



**SUBMISSION BY COMMERCIAL RADIO AUSTRALIA**

**IMPARTIALITY AND COMMERCIAL INFLUENCE IN BROADCAST NEWS**

**ACMA DISCUSSION PAPER DATED JANUARY 2020**

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the ACMA's discussion paper relating to impartiality and commercial influence in broadcast news (**Discussion Paper**).

The commercial radio industry supports the objective of ensuring fair and accurate coverage of matters of public interest, including the disclosure of commercial interests that affect the content of current affairs programs. However, the commercial radio industry firmly believes that it is already over-regulated in this respect and will strongly resist any proposal for further regulation relating to impartiality or disclosure in news and current affairs.

CRA further questions why commercial radio is referenced in the Discussion Paper, when it is already so heavily regulated and when no commercial influence complaints have been made in relation to commercial radio for over 10 years. By contrast, the ABC has been the subject of three quarters of all commercial influence complaints between 2015 to 2019,<sup>1</sup> yet is not included in the Discussion Paper.

**1. Summary**

- The commercial radio industry has onerous disclosure obligations under the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012* (**Disclosure Standard**) and the Commercial Radio Code of Practice (**Code**). Commercial radio is the only medium required to comply with such prescriptive disclosure regulations. There are no similarly onerous requirements imposed upon any other platform.
- To the extent that disclosures are considered necessary to meet the objectives of the *Broadcasting Services Act 1992* (Cth) (**BSA**), broadcasters should be

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<sup>1</sup> The Australian – *ABC eclipses rivals on bias inquiry list* by Leo Shanahan. 24 Feb 2020.

permitted to choose between online or or-air disclosures at their discretion, due to the increasing sophistication of audiences with respect to access to online information. This is particularly so where competitive digital media platforms are not similarly regulated.

- CRA would not support the extension of such onerous disclosure obligations to any other platform. However, the industry believes that the gap between commercial radio and other media should be narrowed, by removing the prescriptive elements currently in the Disclosure Standard and converting it to a more straight forward obligation to disclose the existence of relevant commercial arrangements in a non-burdensome manner.
- The commercial radio industry urges the ACMA to:
  - support a review of the Disclosure Standard, with the objective of simplifying its provisions to make it more user friendly and less burdensome; and
  - place the disclosure obligations within the Code, where they will be easier to find and understand, to the benefit of both listeners and broadcasters.
- Impartiality in commercial radio news content is already addressed as part of the existing regulatory regime – through impartiality provisions introduced into the Code in 2017 – and no further regulation is required.
- The commercial radio industry also seeks the support of the ACMA in simplifying and modernising the obligations imposed on broadcasters under Part 5 Division 5B of the BSA relating to cross-media ownership disclosures.

## **2. Regulatory framework**

Program content on commercial radio industry is governed by the:

- *Commercial Radio Code of Practice*, as required under section 123 of the BSA;
- *Part 5 Division 5B of the BSA*; and
- *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012*.

### **Commercial Radio Code of Practice**

Section 123 of the BSA requires commercial radio broadcasting licensees to develop a Code of Practice applicable to their broadcasting operations.

Relevantly to the Discussion Paper, the Code may relate to:

- *promoting accuracy and fairness in news and current affairs programs; and*
- *preventing the broadcasting of programs that:*
  - *simulate news or events in a way that misleads or alarms the audience.*<sup>2</sup>

The Code covers the treatment of news and current affairs at section 3. There is an additional obligation relating to distinguishability of advertising at section 4.

The key obligations are set out at sections 3.1 and 3.2:

- 3.1 *In broadcasting News Programs, a Licensee must use reasonable efforts to:*
- 3.1.1 *present news accurately and impartially;*
  - 3.1.2 *present news in a way that is not likely to create public panic, or cause serious distress to reasonable listeners, unless it is in the public interest to do so; and*
  - 3.1.3 *distinguish news from comment.*
- 3.2 *In broadcasting Current Affairs Programs, a Licensee must use reasonable efforts to ensure that:*
- 3.2.1 *factual material is reasonably supportable as being accurate;*
  - 3.2.2 *factual material is clearly distinguishable from commentary and analysis; and*
  - 3.2.3 *viewpoints expressed to the Licensee for broadcast are not misrepresented or presented in a misleading manner by giving wrong or improper emphasis on certain material or by editing material out of context.*

The requirement that news must be presented ‘impartially’ was introduced as a result of the 2017 review of the Code, conducted at the request and in conjunction with the ACMA. The ACMA registered the Code in accordance with section 123 and no further regulation upon the commercial radio sector is required.

Section 4 relates to distinguishability of advertising content and provides that:

*Advertisements broadcast by a Licensee must be presented in such a manner that a reasonable listener is able to identify them, at the time of the broadcast, as advertising material.*

This ensures that paid promotional material is clearly distinguishable from other

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<sup>2</sup> BSA, sections 123(2)(d) and (e)(i).

content.

