

Investigation Report no. BI-653

Summary	
Licensee	2 HHH FM Ltd
Station	Triple H 100.1 FM
Type of service	Community Broadcasting
Relevant legislation	Schedule 2 to the <i>Broadcasting Services Act 1992</i> <ul style="list-style-type: none">> paragraph 9(1)(b) [prohibition on advertising]> paragraph 9(3)(b) [time limit on sponsorship announcements]> subparagraph 9(2)(c)(i) [encourage participation in operations]
Decision	The Licensee: <ul style="list-style-type: none">> breached paragraph 9(1)(b) [prohibition on advertising]> breached paragraph 9(3)(b) [time limit on sponsorship announcements]> breached subparagraph 9(2)(c)(i) [encourage participation in operations]
Attachments	Attachment A – Excerpt of Triple H 100.1 FM Membership policy

Background

On 8 March 2022, 24 March 2022, 28 March 2022, 26 May 2022, 14 June 2022, and 12 July 2022, the Australian Communications and Media Authority (**ACMA**) received complaints about 2 HHH FM Ltd (**Licensee**). These complaints raised allegations that the Licensee may not be complying with licence conditions in the *Broadcasting Services Act 1992* (**BSA**).

Additionally, on 20 June 2022, the Licensee contacted the ACMA to report that one of its programs (**the Program**) may have failed to comply with licence conditions in the BSA.

On 1 August 2022, the ACMA commenced an investigation under section 149 of the BSA into the Licensee's compliance with the following licence conditions at Schedule 2 to the BSA:

- > paragraph 9(1)(b) [prohibition on advertising]
- > paragraph 9(3)(b) [time limit on sponsorship announcements]
- > paragraph 9(2)(c)(i) [encourage participation in operations].

The Licensee

Since 19 October 2001, the Licensee has held a long-term community radio broadcasting licence representing the general geographic area community interest in the Hornsby RA1 licence area. The expiry date of the Licensee's current licence is 21 July 2026.

The Licensee's callsign is 2HHH and the service it operates is Triple H 100.1 FM.

At the Licensee's most recent licence renewal in 2021, the ACMA requested some follow up actions to assist in its compliance with licence conditions in the BSA and provisions of the Community Radio Broadcasting Codes of Practice 2008 (**the Codes**). These actions are outlined in the ACMA's letter dated 15 June 2021 and include:

- > requiring the Licensee to amend its membership policy to outline the principles of financial membership, rights and responsibilities of members, and its own rights and responsibilities, as required by Code 1.4 of the Codes. Then, provide the ACMA with a copy of the revised membership policy by 31 December 2021.
- > recommending the Licensee amend its constitution to assist its compliance with the community participation licence condition at paragraph 9(2)(c) of Schedule 2 to the BSA. The ACMA's recommended amendments relate to processes for dealing with rejected membership applications and member expulsions, including providing the affected member with reasons for the decision.

Assessment and submissions

This investigation has considered the following information and submissions received by the ACMA:

1. complaints received on 8 March 2022, 24 March 2022, 28 March 2022, 26 May 2022, 14 June 2022, and 12 July 2022, and subsequent correspondence with complainants providing related information (**the Complaints**)
2. correspondence from the Licensee, received on 20 June 2022, notifying the ACMA that one of its programs may have breached licence conditions in the BSA
3. a recording of the content broadcast by the Licensee between 10:00 am and 11:00 am on 7 May 2022 (**Recording 1**), received from the Licensee on 6 October 2022
4. a recording of the content broadcast by the Licensee between 11:00 am and 12:00 pm on 7 May 2022 (**Recording 2**), received from the Licensee on 12 October 2022
5. written submissions received from the Licensee on 5 October 2022, relating to:
 - recent changes to the Licensee's constitution
 - the distribution of annual reports to members
 - a membership the Licensee has suspended since September 2021
 - a program the Licensee suspended
 - the Licensee's progress towards complying with the ACMA's recommended and required actions from its most recent licence renewal in 2021
 - the Licensee's strategic plan 2020-2025
6. submissions received from the Licensee on 6 October 2022, including:
 - minutes of the Licensee's board of director meetings from March 2021 to March 2022
 - minutes of the Licensee's Annual General Meetings (**AGM**) for 2019, 2020 and 2021
 - copies of the Licensee's annual reports since 2019, which include financial statements
 - screenshots of the Licensee's communication software relating to the distribution of annual reports to members
 - correspondence relating to a program the Licensee suspended
 - records of the number of members of the Licensee from 2017 to 2022
 - copies of the Licensee's 2020-2021 board updates newsletter to members
7. the Licensee's most recent application for renewal of its community broadcasting licence, received on 21 and 22 July 2020
8. the ACMA's letter to the Licensee, dated 15 June 2021, relating to the renewal of its licence and the ACMA's recommended and required actions
9. the Licensee's response to the ACMA's preliminary investigation report, received on 6 December 2022.

