

Investigation Report no. BI-673

Summary	
Licensee	Sutherland Shire Community Radio Assoc Inc
Station	2SSR
Type of service	Community Broadcasting
Relevant legislation	<p><i>Broadcasting Services Act 1992 (BSA)</i></p> <ul style="list-style-type: none">> Paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising] <p><i>Community Radio Broadcasting Codes of Practice (the Codes)</i></p> <ul style="list-style-type: none">> Code 6.3 of the Codes [ensure editorial decisions affecting the content and style of individual programs are not influenced by program or station sponsors]
Decision	<p>The Licensee:</p> <ul style="list-style-type: none">> Breached paragraph 9(1)(b) of Schedule 2 to the BSA> Did not breach Code 6.3 of the Codes

Background

On 25 May 2023, the Australian Communications and Media Authority (the **ACMA**) received a complaint about Sutherland Shire Community Radio Assoc Inc (the **Licensee**).

The complaint raised allegations which suggest that the Licensee is failing to comply with its licence conditions under the *Broadcasting Services Act 1992* (the **BSA**) and provisions of the *Community Radio Broadcasting Codes of Practice* (the **Codes**).

On 26 June 2023, the ACMA commenced an investigation under section 149 of the BSA into the Licensee's compliance with:

- > the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.
- > Code 6.3 of the Codes.

The Licensee

Since 26 September 1992, the Licensee has held a long-term community radio broadcasting licence to represent the general community interest in the Sutherland RA1 licence area.

The service operated by the Licensee is 99.7FM 2SSR (**2SSR**).

The expiry date of the Licensee's current licence is 24 September 2027.

Assessment and submissions

This investigation has considered the following information and submissions:

- > the complaint received by the ACMA on 25 May 2023 (the **Complaint**)
- > audio files received from the Licensee, of the program subject to the Complaint broadcast on 23 May 2023 (the **Program**)
- > written submission received from the Licensee on 11 July 2023
- > various emails and attachments from October 2022 to May 2023, showing correspondence between the Licensee and its sponsor (**Sponsor A**), received from the Licensee on 11 July 2023
- > written submission received from the Licensee on 9 September 2023 in response to the preliminary investigation report for BI-673, including:
 - email to the Licensee's volunteers dated 5 June 2023
 - email to the Licensee's volunteers dated 16 June 2023
 - email to the Licensee's volunteers dated 28 August 2023
 - updated volunteer policy (August 2023)
 - updated guidelines for presenters (August 2023)
 - updated sponsorship agreement.

Other sources are identified in this report where relevant.

Issue 1: Did the Licensee breach the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising]?

Relevant licence condition

Schedule 2

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

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

[...]

(b) the licensee will not broadcast advertisements [...]

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

The complaint

On 25 April 2023, the ACMA received a complaint about the Licensee.

The Complaint alleged that the Licensee was advertising the business of one of its sponsors through an interview on the Program. This raised concerns about the Licensee's compliance with the prohibition on advertising.

The Complaint alleged this occurred on 23 May 2023.

Relevant submissions

On 11 July 2023, the Licensee submitted a copy of the recording from the Program broadcast on 23 May 2023.

On 9 September 2023, the Licensee made submissions in response to the preliminary investigation report for this investigation.

Relevant Guidelines

What is an advertisement?

Paragraph 9(1)(b) of Schedule 2 to the BSA stipulates that it is a condition of all community broadcasting licences that the licensee must not broadcast advertisements.

The ACMA's *Community Broadcasting Sponsorship Guidelines 2008 (Sponsorship Guidelines)* note that the BSA does not provide a definition for an 'advertisement'. The Sponsorship Guidelines note the following:

"In investigating complaints about advertising, the ACMA has previously had regard to the following:

- > The High Court's consideration of the meaning of the term 'advertising' in the context of the former *Broadcasting Act 1942*:

It would seem to be used in a broad general sense which would encompass any broadcast or telecast of material 'designed or calculated to draw public attention' to something ... regardless of whether the broadcast or telecast 'serves a purpose other than that of advertising'.¹

- > The plain English definition in the *Macquarie Dictionary* (Fourth Edition) [(MD)], which defines 'advertisement' as follows:

Advertisement: noun any device or public announcement, as a printed notice in a newspaper, a commercial film on television, a neon sign, etc., designed to attract public attention, bring in custom, etc.

