Investigation report (consolidated) no. BI-678, BI-680 and BI-681

| Summary |  |
| --- | --- |
| **Relevant legislation** | *Broadcasting Services Act 1992* (the **BSA**)*Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022* (the **Standard**) |
| **Date finalised** | 5 July 2024 |
| **Investigation BI-678** |
| **Licensee [service]** | Radio 2GB Sydney Pty Ltd [2GB] |
| **Findings** | Breach of subsection 10(2) [disclosure announcement] of the StandardBreach of section 13 [contents of register] of the StandardBreach of section 15 [licensee must keep commercial agreements] of the StandardBreach of paragraph 8(1)(b) [comply with standards] of Schedule 2 to the BSA |
| **Program [type]** | *Ben Fordham Live* [current affairs] |
| **Date of broadcast** | 3 August 2023 |
| **Investigation BI-680** |
| **Licensee [service]** | Radio 3AW Melbourne Pty Ltd [3AW] |
| **Findings** | Breach of subsection 10(2) [disclosure announcement] of the StandardBreach of section 13 [contents of register] of the StandardBreach of paragraph 8(1)(b) [comply with standards] of Schedule 2 to the BSA |
| **Program [type]** | *3AW Afternoons* [current affairs] |
| **Date of broadcasts** | 2 August 2023 and 28 August 2023 |

| **Investigation BI-681** |
| --- |
| **Licensee [service]** | Radio 4BC Brisbane Pty Limited [4BC] |
| **Findings** | No breach of section 13 [contents of register] of the StandardNo breach of paragraph 8(1)(b) [comply with standards] of Schedule 2 to the BSA |
| **General** |  |
| **Type of services** | Commercial broadcasting—radio |
| **Attachments** | **A –** relevant provisions **B –** commercial agreements held by Jacqui Felgate |

Background

**BI-678**

In September 2023, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into a broadcast of *Ben Fordham Live*.

The program was broadcast on 2GB by Radio 2GB Sydney Pty Ltd (the **2GB Licensee**) on 3 August 2023 at 5:30 am.

The ACMA received information that indicated a commercial agreement between the host of the program, Mr Ben Fordham, and Uber Australia Pty Ltd (**Uber**), was not disclosed on-air when Mr Fordham made comments that appeared to be favourable to Uber.

In November 2023, following receipt of the 2GB Licensee’s responses to enquiries from the ACMA, the ACMA extended the scope of this investigation to include an examination of the content of the 2GB Licensee’s online register of commercial agreements and the requirement to keep commercial agreements.

The ACMA has investigated the 2GB Licensee’s compliance with subsection 10(2) of the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022* (the **Standard**) relating to on-air disclosure announcements, section 13 of the Standard, relating to the content of online registers of commercial agreements and section 15 relating to keeping commercial agreements. The ACMA has also investigated compliance with paragraph 8(1)(b) of Schedule 2 to the BSA, which requires licensees to comply with the Standard.

**BI-680**

In November 2023, the ACMA commenced an investigation under the BSA into a broadcast of *3AW Afternoons*.

The program was broadcast on 3AW by Radio 3AW Melbourne Pty Ltd (the **3AW Licensee**) on 2 August 2023 at 12:00 pm.

The ACMA received information that indicated a commercial agreement between the host of the program, Ms Jacqui Felgate, and Virgin Australia Airlines Pty Ltd (**Virgin**), was not disclosed on-air when Ms Felgate made statements that appeared to be favourable to Virgin.

The ACMA subsequently received information about a broadcast of *3AW Afternoons* broadcast on 28 August 2023 at 12.00 pm.

The information indicated a commercial agreement between the host of the program, Ms Jacqui Felgate, and BMW, was not disclosed on-air when Ms Felgate made statements that appeared to be favourable to BMW.

Following receipt of responses from the 3AW Licensee to enquiries from the ACMA, the ACMA included in this investigation an examination of the content of the 3AW Licensee’s online register of commercial agreements.

The ACMA has investigated the 3AW Licensee’s compliance with subsection 10(2) of the Standard, relating to on-air disclosure announcements, and section 13 of the Standard, relating to the content of online registers of commercial agreements, and consequently, compliance with paragraph 8(1)(b) of Schedule 2 to the BSA, which requires licensees to comply with the Standard.

**BI-681**

In November 2023, following receipt of Radio Magic 882 Brisbane Pty Limited’s (the **4BC Licensee**) responses to enquiries from the ACMA, the ACMA commenced an investigation into the content of the 4BC Licensee’s online register of commercial agreements.

The ACMA has investigated the 4BC Licensee’s compliance with section 13 of the Standard, relating to the content of online registers of commercial agreements, and consequently, compliance with paragraph 8(1)(b) of Schedule 2 to the BSA, which requires licensees to comply with the Standard.