Other sources are identified in this report where relevant.

Issue 1: Did the Licensee breach the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising]?

Relevant licence condition

Schedule 2

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

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

[...]

(b) the licensee will not broadcast advertisements [...]

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

Reasons

The complaint

On 20 June 2022, the Licensee contacted the ACMA to report that on 7 May 2022, the Program may have breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising].

The Licensee submitted that the presenters of the Program interviewed the CEO of a business (**Business A**), which was a sponsor of the Licensee. During this interview, the Licensee stated that the presenters of the Program 'explained in detail both a problem and a commercial solution', which amounted to an advertisement for Business A's products.

On 5 October 2022, the Licensee notified the ACMA that, as of 19 August 2022, the presenters of the Program had withdrawn their program from the station.

Relevant submissions

On 6 October 2022 and 12 October 2022, the Licensee submitted recordings of content it broadcast between 10:00 am and 12:00 pm on 7 May 2022. This included its broadcast of the Program, which ran for approximately 114 minutes and 44 seconds.

Recording 1, received on 6 October 2022, was a copy of the content the Licensee broadcast between 10:00 am and 11:00 am on 7 May 2022.

Recording 2, received on 12 October 2022, was a copy of the content the Licensee broadcast between 11:00 am and 12:00 pm on 7 May 2022.

In Recording 1:

- > from 8:14 to 8:19, a presenter of the Program states, 'Also joining us [...] today we have [CEO's name] who will be discussing [Business A] products and the upcoming [...] events.'
- > from 18:05 to 21:40, the presenters of the Program discuss a product sold by a different company (**Business B**). During the discussion, the presenters of the Program:
 - outline the benefits of Business B's product compared to other products sold in the past, its specifications, features, how to use it, and how much it costs.
 - state that the product is relatively inexpensive, explain where listeners can purchase it online with a month's free trial, and recommend they purchase it in time for Mothers' Day.
- > from 29:31 to 30:03, a pre-recorded sponsorship announcement for Business A is played, ending with a message stating that Business A is a 'Triple H FM sponsor'.

In Recording 2:

- > from 11:59 to 21:30, the presenters of the Program interview the CEO of Business A, during which:
 - from 12:34 to 19:05, the presenters of the Program and the CEO of Business A discuss various problems, and which Business A products and services can solve these problems.
 - from 19:06 to 20:47, the presenters of the Program discuss an upcoming event, at which the CEO of Business A will be available for customer enquiries.
 - from 20:49 to 20:59, the presenters of the Program and the CEO of Business A explain where listeners can obtain further information about Business A's products online.
 - from 21:10 to 21:30, after the interview has ended, the presenters of the Program continue to endorse Business A products, noting that the CEO of Business A is a sponsor.
- > from 27:41 to 28:18, a pre-recorded sponsorship announcement for Business A is played, ending with a message stating that Business A is a 'Triple H FM sponsor'.

Relevant guidelines

The ACMA's Community Broadcasting Sponsorship Guidelines (**the sponsorship guidelines**) provide the following guidance.

The BSA does not provide a definition for an 'advertisement'. In investigating complaints, the ACMA has previously had regard to the following:

- > The High Court's consideration of the meaning of the term 'advertising' in the context of the former Broadcasting Act 1942:

It would seem to be used in a broad general sense which would encompass any broadcast or telecast of material 'designed or calculated to draw public attention' to something ... regardless of whether the broadcast or telecast 'serves a purpose other than that of advertising'.

