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Project Manager – Review of the commercial radio standards □
Broadcasting Standards Section □
Australian Communications and Media Authority □
PO Box Q500 □ Queen Victoria Building
NSW 1230

Re: the Review of the commercial radio standards

Submission from The Hobart Community Legal Service

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Introduction

This submission will focus on some key questions emerging from the Australian Communications and Media Authority Review of Commercial Radio Standards Issues Paper (The Review Issues Paper). This submission is designed to focus on changes which will deliver the best possible outcomes for consumers of commercial radio products. This submission will address five key questions emerging from section 1 of the Review Issues Paper. They are:

1. Issues that regulation should be seeking to address
(Addressing issues paper question 1)
2. What is the most appropriate model for regulation?
(Addressing issues paper question 2)
3. Whether the disclosure standard should be limited to current affairs alone
(Addressing issues paper question 4)
4. Should disclosure be limited to traditional contractual arrangements or more expansive in its scope?
(Addressing issues paper questions 6 and 7)
5. Is the current disclosure standard onerous? If disclosures are to be effective, when should they be made to take place?
(Addressing issues paper questions 8 and 9)

1. Issues that regulation should be seeking to address

The purpose of the disclosure standard should be three fold:

a. Meeting community expectations

As outlined in the issues paper, most notably in table 1, a large section of the community feels strongly that non-disclosed endorsements may be a concern. It is important in maintaining a relationship between consumers and both regulators and industry participants that the regulatory environment conforms with the reasonable expectations of the community and as a consequence this should always be a focus of the disclosure standard.

b. Pursuing consumer awareness

While meeting community expectations is important, the standard cannot simply be reactive. There may be occasions where a regulator is aware of industry practices about which consumers are unaware. In these contexts, the regulator should work towards objectives of consumer awareness and consumer fairness above and beyond the general expectations of the community.

c. Creating a culture of compliance

The dichotomy of “Ex-ante” as compared to “Ex-post” regulatory models is one which appears throughout the Review Issues Paper. Below, this submission will argue that an Ex-post regulatory model is favourable, as it maintains freedom of editorial content. However, if the freedom of the Ex-post model is to be retained, there must be a focus on encouraging adherence to standards by creating a culture of compliance within the industry. This is best achieved through the Compliance Program Standard, which is not dealt with in this paper. However, it can also be done through creating disclosure standards which encourage more complete compliance, which this paper will argue for below.

2. What is the most appropriate model for regulation?

The Review Issues Paper discusses the dichotomy between “Ex-ante” and Ex-post regulatory models. While the Ex-ante model encourages industry participants to produce editorial balance, the Ex-post model allows broadcasters to determine their own content, while encouraging disclosure.

The Ex-post model stops short of regulating radio content, which is desirable. Control of editorial content must remain the prerogative of the broadcaster. Regulating against “bias” risks censoring, or at least creating an environment where

broadcasters may be more inclined to self-censor. Regulatory models should stop short of taking action which could interfere with the invaluable asset of editorial freedom.

The regulatory model must be firmly focused on delivering the best outcome for consumers. This can be achieved through regular, comprehensive and willing disclosure by the industry. Provided this aim can be met, there is no justification at this stage for adopting an Ex-ante approach.

3. Whether the disclosure standard should be limited to Current Affairs alone

While disclosure in Current Affairs programming is of high importance in the context of the regulatory framework, a number of industry factors at play suggest that current affairs disclosure alone may not be sufficient to protect consumers in the commercial radio market. They are:

- a. The continued presence of cross-promotions in media markets
- b. The portability of presenters, media personalities and celebrities across programs, genres and networks
- c. Increasing sophistication in advertising and marketing techniques
- d. The increasingly fluid categorisation of genres in the media market (as seen with the blending of entertainment, current affairs and promotions in the television news industry)

The combination of these factors creates a situation where “Current Affairs” as a stand-alone genre is an increasingly antiquated concept. In order to keep up with programming arrangements, the notion that Current Affairs may be isolated and regulated must be dispensed with. In order to ensure the regulatory framework delivers for all consumers, and in the interest of creating a culture of industry wide compliance, it is imperative that the disclosure standard is extended to all “genres” and programming, not just current affairs.