**Relevant provisions**

Relevant provisions of the Standard and the BSA are set out at Attachment A.

Issue 1: On‑air disclosure of commercial agreements

BI-678 – Ben Fordham Live (2GB)

The investigation considered material broadcast by the 2GB Licensee during *Ben Fordham Live* on 3 August 2023 about the Uber car share service.

Finding

The ACMA finds that the 2GB Licensee breached subsection 10(2) of the Standard and was therefore in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Reasons

To assess compliance, the ACMA has addressed the following questions:

* Was the material broadcast in a current affairs program as defined in section 5 of the Standard?
* Was there a commercial agreement as defined in section 6 of the Standard?
* Did the Licensee broadcast material satisfying at least one of the elements at subparagraphs 10(1)(b)(i) to (iv) of the Standard?

If the answer to any of the questions is no, section 10 of the Standard is not applicable and there is no need to consider the remaining question(s). If the answer to all three questions is yes, the ACMA asks:

* Did the Licensee make an on-air disclosure of the commercial agreement?

If the answer to that question is no, the ACMA asks whether either of the exceptions under subsection 10(3) of the Standard apply:

* Was the material broadcast a news broadcast or bulletin?
* Was the material broadcast an advertisement, that was clearly identifiable to a reasonable listener as an advertisement?

**Was the material broadcast in a current affairs program?**

Section 5 of the Standard provides a definition of a current affairs program.

**current affairs program** means a program a substantial purpose of which is to provide interviews, analysis, commentary or discussion, including open-line discussion with listeners, about current social, economic or political issues.

*Ben Fordham Live* broadcasts discussion, interviews, analysis, including talk-back discussion with listeners, about current social, economic or political issues.

The ACMA considers that *Ben Fordham Live* is a current affairs program for the purposes of the Standard.

**Was there a commercial agreement in place?**

The 2GB Licensee submitted that Mr Fordham had a commercial agreement with Uber, as defined in section 6 of the Standard, when the material about Uber was broadcast on 3 August 2023.

The ACMA, therefore, accepts that a commercial agreement was in place.

**Did the Licensee broadcast material satisfying at least one of the elements at subparagraphs 10(1)(b)(i) to (iv) of the Standard?**

During a regular segment, *Business Report with Peter Swtizer*, there was a discussion about people taking second jobs. During the discussion, Mr Fordham revealed that he had commenced working as a driver with the Uber car share service and had just accepted his first passenger. At the conclusion of this anecdote, Mr Fordham made the following comments:

it's so good. You just switch it on and think, all right. Well, I've got an hour to kill here. I may as well make a bit of money.

Relevantly, the 2GB Licensee submitted that Mr Fordham’s comments did not:

promote Uber’s name, products or services. The name ‘Uber’ was mentioned merely as a means of personalising new data from the Australian Bureau of Statistics showing an uptake in second jobs by Australians.

and

were neither scripted nor planned

and that

the Standard does not prescribe the mere mention of a sponsor’s name, products or services as material that requires an on-air disclosure.

The ACMA agrees the comments were delivered within the context of a broader personal anecdote about Mr Fordham’s recent experiences as an Uber driver and that anecdote was itself told within the context of news about jobs data. However, the ACMA considers that the comments above did not merely mention Uber’s products or services but conveyed positive sentiments to promote Uber as a desirable employer for people who wanted to make extra money by driving a ride share vehicle. The comments conveyed this desirability by stating how easy it was for people to book passengers and make money during their spare time.

The ACMA considers that the Licensee broadcast material satisfying subparagraph 10(1)(b)(i) of the Standard.

**Did the licensee ensure an appropriate disclosure announcement was broadcast?**

The ACMA reviewed the full broadcast of the Business Report and confirmed that no on-air disclosure of the Uber commercial agreement was made.

**Did an exception under subsection** **10(3) of the Standard apply?**

The ACMA considers that neither of the exceptions at subsection 10(3) of the Standard applied, as the material broadcast was not a news broadcast or bulletin, or an advertisement that was clearly identifiable to a reasonable listener as an advertisement.

Accordingly, the ACMA finds that the 2GB Licensee breached subsection 10(2) of the Standard, and consequently, also breached paragraph 8(1)(b) of Schedule 2 to the BSA.

BI-680 – 3AW Afternoons (3AW)

The investigation considered material broadcast by the 3AW Licensee during *Afternoons* on 2 August 2023 about Virgin and material broadcast on 28 August 2023 about BMW.

Finding

The ACMA finds that the 3AW Licensee breached subsection 10(2) of the Standard and was therefore in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Reasons

**Was the material broadcast in a current affairs program?**

Section 5 of the Standard provides a definition of a current affairs program.

*Afternoons* broadcasts discussion, interviews, analysis, including talk-back discussion with listeners, about current social, economic or political issues.