- > The plain English definition in the *Macquarie Dictionary* (Fourth Edition), which defines 'advertisement' as follows:

Advertisement: *noun* any device or public announcement, as a printed notice in a newspaper, a commercial film on television, a neon sign, etc., designed to attract public attention, bring in custom, etc.

Accordingly, an advertisement is potentially any broadcast that is intended to promote a product or service, regardless of whether payment in cash or in kind has been received by a licensee, or by any employee, agent, contractor, or volunteer of the service.¹

Subclauses 2(1) and 2(2) of Schedule 2 to the BSA provide for a number of qualifications to the general prohibition on advertising. If one of these qualifications applies, then the relevant material is not taken to be advertisement for the purposes of the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

The qualifications apply if the material broadcast is:

- > accidental ('without being planned') or incidental ('secondary to the subject of the broadcast' and 'a minor part').²
- > community information or community promotional material ('provides information about community events or promotes community services').³
- > promoting the licensee's community broadcasting service.⁴
- > a sponsorship announcement ('contains an acknowledgement of financial or in-kind support by the sponsor of the licensee or a program', such as a 'sponsorship tag' which 'must state the name of the person or organisation that has given support in cash or in kind to the licensee or the program' and should 'be clearly heard or visible and understood').⁵

Analysis

The ACMA has considered whether the Program's interview with the CEO of Business A or its segment about Business B's product are advertisements for the purposes of the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

Business A

Based on the information provided to the ACMA, the Program's interview with the CEO of Business A was intended to promote Business A's products and services. This is because:

¹ [Community Broadcasting Sponsorship Guidelines](#), page 3.

² [Community Broadcasting Sponsorship Guidelines](#), pages 5 and 7.

³ [Community Broadcasting Sponsorship Guidelines](#), page 9.

⁴ [Community Broadcasting Sponsorship Guidelines](#), page 13.

⁵ [Community Broadcasting Sponsorship Guidelines](#), pages 13-15.

- > the intention of the interview was to discuss Business A products, as noted by the presenters of the Program stating 'we have [CEO's name] who will be discussing [Business A] products'.
- > throughout the interview, the presenters of the Program and the CEO of Business A named and described the benefits of specific products and services from Business A.
- > the CEO of Business A promoted its products by stating they are preferable to similar products from other businesses.
- > the presenters of the Program endorsed Business A's products, directed listeners to Business A's website for the purpose of finding out more about the products, and drew attention to the CEO of Business A's upcoming attendance at an event, where customers could speak to him.

The ACMA also considers that the material in the interview promoting Business A was not:

- > accidental or incidental, as the presenters of the Program stated they planned to discuss Business A's products, and the interview made up more than a minor part of the Program's broadcast, being 8.3% of its run-time on 7 May 2022 (9 minutes and 31 seconds out of 114 minutes and 44 seconds).
- > community information or community promotional material, because Business A is a commercial business, not a community service.
- > about the Licensee's community broadcasting service.

However, on balance, the ACMA considers that the interview was a sponsorship announcement rather than an advertisement, because:

- > at the end of the interview, a presenter of the Program noted that the CEO of Business A is a sponsor.
- > both before and after the interview, the Program broadcast pre-recorded sponsorship announcements for Business A, with sponsorship tags that clearly acknowledged Business A was a sponsor of the Licensee.

Business B

Based on the information provided to the ACMA, the Program's segment about Business B was intended to promote Business B's product. This is because the presenters of the Program:

- > throughout the segment, described the benefits of Business B's product in detail, how to use it, and how much listeners can purchase it for.
- > promoted Business B's product by stating it is preferable to similar products from other businesses, which have 'all been large, cumbersome, and a bit ordinary'.
- > endorsed Business B's product, by saying that it is 'a good idea', 'isn't a lot of money' and comes with a month's free trial.
- > stated that listeners should 'get out and buy your mum one' and directed listeners to Business B's website for the purpose of purchasing the product.

The ACMA also considers that the material in the interview promoting Business B's product was not:

- > accidental or incidental, as the presenters of the Program had prepared detailed information about the product in advance, and the segment focused solely on promoting the product for 3 minutes and 35 seconds.
- > community information or community promotional material, because Business B is a commercial business, not a community service.
- > about the Licensee's community broadcasting service.
- > a sponsorship announcement, because there was no accompanying acknowledgement of any financial support by Business B of the Licensee or the Program.

