

Investigation Report no. BI-575

Summary	
Licensee	Noosa District Community FM Radio Association Inc.
Station	4NSA
Type of service	Community broadcasting – radio
Relevant legislation and codes of practice	<p>Schedule 2 to the <i>Broadcasting Services Act 1992</i> (the BSA)</p> <ul style="list-style-type: none"> > paragraph 9(2)(b) [continue to represent community interest] > subparagraph 9(2)(c)(i) [encourage participation in operations] > subparagraph 9(2)(c)(ii) [encourage participation in program selection and provision] <p>Community Radio Broadcasting Codes of Practice 2008 (the Codes)</p> <ul style="list-style-type: none"> > code 2.1 [people not adequately served by other media encouraged and assisted to participate] > code 2.5 [oppose and break down prejudice] > code 4.1 [involve and take advice from Indigenous Australians in production of programs focusing on Indigenous Australians and issues] > code 7.2 [make reasonable efforts to resolve complaints] > code 7.3 [complaints handling]

Decision	<p>The Licensee:</p> <ul style="list-style-type: none">> did not breach paragraph 9(2)(b) of Schedule 2 to the BSA> did not breach subparagraph 9(2)(c)(i) of Schedule 2 to the BSA> did not breach subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA> did not breach code 2.1 of the Codes> did not breach code 2.5 of the Codes> did not breach code 4.1 of the Codes> breached code 7.2 of the Codes> breached code 7.3 of the Codes
-----------------	--

Background

On 3 June 2020, the Australian Communications and Media Authority (**the ACMA**) received a complaint (**the Complaint**) from three complainants (**Complainants 1, 2, and 3**) about Noosa District Community FM Radio Association Inc. (**the Licensee**).

On 2 December 2020, the ACMA commenced an investigation into the Licensee's compliance with:

1. paragraph 9(2)(b) of Schedule 2 to the BSA
2. subparagraph 9(2)(c)(i) of Schedule 2 to the BSA
3. subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA
4. code 2.1 of the Codes
5. code 2.5 of the Codes
6. code 4.1 of the Codes
7. code 7.2 of the Codes
8. code 7.3 of the Codes.

The Licensee

The Licensee's callsign is 4NSA.

Since July 2002, the Licensee has held a long-term community radio broadcasting licence representing the general geographic area community interest in the Noosa RA1 licence area. Its current licence expires on 30 June 2027.

Previous investigations

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

On 20 December 2021, the ACMA finalised investigation BI-563 into the Licensee's compliance with the following licence conditions in Schedule 2 to the BSA:

- subparagraph 9(2)(c)(i) [encourage participation in operations]
- subparagraph 9(2)(c)(ii) [encourage participation in program selection and provision].

The ACMA made the following decision:²

- breach of subparagraph 9(2)(c)(i) [encourage participation in operations]
- no breach of subparagraph 9(2)(c)(ii) [encourage participation in program selection and provision].

¹ [Investigation report BI-520](#).

² [Investigation report BI-563](#).

Assessment and submissions

This investigation BI-575 considered the following information and submissions to the ACMA.

- the Complaint, received on 3 June 2020
- further submissions from the Complainants, received by the ACMA in connection with this investigation on 9 June 2020, including
 - descriptions of the Complainants' allegations about the Licensee
 - copies of correspondence between the Complainants and the Licensee dated 20 March 2020
 - an analysis by an unidentified third party into investigation BI-520 dated 3 April 2020
- submissions from the Licensee in connection with this investigation, received on 20 July 2021, including
 - in response to the ACMA's investigation opening letter, written submissions dated 19 July 2021
 - a copy of correspondence from the Licensee to one Complainant dated 28 December 2018
 - copies of its policies including
 - Code of Behaviour, authorised February 2002
 - Code of Conduct, dated 2 November 2020
 - Noosa FM – Volunteers' & Presenters' Manual, dated May 2021
 - records of its meetings, including 18 June 2019 Management Committee meeting minutes
- unsolicited submissions from a third party about the Licensee, received on 19 November 2021 and 3 December 2021
- submissions from complainants in connection with BI-563
- submissions from the Licensee in connection with BI-563
- ACMA investigation report BI-563,³ published on 21 April 2022
- correspondence from the Licensee about the remedial actions it has taken in response to investigation BI-563, received on 17 March 2022
- a complaint received on 22 July 2019, which the ACMA considered in deciding to open investigation BI-520
- submissions from the Licensee in connection with BI-520, including policy documents
- submissions from a Complainant in this investigation BI-575, received by the ACMA in connection with BI-520 on 16 August 2019, including
 - descriptions of the complaint
 - copies of correspondence between the Complainant and the Licensee dated
 - 5, 7, 10, and 30 March 2019
 - 3, 4, 9, and 30 April 2019
 - 11, 18 and 20 June 2019

³ [Investigation report BI-563](#).

- copies of correspondence between the Complainants and the Community Broadcasting Foundation dated
 - 5 March 2019
 - 8 July 2019
- ACMA investigation report BI-520,⁴ published on 26 March 2020
- the ACMA's 2016 licence renewal letter to the Licensee dated 31 August 2016
- the Licensee's last community broadcasting licence renewal application, received on 23 December 2021, including a copy of its updated constitution with changes effective 8 December 2021
- submissions from the Licensee in response to the Preliminary Investigation Report for BI-575, including:
 - written submissions
 - a copy of its Training Manual v3 2009
- information obtained from the Licensee's website and public Facebook account by the ACMA on 19 September 2022 and 6 December 2022, which relates to the Licensee's engagement with the community and attendance at events, including:
 - the Booin Gari Festival
 - the Cooroy Fusion Festival
- statements from presenters and members of the Licensee, received on 13 October 2022
- a consolidated Community Participation policy from the Licensee, authorised on 25 October 2022 and received on 26 October 2022.

Other sources are identified in this report where relevant.

⁴ [Investigation report BI-520](#).

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

Relevant licence condition

The BSA

Schedule 2 – Standard conditions

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

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

[...]

(b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated or was last renewed [...]

