

Temporary community broadcasting licence guidelines

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1. Background

Under the *Broadcasting Services Act 1992* (the Act), aspirant community groups may apply to the ACMA for a temporary community broadcasting licence (temporary licence).

The temporary licence scheme has been in place since 1997. The scheme gives aspirant broadcasters the opportunity to develop broadcasting skills before merit-based allocation of planned long-term community broadcasting licences.

The ACMA has developed the *Temporary community broadcasting licence guidelines 2009* (the guidelines) to assist:

- aspirant community broadcasters to apply for a temporary licence; and
- existing temporary licence holders to comply with their statutory obligations.

An application for a temporary licence must be in a form approved in writing by the ACMA (ACMA Form B42) and be accompanied by:

- a completed apparatus licence application form (Form B12); and
- payment for the apparatus licence (currently \$33).

The ACMA allocates temporary licences to all applicants for temporary use of an available frequency who satisfy the following criteria:

- are a company (company includes incorporated associations) formed in Australia or in an external Territory; and
- represent a community interest.

If more than one temporary licence is allocated for the use of an available frequency in a licence area, the ACMA determines timing conditions for shared use of the frequency. The ACMA encourages aspirant groups to agree on timesharing and to notify the ACMA of their agreement. This enables the ACMA to reflect an agreed timesharing arrangement in determining the timing conditions.

Temporary licence holders are required to comply with the same licence conditions that apply to long-term community radio broadcasters, as well as the same codes of practice.

The guidelines are *advisory only* and do not replace the requirements of the Act. The ACMA may deviate from these guidelines where appropriate. If in doubt, licensees should approach the industry group representing their community broadcasting sector—the Community Broadcasting Association of Australia ([CBAA](#))—or seek independent legal advice.

2. When is a temporary licence available

A frequency may be made available for a temporary licence if there is spectrum available because:

- a long-term community radio broadcasting service has been planned in a Licence Area Plan (LAP), but has not yet been allocated; or
- a long-term community radio licence has been cancelled, not renewed, surrendered or lapsed; or
- the licence area is not spectrum congested and there is unplanned spectrum that may be used for temporary community broadcasting purposes.

In an area where an aspirant group has applied for a temporary licence and there is spectrum available, the ACMA will, in general, allocate a temporary licence to that group without advertising the availability of the spectrum.

Aspirant groups need to note that:

- it is their responsibility to:
 - identify available spectrum that may be suitable for temporary community broadcasting use; and
 - pay for the expenses of identifying spectrum (for example, fees charged by a broadcast planning engineer engaged by the aspirant group to identify spectrum – the CBAA may assist aspirant groups to identify suitable persons for this purpose); and
- there is no guarantee that the ACMA will assess the spectrum as suitable for temporary community broadcasting use.

If, after allocating the temporary licence, other aspirant groups emerge, the ACMA may allocate temporary licences to those groups as well and they will share use of the frequency in accordance with timing conditions determined by the ACMA.

The ACMA reminds aspirant groups and temporary licence holders that:

- the allocation of a temporary licence for temporary use of a frequency planned for a long-term community radio broadcasting licence does not mean that the temporary licence holder will be allocated a long-term licence
- the allocation of a temporary licence to a former licensee of a long-term community radio licence that has been cancelled, not renewed, surrendered or lapsed does not mean that the former licensee will be allocated a long-term licence if the ACMA later decides to allocate a long-term licence
- the allocation of a temporary licence to an aspirant group for temporary use of unplanned spectrum in a licence area does not mean that the ACMA will make the spectrum available for a long-term community radio broadcasting licence
- in applying for a temporary licence (ACMA Form B42), they undertake to broadcast regular announcements advising their audience and sponsors that they hold a temporary licence.

3. Who can apply for a temporary licence

Initial temporary licence

The ACMA may only allocate a temporary licence to an applicant for temporary use of an available frequency if the applicant¹:

- is a company (company includes incorporated association) formed in Australia or in an external Territory; and
- represents a community interest².

Organisation structure

An applicant for a temporary licence should be a not-for-profit, locally-based, representative organisation. It should have clearly defined purposes and transparent, non-discriminatory membership rules.

A range of entities may apply for a temporary licence, including incorporated associations, registered cooperatives, and companies limited by shares. The ACMA considers incorporated associations better lend themselves to more robust governance arrangements.

