

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY BY Tamworth Broadcasting Services (Operations) Ltd; (ACN 652 005 037) UNDER
section 114 of the *Regulatory Powers (Standard Provisions) Act 2014***

1. Person giving the undertaking

This Undertaking is given to the Australian Communications and Media Authority by Tamworth Broadcasting Services (Operations) Ltd; ACN 652 005 037 UNDER section 114 of the *Regulatory Powers (Standard Provisions) Act 2014*.

2. Definitions

2.1 In this Undertaking:

- (a) **ACMA** means the Australian Communications and Media Authority.
- (b) **BSA** means the *Broadcasting Services Act 1992*
- (c) **Licences** means the transmitter licences 12469159/1 and 1385160/2 issued to Tamworth Broadcasting Society Incorporated under subsection 102(2) of the RA in relation to the community broadcasting licence issued to Tamworth Broadcasting Society Incorporated under Part 6 of the BSA
- (d) **RA** means the *Radiocommunications Act 1992*
- (e) **RD** means the remedial direction given to Tamworth Broadcasting Society Incorporated by the ACMA under subsection 268(2) of the RA dated 18 June 2024
- (f) **RPA** means the *Regulatory Powers (Standard Provisions) Act 2014*
- (g) **Undertaking** means this Enforceable Undertaking.

3. Term of the Undertaking

- 3.1 This Undertaking, having been given by Tamworth Broadcasting Services (Operations) Ltd, commences on the day it is accepted by the ACMA (**the commencement date**).
- 3.2 This Undertaking continues for a period of 27 months from the commencement date or until it is withdrawn or varied by Tamworth Broadcasting Services (Operations) Ltd, with ACMA's consent under subsection 114(3) of the RPA or cancelled by the ACMA under subsection 114(5) of the RPA, whichever is earlier.

4. Background

- 4.1 The description of the business relevant to the 2 ACMA investigations relates to the Community Radio transmission output power and the operating height of the antenna for the transmitter.
- 4.2 Tamworth Broadcasting Society Incorporated:
 - (a) increased transmission output power to exceed the 1kW Effective Radiated Power limitation of transmitter licence 1385160/1.
 - (b) contravened the height condition of its licence, by operating its radiocommunications transmitter antenna (the **antenna**), authorised by transmitter licence 1385160/2, at a height that exceeded what was permitted in its licence.
- 4.3 This conduct is considered by the ACMA to contravene the RA, because Community Radio stations are not permitted to increase their power output above the limitations of their transmitter licence, nor are they able to operate their transmitter antennas above the height stipulated in their transmitter licence.
- 4.4 Tamworth Broadcasting Society Incorporated accepts the ACMA's view that the conduct outlined at 4.1 and 4.2 contravened section 113 of the RA.
- 4.5 In relation to the breach of permitted transmission output power, an Enforceable Undertaking (**EU**), given by Tamworth Broadcasting Society Incorporated under

section 114 of the RPA, was accepted by the ACMA on 19 December 2022. The term of that EU is effective for 4 years from the date of signing, which is until 18 December 2026. That EU requires Tamworth Broadcasting Society Incorporated to, amongst other things:

- 4.5.1 Permit entry to and inspection of premises to ACMA for the undertaking of an audit program.
 - 4.5.2 Acknowledge that an audit may occur at any time between 9:00am to 5pm, Monday to Friday, without any prior notice from the ACMA.
 - 4.5.3 Provide all other reasonable assistance as requested by the ACMA staff members undertaking the audit.
- 4.6 In relation to the breach of permitted antenna height, the RD was given by the ACMA to Tamworth Broadcasting Society Incorporated. The RD directed Tamworth Broadcasting Society Incorporated to take certain actions directed towards ensuring that it does not contravene subsection 113(1) of the RA, and towards ensuring that it is unlikely to contravene subsection 113(1) of the RA, in the future, by contravening the height condition.
- 4.7 The RD specified that it remains in force until all required actions have been completed, and at a minimum, for a period of one year commencing on the date the RD was given, whereby Tamworth Broadcasting Society Incorporated must engage the services of a person who has the General Licensing Accreditation specified in the *Radiocommunications Accreditation (General) Rules 2021 (AP)* before it makes a change to, or to the operation of:
- (a) the antenna; or
 - (b) a radiocommunications transmitter that uses the antenna.
- 4.8 Tamworth Broadcasting Society Incorporated has applied to the ACMA, under section 91A of the BSA, for approval to transfer its licence (SL3061) to Tamworth Broadcasting Services (Operations) Limited, which is a company registered under the *Corporations Act 2001*. In accordance with subsection 102(2) of the RA, if the related BSA licence is transferred, the Licences are also transferred. Tamworth Broadcasting Services (Operations) Limited has submitted that it will have the same Board of Directors as Tamworth Broadcasting Society Incorporated, with the proposed new organisation planning to provide the same community broadcasting service.
- 4.9 In response to the ACMA's concerns regarding the compliance of Tamworth Broadcasting Services (Operations) Limited with section 113 of the RA following the transfer, Tamworth Broadcasting Services (Operations) Limited gives this Undertaking.