Finding

The ACMA's finding is that the Licensee did not breach the licence condition at paragraph 9(2)(b) of Schedule 2 to the BSA.

Reasons

Relevant guidelines

The ACMA's Community Broadcasting Participation Guidelines (**the Participation Guidelines**) state that licensees should use a range of initiatives and measures to ensure they continue to represent their community interest. No single activity or initiative alone is likely to result in compliance with this licence condition.⁵

Conversely, the ACMA's view is that a single action, or instance of inaction, that is not best practice, will not necessarily result in a breach of this licence condition.

The Complaint

The Complainants alleged the Licensee did not represent its community interest because it disregarded requests from the community to provide community service announcements for Indigenous initiatives.

To support this allegation, Complainant 1 submitted a copy of an email dated 20 March 2020. The email, sent to the personal email address of a presenter and Cc'd to the Licensee's Secretary's email address, states the following:

'On the 16th of January you made contact with me to encourage me to join your radio program Facebook page, to which I agreed, and requested you consider promoting the [not-for-profit organisation], based in [town] to provide training and podcasting services to the Community, particularly disadvantaged and marginalised people. Sadly, I have received no response to my emails of the 21/1, 3/2 and 29/2/20 to arrange the promotions.'

⁵ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, pages 3 and 5.

Again, I request you provide reasons why you have denied access to air-time from particular members of the Sunshine Coast community, particularly Indigenous people who are the patrons of this NFP, which comprises a variety of social enterprises, is a registered charity and volunteer-driven.

Failure to respond will result in referral to the appropriate regulators.'

The Licensee's submission

The Licensee's submission, received on 20 July 2021, states:

'It is not for us as management to follow all presenters private program emails & requests. [...] It was cc'd to the Secretary not sent directly to the Secretary. [...] [Complainant 1] did not follow policy and sent it to an individual presenter instead of to programming or reception which [...] was where you sent CSAs. [...] we are not obligated to reply to cc'd emails

[...]

We have indigenous announcements. We have a "Welcome to Country" announcement at the start of live broadcast each day. We have also run COVID indigenous CSAs and various other CSAs.

[...]

Our Community Service Announcements (CSAs) come from many different sources including the CBAA, community groups, members and Noosa & Sunshine Coast Council. [...] A lot of CSAs are sent to reception, not to individual presenters or the Secretary. [...] Please note that COVID started in March 2020 and the station was running on skeleton staff for weeks and it was almost impossible for us to record CSAs in that time due to the 1.5 sqm rule and other COVID restrictions.'

Did the Licensee fail to represent its community interest?

The Licensee's community interest is the general geographic area community interest in Noosa RA1. As of the 2016 Australian Census, Noosa RA1 had a population of 78,608 persons. Of those living in the licence area, 1.63% identified as Indigenous.

The information provided to the ACMA identifies an instance of a community member writing to the Licensee about promoting a not-for-profit organisation, which the Licensee acknowledges it did not respond to. This, in and of itself, does not show the Licensee failed to represent the general geographic area community interest in Noosa RA1. The ACMA has not received other complaints raising concerns about the licensee's compliance with this licence condition.

Additionally, the ACMA has reviewed information relating to this issue provided by the Licensee in response to this investigation, as well as material obtained from its publicly available website and Facebook page.⁶ This information indicates that, at the time of the Complaint, the Licensee had a range of initiatives in place to ensure that it continued to represent the needs and interests of the community, including the local Indigenous community. These initiatives include:

- providing a platform for local musicians and entertainers in the licence area, such as through the 21 Summers music festival and song contest

⁶ Based on a sample of posts published by the Licensee between 2019 and 2020.

- conducting outdoor broadcasts to engage with the community at in-person events, such as the Cooroy Fusion Festival
- inviting the community to provide feedback on the coverage of its service
- broadcasting programming featuring Indigenous art and music
- broadcasting special programming for events such as NAIDOC Week 2020, to bring attention to Indigenous issues and projects such as the Kabi Ranger Program and Virtual Songlines
- attending local cultural events, such as the Booin Gari Festival
- broadcasting community service announcements for the local Indigenous community.

Conclusion – Issue 1

Whilst the information available to the ACMA identifies an instance of the Licensee not responding to an individual email, the ACMA is not persuaded that this in and of itself is indicative of a breach of the licence condition.

As a result, the ACMA's finding is that the Licensee did not breach the licence condition at paragraph 9(2)(b) of Schedule 2 to the BSA.

Issue 2: Did the Licensee breach the licence condition at subparagraph 9(2)(c)(i) of Schedule 2 to the BSA?

Relevant licence condition

The BSA

Schedule 2 – Standard conditions

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

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

[...]

(c) the licensee will encourage members of the community that it serves to participate in:

(i) the operations of the licensee in providing the service or services [...]

Finding

The ACMA's finding is that the Licensee did not breach the licence condition at subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Reasons

Relevant guidelines

The Participation Guidelines state that the ACMA's strong preference is for licensees to have open membership policies.⁷ This is because open membership is one of the primary ways of encouraging community participation in the operations of a licensee.

Under the Participation Guidelines, membership is open if:

- a licensee can only refuse membership applications on the basis of specific, transparent and reasonable criteria
- there are adequate grievance or review mechanisms for rejected applicants.

Specific and reasonable criteria to refuse membership include reasonable grounds to believe the applicant:

- would not abide by the licensee's rules and objects
- would not abide by the Codes
- would pose a security risk to members, property or premises.

The ACMA understands that the above requirements for specific, transparent, and reasonable criteria, as well as grievance or review mechanisms, extends to the termination of existing memberships, as well as the rejection of new membership applications.

The Complaint

The Complainants alleged the Licensee failed to encourage members of the community to participate in its operations on the basis that the Licensee:

- on 30 March 2019, revoked the memberships of participants in a weekly program focused on Indigenous Australians and issues (**the Program**), including the Complainants
- did not respond to requests for reasons and minutes relating to this decision
- failed to comply with actions set out in the ACMA's licence renewal letter from 2016 including, relevantly, amending its constitution to add a requirement to provide reasons and a right of reply when refusing membership.