Incorporated associations wishing to apply for a temporary licence are encouraged to:

- adopt the model rules issued by the relevant State or Territory body that administers the legislation under which the association is incorporated; and
- make amendments to those rules as recommended by the Community Broadcasting Association of Australia (CBAA).

CBAA's standard amendments to model rules for each State and Territory are available at www.cbba.org.au. The amendments are designed to ensure that community broadcasters have appropriate corporate structures which promote compliance with the applicable licence conditions.

Community interest

To represent a community interest, an applicant should provide evidence of an open structure and transparent procedures, including:

- an organisation chart of the company structure, including office holders and membership; and

¹ Section 92C(1) of the Act.

² See also section 15 of the Act, at page 15 of these guidelines.

- documented decision-making policies, including for membership and programming.

Submitting applications

An application for a temporary licence must be:

- in a form approved in writing by the ACMA (ACMA Form B42); and
- accompanied by:
 - a completed apparatus licence application form (ACMA Form B12)³; and
 - payment for the apparatus licence (currently \$33); and
- sent to:

Post

The Manager
Community Allocations & Information
Section
Australian Communications & Media
Authority
PO Box Q500
Queen Victoria Building
SYDNEY NSW 1230

Fax

(02) 9334 7799

Email

communitybroadcasting@acma.gov.au

Subsequent temporary licences

Temporary licences are allocated for a maximum of 12 months and cannot be renewed⁴.

However, a temporary licence holder can apply for a further temporary licence and it may be allocated where:

- if the spectrum is planned, it is not about to be allocated for long-term use; or
- if the spectrum is unplanned, it is not needed for an alternative use.

In this case, a temporary licence holder is required to submit another set of the ACMA Forms B12 and B42 at least one month prior to the expiry of the licence period and make a further payment for the apparatus licence (currently \$33).

Temporary licence holders need to reapply for temporary licences:

- for temporary licences issued for 12 months – at least one month before the temporary licence expires
- for temporary licences issued for less than 12 months - at least two weeks before the temporary licence expires.

³ Section 92B(2) of the Act.

⁴ Section 92G(1)(c) of the Act.

4. Deciding on whether to allocate a temporary licence

When a temporary licence is available, provided an applicant for a temporary licence is a company formed in Australia or an external Territory and it represents a community interest, the ACMA generally allocates a temporary licence to the applicant.

The Act sets out the criteria for deciding whether to allocate a temporary licence⁵.

In deciding whether to allocate a temporary licence, the ACMA **is not to** have regard to these matters, which it considers when allocating a long-term licence⁶:

- the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area; and
- the nature and diversity of interests of the local community; and
- the nature and diversity of other broadcasting services available within the licence area; and
- the capacity of the applicant to provide the proposed service.

In deciding whether to allocate a temporary licence to an applicant or to one of a group of applicants, the ACMA **may** have regard to⁷:

- the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
- the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a temporary licence.

The ACMA may decide not to allocate a temporary licence if an applicant previously held a temporary licence but did not provide a broadcasting service under that temporary licence⁸.

The ACMA must not allocate a temporary licence if it is satisfied that an applicant is not a 'suitable applicant' or a 'suitable licensee'⁹. The ACMA may consider an applicant is not a suitable applicant if it is satisfied that allowing an applicant to provide a temporary community broadcasting service would lead to a significant risk of:

⁵ Section 92E of the Act.

⁶ Under section 92E of the *Broadcasting Services Act 1992*, the ACMA cannot take these matters into account in allocating temporary licences. However, they are relevant to the allocation of long-term community broadcasting licences (section 84 of the *Broadcasting Services Act 1992*).

⁷ Section 92E(1) of the Act.

⁸ Section 92C(3) of the Act.

⁹ Sections 92C(2) and 92D of the Act.

- an offence against the Act or the regulations being committed; or
- a breach of a civil penalty provision occurring; or
- a breach of the licence conditions occurring.

These situations may arise, for example, when an applicant has previously held a licence (whether a long-term licence that has not been renewed or a temporary licence) and has not complied with licence conditions and/or undertaken required compliance measures.

Publication of temporary licence information

The ACMA publishes a list of temporary licence holders and their community interest on the [ACMA website](#). The list is updated monthly when details of temporary licences allocated in a month are published in *ACMAsphere*.

