

Investigation Report no. BI-581

Summary	
Licensee	Tamworth Broadcasting Society Inc
Station	2YOU
Type of service	Community Broadcasting
Relevant legislation	<i>Broadcasting Services Act 1992</i> (BSA) <ul style="list-style-type: none">> Paragraph 9(2)(b) of Schedule 2 to the BSA.> Paragraph 9(2)(c) of Schedule 2 of the BSA.
Findings	The licensee: <ul style="list-style-type: none">> Breached paragraph 9(2)(b) of Schedule 2 to the BSA.> Breached paragraph 9(2)(c)(i) of Schedule 2 to the BSA.> Breached paragraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Background

On 16 November 2020 the Australian Communications and Media Authority (**ACMA**) received a complaint regarding Tamworth Broadcasting Society Inc (**the licensee**).

The complaint raises allegations which suggest that the licensee is failing to comply with licence conditions in the *Broadcasting Services Act 1992* (**BSA**). Specific allegations made by the complainant about the licensee include that:

- It is serving a narrow community interest (the over 45 group) rather than serving the general community, which would include programs catering to ethnic groups, the youth population, people in the community with disabilities, different genres of music and Indigenous programming (noting that 10% of the local community identify as Indigenous).
- It uses paid employees in the station's operations, instead of volunteers, including paying presenters to present prime time slots at the expense of long-term volunteer presenters.
- While at AGM all positions are meant to be declared vacant before voting, not all positions have been made available for nomination in recent years.

On 1 February 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)(b) of Schedule 2 to the BSA.
- > Paragraph 9(2)(c) of Schedule 2 of the BSA.

The licensee

The licensee has held a long-term community radio broadcasting licence to represent the general community interest in the Tamworth RA2 licence area since 1982.

Assessment and submissions

This investigation has considered:

- > The complaint received by the ACMA on 16 November 2020 (**the Complaint**).
- > A written submission received from the licensee on 05 May 2021 (**the first submission**).
- > A 10 May 2019 Radioinfo article, provided by the complainant.
- > The licensee's 2022 licence renewal application dated 27 September 2021 (**the renewal application**)
- > The licensee's website, accessed in May 2022.
- > The licensee's submission received by the ACMA on 1 June 2022 (**the second submission**)
- > The licensee's submission received by the ACMA on 14 June 2022 (**the third submission**)
- > The licensee's 2017 renewal application dated 4 July 2016 (**the 2017 renewal application**)

Other sources are identified in this report where relevant.

Issue 1: Is the licensee continuing to represent the community interest it represented at the time when the licence was renewed?

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:

[...]

(b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated or was last renewed [...]

Finding

The ACMA finds that the licensee breached paragraph 9(2)(b) of Schedule 2 to the BSA.

Reasons

At renewal on 23 June 2017, the licensee represented the ‘general geographic area’ community interest. The investigation commenced on 1 February 2021. Accordingly, this is the ‘last renewal’ at the time this investigation commenced on 1 February 2021.

The [ACMA Community Broadcasting Participation Guidelines](#) (the participation guidelines) state that if the licensee is representing the general community interest, the focus could be geographically-based around the interests of the entire community of the geographic area of the licence area or could focus on several key needs (for example, ethnic, Indigenous and youth, or some other combination) that are reflective of the needs of the community in a licence area. The guidelines also note that a licensee can demonstrate a commitment to representing its community interest by broadcasting a range of programming that caters for the community’s needs.

The complainant alleges that the licensee was not representing the general community interest of the local area, focussing on the narrower community interest of the 45 to 65 year old demographic. The complainant states that a service representing the general community would include programs catering to ethnic groups, the youth population, people in the community with disabilities, different genres of music and Indigenous programming (noting that 10% of the local community identify as Indigenous).

