no finding in relation to Code 7.3(c) of the Codes.

**7.3(d) Does the Licensee advise complainants in writing that they have the right to refer their complaint about a Code matter to ACMA provided they have first:**

- (i) formally lodged their complaint with the Licensee in writing, and**
- (ii) received a substantive response from the Licensee and are dissatisfied with this response, or have not received a response from the Licensee within 60 days after making the complaint.**

Code 7.3(d) requires licensees to advise complainants in writing that they have the right to refer their complaint about a Code matter to the ACMA provided they have first formally lodged their complaint with the licensee in writing and received a response they are dissatisfied with, or have not received a response within 60 days after making the complaint.

As indicated above, the Licensee has advised it did not receive the Complainant's emails of 10 March 2021 and 15 May 2021.

In the absence of being able to confirm whether the Licensee received the Complainant's emails of 10 March 2021 and 15 May 2021, the ACMA is unable to conclude that the Licensee was under an obligation to advise the Complainant of their rights to lodge a Code matter complaint with the ACMA.

For the above reasons, the ACMA makes no finding in relation to Code 7.3(d) of the Codes.

**7.4 Does the Licensee maintain a record of complaints and responses for at least two years from the date of a complaint?**

Code 7.4 requires licensees to maintain a record of complaints and responses for at least two years from the date of a complaint.

As noted above, the Licensee advised the ACMA that it has received no complaints in the last two years and accordingly did not receive the Complainant's emails of 10 March 2021 and 15 May 2021.

In the absence of being able to confirm whether the Licensee received the Complainant's correspondence, the ACMA is unable to conclude that the Licensee failed to maintain a record of the Complainant's emails of 10 March 2021 and 15 May 2021.

For the above reasons, the ACMA makes no finding in relation to Code 7.4 of the Codes.

## **Conclusion – Issue 2**

The ACMA must be satisfied that an effective complaint was made to a licensee in order to make findings under Code 7 of the Codes. The ACMA has been provided with conflicting information in relation to these complaints. In the absence of independent corroborative information, the ACMA is not able to make a finding about the Licensee's compliance with the Codes.

For the above reasons, the ACMA makes no finding in relation to Codes 7.3(a) – (d) and Code 7.4 of the Codes.

Notwithstanding this no finding the ACMA recommends that the Licensee ensure that, in future, it communicates with members by way of email or letter as opposed to text messages and maintains file notes of telephone calls.