

Investigation Report no. BI-642

Summary	
Licensee	Millicent Community Access Radio Inc
Station	5THE
Type of service	Community Broadcasting
Relevant legislation	Code 7.3 (c) [complaints will be responded to in writing within 60 days of receipt]
Decision	The Licensee breached Code 7.3 (c) [complaints will be responded to in writing within 60 days of receipt]

Background

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

The ACMA complaint raised, among other things, concerns that a complaint had been made to 5THE on 22 November 2021 (**5THE complaint**) and no response had been received.

The 5THE complaint addressed an issue covered by the Community Radio Broadcasting Codes of Conduct 2008 (**the Codes**). The 5THE complaint stated that coverage of the Millicent saleyards by 5THE contained inaccurate and misleading statements.

On 27 May 2022, the ACMA commenced an investigation under the BSA into the licensee's compliance with Code 7.3 (c) of the Codes.

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 ACMA complaint received on 24 March 2022; and
- > The submission received by the licensee on 24 August 2022 (**the submission**)

The licensee did not provide a submission in response to the preliminary investigation report in the requested time frame.

Relevant Code

Code 7

7.3 (c) We will ensure that 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

Finding

The ACMA is of the view that the licensee has breached Code 7.3 (c) of the Codes.

Reasons

The complaint raised an issue covered by the Code 3.6 (b) [News, current affairs...and interviews shall present factual material accurately and ensure that reasonable efforts are made to correct substantial errors of fact as quickly as possible]. It therefore met the description of a complaint in Code 7.1, as it was a complaint about alleged non-compliance with the requirements outlined in the Codes.

The submission stated that the licensee was not aware of the specific complaint in question. However, the ACMA complaint attached a copy of the 5THE complaint that had been sent to the licensee by email on 22 November 2021. The 5THE complaint email shows that it was sent to the email address for the station manager of 5THE, and evidence provided by the complainant demonstrates that a previous email to this address had been responded to by the station manager.

Code 7.3 of the Codes makes it clear that complaints may be submitted via email and the ACMA considers it reasonable for a complainant to use the email address of the station manager to lodge a complaint. Accordingly, the ACMA is of the preliminary view that the 5THE complaint was made to the licensee on 22 November 2021.

The submission referred to ongoing conflict between the complainant and 5THE. The submission cited Code 7.2 of the Codes, which provides that a licensee needs to make every reasonable effort to resolve a complaint, except where a complaint is clearly frivolous, without sufficient grounds or not made in good faith. While the 5THE complaint may have occurred within a broader context of disagreements between the complainant and the licensee, there is no evidence to indicate that the 5THE complaint was clearly frivolous, without sufficient grounds or not made in good faith. As a result, the 5THE complaint did not meet the exception described in Code 7.2 of the Codes.

The licensee has not provided evidence to indicate that the 5THE complaint was responded to in accordance with the Codes, and the complainant advises that they did not receive a response.

For these reasons, the ACMA's view is that 5THE has breached Code 7.3 (c).

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.