On 16 August 2019, Complainant 1 further submitted that the abovementioned participants had been 'denied access to the station and surrounds [...] without the right of appeal [...]'.⁷

The Licensee's submission

The Licensee submitted that it terminated Complainant 1's membership after it explained its concerns to them and gave them an opportunity to address the concerns.

In support, the Licensee submitted a copy of a letter it sent to Complainant 1, dated 28 December 2018, in which it referred to a previous meeting about a number of matters.

The Licensee submitted that it did not intend to terminate the memberships of Complainants 2 and 3. It submitted that, after 30 March 2019, it invited them to renew their memberships and

⁷ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 10

complete presenter training, but they did not take up the option and their memberships eventually lapsed. It also provided written submissions and a supporting letter from a member who confirmed that they personally invited Complainants 2 and 3 to renew their memberships and complete presenter training.

Regarding the allegation that it failed to comply with actions set out in the ACMA's 2016 renewal letter, the Licensee stated the following:⁸

'As mentioned in investigation I563 – 4NSA has had 2 coups since 2016 and we were not aware that this had not been addressed. No excuse will rectify what has been done but we have set down a date of 21st August 2021 for a SGM to make these amendments to our constitution. Although we do not think that these amendments would have had any bearing on the current complaint. [...] We can only apologise for not completing this task but are currently working to have the constitution amended.'

Did the Licensee fail to encourage community participation in its operations?

The information provided to the ACMA as part of the Complaint does not indicate that, in this instance, the Licensee failed to encourage community participation in its operations.

In finding this, the ACMA considered if the Licensee:

- had a constitution which supported open membership, including the amendments set out in the ACMA's 2016 renewal letter
- in practice, provided specific, transparent and reasonable criteria, as well as adequate grievance or review mechanisms to any of the Complainants that it terminated.

Did the Licensee have a constitution which supported open membership, including the amendments set out in the ACMA's 2016 renewal letter?

The Licensee acknowledged that, at the time of the Complaint, it had not yet implemented the constitutional amendments set out in the ACMA's 2016 renewal letter. Consequently, its constitution did not include a requirement for reasons or adequate grievance or review mechanisms, such as a right of reply, when refusing membership.

This was noted as an area of concern in the ACMA's 2021 investigation BI-563 into the Licensee's compliance with the licence condition at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA, which found that:⁹

'The licensee's criteria for the rejection of membership applications are not transparent. The constitution does not set out any such criteria. Nor does it require the licensee to give the applicant the reasons for a decision to refuse their application and information on review or appeal options.'

Relevantly, effective 8 December 2021, the Licensee has taken actions to improve the degree to which its constitution supports open membership, consistent with those set out in the ACMA's 2016 renewal letter. The constitution provided with the Licensee's most recent renewal application in 2021, incorporating amendments from an SGM on 21 September 2021, sets out grounds for rejection of membership applications, provides a right of reply to rejected

⁸ The ACMA's 2016 renewal letter also included actions for the Licensee to provide a range of policy documents, which the Licensee did not provide on time. Since then, the Licensee has submitted a range of policy documents in response to investigation BI-563, with its most recent renewal application in 2021, and in response to this investigation BI-575.

⁹ [Investigation report BI-563](#).

applicants and provides rejected membership applicants with the reasons for the rejection on request.

Did the Licensee provide specific, transparent, and reasonable criteria, as well as adequate grievance or review mechanisms to any Complainants that it terminated?

On balance, the Licensee provided specific, transparent, and reasonable criteria, as well as an adequate grievance or review mechanism to the Complainant that it terminated.

The information provided to the ACMA shows that, of the three Complainants, the Licensee only terminated Complainant 1's membership on 30 March 2019. After this date, the Licensee's meeting minutes, written submissions, and supporting letter from 13 October 2022, show that Complainants 2 and 3 were invited to renew their memberships, which continued until 2020 and 2019 respectively.

The information provided to the ACMA shows:

- in the letter to Complainant 1 dated 28 December 2018, the Licensee listed specific matters that it was concerned about and explained that continuation of these would be reason for termination of Complainant 1's membership. The letter also indicated that the Licensee met with Complainant 1 (before terminating their membership) to discuss matters.
- in an email dated 30 March 2019, the Licensee confirmed it was terminating Complainant 1's membership in line with its previous communications, which included its reasons.

The ACMA is of the view that these communications constituted specific, transparent, and reasonable criteria, as contemplated in the Participation Guidelines, for terminating Complainant 1's membership.

Further, the ACMA is of the view that a meeting was a supplementary mechanism by which Complainant 1 could respond to the Licensee's reasons and communicate any grievances.

Conclusion – Issue 2

The information provided to the ACMA shows that, at the time of the Complaint, the Licensee's constitution did not adequately support open membership, as it lacked provisions such as a requirement for reasons and grievance or review mechanisms for refusing membership.

Despite not having taken steps to codify open membership in its constitution, in its handling of the memberships the subject of the Complaint, the information provided to the ACMA indicates that the Licensee acted in line with the principles of open membership. Relevantly, the Licensee provided the Complainant whose membership it terminated with specific, transparent, and reasonable criteria, as well as an adequate grievance and review mechanism. Since then, the Licensee has taken steps to amend its constitution, to include relevant provisions to affirm its commitment to open membership.

As a result, the ACMA's finding is that the Licensee did not breach the licence condition at subparagraph 9(2)(c)(i) of Schedule to the BSA.

Issue 3: Did the Licensee breach the licence condition at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA?

Relevant licence condition

The BSA

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 selection and provision of programs under the licence

Finding

The ACMA's finding is that the Licensee did not breach the licence condition at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Reasons

Relevant guidelines

Under the Participation Guidelines, licensees encourage community participation in program provision when they give the community an opportunity to produce and present programs.¹⁰

This does not limit a licensee's right to reduce or remove a presenter's airtime, provided it:

- has a valid reason for making the change to the program schedule
- where possible, makes reasonable efforts to identify and offer alternative arrangements to the affected presenter or program provider.