Issue 1: Conclusion

The information provided to the ACMA shows that the Licensee broadcast material intended to promote Business A's products and services during the Program. However, this material was accompanied by acknowledgement that Business A was a sponsor of the Licensee, making it a sponsorship announcement rather than an advertisement.

During the same broadcast of the Program, the Licensee broadcast material promoting a product sold by Business B. The information provided to the ACMA indicates that none of the qualifications to the general prohibition on advertising applied, making this material an advertisement.

Therefore, the ACMA's finding is that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising].

Issue 2: Did the Licensee breach the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements]?

Relevant licence condition

Schedule 2

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

(3) A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:

[...]

(b) [...] 5 minutes in any hour of broadcasting on that service.

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA.

Reasons

The complaint

On 20 June 2022, the Licensee notified the ACMA that the Program's 7 May 2022 interview with the CEO of Business A may have breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements].

As noted in **Issue 1**, the interview was a sponsorship announcement and lasted for 9 minutes and 31 seconds.

Relevant submissions

As noted in **Issue 1**, on 6 October 2022 and 12 October 2022, the Licensee submitted recordings of the content it broadcast between 10:00 am and 12:00 pm on 7 May 2022 in two parts.

Recording 1, of content broadcast from 10:00 am to 11:00 am, contains sponsorship announcements of the following durations for various businesses, with tags acknowledging the sponsors' support:

- > 22 seconds (0:00 to 0:22)
- > 32 seconds (28:27 to 28:59)
- > 33 seconds (29:30 to 30:03)
- > 34 seconds (42:45 to 43:19)
- > 32 seconds (43:20 to 43:52)
- > 39 seconds (43:53 to 44:32).

Recording 2, of content broadcast from 11:00 am to 12:00 pm, contains sponsorship announcements of the following durations for various businesses, with tags acknowledging the sponsors' support:

- > as examined in **Issue 1**, 9 minutes and 31 seconds for Business A (11:59 to 21:30)
- > 32 seconds (26:54 to 27:26)
- > 37 seconds (27:41 to 28:18)
- > 29 seconds (38:38 to 39:07)
- > 33 seconds (39:08 to 39:41)
- > 32 seconds (39:42 to 40:14).

Relevant guidelines

As outlined in the sponsorship guidelines, to determine if a licensee has exceeded the 5-minute per hour time limit on sponsorship announcements, the ACMA:⁶

- > reviews the content broadcast by the licensee from the start of the hour to the end of the hour
- > calculates the total duration of all sponsorship announcements in that hour of broadcast, inclusive of tags and music.

Analysis

The recordings provided to the ACMA show:

- > between 10:00 am and 11:00 am on 7 May 2022, in total, the Licensee broadcast 3 minutes and 12 seconds of sponsorship announcements. This is less than the 5-minute time limit.
- > between 11:00 am and 12:00 pm on 7 May 2022, in total, the Licensee broadcast 12 minutes and 14 seconds of sponsorship announcements. This is more than the 5-minute time limit.

Issue 2: Conclusion

The information provided to the ACMA shows that, between 11:00 am and 12:00 pm on 7 May 2022, the Licensee broadcast 12 minutes and 14 seconds of sponsorship announcements. This exceeded the 5-minute per hour time limit on sponsorship announcements.

Therefore, the ACMA's finding is that the Licensee breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements].

Issue 3: Did the Licensee breach the licence condition at subparagraph 9(2)(c)(i) of Schedule 2 to the BSA [encourage participation in operations]?

Relevant licence condition

Schedule 2

Part 5 – 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 operations of the licensee in providing the service or services [...]

⁶ [Community Broadcasting Sponsorship Guidelines](#), page 15.

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encourage participation in operations].