Accordingly, an advertisement is potentially any broadcast that is intended to promote a product or service, regardless of whether payment in cash or in kind has been received by a licensee, or by any employee, agent, contractor, or volunteer of the service."²

Qualifications to the prohibition on advertising

Subclauses 2(1) and 2(2) of Schedule 2 to the BSA operate as qualifications to the general prohibition on the broadcasting of advertisements. If one of these qualifications applies, then the relevant material is not taken to be advertising for the purposes of the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

The qualifications apply if the material broadcast is:

- > an accidental (defined in the MD as 'happening by chance or accident, or unexpectedly') accompaniment to the broadcast and the person does not receive payment or other valuable consideration for the broadcasting of the advertising matter. The ACMA considers that if the broadcast of the advertising material is deliberate, or due to some arrangement or understanding, it would not be considered accidental (see p.5 of the Sponsorship Guidelines)
- > an incidental (defined in the MD as 'happening or likely to happen in fortuitous or subordinate conjunction with something else') accompaniment to the broadcast and the person does not receive payment or other valuable consideration for the broadcasting of the advertising matter. The ACMA considers that advertising material may be an incidental accompaniment to the broadcast of other matter only if a reference to a product, service or organisation was secondary to the subject of the broadcast or occurred as a minor part of the broadcast (see p.5 of the Sponsorship Guidelines)
- > community information or community promotional material (i.e. provides information about community events or promotes community services)
- > promoting the licensee's community broadcasting service
- > a sponsorship announcement (i.e. contains an acknowledgement of financial or in-kind support by the sponsor of the licensee or a program).

Interviews with subject matter experts

Relevant to the matters considered in this investigation, the Sponsorship Guidelines note that interviews with subject matter experts are common and play a legitimate role in community broadcasting. Licensees may provide information about subject matter experts to establish their credentials. However, care should be taken to ensure that discussions do not move from the general (such as general information or advice) to the specific (for example, the promotion of a particular product, service, or organisation).

¹ *Australian Capital Television Pty Ltd and the State of New South Wales v The Commonwealth* (1992) 177 CLR 106 at 166

² [Sponsorship Guidelines](#) – p. 3.

An interview is more likely to be characterised as an advertisement if the broadcaster has a financial or other arrangement with the expert being interviewed.

The ACMA assesses potential advertising material on a case-by-case basis.

Analysis

On 23 May 2023, the Licensee aired the Program which featured an interview with Sponsor A's representative (**Sponsor Representative**), a subject matter expert. The interview was predominantly focused on general advice about financial issues such as debt management, superannuation, investment strategies, interest rates etc.

Set out below are segments of the interview which raised concerns about the Licensee's compliance with the prohibition on advertising:

1. Presenter: *'As the saying goes, failing to plan, is planning to fail. But you must remember, any information provided today is general information only, if you want specific advice, you will need to contact your own financial advisor, or you can contact [Sponsor Representative] at [Sponsor A] ...'*
2. Presenter: *'These are the sorts of things that people can get from a financial planner or advisor, and once again, I'll say to our listeners out there, if you don't have your own personal advisor, then you are welcome to ring [Sponsor Representative] and organise a time with him...'*
3. Presenter: *'So it's something for people to consider or to find out more information about, so if they see their financial planner or they want to come and see [Sponsor Representative] ...'*
4. Presenter: *'If you want specific advice, you need to contact either your own personal advisor if you have one, if not, obviously I'm going to recommend you to [Sponsor Representative] at [Sponsor A], [Sponsor Representative], should they ring you or send you an email?'*

Sponsor Representative: *'Oh yeah [presenter's name], we got our website there, they can phone, or email is fine, and happy to chat with them.'*

Presenter: *'[Sponsor A] are in Sutherland, what's your address in Sutherland?'*

Sponsor Representative: *'...that's right [presenter's name], we're just in [Sponsor A's address], just behind [location] in Sutherland.'*

Presenter: *'So family-owned business for over... how many years of family been involved here serving the needs of the Sutherland Shire?'*

Sponsor Representative: *'Yeah all told, over 40 years actually.'*

Presenter: *'Over 40 years, so there's a lot of knowledge there, take advantage of it, give them a call...'*

The ACMA considers that the above segments:

- > drew attention to the services offered by Sponsor A on multiple occasions by encouraging listeners to contact Sponsor Representative for financial advice
- > using promotional language designed to bring in custom for Sponsor A by attracting attention to the experience, knowledge and quality of Sponsor A and Sponsor Representative's services
- > provided contact details and a means to contact Sponsor Representative of Sponsor A.

The ACMA considers these segments to amount to more than a reference to establish the credentials of the subject matter expert. The segments clearly had the intended purpose to promote and draw attention to Sponsor Representative and Sponsor A. This was apparent by

the presenters' repeated encouragement to its listeners to contact Sponsor Representative for financial advice, imploring listeners to 'take advantage' of the long history and expertise of Sponsor A and by asking Sponsor Representative to provide his contact details at the end of the interview. The ACMA is of the view that the broadcast of the segments was deliberate and was not secondary to the subject of the broadcast nor did they occur as a minor part of the broadcast. Therefore, in this context, the material is not considered accidental or incidental accompaniment.