If the ACMA receives inquiries about temporary licences in a licence area, it generally provides information on the temporary licence holders and contact details to enable members of the local community to participate in those services. Where appropriate, the information may include details of the timing conditions and licence periods of those licences.

5. How is the licence area designated

The ACMA designates the licence area of a temporary licence by reference to:

- the relevant licence area plan (LAP) where there is a planned long-term community radio broadcasting licence which has not been allocated; or
- the name of the place to be served, based on the major population centre of the coverage area of the temporary licence. In this case, the licence area for the temporary licence is not included in the LAP unless and until the ACMA decides to undertake a LAP variation.

6. How is the licence period determined

In determining the licence period for a temporary licence, the ACMA **is to** have regard to¹⁰:

- any other applications for a temporary licence in the licence area of the proposed licence; and
- any other temporary licences in the licence area of the proposed licence; and
- such other matters as the ACMA thinks fit. Other matters includes whether:
 - the ACMA will commence an allocation process for a long-term community radio broadcasting licence that has been specified in a LAP; and
 - there is a foreseeable need for alternative use of unplanned spectrum.

Depending on demand for use of the frequency, the ACMA generally allocates a temporary licence for a licence period of anywhere between three months to the maximum allowable 12 months.

¹⁰ Section 92G(2) of the Act.

7. How are timing conditions determined

Timing conditions are determined by the ACMA and specify the times when a temporary licence holder is permitted to broadcast¹¹.

The ACMA uses the timing conditions to promote the development of the broadcasting skills and programming expertise of aspirant groups so that they are well-placed to provide a service that meets the needs and interests of the community, including those not being met by other broadcasting services within a licence area.

Sole temporary licence holder

If there is only one temporary licence holder in a licence area, the ACMA generally determines timing conditions that enable the licensee to broadcast continuously for the duration of the licence period.

Multiple temporary licence holders

If there is more than one temporary licence holder for a nominated frequency in a licence area, the ACMA determines timing conditions for shared use of the frequency.

The ACMA encourages aspirant groups to agree on timesharing and to notify the ACMA of their agreement. If aspirant groups are able to agree on timesharing, the ACMA generally determines timing conditions that reflect their timesharing agreement.

While it is not obliged to do so, the ACMA usually gives temporary licence holders the opportunity to comment on proposed timing conditions before the ACMA determines timing conditions.

Relevant considerations

In determining the timing conditions for temporary licences, the ACMA **is to** have regard to¹²:

- any other applications for a temporary licence in the licence area of the proposed licence; and
- any other temporary licences in the licence area of the proposed licence; and
- such other matters as the ACMA thinks fit.

¹¹ Section 92A of the Act.

¹² Section 92G(2) of the Act.

Other matters may include:

- fair access to airtime for all temporary licence holders (for example, a balance of peak and non-peak listening periods, including weekends);
- the provision of quality of service through adequate broadcast periods (for example, broadcast periods of no less than four hours duration);
- practical operational matters (for example, convenient changeover times);
- listener needs (for example, continuity of service and access to broadcasts of particular relevance to listeners in the licence area);
- the interests of the community interest represented by a licensee in hearing broadcasts at particular times (for example, regular Sunday broadcasting may be important for Christian communities while other communities may be interested in one-off sporting events);
- submissions by temporary licence holders on their particular needs (for example, periods when they have access to transmission facilities, or, their desire to provide programming during particular periods to meet local community needs);
- giving temporary licence holders the opportunity to develop their broadcasting skills and programming expertise, as well as to gain an audience base and build community support for their service;
- broadcasting experience of the temporary licence holder, including experience as a long-term and temporary community broadcaster;
- aspirant's history of compliance with codes of practice and licence conditions during previous long-term or temporary community broadcasting licences; and
- such other matters as are relevant on a case by case basis.

Timing conditions are determined by the ACMA, consistent with the above relevant considerations and the information available.

8. Varying licence periods and timing conditions

Varying licence periods

The ACMA may vary the licence period of a temporary licence¹³:

- in the case of a licence period of less than 12 months – to extend the licence period to a maximum of 12 months; or
- to reduce the licence period.¹⁴

This situation may arise if:

- another aspirant group has applied for a temporary licence in the same area; or
- a licence period that is less than 12 months is close to expiry and the licensee wishes to continue to provide a service under a temporary licence.

