

DMG RADIO (AUSTRALIA) PTY LTD

**SUBMISSION TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY IN RELATION TO ITS REVIEW OF THE
COMMERCIAL RADIO STANDARDS**

MAY 2010

1 Introduction

- 1.1 This submission is made by DMG Radio (Australia) Pty Ltd (**DMG**) in response to the Media Release and Issues Paper issued by the Australian Communications and Media Authority (**ACMA**) regarding the ACMA's review of the Commercial Radio Standards (the **Standards**), released in February 2010 (the **Review**).
- 1.2 DMG is a joint venture between Daily Mail and General Trust Plc and Illyria Investments Pty Ltd.
- 1.3 DMG is a major participant in the commercial radio industry in Australia. DMG owns or controls ten commercial radio stations throughout Australia. Nine of DMG's stations were established from scratch between 2000 and 2005 under new licences auctioned by the former Australian Broadcasting Authority. Those nine new stations include the highly successful Nova FM radio network with stations in Sydney, Melbourne, Brisbane, Perth and Adelaide, the newly launched Classic Rock FM stations in Sydney and Melbourne, and Star 104.5 FM in Gosford, New South Wales, together with 97.3 FM in Brisbane(which is owned in a 50/50% joint venture with Australian Radio Network (ARN). Through these relatively new and innovative radio stations, and its AM talk station in Adelaide FIVEaa, DMG has made (and will continue to make) a significant contribution to the diversity, competitiveness and efficiency of the commercial radio industry in Australia.
- 1.4 In addition to the simulcast of its analogue stations in digital format, DMG currently owns or controls two digital-only radio stations: NovaNation and Koffee.

2 Executive summary

- 2.1 DMG's primary submissions are as follows:
 - a. the regulatory regime governing the commercial radio industry was implemented, for the most part, for the purpose of providing important and necessary community safeguards. DMG strongly believes that the current regime continues to achieve this purpose. In DMG's view, any additional regulation and/or restrictions placed on the industry would most likely result in increased cost and resources and, more importantly, significantly impact the quality and interactive, fast-paced nature of radio broadcasting which is, for the most part, what makes commercial radio broadcasting unique and continually relevant to the Australian community;
 - b. considering that it is more than ten years since the 'cash for comment' inquiry and that there have been no material, systematic cash for comment compliance issues since then, and therefore, in light of the very high levels of compliance and industry accepted practices which have developed over the past ten years, DMG believes that the Disclosure Standard has achieved its purpose of embedding a clear understanding and acceptance of the principles that are contained in the Standard and, as the industry has matured in that regard, it is no longer necessary for it to endure such an extreme regulatory burden. This burden should now be reduced, not enhanced. To this end, DMG believes that the Disclosure Standard as it is currently drafted places unnecessary administrative burden on licensees, announcers and production staff;

