

Investigation Report no. BI-640

Summary	
Licensee	Millicent Community Access Radio Inc
Station	5THE
Type of service	Community Broadcasting
Relevant legislation	Paragraph 9(2)(c)(i) of Schedule 2 of the <i>Broadcasting Services Act 1992</i> (BSA)
Finding	The Licensee breached Paragraph 9(2)(c)(i) of Schedule 2 of the BSA.

Background

On 24 March 2022 the Australian Communications and Media Authority (**ACMA**) received a complaint relating to Millicent Community Access Radio Inc (**the licensee**).

The complaint alleges the licensee is failing to comply with licence conditions in the *Broadcasting Services Act 1992* (**BSA**).

On 14 April 2022, the ACMA commenced an investigation under the BSA into the licensee's compliance with the licence condition at subparagraph 9(2)(c)(i) of Schedule 2 of the BSA.

The licensee

The licensee has held a long-term community radio broadcasting licence to represent the general community interest in the Millicent RA1 licence area since 1993. Millicent RA1 has a population of 7935 (2016 Census).

Assessment and submissions

This investigation has considered:

- > The complaint received by the ACMA on 24 March 2022 (**the complaint**).
- > Submissions received from the licensee in June 2022 (**initial submissions**).
- > The licensee's licence renewal application received on 30 June 2022 (**renewal application**).
- > The licensee's previous renewal application from 2017.

- > Submissions received from the licensee in August and September 2022 (**the second submissions**)

Other sources are identified in this report where relevant.

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:

[...]

(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 [...]

Finding

The ACMA finds that the licensee is not encouraging members of the community to participate in the operations of its service, and accordingly has breached paragraph 9(2)(c)(i) of Schedule 2 to the BSA.

Reasons

The [ACMA's Participation guidelines](#) state that licensees encourage community participation in their operations when they have:

- sound corporate governance practices,
- value and promote membership and volunteering, and
- have an effective and transparent committee structure.

Sound corporate governance

The Participation guidelines state that examples of sound corporate governance include policies that require office holders to declare any potential conflict of interest, measures to prevent the concentration of control in the hands of a few individuals (for example, using a range of committees, limiting the number of proxy votes that a member can exercise and having a limited renewable term for individuals holding positions on committees or the board) and procedures for complying with regulatory requirements.

The complaint raised concerns that 5THE, amongst other things, does not have a functioning board.

5THE has an appropriate policy in place relating to community participation and has an appropriate conflict-of-interest policy. With regards to corporate governance the constitution does not contain provisions to limit the number of proxy votes that can be exercised by a member. The inclusion of such provisions is likely to reduce barriers to participation.

The constitution requires that an Annual General Meeting (AGM) is held within three months of the end of the financial year and at that meeting all members of the management committee will vacate their positions.

With regards to the management committee specifically, the constitution requires that the management committee be comprised of a Chairperson, Deputy Chairperson, Secretary and at least four, but no more than seven, other members. There is no limitation on the terms that an individual can serve on the management committee, and there is a provision that allows

current committee members to stand for re-election without needing nomination but requires all other members to receive nomination if they wish to stand for election. The constitution requires that the management committee meets eight times per year

The initial submissions indicate that 5THE's current management committee comprises the positions of Chairperson, Deputy Chairperson and Secretary, but only two other members, rather than the four required by the constitution. The second submissions stated that 5THE's constitution was amended in 2007 to specify that the Board be comprised of 5 members, rather than 7, and noted that 5THE has operated since then with 5 board members. The licensee did not provide the ACMA with a copy of an amended constitution, or evidence that the constitution had been amended.

With regards to the election of the management committee, the licensee did not provide evidence of the positions being vacated and available for election annually, as AGMs have not been held in the previous two years.

The initial submissions report that the current management committee members have served for the following lengths of time:

- > Chair – 8 years
- > Vice Chair – 10 years
- > Secretary – 4 years
- > Board member – 2 years
- > Board member – 3 years

The initial submissions provided evidence that the management committee had conducted two meetings in 2022, with the licensee noting that now that COVID-19 restrictions have lifted, the management committee is intending to return to face-to-face fortnightly meetings throughout 2022. The second submissions provided evidence that 5THE held 8 further management committee meetings from May to August in 2022.

With regards to AGMs, the licensee noted that 5THE has struggled to comply with the rules over the past two years and has not been able to conduct AGMs due to the impacts of COVID-19. In addition to not being able to meet in person, the licensee noted that the challenges included an unfamiliarity with Zoom technology, which prevented meetings from being held via video conference. The ACMA notes that Consumer and Business Services South Australia (CBS) gave associations a 6-month extension to hold an AGM during 2020, due to the impacts of COVID-19. However, the extension had ended by August 2021. CBS also allowed associations to hold virtual AGMs, even if the association's rules required in person meetings¹ The licensee did not provide evidence which indicated that there had been attempts to organise the required AGMs. The renewal application noted that one of 5THE's priorities is to train management committee members to be comfortable with Zoom meetings and associated technology.