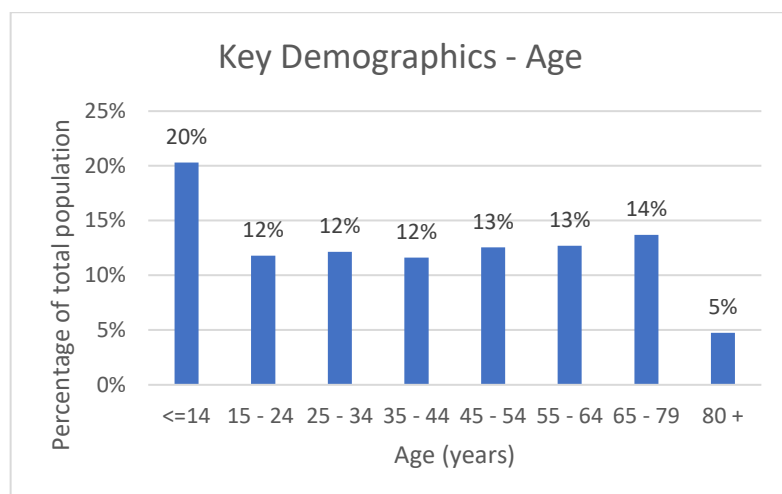
The licensee’s first submission provides evidence that it identifies the needs of the community via surveys, audience feedback, analysis of census data and engagement with local community organisations.

The first submission also includes promotional material which states “Reach the region’s 45 plus market”. The promotional material further describes the station as having a “45-65 years demographic contemporary format”, with “an exciting format from 60s, 70s, 80s and the best of country”. The licensee’s second submission asserts that this material was designed for sponsors, rather than potential listeners. The licensee’s second submission says that ‘In actuality, 2YOU reaches a significant proportion of the 15 to 65 plus demographic.’

A 2019 Radioinfo interview with the CEO of the service reported that the introduction of a music format targeting the 45 to 65 year old audience was one of the changes made to the station in order to strengthen its financial position, as the programming on the service had

been “too diversified” for a regional area. The licensee’s second submission states that this comment referred to the fact that two ethnic programs had been cancelled because the presenters had reported a lack of interest from the communities.

The following table, based on 2016 Census information from the Tamworth RA2 licence area, shows that just over half the population (56%) in the licence area are under the age of 45, while 26 percent of the population in the licence area fall into the 45-65 age group.



The 2016 Census information also shows that Tamworth RA2 has an Indigenous population of 10.72% (compared to 2.2% Australia wide). The majority of the licence area (88.88%) speak only English, with all other languages making up less than 1% each.

The program schedule provided by the licensee is high level, showing broad programming blocks such as a breakfast program, a drive program, and an evening program. With regards to catering to the younger audience, the licensee’s second submission notes that within each program hour there is a range of music, interviews and segments of interest to younger audience. The licensee’s second submission also notes that the service provides 5 hours of programming each weekday that is aimed at the youth audience and hosted by a 25-year-old presenter. The licensee reports that this program includes interviews with popular country music artists and also includes young guest presenters.

In relation to meeting the needs of the Indigenous community, the second submission states that the licensee works with a local Aboriginal Council to train young Aboriginal presenters in producing podcasts (a format that the licensee advised was requested by the Aboriginal Council) which will be promoted by the service. This partnership is mentioned in a press release with the 2022 NAIDOC committee provided in the second submission, which notes the radio training program that 2YOU has set up with a local Aboriginal project officer.

The licensee’s second submission also states that it caters to the Indigenous community by being a major sponsor for local NAIDOC week events, broadcasting on-air interviews with members of the Indigenous community and by cross promoting Indigenous community events. The submission provided evidence of this in a press release with the Tamworth NAIDOC committee, announcing 2YOU as the main sponsor of its events from 3 to 10 July 2022, which will include coverage and promotion of the events. Social media posts viewed by the ACMA also provide evidence of 2YOU support and coverage of NAIDOC week 2022, and acknowledgement of this by the Tamworth NAIDOC committee.

The second submission also included a series of photos taken from 2YOU’s social media, which show 2YOU conducting a live broadcast from the Gather and Trade Aboriginal Artisans Market in April 2022, including interviews with local Indigenous people and politicians.

