

## Investigation Report no. BI-609

| Summary                     |   |
|-----------------------------|---|
| <b>Licensee</b>             | Multicultural Radio & TV Association of WA Inc  |
| <b>Station</b>              | 6EBA  |
| <b>Type of service</b>      | Community Broadcasting  |
| <b>Relevant legislation</b> | <p><i>Broadcasting Services Act 1992</i> (BSA)</p> <ul style="list-style-type: none"><li>&gt; Sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA [encourage community participation in providing its service]</li><li>&gt; Sub-paragraph 9(2)(c)(ii) of Schedule 2 to the BSA [encourage community participation in the selection and provision of programs]</li></ul> |
| <b>Finding</b>              | <p>The Licensee:</p> <ul style="list-style-type: none"><li>&gt; Did not breach the licence condition imposed by sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA</li><li>&gt; Did not breach the licence condition imposed by sub-paragraph 9(2)(c)(ii) of Schedule 2 to the BSA.</li></ul>  |

## Background

Between 6 January 2021 and 12 May 2021, the Australian Communications and Media Authority (**ACMA**) received four complaints regarding the Multicultural Radio & TV Association of WA Inc (**Licensee**).

The complaints raised a number of allegations, some of which suggest that the Licensee is failing to comply with licence conditions obligations imposed on community broadcasting licensees in the *Broadcasting Services Act 1992* (**BSA**) to encourage participation in the operations and programming of the service operated by the Licensee.

On 19 July 2021, the ACMA commenced an investigation under section 170 of the BSA into the Licensee's compliance with the licence conditions at paragraph 9(2)(c) of Schedule 2 to the BSA (encourage community participation in operations and programming).

## The Licensee

The Licensee has held a long-term community radio broadcasting licence to represent the 'Ethnic – General' community interest in the Perth RA1 licence area since 1990.

The service operated by the Licensee is '95.3 FM' (**6EBA**).

The expiry date of the Licensee's current licence is 10 December 2025.

## Assessment and submissions

This investigation has considered the:

- > the complaint received by the ACMA on 6 January 2021 (**the First Complaint**).
  - > the complaint received by the ACMA on 4 February 2021 (**the Second Complaint**).
  - > the complaint received by the ACMA on 26 February 2021 (**the Third Complaint**).
  - > the complaint received by the ACMA on 12 May 2021 (**the Fourth Complaint**).
- (collectively referred to as '**the Complaints**').
- > written submissions and various documents provided by the Licensee to the ACMA on 18 August 2021 (**the Submissions**).
  - > the community broadcasting licence renewal application lodged by the Licensee on 31 March 2020 (**the Licence Renewal Application**)

## **Issue 1: Is the Licensee encouraging community participation in operations?**

### **Relevant licence condition**

#### **Schedule 2**

#### **Part 5 – Community broadcasting licences**

#### **9 Conditions applicable to services provided under community broadcasting licences**

(2) Each community broadcasting licence is also subject to the following conditions:

[...]

(c) the licensee will encourage members of the community that it serves to participate in:

(i) the operations of the licensee in providing the service or services [...]

### **Finding**

The Licensee has not breached sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA.

### **Reasons**

The Licensee is required under the BSA to encourage community participation in the operations of 6EBA. There are a number of allegations regarding the Licensee raised in the Complaints, some of which suggest that the Licensee is failing to encourage community participation in operations of 6EBA.

Allegations which have been raised in the Complaints which concern sub-paragraph 9(2)(c)(i) of Schedule 2 to the BSA include:

- > The Licensee does not have a functioning council.
- > Operational decisions are made exclusively by the chairperson and station manager, and accordingly not all council members are being consulted about station matters.

The ACMA's [Community Broadcasting Participation Guidelines 2010 \(the Guidelines\)](#) note that community participation in a service requires the involvement of, or contribution by, a group of individuals who share a common interest in a licensee's community interest and who live or work within a licence area.<sup>1</sup> Accordingly, the ACMA expects licensees to ensure that decisions are being made by a group of members, as opposed to one or two people.

The Guidelines note that licensees encourage community participation in the operations of its services by having:

- > An effective and transparent committee structure.
- > Sound corporate governance practices which:
  - enable communities to have adequate input into the decision-making that affects their services.
  - can include measures to prevent the concentration of control in the hands of a few individuals (for example, using a range of committees, limiting the number of proxy votes that a member can exercise and having a limited

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<sup>1</sup> See ACMA's [Community Broadcasting Participation Guidelines 2010](#), page 7.

renewable term for individuals holding positions on committees or the board).<sup>2</sup>

### Effective and transparent committee structure

The Complaints suggest that the Licensee's council (**Council**) is not functioning.