Reasons

The complaint

The Complaints received by the ACMA contained allegations that suggested the Licensee may not be complying with the licence condition at paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encourage participation in operations]. Relevantly, they suggested that the Licensee:

- > only has two functional members on its board who make most decisions.
- > in 2019, started using a previous version of its constitution based on a decision by the Chair, without consulting members.
- > did not record member objections to using a previous version of the constitution in its 2019 AGM minutes.
- > since 2019, has not been making its financial reports available and has denied member requests to review its finances.
- > has been suspending memberships, including those of presenters, without providing adequate notice, legitimate reasons, or opportunity to discuss and resolve any issues.
- > has been excluding some members from attending meetings, by classifying them as 'not members of good standing'.
- > since 2017, has lost significant numbers of members, with membership numbers falling from around 126 to 85.

Relevant submissions

On 9 September 2022, the ACMA wrote to the Licensee asking for information related to the above allegations.

Noting that these allegations relate to membership and community participation, the ACMA also requested an update on relevant actions it gave to the Licensee at its 2021 licence renewal.⁷

In response, on 5 October 2022 and 6 October 2022, the Licensee provided a range of submissions,⁸ including meeting minutes, annual reports, screenshots of its communication software, board updates newsletters to members, and written submissions. Relevant excerpts of the Licensee's written submissions are set out below.

Regarding the changes to its constitution in 2019, the Licensee stated:

'The Constitution registered with ASIC [**Australian Securities and Investments Commission**] in 2004 is the current Constitution of 2HHH Limited together with registered amendments approved at the 2019 AGM [...].'

⁷ See **The Licensee** on page 2 of this final investigation report.

⁸ See **Assessment and Submissions** on page 3 of this final investigation report.

'The Registered Constitution reverted to by the 2HHH FM Ltd Directors during calendar year 2019 was made after the Company Secretary alerted the Board to the discrepancies between the Constitution in circulation [**2012 version of the constitution**] and the Constitution which was registered with ASIC. The Company Secretary undertook a concerted search of the records of 2 HHH Limited and held discussions with a number of members who were current members and active during the years concerned. No record of a Special Resolution put to members to replace the 2004 constitution lodged with ASIC at company formation could be found. Additionally, no minutes recording a special resolution meeting the criteria set out in the final paragraph of Rule 1 of the 2004 Constitution registered with ASIC could be located.'

Regarding member objections to changes to its constitution at the 2019 AGM, the Licensee stated:

'One member objected to the reversion to the 2004 Constitution. In statements recorded as part of the 2020 AGM, held on 28 February 2021 during the adoption of the 2019 Minutes, this member advised that this matter was not recorded to the satisfaction of the member concerned.'

In response to the allegations in the Complaints about excluding members for being 'not members of good standing', the Licensee submitted that 'Members who have resigned, or whose membership is under suspension are not members in good standing' and are prevented from attending and voting at AGMs. However, they are still able to participate 'in general 2HHH meetings or activities'.

The Licensee submitted that the basis for the above distinction is set out in rule 23 of its constitution, which states:

'Each member shall be entitled personally, by proxy, attorney or duly authorised corporate representative to attend any meeting of members and shall, if attending in person, and if required by an officer of the Association produce the member's identification. If, after being duly required to produce the membership identification a member fails to do so, the member shall not, without leave of the meeting, or its Chairperson, be entitled to attend such meeting or vote at such meeting. A person who is not a member or a member's proxy, attorney or duly authorised corporate representative, shall not be entitled to attend a meeting of members without the leave of the meeting or its Chairperson.'

Regarding the ACMA's recommended and required actions from the Licensee's most recent licence renewal, the Licensee acknowledged that it has not amended either the membership policy or the constitution, due to a lack of volunteer resources to work on the amendments. However, the Licensee has submitted that it is 'working to address this issue as a priority' and will take the opportunity of the December 2022 AGM to 'put the draft Membership Policy before the members and to outline the next steps required to amend our Constitution.'

Further, the Licensee submitted that 'the current Board of Directors has been undertaking a series of steps to ensure that 2HHH FM Limited operates within the requirements of ASIC and the principles of good governance.' It noted that it has identified constitutional review as an area of focus, as part of its publicly available strategic plan 2020-2025.⁹

In response to the allegations in the Complaints about declining member numbers, the Licensee submitted the following table and graph showing member numbers for 2017 to

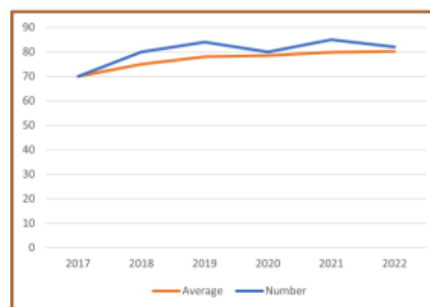
⁹ [Document Library - Triple H 100.1 FM](#), accessed 16 November 2022.