### **Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012**

The Disclosure Standard addresses the disclosure of commercial arrangements between presenters and sponsors where those agreements have the potential to affect the content of current affairs programs.<sup>3</sup> It also requires the disclosure of commercial agreements between licensees and sponsors (where the presenter holds an interest (e.g. a shareholding) in the licensee or a related company).

The Disclosure Standard is an extremely onerous and prescriptive piece of regulation.

In summary:

- it requires on air disclosure during current affairs programs of certain commercial agreements between sponsors and presenters that have the potential to affect the content of those programs<sup>4</sup>;
- it requires on air disclosure during current affairs programs of commercial agreements between licensees and sponsors where a presenter has a financial interest of any size in the radio licensee<sup>5</sup>. This applies, for instance, where presenters hold just one share in the licensee or licensee related company;
- licensees must keep a register of the above commercial agreements and make it accessible to the public<sup>6</sup>;
- it requires on-air disclosure during current affairs programs of the payment of production costs by advertisers and sponsors<sup>7</sup>;
- licensees are prohibited from engaging any presenter unless that presenter has a condition in their engagement contract obliging them to comply with the requirements under section 12 of the Disclosure Standard<sup>8</sup>; and
- the Disclosure Standard sets out detailed, prescriptive and onerous mechanisms for achieving the above.<sup>9</sup>

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<sup>3</sup> Sections 6 and 7(a) Disclosure Standard.

<sup>4</sup> Sections 6, 7(a) Disclosure Standard.

<sup>5</sup> Sections 5, 7 and 8, Disclosure Standard.

<sup>6</sup> Section 7(c), 10 and 11, Disclosure Standard.

<sup>7</sup> Section 7(b) and 9, Disclosure Standard.

<sup>8</sup> Section 15, Disclosure Standard.

<sup>9</sup> Sections 8 to 14, Disclosure Standard.

### **3. The Disclosure Standard should be moved into the Commercial Radio Code of Practice**

Under section 125 of the BSA, the ACMA may impose a Standard where;

*the ACMA is satisfied that there is convincing evidence that a code of practice ... is not operating to provide appropriate community safeguards ... in a particular section of the broadcasting industry.*

The Disclosure Standard has now been in force for 20 years (with relatively minor changes in 2012). There is no longer any convincing evidence to suggest that a Standard, rather than a Code, is necessary to protect the community.

Commercial radio current affairs broadcasters have long implemented policies and procedures to ensure compliance with the Disclosure Standard. These processes are embedded into the daily operational practice of such stations. There is no ongoing risk of systemic breaches, nor is the medium of radio susceptible to subtle commercial visual references such as product placement, as may be found in other media.

#### **No breaches of Disclosure Standard**

Over the last 10 years there have been no breaches of the Disclosure Standard by commercial radio stations.

This is an exceptionally good compliance record, which strongly supports a case for moving the Disclosure Standard into the Code, particularly bearing in mind the test under section 125 of the BSA, which CRA submits is no longer satisfied.

#### **Easier to find and understand disclosure provisions in a Code**

Codification of the disclosure provisions should also improve access and understanding in relation to disclosure.

Currently, many members of the public are unaware of the existence of the Disclosure Standard, as its contents are buried in a legislative instrument and are couched in highly prescriptive, convoluted and formal legal language. Anyone other than a trained lawyer would find the Disclosure Standard difficult to understand and interpret.

By contrast, members of the public are made aware of the existence of the Code, through a weekly on-air announcement. The announcement must be broadcast at different times and in different programs from week to week.<sup>10</sup> The Code itself is written in user friendly language and is subject to a process of public consultation prior to registration.

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<sup>10</sup> Section 1.4, Code.

If the disclosure provisions were made part of the Code, they would be much easier for the public to find. This would necessitate simplification and modernisation of the requirements, making them easier to understand by both stations and listeners.

The review process accompanying the Code also means that adjustments could be made as needed without recourse to complex administrative amendment processes.

**The commercial radio industry strongly submits that elements of the Disclosure Standard, modernised and streamlined to reflect measures that are appropriate for today's sophisticated audiences, should be transferred to the Code.**

#### **4. Simplification of the Disclosure Standard**

The commercial radio industry urges the ACMA to support a review of the Disclosure Standard, with the objective of simplifying and modernising its provisions. This should be accompanied by a move to the Code.

Stylistically, the language and presentation of the Disclosure Standard should be changed, to make it more user friendly and engaging for stations, presenters and the general public.

More substantively, a number of the more onerous and prescriptive elements should be removed to create a streamlined and user friendly Code provision that is appropriate for today's sophisticated audiences.

Examples of areas that might be modernised are below:

##### **Timing of on-air disclosure announcements**

- On-air disclosure announcements must currently be broadcast "at the time of and as part of" the broadcast of material caught by the Disclosure Standard.<sup>11</sup>
- This is too prescriptive and should be changed to permit disclosure on the station website.

##### **Excessively broad scope**

- The wording in the Disclosure Standard is excessively broad. This makes it difficult for presenters to interpret, particularly when disclosure is required immediately and on air.