The ACMA considers that the *Afternoons* is a current affairs program for the purposes of the Standard.

**Was a commercial agreement in place?**

The broadcast of material about Virgin

The 3AW Licensee submitted that Ms Felgate did not have a commercial agreement with Virgin when the material was broadcast on 2 August 2023.

Ms Felgate held a commercial agreement with Virgin between 5 June 2023 and 10 June 2023 (**Virgin Agreement**).

[…]

Further, the Virgin Agreement had expired prior to the 2 August 2023 broadcast referred to by the ACMA. Consequently, Ms Felgate was not required to make on-air disclosures about the Virgin Agreement during the 2 August 2023 broadcast because the agreement had expired.

The ACMA obtained a copy of the commercial agreement and confirmed that it expired on 10 June 2023, and hence it was not in place at the time of the broadcast.

Accordingly, the ACMA finds that the 3AW Licensee was not required to ensure that an appropriate disclosure announcement was broadcast and did not breach subsection 10(2) of the Standard regarding the broadcast of material about Virgin.

The broadcast of material about BMW

The 3AW Licensee submitted that Ms Felgate had a commercial agreement with BMW when the material was broadcast on 28 August 2023.

The ACMA, therefore, accepts that a relevant commercial agreement was in place.

**Did the Licensee broadcast material satisfying at least one of the elements at subparagraphs 10(1)(b)(i) to (iv) of the Standard?**

On 28 August 2023, the 3AW Licensee broadcast a segment during the *Afternoons* program, hosted by Ms Felgate, about electric vehicles (the **EV Segment**).

The EV Segment included an interview with an electrical engineer, who is the founder of a business which provides quotations and information to consumers for rooftop solar systems including batteries and charging of electric vehicles.

The 3AW Licensee submitted that the EV Segment was prompted by a media article published the previous day in which the engineer was featured and canvassed similar issues namely: when to switch to EVs; the challenges of finding an EV charger on long-distance road-trips; the costs of charging compared to petrol or diesel; the pricing of vehicles; EV tariffs; and Australians’ take-up of EVs compared to overseas.

During the interview with the engineer, Ms Felgate revealed that one of ‘our’ cars is an EV and commented that it is sometimes difficult to find a charge point when travelling a long distance. Following the interview, Ms Felgate spoke to callers about their experience of owning an electric vehicle.

The following exchange occurred with Caller 2:

[CalIer 2]

I have just picked up my BMW fully electric a few days ago. I live in the country so I’m regularly up and back to Melbourne long distance driving and I have no problems. I have panels at my home and panels at my daughter’s home and we charge through the day.

[Jacqui Felgate]

Yes, that’s perfect isn’t it. We just took ours, ours is a BMW as well. We took ours to Phillip Island and it was great down there because they had lots of places to charge it. And I think that is a really good distance too […]

[CalIer 2]

Oh, absolutely. There's no range anxiety. I know automatically how far I can go. I use the one-pedal function to maximize return to the battery, and there's no issue. And I do know where charging points are if I need them.

[Jacqui Felgate]

Yeah, that's a good idea, isn't it? And do you have the little charger that you can have that boosts it and makes it quicker when you're at home too?

[CalIer 2]

No, I haven't invested in that. I didn't realise, so I'm going to look into that. But right now it's not an issue.

During a subsequent call [Caller 3], Ms Felgate said:

Do you know what [Caller 3], they are so quick off the mark, like ours is faster than our other car, like they have got so much power …. In terms of speed from a standing start they are super quick.

The 3AW Licensee acknowledged that the exchanges with Caller 2 and Caller 3 had the effect of promoting a product of BMW and therefore required an on-air disclosure of Ms Felgate’s commercial agreement with BMW.

The ACMA agrees with the 3AW Licensee’s submission that Ms Felgate promoted BMW products in making positive comments about the range, power and speed, and accessories of BMW electric vehicles.

Consequently, the ACMA considers that the Licensee broadcast material on 28 August 2023 satisfying subparagraph 10(1)(b)(i) of the Standard.

**Did the licensee ensure an appropriate disclosure announcement was broadcast?**

The ACMA reviewed the full broadcast of *Afternoons* that went to air on 28 August 2023 and confirmed that no on-air disclosure of the BMW commercial agreement was made.

**Did an exception under subsection 10(3) of the Standard apply?**

The ACMA considers that neither of the exceptions at subsection 10(3) of the Standard applied, as the material broadcast was not a news broadcast or bulletin, or an advertisement that was clearly identifiable to a reasonable listener as an advertisement.

Accordingly, the ACMA finds that the 3AW Licensee breached subsection 10(2) of the Standard, and consequently, also breached paragraph 8(1)(b) of Schedule 2 to the BSA.