The second submission also notes that 2YOU’s morning program provides access and support to a range of community groups including cultural and Indigenous activities. It also included a USB drive containing audio evidence of 2YOU news coverage that represented Indigenous interests – one story from 6 May 2022 about the Story Place program aimed at

preserving cultural knowledge in regional areas and one story from 11 May 2022 about issues with a funeral fund that had targeted the Indigenous community in Tamworth.

Conclusion

The second submission provides encouraging evidence of recent programming that caters to elements of the community of Tamworth RA2, including the Indigenous community. However, it does not provide convincing evidence that this was the case at the time of the complaint and commencement of the ACMA's investigation. It also does not provide convincing evidence about which of 2YOU's descriptions of the demographic characteristics of its target audience should be preferred. As a result, it has not demonstrated that it broadcast a range of programming that adequately catered to the community's needs.

Issue 2: 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 ACMA finds that the licensee has breached subparagraph 9(2)(c)(i) of Schedule 2 to the BSA.

Reasons

The participation guidelines state that licensees encourage community participation in their operations when they have:

- sound corporate governance practices,
- value and promote membership and volunteering, and
- have an effective and transparent committee structure.

Corporate governance

The participation guidelines state that good corporate governance includes 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 renewable term for individuals holding positions on committees or the board).

The complainant asserts that at recent AGMs not all positions had been made available for election, despite the fact that all positions are meant to be declared vacant at each AGM.

The licensee's Articles of Association require that the Board of Directors be made up of four office holders (President, Vice President, Secretary and Treasurer) and up to six ordinary members. The Board must be elected annually at the AGM, and Board members are allowed to renominate for positions, although the President may only serve three consecutive terms. There is a quorum of 10 members for the annual AGM.

The Articles of Association generally contain membership provisions that are appropriate for a community broadcasting licensee. require that members must be nominated by an existing member of the service. This requirement may create a barrier to wider community participation in the service, particularly in the context of the low membership numbers discussed below. The licensee's second submission acknowledges that this provision may be 'a bit clunky' however noted that the intention is for current members to support a new member in the spirit of the association, rather than intending to require them to be nominated. The licensee acknowledges that this provision may need to be corrected.

The minutes of the AGMs provided in the licensee's first submission indicate that the quorum was met at the 2020 AGM, with 12 members in attendance. This number included four paid staff and five Board members. This contributes to an overall concern that participation in operations of the service is limited to a small group of people, and as a result, there is concentration of control in the hands of a few individuals.

The minutes provided by the licensee in its first submission and third submission indicate that it did not operate in accordance with its Articles of Association, which requires that Board members are elected annually. The minutes show that;

- In 2018 three Board positions were not open for election.
- In 2019 two Board positions were not open for election.
- In 2020 three Board positions were not open for election.

Further, the first submission provided by the licensee, along with the station newsletters available on the licensee's website¹ indicates that the position of president was occupied by the same person in 2018, 2019, 2020, and 2021. This is not consistent with the licensee's Articles of Association which state that a person can only serve as President for a maximum of three consecutive years. As noted above, the position of President for 2021 was not open for election in the 2020 AGM. Again, this contributes to the overall concern that the service is limiting participation in its operations, rather than encouraging community participation.

In its second submission, the licensee provided evidence that at its 2017 AGM, a motion was passed to amend the Articles of Association to remove the restriction on the President serving no more than three terms and to make the term of other Board positions two years, so that only half the Board would be re-elected at each AGM. The licensee notes however, that the amended Articles of Association were not registered with NSW Fair Trading. The second submission also notes that Covid 19 and natural disasters in Tamworth have made it difficult to engage people in volunteer work, including occupying corporate governance positions.

As the amended Articles of Association were not registered with NSW Fair Trading, the licensee must operate according to the Articles of Association that are registered. However, it should be noted that regardless of registration, the licensee was also not operating in accordance with the amended provisions, as some positions were not open for election for three years in a row, in 2018, 2019 and 2020.

Notwithstanding difficulties relating to the Tamworth community, the failure to operate within the terms of its Articles of Association with regards to the opening of Board positions for election raises significant concerns that the licensee is not encouraging participation in key roles of the service.