The ACMA considers the requirements for valid reasons and, where possible, offering alternative arrangements, extends to presenters identified in any approved applications for programming grants, as well as programs that are already on a licensee's program schedule.

The Complaint

The Complaint alleged the Licensee did not encourage community participation in program provision because the Licensee:

- on 30 March 2019, suspended the Program without right of appeal, thereby denying a group of participants (**the Group**), including the Complainants, the right to communicate or present programs with the Licensee

¹⁰ [Community Broadcasting Participation Guidelines](#), ACMA, 2010, page 18.

- in June 2019, declined a programming grant from the Community Broadcasting Foundation (**the CBF**) which the Group applied for, thereby cancelling an upcoming programming project that was supposed to start in July 2019 (**the CBF-funded project**).

The Complainants submitted the Licensee's email dated 30 March 2019, in which the Licensee suspended the Program and appeared to prohibit further communication from the Complainants, except by registered post.

On 16 August 2019, the Complainants submitted correspondence from the CBF which states:

'[...] As 4NSA have officially decided not to accept their Offer of Funding, the CBF are unable to hold or direct the funds offered to them for other purposes. Unfortunately, we do not have the capacity to do this nor is it within our current processes. This funding will re-enter the pool of Indigenous funds for Specialist programming in Round 2. If you can negotiate with another station, I would suggest aiming for Round 2 2019/20 which is now open and closes on 27 August at 2pm (AEST). This would be for activities from 1 December 2019. I am available to discuss making an application and imagine it would be more about editing all the work that you have already done rather than starting from scratch. [...]

On 16 August 2019, the Complainants also submitted a copy of a complaint made to the Australian Human Rights Commission, in which they outline a range of allegations about the Licensee. In particular, allegations that the Licensee:

- declined the Group's request to apply for a CBF programming grant on three prior occasions
- rejected the Group's attempts to apply for a CBF programming grant until it 'realised that the [...] application would complement and enhance the opportunity for success for a \$44,000 equipment grant planned for submission in the same round [...]

The complaint to the Australian Human Rights Commission also noted that one of the Complainants 'had been working voluntarily towards this outcome for over a year, providing broadcasting services, support and advice in the production of the Indigenous-focused radio program as well as contributing to the development of the project applications for CBF funding.'

The Licensee's submission

In response to the allegations about suspending the Group from presenting, in its submission dated 19 July 2021, the Licensee stated:

'[The Group] was never proposed or ratified by the Program Committee or the Management Committee as the grant was never utilised or received from CBF because [Complainant 1] was removed as a member following the process set down in our constitution.'

Further, the Licensee submitted that it did not deny Complainants 2 and 3 the opportunity to present. Rather, on 2 August 2022, the Licensee submitted that it 'offered [Complainant 3] and [Complainant 2] presenter training. Unfortunately, they did not take that up.'

Regarding the CBF grant, the Licensee's 18 June 2019 Management Committee meeting minutes state:

'[...] We spoke with CBF and explained that the people nominated in the Grant have left.

[...] CBF advised us that the Grant needs to be used exactly as per application and deviation will not be accepted. The Grant was especially given due to the application for payment to an indigenous presenter: This will make them stay with the station – was the argument.

However, we don't have an indigenous presenter and advised, [CBF officer] from CBF about this and we do not have one to recruit [...].'

In its submission dated 19 July 2021, the Licensee stated, 'we did not have the resources at the time to manage the grant [...] you can only stretch your volunteer resources so far. Management had asked some presenters if they wished to take on the grant but none were willing to do so.'

In the Licensee's submission received on 2 August 2022, it further stated:

'We approached several suitable volunteers [...] and all trainers of 4NSA. However, there was no qualified presenter who would have been able to make the extra time to produce and present the program, not even for a different time slot.'

On 13 October 2022, the Licensee submitted supporting letters from three of its presenters. In the letters, the presenters submitted that they recall being approached about the CBF-funded project in June 2019, or wanting to pursue it at the time, but ultimately did not have the time or resources due to other commitments.

Did the Licensee fail to encourage community participation in program provision?

On balance, the Licensee did not fail to encourage community participation in program provision.

Since suspending the Program and not proceeding with the CBF-funded project had the effect of removing the Complainants' airtime, in finding this, the ACMA considered if the Licensee:

- had a valid reason for making these changes
- made reasonable efforts to identify and offer alternative arrangements to the affected presenters or providers.

Did the Licensee have a valid reason for suspending the Program?

The information provided to the ACMA shows, as of 30 March 2019, the main presenter of the Program was no longer a member of the Licensee and was barred from presenting.

The ACMA is of the view that this was a valid reason for the Licensee to suspend the Program.

Did the Licensee make reasonable efforts to identify and offer alternative arrangements to the presenters or providers affected by the suspension of the Program?

Complainants 2 and 3 were presenters or providers affected by the suspension of the Program.

The information provided to the ACMA shows the Licensee made reasonable efforts to offer Complainants 2 and 3 alternative arrangements after it suspended the Program. Specifically, as outlined in the supporting letter submitted on 13 October 2022 under **Issue 2**, a member submitted that they personally invited the Complainants to take up presenter training.

This is further noted in the Licensee's written submission dated 19 July 2021, which states:

- regarding Complainant 2, 'We encouraged [them] to take up the option of doing the training course and correspondence was sent to [them] in this regard via email from [station role].'
- regarding Complainant 3, 'We encouraged [them] to renew [their] membership and the [station role] even spoke to [Complainant 1] directly about this in the hope that [Complainant 3] would renew but [they] did not.'

Did the Licensee have a valid reason for not proceeding with the CBF-funded project?

The information provided to the ACMA shows the Licensee lost the funding for the CBF-funded project. This is because it did not have presenters available who could meet the grant requirements, despite:

- reaching out to several of its presenters, as stated in the supporting letters from presenters submitted on 13 October 2022
- offering presenter training to Complainants 2 and 3, as stated in the supporting letter from a member, submitted on 13 October 2022, and the Licensee's written submissions dated 19 July 2021.

The ACMA is of the view that the loss of funding was a valid reason for not proceeding with the CBF-funded project.