Issue 2: Listing of commercial agreements on register

BI-678 – The 2GB online register

The ACMA received information alleging that the 2GB Licensee had not complied with the obligation under section 13 of the Standard.

Finding

The ACMA finds that the 2GB Licensee breached section 13 of the Standard with respect to its online register of commercial agreements and therefore also breached its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Reasons

To assess compliance, the ACMA has addressed the following question:

* Did the online register include information about each current commercial agreement to which a presenter of the licensee was a party?

A commercial agreement becomes current on the date on which the presenter enters into it, unless the commercial agreement was entered into prior to the person becoming a presenter of the licensee (as defined in section 5 of the Standard). In this case, the commercial agreement becomes current on the date that the person becomes a presenter of the licensee.

The ACMA assesses whether the licensee included information on the online register in a timeframe that was reasonable in the circumstances having regard to the following:

* the object of the Standard, which is to encourage licensees to be responsive to the need for a fair and accurate coverage of matters of public interest by requiring the disclosure of commercial agreements that have the potential to affect the content of current affairs programs[[1]](#footnote-2).
* section 14 of the Standard, which provides that a licensee must require presenters to disclose a commercial agreement, to the Licensee, within 7 days of the agreement being entered into.
* any circumstances outside of the licensee’s control that contributed to a delay in updating the online register.

[Presenter 1] and [Sponsor 1]

The ACMA has considered whether the 2GB Licensee updated its online register to include information about this commercial agreement in a timeframe that was reasonable in the circumstances.

The commercial agreement was:

* entered into on 8 December 2022.
* disclosed to the 2GB Licensee on 23 January 2023.
* added to the 2GB online register on 8 February 2023.

Section 13 of the Standard does not apply to a presenter who is an on-air presenter of a current affairs program for less than an average of 3 hours a week over any 4 week period.[[2]](#footnote-3)

The ACMA accepts the Licensee’s submission that [Presenter 1] was on leave between 9 December 2022 and 15 January 2023 and that therefore section 13 of the Standard did not apply to [Presenter 1] during this period.

However, once [Presenter 1] returned to presenting on 16 January 2023, section 13 of the Standard applied to [Presenter 1] and accordingly, the Radio 2GB online register should have included information about [Presenter 1] 's current commercial agreement. It did not include this information, however, for a period of 23 days from 16 January 2023.

The 2GB Licensee further submitted:

the short period between its receipt of notification of the agreement and updating of the Register was a reasonable period in the circumstances - particularly noting that it included a public holiday, and relevant staff were still in the process of returning from summer leave at that time.

The ACMA notes that eleven business days elapsed between notification of the commercial agreement and the update of the online register.

The 2GB Licensee’s submission provides an explanation for the time taken to update the 2GB online register but does not provide grounds to conclude that the timeframe was reasonable in the circumstances. The fact that ‘relevant staff were still in the process of returning from leave’ was not a circumstance that was out of the 2GB Licensee’s control and resources could and should have been prioritised to ensure an earlier update of the online register.

The submission by the 2GB Licensee did not identify any additional circumstances outside of the control of the licensee that contributed to the delay in adding information to the online register.

The ACMA considers that the 2GB Licensee did not update the 2GB online register to include information about [Presenter 1]’s current commercial agreement within a reasonable timeframe.

Consequently, the ACMA finds that the 2GB Licensee breached section 13 of the Standard and therefore also breached its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

[Presenter 2] and [Sponsor 2]

The ACMA has considered whether the 2GB Licensee updated its online register to include information about this commercial agreement in a timeframe that was reasonable in the circumstances.

The 2GB Licensee submitted that on 9 August 2023, it provided ‘in principle approval’ for [Sponsor 2] and [Presenter 2] to proceed with negotiating a commercial agreement.

The unwritten commercial agreement was:

* entered into on 9 August 2023.
* disclosed to the 2GB Licensee on 14 September 2023.
* added to the 2GB online register on 15 September 2023.

The 2GB online register did not include information about [Presenter 2]’s current commercial agreement for a period of 37 days.

Under section 14 of the Standard, a licensee must require presenters to disclose information about unwritten commercial agreements within 7 days of the agreement being entered into (paragraph 14(1)(b) of the Standard).

The 2GB Licensee should have received information about [Presenter 2]’s commercial agreement by 16 August 2023 but did not receive the information until 14 September 2023.

Consequently, over a month elapsed between the date on which the commercial agreement should have been disclosed to the 2GB Licensee and the date on which the 2GB online register was updated to include the information required by section 13 of the Standard.

The 2GB Licensee submitted that the ACMA should have regard to:

the logical impossibility of a requirement for a licensee to be obliged to update its register under clause 13 *before* it receives notification of the existence of a commercial agreement under clause 14.