The second submissions also stated that the 2021 AGM was postponed due to the ill health, and that several dates had been discussed for the 2022 AGM, and that a decision was made to postpone the meeting until the ACMA's investigation into 5THE was finalised. The second submissions state that the 2022 AGM is scheduled to be held in September 2022.

5THE's constitution requires that the AGM is held within 3 months of the end of the financial year. The constitution includes provisions for another member to act in the position of Chair, if the Chair is not at an AGM.

In applying for a previous licence renewal in 2017, the licensee provided evidence of holding AGMs in the two preceding years, which appeared to be conducted appropriately.

Further to the management of the station's financial and operational affairs, the initial submissions noted that the licensee had found it challenging to engage administrative staff to assist with management and record keeping, due to the lack of ability to attach a salary to the job. Lack of available funds for a paid administrative position is attributed by the licensee to

¹ [Information for Associations | Consumer and Business Services | South Australia \(cbs.sa.gov.au\)](https://www.cbs.sa.gov.au/information-for-associations)

the loss of sponsorship due to COVID-19, as well as what the licensee describes as a campaign to discredit 5THE FM, which resulted in loss of a significant amount of sponsorship. No evidence was provided by the licensee in this regard.

The renewal application and the second submissions provided 5THE's financial statements from 2019. The licensee stated that more recent financial records are currently unavailable, due to the challenges faced by 5THE in engaging with third parties. No evidence was provided to support these claims.

In summary, the ACMA is concerned about aspects of 5THE's corporate governance. 5THE's constitution could be improved to reduce barriers to participation in the service. More significantly, and notwithstanding difficulties related to COVID-19, as well as other pressures, the fact that the licensee has not held an AGM for 2 years and has not had an election for management committee positions for 2 years, combined with the inability to provide financial records, supports the conclusion that the licensee cannot demonstrate sound corporate governance practices over the past 2 years.

Value and promote membership and volunteering

The Participation guidelines list a number of ways in which a licensee can promote the benefits of membership to the community, including on air-announcements, via the licensee's website or social media pages, and membership drives.

The complaint raised concerns about the decreasing number of volunteers involved in the service.

The renewal application states, with regard to promoting membership, that 5THE:

- > broadcasts on-air announcements calling for members and volunteers and advising of available positions
- > has membership application forms available in a letter box outside the station office
- > uses social media to invite membership applications
- > held open days at the station (prior to COVID-19 restrictions).

The renewal application also provided several examples of the ways in which 5THE engages with the local community and encourages community participation in the service, including letters of support from a wide range of local community groups.

The renewal application states that 5THE has 17 members and 17 volunteers – an increase from 12 members and volunteers, twelve months before the application. The renewal application noted that pre-COVID-19 member numbers were about 100. This is reflected in its 2017 application for renewal, when it reported having 114 members and 30 volunteers. The second submissions stated that the decrease in membership numbers can be explained by a decision made in 2017 to change the way in which members were counted. Minutes provided from the 2017 AGM show that the creation of separate categories for members and subscribers was discussed at the meeting and was motivated by concerns that people who did not want to become volunteers were signing up for membership in order to be able to vote for Board positions at AGMs.

The renewal application and the initial submissions also allege that an ongoing conflict has resulted in a campaign against the station, which is a significant barrier to participation in the service. The licensee asserts that members have expressed concern about how the conflict may impact them if they are involved in the service. The licensee did not provide specific evidence regarding concern from members.

In summary, while 5THE has taken a number of steps to promote membership and volunteering, the numbers of members and volunteers are low. This may be in part explained by the impact of COVID-19 and other pressures on the service.

Effective and transparent committee structure

The Participation guidelines state that committees are an important way in which members and other people in the community can have a say in the running of the service.

As noted above, 5THE's constitution does not contain provisions relating to the formation of sub-committees within the organisation.

The renewal application states that in the context of being in a small town of 5000 people, 5THE's volunteers base is not large enough to have sub-committees, however members work together to do specific jobs.

With regards to programming, while 5THE does not have a programming committee, the renewal application stated that seven program proposals had been received in the previous 12 months, of which five were approved and broadcast. This provides some assurance that despite the lack of a formal sub-committee, community participation in this aspect of the service is being encouraged.

The ACMA notes the licensee's submissions about the small population but strongly encourages the licensee to pursue the formation of sub-committees where possible noting the importance of this framework for facilitating community involvement and engagement.

Conclusion

The licensee has demonstrated it takes some steps to promote membership and volunteering.

However, notwithstanding the impacts of COVID-19, and the small licence area that the service is located in, membership numbers are low.

Over the previous two years 5THE has not operated in accordance with the corporate governance requirements set out by its constitution in relation to holding AGMs, and subsequently has not provided the opportunity for members to nominate for management committee positions. 5THE has also been unable to provide recent financial records.

The ACMA is of the view that due to the concerns with the soundness of the licensee's corporate governance processes, including both the provisions of the constitution and the failure to act in accordance with the constitution, the licensee has breached paragraph 9(2)(c)(i) of Schedule 2 to the BSA.

Enforcement action

Subject to the outcome of the ACMA's consideration of 5THE's application to renew its licence, the ACMA will consider enforcement action for this matter.