Did the Licensee make reasonable efforts to identify and offer alternative arrangements to the presenters or providers affected by the Licensee not proceeding with the CBF-funded project?

The information provided to the ACMA shows the intended presenters and providers of the CBF-funded project were the same as those of the Program, including Complainants 2 and 3.

The ACMA is of the view that the Licensee's offers for Complainants 2 and 3 to undertake presenter training and continue participating, examined above, demonstrated reasonable efforts to offer alternative arrangements.

Conclusion – Issue 3

The information provided to the ACMA shows the Licensee made changes to the Program and the CBF-funded project, which had the effect of removing the Complainants' airtime. However, on balance, the Licensee had valid reasons for making the changes and offered alternative arrangements to the Complainants, in line with the ACMA's expectations for encouraging community participation in program provision.

As a result, the ACMA's finding is that the Licensee has not breached the licence condition at subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Issue 4: Did the Licensee breach code 2.1 of the Codes?

Relevant code provision

The Codes

- 2.1 Our station will make sure that people in our community who are not adequately served by other media are encouraged and assisted to participate in providing our service. We will have in place policies and procedures to

support this commitment. We will document evidence of our efforts to encourage community participation.

Finding

The ACMA's finding is that the Licensee did not breach code 2.1 of the Codes.

Reasons

The Complaint

The Complainants alleged the Licensee did not have policies and procedures to encourage participation by people in the community who are not adequately served by other media.

They submitted that '[the Licensee] does not have mechanisms for, nor commitments to encourage and assist community members to provide the service'.

The Licensee's submission

On 20 July 2021 and 2 August 2022, the Licensee submitted copies of its policy and procedure documents which were in use at the time of the Complaint, to demonstrate its commitment to encouraging participation from community members who are not adequately served by other media.

Relevant extracts from the policy and procedure documents are excerpted below.

Noosa Community Radio – In-house Presenter Training Manual (version 3 2009)

'Noosa Community Radio Objectives

The objects for which the association is established are:

1. To build, equip and maintain a broadcasting station which will service the Noosa District and environs and address carrying issues including educational, ethnic, sport, news, environmental concerns, current affairs and any other subject deemed by the Association as appropriate and complementary to these objects.
2. To provide:
 - (i) Programs that will complement and supplement existing broadcasters.
 - (ii) Opportunities for groups, associations and individuals within the Noosa District and environs to produce programs of music and spoken word.
 - (iii) The community of Noosa District and environs the opportunity to acquire skills in broadcasting techniques.
 - (iv) The highest standards in innovative programming that are attainable and consistent with community participation.
 - (v) A broadcast program which shall be independent of political, racial, gender, religious or commercial influence or bias.
3. To promote local music, local art and local current affairs.
4. To provide assistance and airtime where available and appropriate to, amongst others, the following:
 - (i) Volunteer and other emergency services.
 - (ii) Musicians, artists and entertainers from the Noosa District and environs.

- (iii) Community groups in particular those representing the disadvantaged members and residents of Noosa District and Environs.

Policy Statement 1.03 – Programming Authority (authorised 4 January 2012)

- ‘2. Programming Committee’s responsibilities are to:
 - 2.7 Plan the flow of programme material to meet the recognised or perceived needs of the audience of Noosa District Community Radio, as defined by the Objects of the Association, CBAA guidelines, and the understanding of the Programming Committee;
 - 2.8 Solicit programme submissions and allocate programme slots to presenters who are financial members of the Association and who are considered competent to broadcast to the standards defined from time to time, presenting new programme schedules to the Management Committee for confirmation;
 - 2.9 Call and conduct meetings of presenters in order to exchange views, opinions and ideas on programming content, practice and standards; to pass information from Programming Committee to presenters; to receive information from presenters that is needed to discharge the duties of Programming Committee, and to act as an information and ideas exchange between presenters and the Management Committee and its various sub-committees;
 - [...]
 - 2.18 Identify future programme potential and needs, and to identify presenters capable of meeting those needs, in order to develop skills (in conjunction with Training Committee where appropriate) that will allow identified presenters to prepare and broadcast innovative material to meet those needs [...]

Policy Statement 9.02 – HRP1 Code of Behaviour (authorised February 2002)

- ‘3.1 DISCRIMINATION
 - 3.1.1 In keeping with the law no person shall be discriminated against because of their age, sex, illness eg HIV infection, disability, country of birth or origin, nationality, religion, colour or marital status.
 - [...]
- 3.7 PEOPLE WITH DISABILITIES
 - 3.7.1 Noosa Community Radio is committed to ensuring fair, consistent and safe treatment of all people associated with the station, including people with a disability. To this end, our policies and procedures aim to ensure that any person, young or mature, with a disability will not, on the basis of that disability, be denied full and equal access to the activities of the Station.’

In response to the ACMA’s 2021 investigation BI-563, the Licensee also submitted the following.

Policy Statement 1.11 – Community Service Announcements (revised January 2014)

'1. Authority and responsibility for managing Community Service Announcements is delegated to the Secretary of the Management committee who shall administer suitable Reception staff to perform this service. a sub-committee of the Management Committee, titled the Community Service Announcements Committee.

2. Reception staff so authorised shall have responsibilities:

- 2.1 To contact community organisations within the Association's broadcast coverage area to advise the service provided by the station;
[...]
- 2.3 To ensure that Community Service Announcements are broadcast only for persons or organisations that provide a service to the community without personal profit [...]

Regarding the Licensee's obligation to document evidence of its efforts to encourage community participation:

- on 20 July 2021, the Licensee submitted posts from its Facebook page, showing examples of posts it made for NAIDOC Week 2020, to encourage the community to engage with and listen to programs about Indigenous Australians and issues.
- as accessed by the ACMA on 19 September 2022 and 6 December 2022, the Licensee's publicly available Facebook page contains posts documenting its activities from before the Complaint to date, such as community fundraisers, Volunteer's Week, invitations to an ANZAC event with online streaming option, information about sponsorship rates, an Antenna Project inviting community members to subscribe and learn about roles within the station, an invitation to the Licensee's 2019 AGM, and invitations to interact with presenters by SMS.¹¹

Did the Licensee have in place policies and procedures to ensure people in its community who are not adequately served by other media are encouraged and assisted to participate?