- c. the method and frequency of disclosure announcements should be relaxed to allow licensees to broadcast these announcements at regular intervals during a program, or at the beginning and end of each program, rather than each time a sponsor is mentioned/discussed;
- d. the definition of "commercial agreements" as currently drafted should not be expanded to include "commercial arrangements with the potential to influence program content" as this standard is subjective and ambiguous, which would make compliance with it from a practical perspective by announcers and licensees extremely difficult;
- e. the Disclosure Standard should not be broadened to capture agreements relating to staff other than announcers. This would result in an even greater administrative and cost burden for licensees, as well as affecting program content and holding radio to a standard of disclosure which no other media is subject to. ACMA, in its report into the 'cash for comment' inquiry, highlighted the fact that 'cash for comment' concerned those individuals who, in the minds of listeners, are in a position of trust. Listeners considered these individuals to be the people who talked to them, ie. the Announcers. The Disclosure Standard was not designed to deal with commercial preferences or personal decisions of staff who work at a radio station. If ACMA is concerned about certain rogue individuals who seek to circumvent its regulations, it should exercise its enforcement powers to deal with such individual(s)
- f. the commercial radio industry is not afforded the flexibility of most other media (especially television) to explore new revenue streams, such as integrated advertising, in a responsible and appropriate way. This places the industry at an unfair commercial disadvantage which is not viable for the commercial radio industry to sustain over the longer-term. DMG proposes that:
 - (i) the Advertising Standard should be repealed; and
 - (ii) Code 3 should be amended to allow for integrated advertising where:
 - (A) a program is not a news and current affairs program for the purposes of the Codes; and
 - (B) disclosure of the relevant program sponsors and integrated advertisers is made either at the beginning or end of the program, or on the Station's website on a webpage dedicated for that purpose;
- g. the Compliance Standard is effective as it currently exists and should not be amended to provide for more onerous reporting requirements from Stations to ACMA;
- h. DMG strongly believes that, if there are any additional regulations or restrictions imposed on the commercial radio industry, not only will that increase costs, but in addition, because there has been so much additional regulation introduced in the past few years and because of the significant capital costs borne by the industry for its expansion into digital radio, if any such additional regulation or restrictions were to involve more investment by the industry, this will directly impact the investment into programming. This will have an unfortunate but inevitable impact on the quality of the product delivered to listeners; and

- i. the issues highlighted in ACMA's *Community Attitudes to Radio Content* research report regarding sponsors of news and current affairs programs and the ability to distinguish advertising from other content are valid and important, but the results received very much reflect:
 - (a) the current regulatory landscape;
 - (b) the formulation of questions which participants were asked; and
 - (c) the fact that participants were not given an opportunity to comment on different ways in which it could be made clear to them that something is an advertisement, as opposed to program content.

Participants weren't really asked to consider alternative forms of disclosure or advertising models. DMG's own research into listeners' preferences undertaken over the past four years indicates that listeners strongly prefer, and engage more effectively with, live reads and more integrated advertising over traditional advertising models. DMG strongly believes that the Standards (and, where necessary, the Codes) can be adapted to cater to listener preferences without sacrificing community safeguards, as discussed in more detail below.

- j. DMG is strongly of the view that integrated advertising as recommended in this submission (with appropriate disclosures mechanisms) does mean that an advertisement is distinguishable from other content and therefore does reflect, and is consistent with, ACMA's community research findings. What DMG is recommending in this submission is therefore consistent with ACMA's findings. ACMA should not see integrated advertising as a mechanism to avoid the obligation to properly distinguish advertisements from other program content.

2.2 DMG has been provided with a copy of the submission by Commercial Radio Australia ("CRA") regarding the Review. DMG supports the submission of CRA.

2.3 These issues, and others, are discussed in more detail below.

3 **Disclosure Standard**

3.1 Whilst DMG acknowledges that the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000* (the **Disclosure Standard**) addressed the serious concerns over the level of influence of presenters of news and current affairs programs as a result of the 'cash for comment' inquiry, we believe that, ten years down the track, industry practices and procedures have developed to a point that the need for the Disclosure Standard in its current administratively burdensome form is no longer necessary.

3.2 DMG's news and current affairs Station, FIVEaa, has a comprehensive program in place for announcers, production staff and management to ensure that all parties are aware of their obligations under the Disclosure Standard and this program is audited on a regular basis.

3.3 In light of this, DMG submits that there are less disruptive, time consuming and expensive ways of making disclosures and ensuring that any commercial agreements entered into by news and current affairs announcers are recorded, as discussed in more detail below.

