



SENATE INQUIRY INTO THE EFFECTIVENESS OF THE BROADCASTING CODES OF PRACTICE

SUBMISSION

Commercial Radio Australia (**CRA**) welcomes the opportunity to comment on the inquiry into the effectiveness of the broadcasting codes of practice. CRA is the peak national industry body for Australian commercial radio stations. CRA has 260 members and represents approximately 99% of the commercial radio broadcasting industry in Australia.

CRA maintains that the Commercial Radio Codes of Practice (**Codes**) operate effectively to ensure that commercial radio programs meet appropriate community standards and are subject to a fair and effective complaints process. Additional safeguards are provided by the Australian Communications and Media Authority (**ACMA**), which develops and administers the Codes in conjunction with CRA.

Summary

CRA's primary comments are:

- The Codes contain adequate provisions to ensure that program content and language do not offend the listening audience.
- The Codes are developed in consultation with ACMA, as required by the *Broadcasting Services Act 1992*.¹ ACMA will only register the Codes if it is satisfied that they provide appropriate consumer safeguards.
- The Codes provide an effective complaints process. If listeners are not satisfied with the response they receive from the relevant commercial radio station, they have the right to complain to ACMA, who will investigate the complaint and may impose sanctions on licensees who are in breach of the Codes.
- There are commercial incentives for licensees to work within the Codes to ensure that programs meet community standards and attract and retain listeners. Commercial radio survives on advertising revenue, which is driven by listener numbers, and stations will respond quickly to remove programs that are not attracting large audiences.
- Commercial radio stations offer a wide variety of programs across metropolitan and regional Australia. The content of each program is adjusted to suit its intended audience. If listeners object to the content they hear, they have a range of alternative commercial radio programs from which to choose.
- Few formal complaints are received by ACMA in relation to the language, content and complaints processes employed by the 260 CRA member commercial radio

¹ Section 123.

stations broadcasting in Australia. This suggests that the current co-regulatory framework is operating effectively.

A discussion of these points, together with other comments, is below.

ACMA's role in developing, administering and enforcing the Codes

1. The Codes are the product of a co-regulatory regime. The *Broadcasting Services Act 1992 (BSA)* provides that the commercial radio sector shall develop the Codes in conjunction with ACMA. The Codes cover the matters prescribed in section 123 of the BSA – including community attitudes to the use of offensive language – and other matters relating to program content that are of concern to the community.
2. The BSA also provides that codes of practice developed by licensees may include methods of handling complaints from the public about program content or compliance with codes of practice, and reporting to ACMA on such complaints.² The Codes address these issues in detail (see below).
3. The Codes must be registered by ACMA before they are implemented.³ ACMA can refuse to register the Codes if it considers that the provisions do not provide appropriate community safeguards. In registering the Codes that are currently in force, ACMA has recognised that they provide appropriate protection for listening audiences.
4. The process that precedes ACMA's registration of the Codes is a lengthy one, designed to ensure that all community views are taken into account and reflected in the final draft. ACMA and CRA jointly develop the draft codes of practice, by discussing at length the best means of safeguarding community interests, by reference to the criteria set out in the BSA. The draft is then published for public comment before the Codes are finalised and registered by ACMA.
5. The Codes are mandatory and their operation is supervised and enforced by ACMA. ACMA performs an independent adjudicator role where complaints are not resolved between the complainant and the broadcaster involved. Actions available to ACMA in relation to licensees' breaches of the Codes include:
 - (a) accepting an enforceable undertaking;
 - (b) accepting an unenforceable undertaking; and
 - (c) imposing an additional condition on the licensee.
6. Licensees are also required to formulate, implement and maintain a compliance program to ensure compliance with the Codes, the Broadcasting Standards⁴ and the BSA. As part of the program, all staff must undertake compliance training at induction and thereafter at least once a year. This is a condition of each broadcaster's licence, under the *Broadcasting Services (Commercial Radio Compliance Program) Standard 2000*.

² Section 123(2)(h), BSA.

³ Section 124, BSA.

⁴ There are three separate Broadcasting Standards. They relate to the disclosure of commercial agreements by presenters of current affairs programs, the need to distinguish advertisements from other programs and the establishment of compliance programs by commercial radio licensees.

Key provisions of the Codes

Content

7. The Codes address the issue of program content and language, including sex and sexual behaviour. The key provisions are:

1.5(a): *All program content must meet contemporary standards of decency, having regard to the likely characteristics of the audience of the licensee's service.*

1.5(b): *The gratuitous use in a program of language likely to offend the anticipated audience for that program must be avoided.*

1.6: *Licensees must not broadcast audio of actual sexual acts.*

1.7: *Licensees must not broadcast a feature program which has an explicit sexual theme as its core component unless it is broadcast between 9.30pm and 5.30am and an appropriate warning is made prior to commencement of the program and at hourly intervals during broadcast of the program.*

Complaints

8. The Codes set out the methods of handling complaints made by members of the public to licensees regarding compliance with the Codes. They also detail licensees' obligations in relation to the reporting of complaints. The key provisions are:

5.2: *[...] a complaint⁵ is an assertion . . . that the licensee has broadcast matter which, in the opinion of the complainant, breaches these Codes. Complaints need not specify the section of the code to which the complaint relates, but must adequately identify the material broadcast and the nature of the complaint.*

5.6: *Written complaints must be conscientiously considered by the licensee and the licensee must use its best endeavours to respond substantively in writing within 30 days of the receipt of the complaint. If the licensee needs to investigate the complaint or obtain professional advice and a substantive response is not possible within 30 days, the licensee must, in any event, acknowledge receipt of the complaint within 30 days and provide a final reply within 45 days of receiving the complaint.*

5.7: *The response must inform the complainant that he or she has the right to refer the complaint to ACMA if the complainant is not satisfied with the response by the licensee.*

9. The Codes also oblige licensees to maintain a written record of complaints they receive and to provide CRA with a summary of that record. CRA then compiles industry complaint data, which it passes on to ACMA.⁶
10. Under Code 7.2, licensees must broadcast weekly announcements publicising the existence, nature and effect of the Codes.

⁵ Complaint is further defined in Code 5.2 as being "(a) made in writing by letter or fax by a person who provides his or her name and address; (b) to a licensee or a person at the radio station concerned who is acting with the apparent authority of the licensee".

⁶ Code 5.11 and 5.12.

Effective complaints mechanism

11. The complaints procedure set out above fulfils all the requirements of the BSA, and has the benefit of ACMA's input and independent adjudication, should the listener and licensee be unable to resolve the matter at issue. The procedure is well advertised and accessible, in part as a result of the regular on air announcements.
12. The ACMA reporting requirements also ensure that a full record of complaints is maintained. This increases licensee accountability and enables ACMA to identify and sanction licensees who regularly breach the Codes.
13. The industry submits that this complaints procedure is a highly effective and efficient mechanism for resolving disputes. It provides the listener with a means of voicing concerns, without imposing unreasonable burdens on an industry that is already subject to high levels of reporting and regulatory compliance.

Content suitability for intended audience

14. The Codes provide that all program content must meet contemporary standards of decency by reference to "*the likely characteristics of the audience of the licensee's service*".⁷ The Codes also prohibit the use of language that is "*likely to offend the anticipated audience*". Accordingly, the applicable standards of content and language will vary to reflect the composition of the listeners.
15. The commercial radio industry submits that this is the most effective means of imposing appropriate content and language restrictions on licensees. A huge variety of programs are offered by the 260 members of CRA, and it would not be possible - nor desirable - to apply identical content restrictions to each one of those programs. To do so would fail to recognise the differing standards and expectations of the diverse audience demographics, and would severely limit the type of programs broadcast by commercial radio. This would be to the detriment of the wider listening community.
16. Commercial considerations also encourage the industry to broadcast appropriate content. Commercial radio survives on advertising revenue, which is driven by listener numbers, and stations will respond quickly to remove programs that are not attracting large audiences. If listeners do not like what they hear they will turn off, or switch to a competitor radio station. Accordingly, the industry naturally monitors and reflects community standards in striving to obtain the maximum listening audience.
17. Further, CRA believes that there should be no distinction between the form of language permitted on radio and the form of language permitted on television. Radio and television broadcasters are best equipped to determine the appropriateness of language, in a particular case, by reference to factors such as the time slot, the target and anticipated audiences, the context of the relevant program and the use of the language within that program. The very small number of complaints received by radio stations and the even smaller number of such complaints upheld by regulators, suggests that this exercise is undertaken responsibly in the radio industry. Although it is not our place and we are not able to comment on the way that exercise is undertaken in the television industry, we are of the strong view, first, that restrictions on the use of language in the radio industry should not be tightened (and, if anything, given the responsible way in which that exercise is undertaken, should be relaxed)

⁷ Code 1.5.

and, secondly, that both the terms and the enforcement of such restrictions in the radio industry should be no more stringent than in the television industry.

Incidence of complaints

18. Commercial radio stations ensure that listeners are aware of their rights under the Codes by broadcasting, on at least one occasion per week, an announcement publicising the existence of the Codes together with a general description of the nature and effect of their operation. The announcement also explains who listeners should contact if they wish to make complaints. These announcements are broadcast at different times and in different programs from week to week, in order to reach as many listeners as possible.⁸
19. There appears to be an excellent level of listener satisfaction regarding both the content of broadcasts on commercial radio in Australia and the handling of complaints. During the past 2 years there have only been 2 formal complaints upheld by ACMA relating to standards of decency, and 4 formal complaints upheld by ACMA relating to the industry's complaints handling.
20. The above incidences of complaint are extremely low, when compared with the number of programs broadcast on a daily basis by CRA's 260 members. This suggests that the Codes are operating effectively to safeguard and reflect community standards.

CRA would welcome the opportunity to discuss or amplify any of these points with the Environment, Communications and Arts Committee. The Committee should contact Joan Warner on 9281 6577 if it wishes to do so.

⁸ Such announcements are mandatory under Code 7.2.