Based on the information provided to the ACMA, the Licensee had in place policies and procedures to ensure people in its community who are not adequately served by other media are encouraged and assisted to participate.

It is noted that at the time of the Complaint, the Licensee did not have a single consolidated community participation policy. However, the individual policy and procedure documents it did have in place, excerpted above, contained a range of commitments to, and mechanisms for, encouraging participation from the general community in Noosa RA1, as well as potentially underserved members of the community. These include:

- policy objectives focused on providing a service that is 'consistent with community participation' and that complements other media available in the area, rather than duplicating content
- a focus on highlighting 'local music, local art and local current affairs'
- a commitment to assisting the local community to 'acquire skills' in broadcasting
- a commitment to support local community groups, with a focus on 'those representing the disadvantaged members and residents of Noosa District and Environs'

¹¹ Based on a sample of posts published by the Licensee between 2019 and 2020.

- a training program for new presenters which emphasises familiarity with obligations under the Codes
- policies directing and authorising the Programming Committee to 'solicit' program submissions, conduct consultation meetings, identify community needs, and develop programming and participant skills to meet those community needs in conjunction with the Training Committee
- an explicit commitment against discrimination on the basis of 'age, sex, illness e.g. HIV infection, disability, country of birth or origin, nationality, religion, colour or marital status'
- a commitment to ensuring that the Licensee's station will be physically accessible to all participants, regardless of age or disability
- processes for engaging with community organisations in Noosa RA1 to raise awareness about the Licensee's service and ensure community service announcements are for the benefit of the community.

Did the Licensee document evidence of its efforts to encourage community participation?

On balance, the Licensee documented evidence of its efforts to encourage community participation.

The information available to the ACMA indicates that, since before the time of the Complaint, the Licensee has encouraged the community to participate through a range of mechanisms, such as outdoor broadcasts, social media engagement, attending community events, and offering education about broadcasting. It has also provided the community with information about ways it can participate, such as through subscribing, attending AGMs, volunteering, presenting, attending fundraisers, becoming a sponsor, and interacting with presenters by SMS.

The ACMA has been provided with documentary evidence of a number of these activities and has obtained further information documented on the Licensee's publicly available Facebook page. The ACMA considers that the availability of this information indicates that the Licensee has taken steps to document its efforts.

Conclusion – Issue 4

The information provided to the ACMA shows that, at the time of the Complaint, the Licensee had a range of policies and procedures in place which contained mechanisms to encourage participation from members of the community who are not adequately served by other media. The information available also shows that the Licensee has taken steps to document evidence of its efforts to encourage participation.

As a result, the ACMA's finding is that the Licensee has not breached code 2.1 of the Codes.

Issue 5: Did the Licensee breach Code 2.5 of the Codes?

Relevant code provision

The Codes

- 2.5 In all station activities and our behaviour we will oppose and break down prejudice on the basis of ethnicity, race, language, gender, sexuality, age, physical or mental ability, occupation, religious, cultural or political beliefs.

Finding

The ACMA's finding is that the Licensee has not breached code 2.5 of the Codes.

Reasons

The Complaint

The Complainants identified concerns about the Licensee's compliance with code 2 of the Codes and raised some broader allegations against the Licensee that might indicate concerns regarding compliance with this code 2.5.

Matters relating to the Licensee's dealing with Indigenous community members in the context of its handling of the Program and the CBF-funded project are dealt with in relation to Code 4, under **Issue 6**.

The Licensee's submission

The Licensee submitted that it 'welcomes all groups to be involved in the station'. It noted that it has presenters across a range of ages, from 17 to 81, and has 'several presenters from NESB backgrounds e.g. German, Filipino [...]'.¹²

The Licensee also described relevant activities it has undertaken, including broadcasting at cultural events and broadcasting special programming for NAIDOC Week 2020. As examined under **Issue 4**, evidence of a range of the Licensee's activities is documented on its publicly available Facebook page. This includes engagement with the Women2Women Expo 2019 and programming highlighting Indigenous artists.¹²

As examined above under **Issue 4**, the Licensee's Code of Behaviour, authorised February 2002, also states:

- 3.1.1 In keeping with the law no person shall be discriminated against because of their age, sex, illness eg HIV infection, disability, country of birth or origin, nationality, religion, colour or marital status.

[...]

- 3.7.1 Noosa Community Radio is committed to ensuring fair, consistent and safe treatment of all people associated with the station, including people with a disability. To this end, our policies and procedures aim to ensure that any person, young or mature, with a disability will not, on the basis of that disability, be denied full and equal access to the activities of the Station.'

Did the Licensee fail to oppose and break down prejudice on the basis of ethnicity, race, language, gender, sexuality, age, physical or mental ability, occupation, religious, cultural or political beliefs?

¹² Based on a sample of posts published by the Licensee between 2019 and 2020.

On balance, the information available to the ACMA does not demonstrate that the Licensee failed to oppose or break down prejudice on the basis of ethnicity, race, language, gender, sexuality, age, physical or mental ability, occupation, religious, cultural or political beliefs.

The submissions from the Licensee, in conjunction with information obtained from its public Facebook page, indicate that it supports a diverse range of presenters, engages in and highlights local cultural events, and has policies in place which affirm its commitment to opposing prejudices on a range of bases.

Conclusion – Issue 5

The information available to the ACMA does not show evidence of the Licensee failing to oppose and break down prejudices on a range of bases.

As a result, the ACMA's finding is that the Licensee did not breach code 2.5 of the Codes.

Issue 6: Did the Licensee breach code 4.1 of the Codes?

Relevant code provisions

The Codes

- 4.1 We will seek to involve and take advice from Indigenous Australians in the production of programs focusing on Indigenous Australians and issues. Where possible, we will consult the appropriate Indigenous media organisation broadcaster on appropriate forms of communication.

Finding

The ACMA's finding is that the Licensee did not breach code 4.1 of the Codes.