The 2GB Licensee was aware, from 9 August 2023 onwards, that [Presenter 2] was negotiating a commercial agreement with [Sponsor 2]. In these circumstances, the 2GB Licensee was well placed to make certain that [Presenter 2] provided information about the commercial agreement in accordance with section 14 of the Standard and that this information was included in the 2GB online register as required by section 13 of the Standard.

The delay in updating the 2GB online register could have been avoided or mitigated had the 2GB Licensee followed up with [Presenter 2] about the status of the commercial agreement and obtained the relevant information for the 2GB online register.

The submission by the 2GB Licensee did not identify any additional circumstances outside of the control of the Licensee that contributed to the delay in adding this information to the online register.

The ACMA considers that the 2GB Licensee did not update the 2GB online register, to include information about [Presenter 2]’s current commercial agreement, within a reasonable timeframe. Consequently, the ACMA finds that the 2GB Licensee breached section 13 of the Standard and therefore also breached its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

[Presenter 3] and [Sponsor 3] and [Sponsor 4]

The ACMA has considered whether the 2GB Licensee updated its online register to include information about these commercial agreements in a timeframe that was reasonable in the circumstances.

[Presenter 3] entered into the commercial agreement with [Sponsor 3] on 21 December 2021 and entered into the commercial agreement with [Sponsor 4] on 1 March 2023.

Both commercial agreements were:

* disclosed to the 2GB Licensee on 13 September 2023.
* added to the 2GB online register on 14 September 2023.

Between 4 April 2022 and 14 September 2023, the 2GB Licensee employed [Presenter 3] as a part-time current affairs presenter on 2 current affairs programs.

[Presenter 3]’s commercial agreement with [Sponsor 3] was a current commercial agreement for the purpose of section 13 of the Standard from 4 April 2022, and their commercial agreement with [Sponsor 4] was a current commercial agreement from 1 March 2023.

The 2GB online register did not include information about [Presenter 3]’s current commercial agreement with:

* [Sponsor 3] for a period of 529 days.
* [Sponsor 4] for a period of 198 days.

The 2GB Licensee acknowledged that the online register was non-compliant with section 13 of the Standard during these periods and submitted:

Due to genuine and unintended administrative oversight in relation to whether [Presenter 3]’s average hours on air exceeded the minimum threshold, the Licensee had not received information about [Presenter 3]’s commercial agreement with [Sponsor 3] [and with Sponsor 4] until 13 September 2023.

The ACMA considers that the 2GB Licensee did not update the 2GB online register to include information about [Presenter 3]’s current commercial agreements within a reasonable timeframe. Consequently, the ACMA finds that the 2GB Licensee breached section 13 of the Standard and therefore also breached its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

BI-680 – The 3AW online register

The ACMA has assessed compliance by the 3AW Licensee with section 13 of the Standard with respect to commercial agreements between Jacqui Felgate and various companies.

Finding

The ACMA finds that the 3AW Licensee breached section 13 of the Standard with respect to its online register of commercial agreements and was therefore also in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Reasons

To assess compliance the ACMA has addressed the following question:

* Did the online register include information about each current commercial agreement to which a presenter of the licensee was a party?

Agreements between Jacqui Felgate and various companies that were added to the online register

The ACMA has considered whether the 3AW Licensee updated the online register to include information about Ms Felgate’s current commercial agreements in a timeframe that was reasonable in the circumstances. Information about the commercial agreements is at **Attachment B**.

Between 25 July 2023 and 15 January 2024, Ms Felgate was employed by the Radio 3AW Licensee as an on-air current affairs presenter on the *Afternoons* program.

Ms Felgate entered into eight commercial agreements prior to commencing as a presenter on *Afternoons.* These became current commercial agreements for the purpose of section 13 of the Standard on 25 July 2023.

Ms Felgate entered into six commercial agreements after 25 July 2023.

The Radio 3AW Licensee submitted:

Following 3AW’s appointment of Ms Felgate as the new 2024 host of its Drive program, effective 15 January 2024, 3AW was in the process of assisting Ms Felgate transition from a sport hosting role to a current affairs hosting role. As part of that transition, 3AW had been in the process of preparing Ms Felgate’s commercial agreements for disclosure on the Register in compliance with its obligations under the Standard, as per 3AW’s practice with all new current affairs presenters.

Due to sudden and unforeseen changes to 3AW’s existing 2023 on-air lineup, Ms Felgate was asked to fill-in temporarily on its Afternoons program. Due to a genuine and unintended oversight during this transition period, the 3AW Register had not been updated to include Ms Felgate’s commercial agreements at that time.

The ACMA identified the period during which the Radio 3AW online register did not include information about each of Ms Felgate’s current commercial agreements. The timeframes are summarised below:

* Melbourne Airport - 62 days.
* La Roche Posay, Chemist Warehouse, Racing Victoria (Off the Track), Smile Solutions, Maybelline, BMW, and Villawood Property - 58 days each.
* NAB AFL Auskick - 57 days.
* All Kinds - 18 days.
* Chadstone - 13 days.
* Globe West and Fine Day – 12 days each.