In summary, several aspects of the licensee's corporate governance are less than sound and indicate that participation in the operations of the service is limited to a small group of people, rather than encouraging participation from members of the wider community. This includes Articles of Association which place a restriction on membership by requiring that new

¹ [Document Centre | 88.9 FM Tamworth \(889fmtamworth.com.au\)](#) Accessed 26 April 2022

members are nominated by existing members, and the evidence that Board positions are not being elected at AGMs as required by the licensee's Articles of Association.

Membership and volunteering

The participation guidelines list a number of ways in which a licensee can promote the benefits of membership to the community, including on air-announcements, via the licensee's website or social media pages, and membership drives. The licensee's 2022 licence renewal application reports that the licensee has information about membership on its website, makes on air announcements promoting membership and conducts membership events. The first submission also provides evidence that the station hosts annual membership nights, which offer entertainment, information and the opportunity to sign up for membership.

Despite this, membership numbers are low. There are currently 56 members, with the licensee noting in its first submission that membership numbers have been affected by Covid. These numbers are significantly lower than the average of 115 for a regional community broadcaster.²

The ACMA raised concerns about the licensee's membership numbers in the context of its 2017 renewal, noting that its 62 members represented nearly a 70 percent reduction since 2011.

There are some inconsistencies in the first submission regarding the exact number of volunteers involved in the service. Based on the organisation structure provided in the first submission, there are 17 volunteers, including three presenters, five members of the program committee and the five Board members. However, based on information provided elsewhere in the first submission, there are only 13 volunteers involved in the service as three members of the program committee are paid staff, one member of the program committee is also a Board member and there are only two volunteer presenters. With regards to the distinction between paid staff and volunteers, the second submission notes that most of the service's volunteers are casual retired personnel, who receive payments, but volunteer for more hours than they are paid for. The ACMA is of the view, for the purposes of this investigation report, that the term volunteer refers to someone who performs a service for no financial gain³. Therefore, if the casual retired personnel are receiving payment for part of their work for the organisation, they cannot be considered to be volunteers.

Regardless of these inconsistencies, the service has significantly fewer volunteers than the average of 40 for regional broadcasters⁴. In its 2017 renewal application, the licensee reported having 19 volunteers involved in the service, down from 23 the year before. At that time the ACMA expressed concerns about these numbers, noting that there had been a decline of nearly 50 percent since 2011.

The second submission notes that the circumstances in Tamworth in recent years have made it difficult to attract volunteers, and that following Covid 19, it is now running events again to attract new members and volunteers. The second submission also notes that the licensee has a range of volunteers that assist with major events, including technicians and helpers.

While the licensee has an appropriate volunteer policy and has a volunteer expression of interest form available on the station website, it appears that there are minimal opportunities for volunteers to participate in the operations of the service, with the majority of roles in the organisation performed by paid staff. This includes the positions of CEO, program manager, five of the seven presenters, and the sales and administration roles. The functions of schedule coordination, news editor, production, and the majority of positions in the program and membership committees are also performed by paid employees.

While the Board is comprised wholly of volunteers, the evidence from the AGM minutes provided by the licensee suggests that these roles are not regularly made available to the

² *Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year* (Oct 2017), p 20.

³ [Macquarie Dictionary](#) Online definition of volunteer - "someone who enters into any service of their own free will, or who offers to perform a service or undertaking for no financial gain"

⁴ *Community Broadcasting Station Sector Financial Health of Community Radio Survey for the 2015-2016 Financial Year* (Oct 2017), p 34.

licensee's full membership base, or the wider community (this is considered in more detail under 'corporate governance', above). Outside of the Board, most of the decision-making roles within the organisation are occupied by paid staff, which suggests that opportunities for volunteers to contribute to making decisions about the service are limited.

In summary, while the licensee does promote membership to the community, its membership numbers and volunteer numbers are low. Notwithstanding the licensee's submissions that post Covid 19 it is working to build up member and volunteer numbers, the lack of involvement of members and volunteers in key roles in the service indicates that these efforts are not encouraging participation in its service.