Before varying a licence period, the ACMA writes to the temporary licence holder, advising of its intention to vary the licence period and giving the temporary licence holder a reasonable opportunity to make representations to the ACMA on the proposed action¹⁵.

In varying a licence period, the ACMA has regard to the same matters that it had regard to when determining the original licence period.

The ACMA cannot vary a licence period to exceed the maximum allowable 12 months.

Varying timing conditions

Once a temporary licence has been allocated and the timing conditions determined, the ACMA may vary the timing conditions¹⁶ to accommodate a change in circumstances since the ACMA determined the original timing conditions.

In varying timing conditions, the ACMA has regard to the same matters that it had regard to when determining the original timing conditions.

¹³ Section 92J(1)(c)(c) of the Act.

¹⁴ This may occur, for example, where the long-term licence has been allocated for the frequency occupied by a temporary licence..

¹⁵ Section 92J(4) of the Act.

¹⁶ Section 92J(1)(a) of the Act.

Variation requested by a temporary licence holder

A temporary licence holder may ask the ACMA to vary timing conditions. For example, a temporary licence holder may wish to broadcast coverage of an event or occurrence which falls outside its permitted broadcast times but is of particular relevance to its community interest.

Before varying timing conditions, the ACMA writes to all temporary licence holders sharing broadcast time on the frequency, advising of its intention to vary the timing conditions and giving them a reasonable opportunity to make representations to the ACMA on the proposed action¹⁷.

Variation agreed on by temporary licence holders

If temporary licence holders sharing broadcast time on a frequency agree to vary the timing conditions, they may write to the ACMA requesting a variation to reflect their agreement.

The ACMA requires a minimum of two week's notice of any request to vary timing conditions, unless exceptional circumstances apply.

This is to enable the ACMA to consider the request, which includes giving temporary licence holders a reasonable opportunity to comment on any proposed variation to timing conditions.

¹⁷ Section 92J(4) of the Act.

9. Temporary licence compliance requirements

Temporary licence holders are required to comply with the same licence conditions ([clause 9 in Part 5 of Schedule 2 to the Act, except paragraph 9\(1\)\(h\)](#)) and [codes of practice](#) that apply to long-term community radio broadcasters.

The licence conditions include requirements of licensees to:

- continue to represent the community interest; and
- encourage members of the community to participate in the operations and programming of the service.

The ACMA has a range of enforcement options available where a temporary licence holder does not comply with licence conditions, codes of practice, or both. These enforcement options include issuing remedial directions and imposing additional licence conditions.

Before imposing or varying an additional licence condition, the ACMA will write to the affected temporary licence holder, advising of its intention to impose or vary the additional licence condition and giving them a reasonable opportunity to make representations to the ACMA on the proposed action¹⁸.

Complaints

The ACMA deals with valid complaints about temporary licences in the same way as it deals with complaints about long-term community radio broadcasters.

Complaints may be made directly to the ACMA if a person believes that a temporary licence holder is breaching a licence condition¹⁹.

Complaints about a code matter must be made to the temporary licence holder in the first instance. If the person has not received a response within 60 days after making the complaint, or the person has received a response but considers it to be inadequate, the person may then make a complaint to the ACMA about the code matter²⁰.

¹⁸ Section 92J(4) of the Act.

¹⁹ Section 147 of the Act.

²⁰ Section 148 of the Act.

10. Further information

Further information on community broadcasting, including temporary licences, is available from the ACMA's website at

http://www.acma.gov.au/WEB/STANDARD/pc=PC_311074.

For queries about these guidelines, contact the ACMA's Community Broadcasting Group at communitybroadcasting@acma.gov.au or (02) 9334 7907.

11. Extracts from the *Broadcasting Services Act 1992*

Part 2—Categories of broadcasting services

15 Community broadcasting services

Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

Part 6A—Temporary community broadcasting licences

92A Interpretation

In this Part:

company includes an incorporated association.

licence period means the period of a temporary community broadcasting licence determined by the ACMA under paragraph 92G(1)(c) or varied by the ACMA under section 92J.

timing conditions means the conditions of a temporary community broadcasting licence that:

- (a) are about the times in which the licence allows community broadcasting services to be provided; and
- (b) are determined by the ACMA under paragraph 92G(1)(b) or varied by the ACMA under section 92J.