The ACMA considers that the Radio 3AW Licensee did not include information on the online register about each of the above current commercial agreements of Ms Felgate’s within a reasonable timeframe.

Consequently, the ACMA finds that the 3AW Licensee breached section 13 of the Standard with respect to its online register of commercial agreements and was therefore in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Agreement between Jacqui Felgate and Coles that was not added to the online register

Ms Felgate entered into a commercial agreement with Coles on 4 August 2023 that ended on 19 September 2023. For the purposes of section 13 of the Standard, this was a current commercial agreement for the period 4 August 2023 to 19 September 2023.

The Radio 3AW Licensee did not add information to the online register about this commercial agreement at any time because it was no longer a current agreement on 21 September 2023 when Ms Felgate provided a copy to the licensee.

As outlined above, the Radio 3AW Licensee submitted that delays occurred in adding information to the online register, about Ms Felgate’s commercial agreements, due to a genuine and unintended oversight.

The ACMA considers that the Radio 3AW Licensee failed to include information on the online register about the commercial agreement between Ms Felgate and Coles. Consequently, the ACMA finds that the 3AW Licensee breached section 13 of the Standard with respect to its online register of commercial agreements and was therefore in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

BI-681 – The 4BC register

The ACMA has assessed compliance by the 4BC Licensee with section 13 of the Standard with respect to a commercial agreement between Sofie Formica and the Brisbane Economic Development Agency (**BEDA**).

Finding

The ACMA does not find that the 4BC Licensee breached section 13 of the Standard with respect to its online register of commercial agreements and was therefore not in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Reasons

To assess compliance the ACMA has addressed the following question:

* Did the online register include information about each current commercial agreement to which a presenter of the licensee was a party?

The ACMA has considered whether the 4BC Licensee updated the online register to include information about Ms Formica’s current commercial agreement with BEDA in a timeframe that was reasonable in the circumstances.

Ms Formica entered into the commercial agreement with BEDA on 1 November 2019.

The commercial agreement became current for the purpose of section 13 of the Standard on 4 October 2021 when Ms Formica commenced working for the 4BC Licensee as an on-air current affairs presenter on *4BC Afternoons with Sofie Formica*.

Ms Formica disclosed the commercial agreement to the 4BC Licensee on 12 September 2023 and the 4BC Licensee added information about the commercial agreement to the 4BC online register on 13 September 2023.

The 4BC online register did not include information about Ms Formica’s current commercial agreement with BEDA for a period of 710 days.

The 4BC Licensee submitted:

Prior to [the BEDA Agreement’s] disclosure on the Register, 4BC was not aware of its existence. This was due to a genuine misunderstanding that the BEDA Agreement, which does not require promotional activities on her part, constitutes a commercial agreement pursuant to section 6(1)(b) of the Standard.

The ACMA has had regard to the Licensee’s obligation under section 14 of the Standard to require presenters to disclose commercial agreements within 7 days of the commercial agreement being entered into.

The 4BC Licensee submitted that it took the following actions in September 2021 when Ms Formica commenced as a current affairs presenter:

* included a clause in Ms Formica’s employment contract that she would read, understand, and comply with the Standard.
* provided advice and training to Ms Formica in one-on-one briefings that explained the obligations of presenters to disclose commercial agreements to the licensee under section 14 of the Standard and the definition of a commercial agreement under section 6 of the Standard.

The 4BC Licensee submitted that the above advice was supplemented with copies of:

* the ACMA-produced ‘*Guide to the commercial radio disclosure standard*’.
* Nine Radio’s Editorial Compliance Policy, which requires all editorial staff to familiarise themselves with, and adhere to, the Standard.
* Nine Radio’s Editorial Compliance Manual, which elaborates in detail on the specific commercial disclosure requirements under the Standard.

The 4BC Licensee submitted that Ms Formica participated in training activities between September 2021 and September 2023 that addressed the obligations of presenters under section 14 of the Standard and the meaning of commercial agreements under section 6 of the Standard. This included:

* mandatory annual editorial training on 23 March 2022 and 26 July 2023.
* all staff questionnaire emails that provided information about the obligations of presenters under section 14 of the Standard and requested presenters to confirm that entries on the 4BC online register concerning any commercial agreement they have was correct.

The ACMA considers that the 4BC Licensee took reasonable steps to require Ms Formica to provide the required information under section 14 of the Standard.

The 4BC Licensee did not include information on the online register about Ms Formica’s current commercial agreement with BEDA within a reasonable timeframe. Noting that the 4BC Licensee has submitted that they did not know of the existence of the commercial agreement with BEDA before 12 September 2023, the ACMA does not propose to find a breach of section 13 of the Standard.