Committees

The participation guidelines state that committees are an important way in which members and other people in the community can have a say in the running of the service.

The first submission provided by the licensee indicates that the licensee has a membership committee and a program committee, which is discussed in the context of Issue 3 below.

The membership committee is comprised of two paid staff members and one volunteer. The minutes of the membership committee meeting in January 2021 indicate that the meeting was focussed on the organisation of member nights in the coming year, demonstrating that the licensee has strategies to engage members in the service.

However, it is noted that the ideas from the meeting will be discussed with the Board and staff to determine which are suitable, which is another indicator that the decision making within the service is confined to a small group of people - notably paid staff and the Board members.

Conclusion

The licensee has demonstrated it takes steps to encourage members of the community to become members of the service. However, the ACMA has identified concerns with the licensee's corporate governance practices with regards to the opportunity for participation in key roles in the service, concerns with membership and volunteer numbers, and concerns that participation in the licensee's management committees appear to be dominated by a small group of individuals, many of whom are paid staff.

As the ACMA has identified concerns with the soundness of the licensee's corporate governance processes and the effectiveness and transparency of the committee structure, it therefore finds that the licensee has breached subparagraph 9(2)(c)(i) of Schedule 2 to the BSA by not encouraging participation in the operations of its service.

Issue 3: 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 ACMA finds that the licensee breached subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

Reasons

Participation in programming has two elements – participation in program selection and participation in program provision. The participation guidelines note that licensees that successfully encourage community participation in program selection are more likely to have diverse program schedules.

Program selection

The participation guidelines state that:

- licensees should have mechanisms for the community to make program requests and involve members in the selection of programs.
- 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.

The licensee's 2022 renewal application notes that members may offer written submissions for program ideas to its program committee. The licensee's website also has a program proposal form, for members of the public to make program suggestions.

However, the licensee reports receiving only one new program proposal in the last six months, and this proposal appears to be to temporarily amend the program schedule for the service for the 10 days of the Tamworth Country Music Festival. Based on the names provided in the proposed schedule, it appears that the plan was for the programs to be presented by the existing presenters. With regards to the coverage of the Tamworth Music Festival, the second submission asserts that given the significance of the event, experienced presenters are required. It also notes that the service uses volunteers during the festival to conduct interviews and assist presenters.

Another program proposal is mentioned in a memo to the licensee's CEO from the programming committee in April 2021, however the proposal was for a program which would be presented by a Board member and produced by one of the existing paid presenters.

The first submission from the licensee also includes examples of feedback that the licensee had received via its online form. One enquiry was from a person who asked if the station took submissions from unsigned artists and offered to provide some recordings. There was no record of how the licensee responded to this proposal.

The second submission states that the service receives as many as 100 proposals each month. However, the evidence provided indicates that these relate to program segments such as song releases and potential interviews with country musicians, rather than proposals for new programs.

As noted above, the licensee has a program committee. In its 2022 renewal application, the licensee reported that members are appointed to the program committee for a one-year term. There is some uncertainty regarding the exact composition of the program committee:

- The organisation structure provided by the licensee in its first submission lists five members, including the paid program manager, two paid presenters, a Board member and a volunteer.
- The February 2021 program committee meeting was attended by 6 2YOU members and 2 guests from the country music industry. The members in attendance included two paid presenters, a Board member, a volunteer presenter and two other volunteers.

- The March 2021 program committee meeting was attended by 11 2YOU members, including the paid CEO, the paid program manager, 5 paid presenters, the paid news editor, a paid sales executive, a volunteer presenter and another volunteer.

The licensee's program committee appears to be comprised mainly of paid staff, including the presenters. This indicates that decisions about programming are concentrated in the hands of a small group of individuals, with limited opportunity for members and the wider community to have meaningful input into the programming decisions for the service.

The dominance of paid presenters on the program committee also presents an opportunity for potential conflict of interest around scheduling decisions, potentially favouring the existing presenters, rather than identifying new opportunities for community participation.