2022,¹⁰ showing that ‘there have been no significant changes in membership numbers across the five-year period’.

Table 1

2HHH Membership		
Year	Number	Average
2017	70	70
2018	80	75
2019	84	78
2020	80	79
2021	85	80
2022	82	80

Figure 1



The Licensee submitted that between September 2021 and September 2022, it only suspended one individual’s membership for a breach of its operating agreement. As part of this process, it provided them reasons for the suspension and an opportunity to ‘show cause’ as to why their membership should not be terminated, which the individual ultimately declined.

Further, the Licensee submitted correspondence relating to a program it suspended, to show how it provided reasons and a right of reply to the affected presenters. The Licensee submitted that the presenters’ memberships remained ‘intact’ until after they notified the Licensee that they would be withdrawing their program. Subsequently, the Licensee did not renew their memberships.

The ACMA has also considered relevant information submitted by the Licensee on 21 and 22 July 2020, as part of its most recent licence renewal application. This includes:

- > a copy of its registered 2004 constitution
- > copies of policies it has in place to meet its obligations under the Codes
- > a copy of its 2018 AGM minutes, which show that a quorum of members (25) was not achieved.

Relevant guidelines

The ACMA’s Community Broadcasting Participation Guidelines (**the participation guidelines**) state that licensees that encourage community participation in operations generally:¹¹

- > have sound corporate governance practices
- > value and promote membership.

¹⁰ Table 1 and Figure 1 include a running average of the Licensee’s member numbers for the five-year period from 2017 to 2022, labelled ‘Average’, for comparison.

¹¹ [Community Broadcasting Participation Guidelines](#), page 9.

Analysis

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 decision-making that affects their services.

The participation guidelines note that sound corporate governance practices 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, such as having a range of committees
- > procedures for complying with regulatory requirements that apply to the service, such as licence conditions in the BSA, provisions of the Codes, and obligations that apply to companies related to holding meetings, keeping records, and lodging documents.

The information available to the ACMA indicates that some of the Licensee's corporate governance practices are appropriate. In particular:

- > the Licensee's registered constitution contains rules which require directors to declare conflicts of interest (rule 106) and prohibit directors from voting in respect of any contract or arrangements in which they have an interest (rule 107). The Licensee's board of director meeting minutes also reflect a standing item, for attendees to make any relevant declarations of interest at the beginning of the meeting.
- > the Licensee has some measures in place to prevent the concentration of control in the hands of a few individuals, including:
 - o having several committees, such as a training committee and a programming committee, members of which are selected by the board of directors.
 - o distributing annual reports, making its activities, structure, and finances open and accessible, so the community can have informed input into the decision-making of the service. This is particularly relevant for members of the Licensee who are entitled under its constitution to attend and vote at AGMs (rule 23), whom it describes as 'members in good standing'.
 - o at meetings of the board of directors, consistently meeting or exceeding the quorum (3). The minutes of these meetings indicate that motions are moved, seconded, and carried by a range of directors, contrary to allegations in the Complaints that suggest there are only two functional board members.

However, the information available to the ACMA indicates that the Licensee does not have sound corporate governance practices for complying with regulatory requirements. In particular, the ACMA notes that:

- > on 15 June 2021, the ACMA wrote to the Licensee to confirm that its licence would be renewed (**the renewal letter**). In the renewal letter, the ACMA recommended that the Licensee amend its constitution to assist its compliance with the licence condition at paragraph 9(2)(c) of Schedule 2 to the BSA.¹² As of 5 October 2022, the Licensee confirmed that it had not amended its constitution accordingly, as it did not have volunteer resources yet, although it had attempted to engage volunteers for a review

¹² See **The Licensee** on page 2 of this final investigation report.

sub-committee 'on at least 6 occasions since February 2020'. The Licensee provided copies of its 25 May 2020 and 22 August 2021 board updates newsletter to members as examples of these attempts. In the board updates newsletter, the Licensee notified members it was seeking assistance to develop its strategic plan relating to governance and called for nominations for a governance committee.