Reasons

The Complaint

The Complaint alleged that the Licensee did not involve and take advice from Indigenous Australians in the production of programs focusing on Indigenous Australians and issues.

The Complaint alleged this on the basis that the Licensee:

- terminated the memberships of Indigenous Australian participants in the Group and suspended the Program without giving them the opportunity to reply or object
- chose not to proceed with the CBF grant and the CBF-funded project without appropriate consultation, thereby denying Indigenous people a voice, employment, and training opportunities that would have come with the funding.

On 9 June 2020, the Complainant 1 submitted that:

'[The Licensee's] action is considered a serious breach of trust and highly disrespectful of the Indigenous people who invest considerable time and effort in preparing the application and meeting the requirements of pre-negotiation with the station, and piloting the program for over 2 years.'

The Licensee's submission

On 20 July 2021 and 2 August 2022, the Licensee made the following submissions, contending that the Group and the Program were not formalised initiatives focused on Indigenous Australians and issues:

'[The Group] was never proposed or ratified by the Program Committee or the Management Committee as the grant was never utilised or received from CBF because [Complainant 1] was removed as a member following the process set down in our constitution.'

'Please see our older website and Facebook entries. [Complainant 1's] program format was to present Australian and Country Music.'

Regarding the suspension of the Program and the CBF-funded project, the Licensee further submitted the following examples of its attempts to involve and take advice from Indigenous Australians:

'Noosa FM management did consult with the indigenous people who were members and part of [Complaint 1's] program. We offered [Complainant 3] and [Complainant 2] presenter training. Unfortunately, they did not take that up. [...]

As the [station role] of Noosa FM, [name], met before and around that time with [name of Indigenous community member] and visited [them] at [business]. They met to discuss the inclusion of indigenous people on the Noosa FM airwaves. [...] However, we said all our presenters need to be trained by us and comply with our policies. [Name of Indigenous community member] did not want to have non-indigenous members involved in [their] project and therefore and unfortunately, we did not come together at the time.'

As noted under **Issue 2** and **Issue 3**, on 13 October 2022, the Licensee also provided a supporting letter from a member of the station, who submitted that they personally spoke to Complainants 2 and 3 to encourage them to renew their membership and undertake presenter training.

Did the Licensee fail to involve and take advice from Indigenous Australians in the production of programs focusing on Indigenous Australians and issues?

On balance, the Licensee did not fail to involve and take advice from Indigenous Australians in the production of programs focusing on Indigenous Australians and issues.

The information available to the ACMA shows that the Program and the CBF-funded project were programs focusing on Indigenous Australians and issues. This is because the information available to the ACMA, including obtained from the Licensee's website, shows:

- the Program featured presenters who are Indigenous Australians, was described as dedicated to First Nations people, and prominently featured content with and by Indigenous Australians.
- the Complainants and the Licensee had a common understanding that the CBF grant was for a program focused on Indigenous Australians and issues. In particular, to fund the employment and retention of an Indigenous presenter.

Therefore, the Licensee was required to involve and take advice from Indigenous Australians in the production of the Program and the CBF-funded project. This includes its decision to suspend the Program and its handling of the approved CBF grant.

On balance, the information provided to the ACMA shows that the Licensee took steps to involve and take advice from Indigenous Australians when it suspended the Program and handled the CBF grant. These steps included:

- as examined under **Issue 2** and **Issue 3**, reaching out to the Indigenous Complainants who were involved in the Program and applying for the CBF grant, to offer them presenter training so they could continue presenting with the Licensee.
- as stated in the Licensee's written submissions, arranging a meeting with another Indigenous community member at their place of business to discuss ways of including Indigenous community members in the Licensee's broadcasts.

The ACMA is of the view that these were appropriate steps consistent with the requirement to involve and take advice from Indigenous Australians, even if the Program and the CBF-funded project were ultimately not able to go ahead.

Noting the above, the ACMA acknowledges the impact of the Program and the CBF-funded project not going ahead, as described by Complainant 1 in their submission dated 9 June 2020.

Conclusion – Issue 6

The information provided to the ACMA shows the Licensee made production decisions which impacted programs focusing on Indigenous Australians and issues. Specifically, the Program and the CBF-funded project. However, the information also shows that the Licensee took appropriate steps to involve and take advice from Indigenous presenters and an Indigenous member of the community in the process.

Therefore, the ACMA's finding is that the Licensee did not breach code 4.1 of the Codes.

Issue 7: Did the Licensee breach code 7.2 of the Codes?

Relevant code provision

The Codes

- 7.2 We will make every reasonable effort to resolve complaints, except where a complaint is clearly frivolous, without sufficient grounds or not made in good faith.

Finding

The ACMA's finding is that the Licensee breached code 7.2 of the Codes.

Reasons

The Complaint

The Complaint alleged that the Licensee failed to make reasonable efforts to resolve legitimate complaints.

The Complainants stated that the Licensee 'has not, to this day, abided in anyway with Code 7, in that there has been no response to many requests to reconcile this matter [...]'.

The Complainants submitted records of emails and letters that it sent to the Licensee between April and June 2019. Amongst this correspondence are two complaint letters from Complainant 1 to the Licensee excerpted below:

'30th April 2019

Attention: The Secretary,

NOOSA DISTRICT COMMUNITY FM RADIO ASSOCIATION INC.

(also sent by registered post 30/4/2019 - see attachment below)

I refer to the Secretary's email of the 30th March 2019 regarding the suspension of [the Program] and those associated with it, and my subsequent requests to appeal the decisions in accordance with the ASSOCIATIONS INCORPORATION REGULATION 1999 - SCHEDULE 4.

As I have received no acknowledgement of my right to appeal these decisions, the Secretary is respectfully requested to address this matter in accordance with the appeals process described in the aforementioned regulation.

[...]

'18th June 2019

[...]

Consequently the team would view any variation to the Content grant, without consultation with the project team, to be a serious breach of trust and would be referred to the funding provider and ACMA, along with the other Code breaches incurred by this management committee.