The role of the program committee as documented in the first submission from the licensee includes regularly reviewing the program grid. However, the minutes and discussion points from the March program committee meeting indicate that the scope of the programming committee is more narrowly focused on the goal of ensuring that the existing program schedule caters to the target market identified by the licensee – for example making adjustments to the segments and music playlists within current programs, rather than identifying opportunities for new programs that meet the needs of the community interest represented by the licensee.

Program provision

The participation guidelines state that:

“Licensees encourage community participation in program provision when they are open to new programming ideas from the community.

Examples of activities which demonstrate that services are open to new programming ideas include:

- broadcasting regular on-air announcements inviting program proposals, CDs or DVDs
- making available information on the procedure for making program proposals, application forms, and requirements for sample CDs or DVDs
- developing a procedure for responding to program proposals from members of the community or program producers,
- canvassing local community groups and organisations which may have a particular programming need (for example, a program designed to help newly arrived migrants settle into their new environment);
- inviting individuals and community groups to provide programming for vacant airtime;
- limiting the amount of vacant airtime or syndicated programming in favour of locally-produced programs, particularly where individuals or community groups have expressed interest in providing programs
- providing work experience opportunities and training in the use of broadcasting facilities; and
- periodically analysing program schedules to ensure an adequate representation of locally-produced programs.”⁵

...

⁵ ACMA Community Participation Guidelines p 21

“Licensees with a large number of presenters are more likely to have effective mechanisms in place to encourage community participation in program provision than licensees which have a program schedule monopolised by a handful of presenters.”⁶

The licensee provided limited evidence that the service is open to new programming ideas. There is a program suggestion form⁷ available on the licensee’s website, as well as a presenter application form, which is available to financial members of the service and is included in the services policies and procedures manual. However, the licensee provided no information to indicate that it was engaging in the other activities listed in the participation guidelines.

While the program schedule is comprised wholly of locally produced programs, it appears to be a rigid structure, with minimal flexibility for adding new programs. For example, each weekday is comprised of a breakfast program, morning program, a drive program and an evening program, hosted by the same person each day. The schedule follows a similar structure on weekends. The second submission asserted that the program structure provides flexibility within the program blocks and incorporates many community interests with news, events, local interviews, on-air mentions and community announcements.

With regards to having a large number of presenters, as opposed to a program schedule including a handful of presenters, one of the specific concerns raised by the complainant was that volunteers were removed from prime-time slots in the program schedule and replaced with paid presenters.

As mentioned in Issue 1 above, the 2019 Radioinfo interview reported that one issue that had led to changes to the service was that the programming had been “too diversified” for a regional area. However, the licensee’s second submission states that this comment referred to the fact that two ethnic programs had been cancelled because the presenters had reported a lack of interest from the communities.

The organisation chart in the first submission from the licensee stated that the service has seven presenters on air each week, five of whom are paid staff. A program schedule on the licensee’s website lists nine presenters, and based on the information provided in the submission to the ACMA, eight of which are paid staff. The second submission stated that it is very difficult to get on-air presenters in the region and noted that three of the on-air presenters only present 3-4 hours a day and receive a minimum payment.

The evidence above indicates that while the licensee does fulfill some of the activities listed in the participation guidelines which indicate that it is open to new program ideas, it appears that the opportunity for community members to present programs on the service is limited, with the program schedule dominated by a small number of paid staff.

Conclusion

Opportunities for the community to participate in program selection for the service are limited, with the program committee membership comprising mainly of paid staff and a board member. Evidence also suggests that there is limited opportunity for the community to participate in the provision of programs for the service, with the program schedule dominated by a small number of paid staff. Based on these reasons, the ACMA finds the licensee does not encourage members of the community to participate in the selection and provision of programs, and therefore has breached subparagraph 9(2)(c)(ii) of Schedule 2 to the BSA.

⁶ ACMA Community Participation Guidelines p 22

⁷ [Our Radio Shows | 88.9 FM Tamworth \(889famtamworth.com.au\)](http://www.889famtamworth.com.au) Accessed 21 June 2022