Clause 11.1 of the Licensee's constitution requires that the Council consist of four office bearers (Chairperson, Vice-Chairperson, Treasurer, Secretary) and no less than two, but no more than five, 'other persons' (e.g. councillor).

The Submissions note that the current Council consists of the following positions:

| <b>Council role</b> | <b>Details of tenure</b>   |
|---------------------|--|
| Chairperson         | Elected at 2015, 2017 and 2019 AGMs.   |
| Vice-Chairperson    | Elected at 2017 and 2019 AGMs.   |
| Treasurer (Acting)  | Elected as Councillor at 2019 AGM.<br>Co-opted as Treasurer when position became vacant. |
| Secretary (Acting)  | Elected as Councillor at 2019 AGM.<br>Co-opted as Secretary when position became vacant. |
| Councillor          | Co-opted by council on 3 March 2021.   |
| Councillor          | Co-opted by council on 3 March 2021.   |
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The current composition of the Council is compliant with the requirements under the Licensee's constitution and is appropriate for a community broadcasting licensee.

The Submissions included copies of the Council meeting minutes from August 2020 – November 2020 and March 2021. The minutes indicate that:

- > The Council has been meeting on a regular basis.
- > All four office bearers, and at least two councillors, have been in attendance at Council meetings.
- > Significant matters relevant to the Licensee's operation are discussed by the Council.

This information suggests that the Council is functional.

The ACMA further notes that Council meeting minutes from 3 March 2021 indicate that two members from ethnic broadcasting member groups of 6EBA were co-opted to the council following a vote of 4 in favour and 2 opposed, indicating that the Licensee does not discourage its members seeking council positions. The Licensee's constitution affords the council powers to co-opt members to various roles on the council.

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<sup>2</sup> See ACMA's [Community Broadcasting Participation Guidelines 2010](#), page 9.

The Submissions noted that there had been changes to the council. The Complaints raised concerns regarding some of the changes.

It is not the ACMA's role to investigate the outcome of individual internal disputes or to act as a mediator or arbitrator in conflicts between parties. If parties are unable to resolve a dispute through the means afforded in the Licensee's constitution or the Licensee's internal conflict policy, each respective party may wish to seek independent legal advice. The ACMA notes that the disputes amongst the Council do not appear to have prevented the Licensee from ensuring that the Council remains operational in accordance with the Licensee's constitution.

Based on the material before the ACMA, the Council appears to operate in an effective and transparent manner.

#### Sound corporate governance practice

The Complaints suggest that decisions about operational matters are being made exclusively by the chairperson and station manager, and accordingly not all Council members are being consulted about station matters.

As noted in Clause 11 of the Licensee's constitution, the council is responsible for managing the affairs of the Licensee. Accordingly, the ACMA would expect that significant decisions regarding operations would come before the council and all of its members.

An operational management committee is an important means of ensuring that decision making is not concentrated in the hands of a few individuals, and accordingly represents an important way for a licensee to comply with the BSA licence condition to encourage participation in operations.

In assessing whether the Licensee is enabling its community to have adequate input into the decision-making of the service, the ACMA has reviewed council meeting minutes that were provided in the Submissions. The council meeting minutes indicate that:

- > A variety of matters are discussed at council meetings where a number of council members are in attendance.
- > Motions are raised and council members are afforded the opportunity to move, second or oppose a motion.

From the ACMA's review of the council minutes, it is not apparent that the chairperson or the station manager are exclusively making decisions regarding 6EBA operations. Furthermore, the minutes indicate that the manner in which the council functions prevents a concentration of control of 6EBA operations.

The ACMA expects that a station manager make decisions regarding day to day operations of a licensee's service. In respect of the Licensee's operations, council minutes indicate that the station manager briefs the council by way of presenting a 'Station Manager's Report' at council meetings.

Based on the material before the ACMA, the Licensee appears to have sound corporate governance practices.

## **Conclusion**

The Licensee appears to have a functioning council that is overseeing decision making regarding 6EBA operations.

There is no evidence to suggest that the chair and station manager are the exclusive decision makers regarding 6EBA operations.

Based on the above reasons, the ACMA is of the view that the Licensee is not in breach of sub-paragraph 9(2)(c)(i) of the BSA.

## **Issue 2: Is the licensee encouraging community participation in the selection and provision of programs?**

### **Relevant licence condition**

#### **Schedule 2**

#### **Part 5 – Community broadcasting licences**

(2) Each community broadcasting licence is also subject to the following conditions:

[...]