Issue 3: Licensee must keep commercial agreements

BI-678 – Information kept by the 2GB Licensee about commercial agreements

Finding

The ACMA finds that the 2GB Licensee breached section 15 of the Standard with respect to keeping information about commercial agreements and was therefore also in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

**Reasons**

To assess compliance the ACMA has addressed the following questions:

* Did the licensee keep the information and documents mentioned in section 13 and section 14 of the Standard for each commercial agreement to which a presenter is a party as required under section 15 of the Standard?

Section 14 of the Standard provides that licensees must require presenters to provide to the licensee a copy of a written commercial agreement, or specified information about a commercial agreement that is not in writing, within seven days of the agreement being entered into (paragraph 14(1)(b) of the Standard).

Subparagraph 14(3)(b) of the Standard specifies that presenters must provide the licensee with the following information about unwritten commercial agreements:

(i) the date of the commercial agreement;

(ii) the parties to the commercial agreement;

(iii) a brief description of the obligations imposed on the presenter or associate of the presenter under the commercial agreement;

(iv) the name of each person providing consideration under the commercial agreement;

(v) the amount or value of consideration to be provided under the agreement.

Subsection 15(1) of the Standard requires licensees to keep the information and documents mentioned in section 14 for each commercial agreement to which a presenter of the licensee is a party. Subsection 15(2) provides that this information must be kept for 12 months after the expiry of the commercial agreement.

Written commercial agreements

The 2GB Licensee provided the ACMA with copies of written commercial agreements held by its presenters.

Unwritten commercial agreements

The 2GB Licensee provided the ACMA with a document that included information provided by 3 presenters about 5 unwritten commercial agreements as specified in paragraph 14(1)(b) of the Standard.

On 12 April 2024, the ACMA sent a request to the 2GB Licensee for copies of documents kept for the purpose of section 15 of the Standard about an unwritten commercial agreement between [Presenter 3] and [Sponsor 4] that expired in December 2023.

The 2GB Licensee advised the ACMA that it has kept records of the required details of presenters’ unwritten agreements in its email archives for the purpose of sections 14 and 15 and subsequently provided a copy of two emails (**the emails**) between [Presenter 3] and the 2GB Licensee.

The emails did not reference ‘the date of the commercial agreement’, nor is it clear from the emails the ‘name of each person providing consideration’. While the emails include an approximate value of the consideration provided, they do not specify ‘the amount or value of consideration to be provided under the agreement’.

The ACMA considers that the emails do not provide a record of the information specified under subparagraphs 14(b)(3)(i), 14(b)(3)(iv) or 14(b)(3)(v) as required under the Standard.

Accordingly, the ACMA considers that the 2GB Licensee has not complied with section 15 of the Standard.

The ACMA finds that the 2GB Licensee breached section 15 of the Standard and was therefore also in breach of its licence condition under paragraph 8(1)(b) of Schedule 2 to the BSA.

Attachment A

Relevant provisions

The Standard

**5 Definitions**

In this standard:

[…]

***current affairs program*** means a program a substantial purpose of which is to provide interviews, analysis, commentary or discussion, including open‑line discussion with listeners, about current social, economic or political issues.

[…]

***presenter*** means a person who:

(a) is an on‑air presenter of a current affairs program broadcast by a licensee; and

(b) is not a commentator or guest invited to appear on the program, even if the person appears on the program regularly.

**10 On‑air disclosure of commercial agreements**

(1) This section applies if:

(a) a sponsor or an agent of a sponsor has a commercial agreement with a licensee, a related body corporate of a licensee, a presenter of a licensee or an associate of a presenter of a licensee; and

(b) the licensee is broadcasting material in a current affairs program that:

(i) promotes the name, products or services of the sponsor; or

(ii) includes an interview with an agent, employee or officer of the sponsor in relation to a matter that concerns the sponsor, its products, services or interests; or

(iii) is requested by the sponsor, or which is based on, or similar to, material provided by the sponsor; or

(iv) directly promotes an issue which is directly favourable to the sponsor.

(2) The licensee must ensure that a disclosure announcement that is clearly identifiable to a reasonable listener as a disclosure announcement, is broadcast on air during the current affairs program at the time of, and as part of, the broadcasting of any material in subparagraph (1)(b)(i), (ii), (iii) or (iv).

(3) However, a disclosure announcement is not required to be broadcast if the material is:

(a) a news broadcast or bulletin; or

(b) an advertisement that is clearly identifiable to a reasonable listener as an advertisement.

**12 Publicly available online register**

(1)  For a commercial agreement mentioned in subsection 13(1), a licensee must keep a register containing the information mentioned in section 13.