- > in the renewal letter, the ACMA required the Licensee to amend its membership policy to comply with Code 1.4 of the Codes,¹³ then provide the ACMA with a copy of the revised membership policy by 31 December 2021. As of 5 October 2022, the Licensee confirmed that it had not amended its membership policy accordingly, due to 'the lack of response from our members in response to working with us on these governance issues, and by the challenges of working within the COVID environment.'
- > regarding obligations for holding meetings, the Licensee's AGM minutes from 2018 to 2020 indicate that it did not achieve a quorum of 25 members, as required for transacting business under rule 25 of its registered constitution. Further, its 2020 and 2021 AGMs were delayed until 28 February 2021 and 3 April 2022 respectively.
- > regarding obligations for keeping records, the Licensee identified that a 'lack of documentation' required it to resume use of the registered 2004 constitution. As reflected in the amended 2019 AGM minutes, 'The members were advised that there is no record at ASIC of the 2012 Constitution and that [there is] no record of that 2012 Constitution being accepted by the majority of members required to alter the constitution in accordance with the 2004 constitution and the Corporations Act (Cth).'
- The ACMA notes that the amended version of the 2019 AGM minutes, presented and adopted by members at the 2021 AGM, reflects member objections to the constitutional changes.
- > regarding obligations for lodging documents, as noted above, the Licensee submitted that it could not find any record of having registered the 2012 version of the constitution with the relevant registration body.

Conclusion: Sound corporate governance practices

Despite having some appropriate practices, overall, the Licensee does not have sound corporate governance practices. It has not completed the governance-related recommended and required actions from its most recent licence renewal, it did not conduct its 2018, 2019 or 2020 AGMs in accordance with its constitution, it does not keep adequate records, and it failed to lodge the 2012 version of its constitution with ASIC.

Valuing and promoting membership

Membership is one of the primary ways for licensees to encourage community participation in the operations of their service.

The participation guidelines note that licensees should promote the benefits of membership to the communities they serve. Information on the membership application procedure, including the membership application form, should be freely available.

The ACMA's strong preference is for licensees to have open membership policies in order to encourage community participation. Membership is open if:

- > it is automatic on lodgement of a membership application form and payment of the membership fee or

¹³ See **The Licensee** on page 2 of this final investigation report.

- > 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.

The requirement for specific, transparent, and reasonable criteria, and grievance or review mechanisms, also applies to the expulsion of members.

The information provided by the Licensee indicates that, since 2017, the number of members has remained relatively stable, in the range of 70 to 85 members.¹⁴

In the Licensee's most recent licence renewal application, it indicated that it promotes the benefits of membership to its community by:

- > broadcasting on-air announcements encouraging participation
- > promoting its programs and the opportunity to become involved via newsletters, flyers, and postcards.

Information about the Licensee's membership application procedure, including the membership application form, is also freely available on the Licensee's website.¹⁵

However, the Licensee does not have open membership as contemplated in the participation guidelines. This is because:

- > membership is not automatic on lodgement of a membership application form and payment of the membership fee. Rather, as outlined in the Licensee's registered constitution, membership is subject to 'satisfying such conditions as the Board of Directors may from time to time determine' (rule 2). The Licensee's membership policy outlines a range of membership requirements,¹⁶ as well as procedures for processing applications, and how applications may be referred to the station manager then the board if it is suspected 'that the prospective Triple H FM member does not meet the membership requirements [...]'.
 - o states that the board of directors may refuse to admit any person as a member and shall not be bound to give any reason for so refusing (rule 4).
 - o states that the board of directors may at any time, despite the payment of the subscription by a member, expel such member from the Association and remove such member from the register without giving any reason for doing so (rule 7).
 - o does not set out adequate grievance or review mechanisms for rejected membership applicants or members who have been expelled.
- > contrary to what is set out in the participation guidelines, the Licensee's constitution:

As examined above,¹⁷ the Licensee has not completed its membership-related recommended and required actions from its most recent licence renewal, which would have facilitated open membership.¹⁸ In the renewal letter, the ACMA referred the Licensee to the participation guidelines, which explain the significance of open membership, and specified that 'if the ACMA receives a complaint relevant to these issues or the same issues arise when 2HHH

¹⁴ See **Table 1** and **Figure 1** on page 13 of this final investigation report.