(c) the licensee will encourage members of the community that it serves to participate in:

[...]

(ii) the selection and provision of programs under the licence

### **Finding**

The Licensee has not breached sub-paragraph 9(2)(c)(ii) of Schedule 2 to the BSA.

### **Reasons**

The Licensee is required under the BSA to encourage community participation in the selection and provision of programs broadcast on 6EBA.

Allegations raised in the Complaints suggest that the Licensee is failing to encourage community participation in the selection and provision of programs on 6EBA by way of:

- > Programming decisions being made arbitrarily by the station manager.
- > The number of presenters and members at 6EBA is decreasing.

The Guidelines outline various ways in which a licensee can encourage community participation in the selection and provision of programs, and state that:

*Licensees encourage community participation in program selection by providing opportunities for their communities to have a say in programming decisions.*

*Licensees do not encourage community participation in program selection where all programming decisions are concentrated in the hands of one individual (station manager or program coordinator, for example) or a small group.*

*A common way to encourage collective decision-making about programming is for licensees to establish a program committee.*

*Licensees need to give some thought to the membership of their program committee. Program committee membership should not be unreasonably restricted to certain individuals, such as board members.<sup>3</sup>*

### Programming decisions

The Complaints suggest that programming decisions (such as the cancelling of programs and changing of the programming schedule) are being made arbitrarily by the 6EBA station manager.

As noted above, and as advised to the Licensee and the complainants, the ACMA does not investigate the outcome of individual internal disputes or to act as a mediator or arbitrator in conflicts between parties. Matters such as concerns regarding programming decision making should be attempted to be resolved through the means afforded in the Licensee's constitution or the Licensee's internal conflict policy. If parties are unable to resolve a dispute through the means afforded in the Licensee's constitution or the Licensee's internal conflict policy, each respective party may wish to seek independent legal advice.

In respect of concerns that were raised in the Complaints about programming decisions being made arbitrarily by the 6EBA station manager, the ACMA has reviewed written correspondence between the Licensee and the complainants and notes that the Licensee has provided reasons for any changes to programs that were presented by the complainants. The written correspondence also indicates that the Licensee has afforded the complainants the opportunity to provide pre-recorded copies of programs in the instance where the party was unable to broadcast live, and that the complainants were afforded the opportunity to discuss any dispute regarding a change in the programming decisions with either the Chairperson, the 6EBA council or the 6EBA dispute and disciplinary sub-committee.

The ACMA is of the view that the Licensee has implemented appropriate measures to continue to air programs of its broadcasters during any closure of the studio facilities. The Licensee provided a copy of an email sent from 6EBA to its broadcasters on 29 June 2021 which notes that:

*As you are aware, as of midnight, we found ourselves in lockdown again. This means that no broadcaster will be permitted to enter the station... All programs must be pre-recorded and sent via email (please use the WeTransfer website)... Please don't leave it to the last minute to send your program...*

The Licensee acknowledged that one of its members had difficulties in providing its pre-recorded program.

The information that has been provided to the ACMA by the Licensee and in the Complaints does not suggest that programming decisions are being made arbitrarily by the 6EBA station manager.

### *Decreasing presenter and member numbers at 6EBA*

One of the Complaints suggested that the Licensee's number of presenters and members has been decreasing. This raises concerns that the Licensee may not be adequately encouraging the community in the licence area to participate in the provision of programs on 6EBA.

The ACMA notes that the 6EBA website provides details about applying for membership and presenting programs on 6EBA.

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<sup>3</sup> ACMA's [Community Broadcasting Participation Guidelines 2010](#), page 18.

The Licensee's Submissions included the following:

- > The COVID-19 pandemic had impacted the ability of 6EBA to attract new members as well as the ability of potential new members to commence a membership and broadcasting.
- > The Licensee has a partnership with the WA Office of Multicultural Interests (OMI), which it believes will attract new members and volunteers.
- > Despite the decrease in members, the station is continuing to do well.
- > The member numbers of an ethnic radio station fluctuate.

From the information before the ACMA, it appears that the Licensee is encouraging participation in the programming of its service. However, the ACMA notes that the Licensee should pay close attention to the level of community engagement in the operations and programming of the station.

## **Conclusion**

The Licensee appears to have measures in place which encourage its members to participate in the selection and provision of programs on 6EBA.

Based on the above reasons, the ACMA is of the view that the Licensee is not in breach of sub-paragraph 9(2)(c)(i)(ii) of the BSA.