4. Should disclosure be limited to traditional contractual arrangements or more expansive in its scope?

As flagged in the Review Issues Paper, the current regulatory arrangement provides exceptions for certain kinds of sponsorship arrangements.

The drawback of this situation is that consumers who are exposed to piecemeal disclosure are unlikely to be aware that the disclosure is piecemeal. This may mislead consumers in to the assumption that endorsements subject to more complex commercial arrangements, which are not accompanied by disclosure, are not in fact endorsements. An arrangement which could lead to the illusion of full disclosure would have the potential to be just as misleading as a complete absence of disclosure.

Unlike the European Ex-ante frameworks, the Australian standard is not a restrictive one, but simply one which requires openness and accountability. As such it does not impact on the flexibility of any commercial arrangement, rather it requires that such arrangements, while freely made, be completely disclosed. In order to ensure that our current model remains functional, the disclosure standard must be expanded to take in all forms of contractual or business arrangement which editorial and on-air staff enter in to which are outside those which an ordinary person would enter in to.

This would include:

- a. Share or option contracts between staff and sponsors
- b. Sponsor provided events such as sports events, holidays and conferences
- c. Sponsor provided goods or services
- d. Sponsor provided "samples" outside of what would be made available to the general public

Furthermore, the considerable loopholes created by a partial disclosure regime may potentially lead to more advertisers pursuing complex advertising arrangements designed to circumvent the disclosure standard. This would have a negative impact on both consumer awareness, which could be damaged by piecemeal or incomplete disclosure, and the culture of compliance which the standard should seek to foster. The standard should seek make disclosure the norm, exempting a range of agreement types may create a culture of optional disclosure and selective non-compliance.

- 5. Is the current disclosure standard onerous? If disclosures are to be effective, when should they be made to take place?**

Thus far, this paper has argued that disclosure standards are of utmost importance to the consumer and to the radio industry. However, disclosures only have value if they are accessible and available to consumers. In the Review Issues Paper, a range of options for the format and timing of disclosures. The most disturbing of these was the argument that disclosures could take place at the beginning or end of a program. This question will address that argument.

The possibility of airing disclosures at the beginning or end of a program creates the potential for broadcasters to minimise their compliance. The issues paper noted that the practice of airing disclosures at the beginning or end of television programs may be analogous to the situation faced in commercial radio. In evaluating this argument, two points need to be considered, the first is that radio programs are generally longer than television programs, mostly exceeding the two hour mark. The second is that unlike television which is generally viewed on a program-by-program basis, generally involving programs with a structured narrative, radio is generally designed to be absorbed in a piece-by-piece basis, by audiences such as commuters in the instance of "Drive time" programs.

Taking this into account, it would appear that the situation of radio advertising is more analogous to the situation faced by a newspaper. If a newspaper claimed that the burden of placing disclosures nearby the relevant articles or columns were "onerous" and instead placed a bulk disclosure in a lesser-read section such as the sports or classified section, the public would rightly dismiss that objection as an evasive one. An appropriate disclosure standard is one which provides consumers with real disclosure. In the context of radio, that means disclosures adjacent to the paid endorsements, during the body of a radio program.

Conclusion

In summary, this paper submits the following

1. The disclosure standard be maintained with a view to reflecting the concerns of consumers, keeping consumers reasonably informed and creating a culture of compliance.
2. The Ex-post model is the most appropriate regulatory model for the commercial radio industry at the present time. However, this model can only operate effectively in a culture of compliance.
3. Limiting the disclosure standard to Current Affairs alone is inadequate in the current media climate, the disclosure standard should be extended to all types of programming

4. The disclosure standard should apply to all editorial staff and all contracts of endorsement, sponsorship or inducement
5. Disclosures should take the form of an announcement directly adjacent to a paid endorsement

We urge the review to give consideration to these submissions.