While the presenter opened the program by saying that Sponsor A had recently become a new sponsor, no further reference was made about Sponsor A being a sponsor of the Licensee for the remainder of the hour-long program. The ACMA considers that this one acknowledgement did not clearly label the entire interview as a sponsorship announcement, nor was the acknowledgement sufficiently proximate to the material of advertising character to allow that material to become sponsorship announcements. The Sponsorship Guidelines note that generally a sponsorship tag should be attached to each individual sponsorship announcement and that it is not sufficient to broadcast one tag covering a block of announcements. Therefore, the material of advertising character broadcast by the Licensee was not sponsorship announcements.

None of the other qualifications apply to the segments, therefore the segments were advertising.

In response to the preliminary investigation report, the Licensee submitted "The alleged breach was unintended. We acknowledge that Sutherland Shire Community Radio Association Inc. (2SSR) needs to make a number of changes to ensure that there is no reoccurrence of this type of issue at our radio station."

Conclusion – Issue 1

The information provided to the ACMA shows that on multiple occasions during the broadcast of the Program the Licensee broadcast material that the ACMA considers to be advertisements.

Accordingly, the ACMA is of the view that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising].

Issue 2: Has the Licensee complied with Code 6.3 of the Codes?

Relevant code provision

The Codes

- 6.3 We will ensure editorial decisions affecting the content and style of individual programs are not influenced by program or station sponsors.

Finding

The ACMA is of the view that the Licensee did not breach Code 6.3 of the Codes.

Reasons

The complaint

The Complaint alleged that the Licensee was giving preferential access to broadcasting time (via an interview) through its sponsorship agreement.

Relevant submissions

- > written submission received from the Licensee on 11 July 2023
- > various emails and attachments from October 2022 to May 2023 showing correspondence between the Licensee and Sponsor A, received from the Licensee on 11 July 2023
- > written submission received from the Licensee on 9 September 2023 in response to the preliminary investigation report.

Analysis

The Licensee submitted on 11 July 2023 that the sponsorship contract between Sponsor A and the Licensee was in the form of various emails between the two parties. The Licensee indicated that it has a standard contract form for sponsorship agreements which was not used in this specific case. Based on the evidence provided by the Licensee, it was not clear that the interview with the Sponsor Representative formed part of the sponsorship agreement.

The various items of correspondence received from the Licensee on 11 July 2023 show the communication between the Licensee and Sponsor A, including discussions on the script and dates for the sponsorship announcements, sponsorship payment and organising an interview with Sponsor Representative.

The ACMA has concerns that the interview was requested at the same time these sponsorship arrangements were being discussed, and ultimately the interview that was broadcast during the Program contained advertisements in breach of paragraph 9(1)(b) of Schedule 2 to the BSA (see Issue 1, above).

However, based on the evidence provided by the Licensee, the ACMA considers the interview was planned by the Licensee with the purpose of giving Sponsor Representative of Sponsor A the opportunity to participate in the Program as a subject matter expert and to get to know Sponsor Representative as a person, the person behind the business, and the music that has been a part of his life.

This evidence does not amount to a clear editorial decision in breach of Code 6.3 of the Codes.

Conclusion – Issue 2

The ACMA is of the view that the Licensee did not breach Code 6.3 of the Codes.

Agreed actions

On 9 September 2023, the Licensee submitted it has taken the following actions in response to this investigation:

- > suspended/cancelled the Program indefinitely
- > conducted an internal investigation into the circumstances of the interview being arranged, planned and the approval process for the interview to be broadcast
- > issued a directive to all its presenters that management pre-approval is mandatory for all future interviews until further notice
- > provided initial refresher training and education to all its presenters on the rules around advertising and sponsorship
- > reviewed and revised all relevant policies and procedures associated with the breach
- > reviewed and revised its sponsorship agreement for all new and renewing sponsors
- > developed and implemented a compliance issue register to record, prioritise and track resolution of compliance risks.

The Licensee also submitted that it would take the following further actions in response to this investigation:

- > a formal review of the ACMA final investigation report, overseen by its management team to ensure that all adverse findings are adequately dealt with
- > if appropriate, disciplinary action will be considered
- > continue regular refresher training and skills development for all presenters (interview preparation and interviewing skills)
- > replace the current interview authorisation process with detailed interview guidelines
- > complete a review of all its policies, procedures and internal controls.

The ACMA notes steps taken by the Licensee to address the breach finding and proposes no further action at this time.