92B Temporary community broadcasting licences

- (1) The ACMA may allocate to a person, on application in writing by the person, a temporary community broadcasting licence.
- (2) Applications must be in accordance with a form approved in writing by the ACMA.

92C Applicants for temporary community broadcasting licences

- (1) The ACMA is not to allocate a temporary community broadcasting licence to an applicant unless the applicant:
 - (a) is a company that is formed in Australia or in an external Territory; and
 - (b) represents a community interest.

- (2) The ACMA is not to allocate a licence to an applicant if the ACMA decides that subsection 92D(2) applies to the applicant in relation to the licence. However, the ACMA is not required to consider the application of subsection 92D(2) to the applicant before allocating the licence.
- (3) The ACMA may refuse to allocate a licence to an applicant if the applicant was a temporary community broadcasting licensee for a period but did not provide community broadcasting services in that period. This subsection does not limit the ACMA's discretion to refuse to allocate a licence.

92D When applicants and licensees are regarded as suitable

- (1) A company is a *suitable applicant* or *suitable licensee* in relation to a temporary community broadcasting licence if the ACMA has not decided that subsection (2) applies to the company in relation to the licence.

Note: It is a condition of a temporary community broadcasting licence that the licensee remain a suitable licensee: see paragraph 9(2)(a) of Schedule 2.

- (2) The ACMA may, if it is satisfied that allowing a company to provide or continue to provide broadcasting services under a temporary community broadcasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;decide that this subsection applies to the company in relation to the licence.
- (3) In deciding whether such a risk exists, the ACMA is to take into account only:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of the chief executive and each director and secretary of the applicant; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

92E Criteria for deciding whether to allocate a licence

- (1) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA may have regard to:

- (a) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
 - (b) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a temporary community broadcasting licence.
- (2) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA is not to have regard to:
- (a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and
 - (b) the nature and diversity of the interests of that community; and
 - (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and
 - (d) the capacity of the applicant to provide the proposed service.

92F Licences to accord with alternative planning procedures

The ACMA is not to allocate a temporary community broadcasting licence except in accordance with a determination of the ACMA under section 34.

92G Licence area, timing conditions and licence period

- (1) Before allocating a temporary community broadcasting licence, the ACMA is to:
- (a) designate a particular area in Australia as the licence area of the licence; and
 - (b) determine the timing conditions of the licence; and
 - (c) determine a period of up to 12 months as the licence period.
- (2) In determining the timing conditions and licence period, the ACMA is to have regard to:
- (a) any other applications for temporary community broadcasting licences in the licence area of the proposed licence; and
 - (b) any other temporary community broadcasting licences in the licence area of the proposed licence; and
 - (c) such other matters as the ACMA thinks fit.

92H Conditions of temporary community broadcasting licences

Each temporary community broadcasting licence is subject to:

- (a) the conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2; and
- (b) the timing conditions; and
- (c) such other conditions as are imposed under section 92J.

92J ACMA may vary conditions or periods, or impose new conditions

- (1) The ACMA may, by notice in writing given to a temporary community broadcasting licensee:
- (a) vary or revoke a condition of the licence (including a timing condition); or
 - (b) impose an additional condition on the licence; or
 - (c) vary the licence period.

- (2) Without limiting subsection (1), the ACMA may impose an additional condition on a licence:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.
- (3) An additional condition of a licence must be relevant to community broadcasting services.
- (4) If the ACMA proposes to vary or revoke a condition, impose an additional condition or vary the licence period, the ACMA is to give to the licensee:
 - (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.
- (5) This section does not allow the ACMA:
 - (a) to vary or revoke a condition set out in Part 5 of Schedule 2; or
 - (b) to vary or revoke a timing condition so that there are no times in which the licence allows community broadcasting services to be provided; or
 - (c) to vary the licence period so that the period is longer than 12 months.
- (6) If the ACMA varies or revokes a condition (other than a timing condition), imposes an additional condition or varies the licence period, the ACMA is to publish the fact of the variation, revocation or additional condition in the Gazette.
- (7) Action taken under subsection (1) must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2.

92K Duration of temporary community broadcasting licences

Subject to section 92L and Part 10, a temporary community broadcasting licence remains in force for the licence period.

92L Surrender of temporary community broadcasting licences

A temporary community broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.