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<sup>11</sup>Section 8(2) Disclosure Standard. Disclosure announcements must be made in relation to material that (i) promotes the name, products or services of a sponsor; (ii) includes an interview with an agent, employee or officer of a sponsor in relation to any matter concerning the sponsor, its products, services or interests; (iii) is requested by the sponsor based on or similar to material provided by a sponsor; or (iv) directly promotes an issue directly favourable to the sponsor – section 8(1), *Disclosure Standard*.

- In particular, section 8(1)(iv) requires disclosure announcements during broadcasts of any material that *'directly promotes any issue which is directly favourable to a sponsor'*. This potentially covers a wide range of comments and is difficult to interpret, particularly at the fast pace of talk back radio.
- The fast, live format of talk back radio means that it is often very difficult to make a snap judgement as to whether material will be considered to be promotional, particularly in circumstances where the material does not directly mention a sponsor. This may lead to inadvertent breaches of the Disclosure Standard.

#### **Inclusion of agreements between licensees and sponsors is unnecessary**

- The Disclosure Standard was amended in 2012 to include agreements between sponsors and licensees, where the presenter has a direct or indirect interest in the licensee or a related body corporate.<sup>12</sup> This is unnecessary and should be removed.

#### **Register of commercial agreements imposes an unreasonable burden**

- The Disclosure Standard obliges commercial radio stations to keep a register of current commercial agreements between sponsors and presenters of current affairs programs. This register must be made publicly available on the licensee's website via the homepage.<sup>13</sup>
- There is no need for the public to be made aware of the detail – usually confidential - of the presenter commercial arrangement. The only information to which the public should be party is the fact that a commercial arrangement exists.

#### **Provision of copies of commercial agreements is unreasonable**

- Presenters are further required to provide the radio station with a physical copy of all existing commercial agreements within 7 days of each agreement being entered into.<sup>14</sup>
- The basis for this requirement is unclear. The presenter's remuneration and the other terms of the contract should not be relevant.

### **5. Cross-Media Disclosure Requirements under Part 5 Div 5B of the BSA**

Part 5 Div 5B of the BSA requires commercial radio licensees owned by a group that also owns newspapers or television interests, regardless of whether those newspaper or television interests are operating in the same market, to make an on-air disclosure. These disclosures must be broadcast on-air.

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<sup>12</sup> Section 5, Disclosure Standard.

<sup>13</sup> Sections 10 and 11, Disclosure Standard.

<sup>14</sup> Section 12, Disclosure Standard.

This requirement is onerous, intrusive and outdated. While an on-air disclosure may have been appropriate when the legislation was incepted in 2006<sup>15</sup>, a more appropriate method of disclosure would be on a broadcaster's website given that audiences now have widespread access to the internet.

## **6. Recommendations**

### ***Recommendation 1 – program content on radio should not be subject to further regulation concerning impartiality***

Impartiality in commercial radio news content is already addressed as part of the existing regulatory regime – through impartiality provisions introduced into the Code in 2017 – and no further regulation is required.

### ***Recommendation 2: Move the Disclosure Standard into the Code***

- The disclosure obligations should be placed within the Code, where they will be easier to find and understand, to the benefit of both listeners and broadcasters.

### ***Recommendation 3: Simplify and modernise the Disclosure Standard***

- The generally accepted practices of commercial radio broadcasters have moved a long way since the introduction of the Disclosure Standard twenty years ago. The principles enshrined in the Standard are now commonly accepted and universally applied in the industry.
- As a result, the heavy-handed approach of the Disclosure Standard is no longer required and it should be reduced to just a small number of clauses. Those clauses would simply state the general principles and require commercial radio broadcasters to take whatever steps are appropriate to draw to the attention of listeners the existence of commercial arrangements entered into by current affairs presenters, where such arrangement may affect the presenter's impartiality.
- The Disclosure Standard should be generally simplified – as outlined above – so that radio stations are able to make disclosure in the most appropriate way at their discretion – whether that is regular on-air or website disclosure - without having to get caught up in detailed and prescriptive requirements.

### ***Recommendation 4: Permit online disclosure***

- Commercial radio licensees should be permitted to communicate online disclosure announcements, rather than announcements made at the time of the broadcast of the relevant material.
- Such an approach would enable the *licensee* to control the making of required disclosures, rather than relying on the presenter to make them while they are

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<sup>15</sup> *Broadcasting Services Amendment (Media Ownership) Act 2006 (Cth)*

broadcasting live radio. It would also remove the difficulties of identifying relevant material and interpreting section 8 of the Disclosure Standard in a split second on-air.

- Listeners are referred to the station website by presenters multiple times in each program, so are extremely familiar with the station website as a point of reference and information. This contrasts with listeners' limited use of station websites (if such websites even existed) 20 years ago when the Disclosure Standard was introduced.

***Recommendation 5: permit cross media disclosures to be made on the broadcaster's website***

- Cross media disclosures under Part 5 Div 5B of the BSA should be permitted to be made on the broadcaster's website.
- Listeners are referred to the station website by presenters multiple times in each program, so are extremely familiar with the station website as a point of reference and information.

Please contact Joan Warner, on [REDACTED], for clarification on any aspect of this submission.

Commercial Radio Australia