Disclosure requirements

- 3.4 DMG submits that the current definitions of "commercial agreement" and "consideration" are adequate, effective and do not require amendment.
- 3.5 Question 6 in ACMA's Issues Paper asks whether "any disclosure requirement should be extended to apply to all commercial arrangements that have the potential to affect program content". DMG believes strongly that this should not be the case, for two reasons:
- (a) whether an agreement has the "potential to affect program content" is a very vague and subjective test, which would be extremely hard to define in practical terms for broadcasters and licensees to comply with. Any commercial arrangement has the potential to affect programming content, therefore a degree of balance and materiality must apply. DMG strongly believes that the materiality tests which apply today are appropriate; and
 - (b) this would potentially involve a massive administrative burden for announcers, their producers and Station staff to manage and effectively police.
- 3.6 Whilst ACMA's *Community Attitudes to Radio Content* research indicates an ongoing concern by listeners regarding fair and accurate coverage of news and current affairs (which is expected) there is no reason or evidence to believe that the current regulatory regime doesn't provide more than adequate mechanisms to address these concerns. The very low number of breaches of the Disclosure Standard and high industry compliance through the development of comprehensive practices and procedures would, in fact, indicate that the industry is ready for more flexibility which can be achieved without sacrificing community safeguards. In DMG's view, broadening the scope of the Disclosure Standard would be a disproportionate reaction to a system which has operated effectively for almost a decade.
- 3.7 Question 7 in the Issues paper relates to the widening of the Disclosure Standard to cover all employees associated with the licensee or its program content. DMG submits that this is completely unviable for the industry to administer and manage. Commercial agreements have the potential to affect decisions and opinions of people every day, in every industry and walk of life. Listeners know this, have the ability to ask questions, make judgements and come to their own conclusions about issues. To expect the radio industry to disclose every commercial agreement entered into by staff with the potential to affect on-air content would be unreasonably onerous and unnecessarily burdensome, without any guarantee that this would improve compliance or increase community safeguards in a tangible way. In addition, this would be inconsistent with ACMA's original findings as part of its inquiry into "cash for comment" which indicated that the Announcers were the people whom listeners considered to be in a position of trust, not radio station employees generally.
- 3.8 We believe, at the end of the day, that if parties want to circumvent the provisions of the Disclosure Standard, they will find a way to do this, regardless of how terms and defined and how broad ACMA attempts to make the scope of the Standard. However, the vast majority of Stations comply with the Standard and disclose relevant agreements in good faith. This system is very effective, good industry practices are now entrenched and work effectively almost all of the time. To add extra regulation to the industry at this stage would be over-regulation. It is not the role of the law to unfairly impinge on the business activities of those who comply, to deal with rogue broadcasters who seek to circumvent that law. Rogue broadcasters are best dealt with by ACMA through its enforcement powers.

On-air disclosure announcements

- 3.9 Questions 8 and 9 relate to on-air disclosure announcements. DMG submits that announcements made "in the same breath" as content relating to a sponsor is very onerous and difficult for each licensee to manage from a practical perspective, especially considering the ever quickening pace and interactive nature of talkback radio (and radio generally). At the end of the day, DMG is a business selling a product, which is radio programming. We must be mindful of the fact that anything which interrupts or interferes with that product, will have a corresponding effect on our business. Our listeners have told us on numerous occasions over the past decade that disclosure announcements made 'in the same breath' as a sponsor mention are interruptive, irritating and make our shows less coherent. This is a demonstrable and negative effect on our product.
- 3.10 DMG submits that licensees and announcers should have the option to make disclosure announcements in one of the following ways:
- (a) simultaneously with the relevant statement (as is the case currently);
 - (b) at regular intervals throughout the relevant program (hourly, for example); or
 - (c) on the Station website.
- 3.11 This flexibility is consistent with that afforded to the television industry, still allows for full disclosure and is less disruptive for both listeners and announcers.