(2) The licensee must:

(a) publish the register on a website operated by, or on behalf of, the licensee that is accessible online by the public; and

(b) provide a link from the homepage of the website to the webpage where the register can be accessed.

**13 Contents of register**

(1) The register must contain the following information for each current commercial agreement to which a licensee, related body corporate of the licensee, presenter of the licensee or associate of a presenter of the licensee is a party:

(a) the parties to the commercial agreement;

(b) a brief description of the obligations imposed on the licensee, presenter, or associate of the presenter under the commercial agreement;

(c) the name of each person providing consideration under the commercial agreement;

(d) if the presenter or associate of the presenter is a party to the commercial agreement—the name of the current affairs program that the presenter presents;

(e) for an agreement, arrangement or understanding mentioned in subsection 6(2)—the name of the presenter doing the thing mentioned in subparagraph 6(2)(a)(i), (ii) or (iii) and the name of the current affairs program that the presenter presents.

(2) However, if a presenter of the licensee is the presenter of a related broadcast, the register must contain the following information in relation to the related broadcast:

 (a) the name of the current affairs program;

 (b) the name of the licensee which produced or commissioned the program;

 (c) the website where the register of current commercial agreements of the licensee which produced or commissioned the program can be accessed by the public.

(3) Subsections (1) and (2) do not apply to a presenter who is an on‑air presenter of a current affairs program broadcast by a licensee for less than an average of 3 hours a week over any 4 week period.

**14 Licensee to require presenters to disclose commercial agreements to licensee**

(1) A licensee must require a presenter of the licensee to provide to the licensee the information or documents mentioned in subsection (3) for any commercial agreements the presenter or an associate of the presenter is party to with a sponsor or an agent of a sponsor:

(a) for an existing commercial agreement—within 7 days of the commencement of this standard; and

(b) for an agreement entered into after the commencement of this standard—within 7 days of the agreement being entered into.

(2) In relation to any commercial agreements to which the presenter or associate of the presenter of a related broadcast is a party, the licensee who produced or commissioned the current affairs program is the licensee required to comply with subsection (1).

(3) For subsection (1), the following information or documents must be provided to the licensee:

(a) if the commercial agreement is in writing—a copy of the commercial agreement;

 (b) if the commercial agreement is not in writing—the following:

 (i) the date of the commercial agreement;

 (ii) the parties to the commercial agreement;

(iii) a brief description of the obligations imposed on the presenter or associate of the presenter under the commercial agreement;

(iv) the name of each person providing consideration under the commercial agreement;

(v) the amount or value of consideration to be provided under the agreement.

**15 Licensee must keep commercial agreements**

(1) A licensee must keep the information and documents mentioned in sections 13 and 14 for each commercial agreement to which a licensee, related body corporate of the licensee, presenter of the licensee or associate of a presenter of the licensee is a party.

(2) The information and documents must be kept for 12 months after the expiration of the commercial agreement.

**16 Information or documents to be provided to the ACMA**

(1) The ACMA may request in writing any of the following:

(a) any information in relation to a commercial agreement required by section 13 to be contained in the licensee’s register;

(b) a copy of a commercial agreement mentioned in subsection 6(2) or provided to the licensee under paragraph 14(3)(a);

(c) any information provided to the licensee under paragraph 14(3)(b);

(d) any information and documents required by section 15 to be kept by the licensee;

(e) particular information contained in the information and documents required by section 15 to be kept by the licensee.

The BSA

**Schedule 2 – Standard conditions**

**Part 4—Commercial radio broadcasting licences**

[…]

**8 Standard conditions of commercial radio broadcasting licences**

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

[…]

(b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;

The Standard was made under subsection 125(1) of Part 9 of the BSA.

Attachment B

Commercial agreements entered into by Jacqui Felgate

|  |  |  |
| --- | --- | --- |
| **Name of other party to the commercial agreement**  | **Date commercial agreement became current**  | **Date Radio 3AW Licensee updated the online register** |
| La Roche Posay Chemist WarehouseRacing Victoria (Off the Track) Smile SolutionsMaybellineBMW Villawood Property | 25 July 2023 | 11 September 2023 |
| NAB AFL Auskick | 25 July 2023 | 12 September 2023 |
| Melbourne Airport | 26 July 2023  | 25 September 2023 |
| Coles | 4 August 2023  | Not added as the commercial agreement had expired by the date the Licensee received the agreement. |
| All Kinds | 25 August 2023 | 11 September 2023 |
| Chadstone | 30 August 2023 | 11 September 2023 |
| Globe West | 14 September 2023 | 25 September 2023 |
| Fine Day | 14 September 2023 | 25 September 2023 |

1. Section 8 of the Standard, [↑](#footnote-ref-2)
2. Subsection 13(3*)* of the Standard. [↑](#footnote-ref-3)