5. Undertakings

- 5.1 Tamworth Broadcasting Services (Operations) Ltd undertakes it will permit periodic audits and monitoring by members of the ACMA staff of any radio communication transmitters in the possession of Tamworth Broadcasting Services (Operations) Ltd, or on premises Tamworth Broadcasting Services (Operations) Ltd has access to, operated to provide a community radio broadcasting service. Tamworth Broadcasting Services (Operations) Ltd:
 - 5.1.1 will permit entry to and inspection of premises to ACMA for the undertaking of an audit program.
 - 5.1.2 acknowledges that an audit may occur at any time between 9:00am to 5pm, Monday to Friday, without any prior notice from the ACMA.
 - 5.1.3 will provide all other reasonable assistance as requested by the ACMA staff members undertaking the audit.

Undertaking to comply with obligations corresponding to those in the RD

- 5.2 From the date that the Licences are transferred to Tamworth Broadcasting Services (Operations) Ltd (the **Transfer Date**), Tamworth Broadcasting Services (Operations) Ltd undertakes that it will comply with each obligation placed upon Tamworth Broadcasting Society Incorporated by the RD as if:
 - 5.2.1 each such obligation of Tamworth Broadcasting Society Incorporated in the RD was an obligation of Tamworth Broadcasting Services (Operations) Ltd under this Undertaking;
 - 5.2.2 each reference in the RD to "Tamworth Broadcasting Society Incorporated" was a reference to "Tamworth Broadcasting Services (Operations) Ltd";
 - 5.2.3 any act or thing done by Tamworth Broadcasting Society Incorporated for the purposes of the RD before the Transfer Date was done by Tamworth Broadcasting Services (Operations) Ltd;
 - 5.2.4 any notice, comment, agreement or other thing given by the ACMA, or an SES employee or acting SES employee of the ACMA, to Tamworth Broadcasting Society Incorporated before the Transfer Date was given to Tamworth Broadcasting Services (Operations) Ltd.
- 5.3 Tamworth Broadcasting Services (Operations) Ltd undertakes it will provide all documents and information requested by the ACMA, from time to time, for the purpose of assessing compliance with the terms of this Undertaking.

6. Acknowledgements

- 6.1 Tamworth Broadcasting Services (Operations) Ltd acknowledges that:
 - 6.1.1 The ACMA will make this Undertaking publicly available in accordance with subsection 271(4) of the RA including by publishing it on the ACMA's website.
 - 6.1.2 The ACMA may, from time to time, make public comment about this Undertaking and its terms which includes issuing a media release upon its execution by the ACMA.
 - 6.1.3 The ACMA may, from time to time, publicly report on compliance with this Undertaking.
- 6.2 Tamworth Broadcasting Services (Operations) Ltd also acknowledges that:
 - 6.2.1 The ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct.
 - 6.2.2 This Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from the alleged conduct, the subject of this Undertaking.

Execution of the Undertaking

Signed/Executed by Tamworth Broadcasting Services (Operations) Ltd (ACN 652 005 037)



Signature

Mr Kevin Tongue

Name (Director)

Date: 10 December 2024



Signature

Mr John Brand

Name (Director)

Date: 10 December 2024

Accepted by the **Australian Communications and Media Authority** under section 114 of the *Regulatory Powers (Standard Provisions) Act 2014*:



Signature

Nerida O'Loughlin

Name, Member (print)

Date: 17/01/2025



Signature

Autumn Field

Name, Member/General Manager (print)