4 Advertising Standard

- 4.1 The Broadcasting Service (Commercial Radio Advertising) Standard 2000 (the **Advertising Standard**) expands on and emphasises Code of Practice 3. As far as DMG is aware, industry compliance with Code 3 and the Advertising Standard is extremely high, and DMG has certainly put comprehensive procedures and processes in place to ensure this is the case across our group of Stations.
- 4.2 As set out in the Issues Paper, DMG acknowledges and agrees with the community concern over listeners' ability to distinguish advertising from other programming, as highlighted in ACMA's *Community Attitudes to Radio* survey (the **ACMA Survey**), especially in relation to AM programming.
- 4.3 However, there is a very strong commercial argument to be made that the Advertising Standard and Code 3 as it is currently drafted, place unnecessarily burdensome limitations on the way the radio industry advertises (and its resulting revenue opportunities) in an economic environment which demands increased innovation and flexibility.
- 4.4 DMG has extensive experience dealing with advertisers and agencies. They constantly tell us that one of the reasons why they choose to advertise on television or through electronic media instead of radio is that the other forms of media can provide seamless integration, whereas radio cannot. This is evidence of the fact that radio misses out on revenue because it cannot offer integrated advertising to its advertisers as an option.
- 4.5 For this and other related reasons, DMG strongly submits that that the Advertising Standard be repealed.

Program formats

- 4.6 DMG notes that ACMA's community research appears to be heavily weighted towards news and current affairs programs, rather than entertainment or lifestyle content. Question 18 in the Issues paper asks whether regulation of advertising on radio should apply to all program formats. DMG submits that it should not. Program content which does not relate to news and current affairs (as defined in the Codes) should not be subject to the same level of regulation as news and current affairs content which has the potential to affect issues of public and community significance. DMG therefore submits that programs which are not news and current affairs programs should not be subject to Code 3.

Integrated Advertising

- 4.7 Whilst other forms of media have the flexibility to explore integrated advertising opportunities, commercial radio currently does not. As set out in Commercial Radio Australia's submission to the Review, this inflexibility places radio at an unfair disadvantage over other media. If the commercial radio industry is prevented from exploring integrated advertising due to the existing regulatory environment, this has already and will continue to have a long-term negative effect on the industry. .
- 4.8 From DMG's perspective, this is certainly the case. Whilst we appreciate the need for listeners' to be aware of what is an advertisement and what is not, our clients are constantly asking us for more integrated advertising ideas which we are unable to service, due to the current regulatory environment.
- 4.9 The questions asked in ACMA's survey which solicited the response contained in the Issues Paper was "*How important is it for you to be able to make a clear distinction between advertising and other radio content [in current affairs/non-current affairs] programs?...".* The answers were, in the vast majority, "fairly" or "very" important. However, if this question had been asked of television viewing audience, we suspect the answers would be very similar, yet television regulation allows for integrated advertising with a disclosure system.
- 4.10 DMG submits that the commercial radio industry should be permitted to conduct integrated advertising, with an appropriate disclosure regime in place.
- 4.11 Whilst we agree that it is important for listeners to have access to sponsor/advertiser information, that information does not need to be disclosed to listeners at the time an advertisement is broadcast, in the case of integrated advertising. This is already the case for television, where disclosure is made in the credits at the end of the broadcast.
- 4.12 In addition, there is evidence to support the fact that listeners engage more effectively when listening to integrated advertising, rather than traditional advertising.
- 4.13 In support of this, over the past 4 years, DMG has undertaken research into listener preferences and habits with Neuro-Insight Pty Ltd.
- 4.14 Neuro-Insight is a market research company that uses unique brain-imaging technology to measure how the brain responds to communications. The technology used by Neuro-Insight enables it to measure second by second changes in brain activity. This allows Neuro-Insight to deliver unique insights into how a piece of design or advertising is affecting people at both a rational and an emotional level.