¹⁵ [Become a Member - Triple H 100.1 FM](#), accessed 14 November 2022.

¹⁶ See **Attachment A** – Excerpt of Triple H 100.1 FM Membership policy

¹⁷ See pages 14 and 15 of this final investigation report.

¹⁸ See **The Licensee** on page 2 of this final investigation report.

next applies to renews its licence, 2HHH's responses to these recommendations may be considered in determining the outcome.'

The ACMA notes the Licensee's submission that the delay relates to a lack of volunteer resources, rather than a lack of willingness to comply with the recommended actions. However, a lack of volunteer resources does not change the Licensee's obligation to comply with the conditions of its community radio broadcasting licence.

Noting the above, the ACMA acknowledges the Licensee's written submissions about how it has handled recent membership and programming suspensions, which:

- > do not indicate that the Licensee is systematically suspending memberships, as alleged in the Complaints
- > show that the Licensee provided reasons and a mechanism of review to the individual whose membership it suspended, in line with the principles of open membership.

Conclusion: Valuing and promoting membership

Although the Licensee promotes membership, it has not taken appropriate steps to value membership by codifying open membership in its constitution and policies. Membership of the Licensee is not automatic on lodgement of an application form and payment of the membership fee. Further, when refusing membership, such as by rejecting new applications, expulsion, or refusing renewal applications, the Licensee does not have:

- > specific, transparent, and reasonable criteria
- > adequate grievance or review mechanisms.

Issue 3: Conclusion

The ACMA noted the Licensee's commitment to improving its corporate governance practices, and its submission that 'the current Board of Directors has been undertaking a series of steps to ensure that 2HHH FM Limited operates within the requirements of ASIC and the principles of good governance.'

The ACMA considers that the Licensee's actions in identifying issues with its constitution, prioritising constitutional reform in its strategic plan, and reporting potential breaches of licence conditions,¹⁹ are positive indicators consistent with this commitment.

However, the information available to the ACMA indicates that the Licensee does not have sound corporate governance practices for complying with regulatory requirements. Nor does it adequately value membership.

Therefore, the ACMA's finding is that the Licensee has breached the licence condition at paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encourage participation in operations].

¹⁹ See **Issue 1 and Issue 2** of this final investigation report.

Attachment A - Excerpt of Triple H 100.1 FM Membership policy approved on 20 July 2020

Membership policy

2. Applications for membership of Triple H FM shall be open to individuals and organisations that:

- i. Support the vision, mission, and purposes of the organisation;
- ii. Agree to abide by the rules, codes and policies of the organisation;
- iii. Have a demonstrated commitment to facilitating access and use of community media resources for young people; and
- iv. Pay the required joining or membership fee as set by the Triple H FM Board.

Agreed actions

On 6 December 2022, the Licensee advised that it accepts the ACMA's findings in relation to this investigation and, in response, will take the actions summarised below.

- > To prevent breaches of its obligations relating to sponsorship and advertising under the BSA, the Licensee will:
 - Complete its policy for managing sponsorship, ensuring a section specifically relates to conducting interviews with local businesses and sponsors.
 - Complete a training package for presenters, highlighting their obligations under the BSA, and specifying how to conduct interviews with business owners and sponsors without breaching these obligations.
 - Hold a members meetup focused on training presenters about the sponsorship policy, requirements of presenters, and providing practical examples of how to conduct an interview with a person or organisation without breaching obligations in the BSA.

- > To comply with its obligation under the BSA to encourage the community to participate in its operations, the Licensee will:
 - Take steps to amend rules in its constitution which act as barriers to participation in operations (particularly rules 2, 4, and 7), in consultation with its members, and subject to approval by members at an upcoming extraordinary general meeting.
 - Amend its membership policy, including to reflect the changes to its constitution.

The ACMA notes the Licensee's plan to address the breach findings and will monitor its progress towards completing these actions.