Therefore, we respectfully request you advise a time this week to meet, or teleconference, with us to discuss ways to move forward on this very important project.

[...]

The Licensee's submission

On 2 August 2022, the Licensee indicated that, having responded to a range of correspondence previously, it did not address this correspondence for practical and administrative reasons.

Did the Licensee fail to make reasonable efforts to resolve complaints?

The Licensee failed to make reasonable efforts to resolve complaints.

The information provided to the ACMA shows, on 30 April 2019 and 18 June 2019, Complainant 1 sent the Licensee written complaints, which the Licensee was required to make reasonable efforts to resolve.

Based on the Licensee's 2 August 2022 submission, it did not acknowledge the complaint correspondence from Complainant 1. As it did not acknowledge the complaints, it did not recognise an obligation to make reasonable efforts to resolve them.

The ACMA acknowledges the Licensee's explanation about the practical and administrative difficulties it had managing correspondence. However, this does not detract from the

Licensee's obligation to make reasonable efforts to resolve complaints. When a Licensee receives a complaint about a new issue, it should make a reasonable attempt to resolve the new complaint, so long as that new complaint is not clearly frivolous, without sufficient grounds, or not made in good faith, even if it had extended correspondence with the complainant about other related matters in the past.

Conclusion – Issue 7

The information provided to the ACMA shows that, on 30 April 2019 and 18 June 2019, the Licensee received written complaints which it was required to make reasonable efforts to resolve. However, the Licensee did not make any efforts to resolve these complaints.

As a result, the ACMA's finding is that the Licensee breached code 7.2 of the Codes.

Issue 8: Did the Licensee breach code 7.3 of the Codes?

Relevant code provision

The Codes

- 7.3 We will ensure that:
- [...]
- (b) complaints will be conscientiously considered, investigated if necessary, and responded to substantively as soon as possible,
- [...]
- A written complaint or response can be a letter, fax, or email.

Finding

The ACMA's finding is that the Licensee breached code 7.3 of the Codes.

Reasons

The Complaint

The Complaint alleged that the Licensee:

- did not respond to complaints in writing from the Complainants about alleged breaches of the Codes
- denied the Complainants the right to submit complaints by any other method than registered post.

The Complainants submitted a copy of the Licensee's 30 March 2019 email, which states that any further communication from Complainant 1, their 'agents' or 'support group persons or personnel' must be by registered post, or it would be disposed of without opening.

On 9 June 2020, the Complainants submitted:

'Further reasons for the complaints include the facts that 4NSA has not, to this day, abided in anyway with Code 7, in that there has been no response to many requests to reconcile this matter, and 4NSA's demands for communication by registered mail is also contrary to Code 7 [...]

The Complainants also submitted email and post correspondence, which shows Complainant 1 sent two complaints in writing to the Licensee, at least one of which was explicitly about non-compliance with the Codes. This letter, sent on 18 June 2019, is excerpted under **Issue 7**. Relevantly to **Issue 8**, it states:

'Consequently the team would view any variation to the Content grant, without consultation with the project team, to be a serious breach of trust and would be referred to the funding provider and ACMA, along with the other Code breaches incurred by this management committee.

Therefore, we respectfully request you advise a time this week to meet, or teleconference, with us to discuss ways to move forward on this very important project.'

The Licensee's submission

On 2 August 2022, the Licensee indicated that, having responded to a range of correspondence previously, it did not address this correspondence for practical and administrative reasons.

On 20 July 2021, the Licensee also acknowledged it restricted Complainant 1's methods of contacting the station as follows.

'We only received in March 2019 over 3 months after [they were] removed, a request for the minutes. Also yet again not following instruction [they] sent that by email not registered post.'

Did the Licensee fail to conscientiously consider, investigate, and respond to complaints in writing?

The information provided to the ACMA shows the Licensee failed to conscientiously consider, investigate, or respond to complaints in writing.

As examined under **Issue 7**, Complainant 1 sent complaints in writing to the Licensee, which the Licensee did not acknowledge. As the Licensee did not acknowledge that it had received complaints, it did not conscientiously consider, investigate, or respond to them.

Did the Licensee limit the Complainants' right to submit complaints by methods other than registered post?

The information provided to the ACMA shows, in the email dated 30 March 2019, the Licensee attempted to limit Complainant 1's methods of contact to registered post. This, in and of itself, is a breach of the stipulation that complaints in writing may be made by letter, fax, or email.

Conclusion – Issue 8

The information provided to the ACMA shows that, between April and June 2019, the Licensee received written complaints which it was required to conscientiously consider, investigate, and respond to. However, the Licensee did not do this. Further, the information provided to the ACMA shows that the Licensee attempted to limit a Complainant's methods of contact to registered post, contrary to the stipulation that complaints in writing may be made by letter, fax, or email.

As a result, the ACMA's finding is that the Licensee breached code 7.3 of the Codes.

Agreed actions

The Licensee has advised the ACMA of the following actions that it has taken, or will take, in response to the ACMA's Preliminary Investigation Report:

- > To ensure incoming correspondence, particularly complaints, are appropriately responded to in accordance with code 7 of the Codes, it will put stronger emphasis on having its presenters use the station's official contact methods for station business, rather than individual or personal email addresses.
- > To avoid unintentionally discouraging participation in operations or program provision, it will take steps to revise the wording of future suspension or cancellation notices to make it clear:
 - whose rights to participate are being restricted
 - to what extent they are being restricted
 - why they are being restricted.
- > It will encourage its presenters to apply for program grants, including presenters who are currently working with Indigenous guests and featuring Indigenous music, storytelling, and art. It will support the inclusion of Indigenous program content and work on the provision of an Indigenous program.

The ACMA notes steps taken by the Licensee to address the breach findings of codes 7.2 and 7.3 of the Codes.

To further support compliance with code 7.3 of the Codes, the ACMA recommends that the Licensee take steps to revise the wording of future suspension or cancellation notices, to ensure it is not limiting community members' rights to submit written complaints by letter, fax, or email.

The ACMA also notes the steps taken by the Licensee to improve its practices in response to other matters raised as part of this investigation.