- 4.15 As part of its work with DMG, a number of studies were undertaken by Neuro-Insight relating to the level of listener engagement in advertising versus other program content.
- 4.16 These studies have consistently returned the following results:
- (a) "live reads" (advertising read by announcers in the style and tone of the relevant station) result in greater engagement by listeners than traditional advertisements; and
 - (b) listeners prefer "live reads" and other advertising which is delivered consistently with the tone and nature of the relevant Station (ie – integrated with Station feel and tone);

Regulation of integrated advertising

- 4.17 There are a number of different ways in which radio could responsibly undertake more integrated advertising and make appropriate disclosures relating to show sponsors and advertisers. DMG acknowledges ACMA's concern around the most effective form of disclosure for integrated advertising – unlike television, there is no "roll of credits" at the conclusion of a radio program. However, there are a number of different ways in which disclosure can be effectively achieved. DMG submits that that most effective of these would be placing a list of the relevant sponsors and integrated advertisers for each program on a dedicated page on the Station's website.
- 4.18 ACMA has recognised in its Issues Paper that the percentage of radio listeners who use the internet is very high. Providing a list of program sponsors on a dedicated webpage on each relevant Station's website would allow listeners the opportunity to inform themselves of a program's sponsors without disruption to, or interference with, regular programming.
- 4.19 DMG reiterates that it agrees with ACMA and with the findings set out in its community attitudes survey that it's essential for advertising content to be distinguishable from other content.
- 4.20 The suggestions DMG has set out above is what we believe to be the best way to enable the industry to obtain the benefits of integrated advertising and for listeners to receive the best quality of integrated programming and, at the same time, for information to be effectively disclosed to listeners about what is and isn't an advertisement so that they can distinguish it.
- 4.21 However, if ACMA agrees with this suggestion in principle but has questions regarding the form of disclosure, DMG would welcome the opportunity to speak with ACMA about what ACMA considers might be the most appropriate form of disclosure for listeners to distinguish advertisements from other content.

5 Compliance Standard

- 5.1 DMG took part in ACMA's audit of commercial radio compliance under the *Broadcasting Services (Commercial Radio Compliance Program) Standard 2000* (the **Compliance Standard**).
- 5.2 DMG has a comprehensive compliance program and training which is conducted with all staff across our group on an annual basis.

- 5.3 As reflected in the results of the audit and reported in the Issues Paper, industry compliance with the Compliance Standard was extremely high.
- 5.4 DMG considers the procedures and processes it has developed and continues to implement in respect of the Compliance Standard to be important to its business, however, the time spent in administering its compliance under the Standard is considerable.
- 5.5 DMG does not believe that any kind of formal reporting to ACMA under the Compliance Standard is necessary, nor would it add any additional community safeguards considering the already very high compliance and extensive programs and procedures which exist, industry wide, in order to ensure compliance with the Codes, Standards and the BSA. The results of ACMA's compliance audit conducted in late 2009 are testament to this.

6 **Conclusion**

- 6.1 The regulatory regime governing the commercial radio industry was implemented, for the most part, for the purpose of providing important and necessary community safeguards. DMG strongly believes that, notwithstanding very rare and isolated incidents, the current regime continues to achieve this purpose. In DMG's view, any additional regulation and/or restrictions placed on the industry would most likely result in increased cost and resources and, more importantly, significantly impact the quality and interactive, fast-paced nature of radio broadcasting which is, for the most part, what makes commercial radio broadcasting unique and continually relevant to the Australian community.
- 6.2 DMG stations are committed (through our policies, procedures and training) to ensuring that compliance with the Codes, Standards and the BSA is maintained. It does not believe that further restrictions are necessary.
- 6.3 It is important for ACMA to recognise the need for the commercial radio industry to remain competitive and relevant in an environment where new technologies and increasing economic pressures demand flexibility and innovation. Without the flexibility to address listeners' needs and preferences, especially when such flexibility is already afforded to other media, commercial radio will face significant challenges to retain listeners in future. When addressing listener concerns and community safeguards, it is also important to take into account listener's preferences (for live reads and more integrated advertising, for example). DMG strongly believes that its suggestions above allow for flexibility within the industry, without sacrificing community concerns and providing relevant and adequate community protections.

Please do not hesitate to contact me if you require any further information regarding to the above points.

Yours Sincerely



Cathy O'Connor
Chief Executive Officer
DMG Radio (Australia) Pty Ltd