

Community broadcasting licence transfer guidelines

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Background

Under the *Broadcasting Services Act 1992*, a community broadcasting licensee may apply to the Australian Communications and Media Authority (the ACMA) for approval to transfer its licence.

An application to transfer a community broadcasting licence must be in a form approved in writing by the ACMA (ACMA Form B75 or B76 for remote indigenous broadcasting services).

The ACMA must not approve the transfer of a licence unless, among other things, it is satisfied that:

- > for a licence that has not been renewed – the proposed transferee represents the same community interest as the original licensee
- > for a licence that has been renewed – the proposed transferee represents the same community interest of the licence when it was last renewed.

If the ACMA approves the transfer of a licence, the licensee may implement the decision within 90 days after approval is given.

About the guidelines

The ACMA has developed the *Community broadcasting licence transfer guidelines* (the guidelines) to assist licensees intending to apply for a transfer of their licence.

The guidelines are **advisory only** and do not replace the requirements of the Broadcasting Services Act. The ACMA may deviate from these guidelines where appropriate. If licensees have questions, they should approach the industry group representing the community broadcasting sector – the Community Broadcasting Association of Australia ([CBAA](#)) or the Australian Community Television Alliance – or seek independent legal advice.

Collection of personal information

The *Privacy Act 1988* (Cth) imposes obligations on the ACMA in relation to the collection, security, quality, access, use and disclosure of personal information. These obligations are detailed in the [Australian Privacy Principles](#).

The ACMA may only collect personal information if it is reasonably necessary for, or directly related to, 1 or more of the ACMA's functions or activities.

The purpose of the collection of personal information in the B75 or B76 form is to enable the ACMA to assess the transferee's capacity to provide the community broadcasting service. This information is required under paragraph 91A(7)(b) of the Broadcasting Services Act.

The ACMA will not use the information for any other purpose, nor disclose it, unless the relevant consent has been obtained or it is otherwise permitted to do so under the Privacy Act.

If the information requested in the B75 or B76 form is not provided, the application for the transfer of the licence may not be processed.

Further information on the Privacy Act and the [ACMA's privacy policy](#) is available from the ACMA's website www.acma.gov.au. The Privacy Policy contains details about how

personal information that is held by the ACMA may be accessed, and how such information may be corrected, where appropriate. It also explains how a complaint about a breach of the [Privacy Act](#) may be lodged and how the ACMA will deal with such a complaint.

Any questions relating to the privacy of information requested in B75 or B76 should be directed to the ACMA's privacy contact officer on telephone 1800 226 667 or by email to privacy@acma.gov.au.

Reasons to transfer a licence

Some of the circumstances in which a community broadcasting licensee (licensee) might wish to transfer a licence are where the licensee:

- > wishes to merge with another company or council so that it becomes part of a larger corporate entity and loses its original legal status
- > wishes to operate the service as a different type of legal entity (for example, an incorporated association rather than a company limited by guarantee or a cooperative)
- > does not have the financial capacity to continue broadcasting and wishes to hand over the licence to another corporate entity
- > knows that it will or is likely to cease to exist in the future (for example, where the licensee expects to be deregistered).

There might be other situations where there is a need to change the identity of the corporate entity that holds the licence.

ACMA considerations

The Broadcasting Services Act limits the circumstances in which the ACMA may approve a transfer of a licence.

The ACMA may only approve the transfer of a licence if:

- > the proposed transferee is a company of the sort that would be eligible to be allocated such a licence in the first place – that is:
 - > it is the type of corporate entity that may apply to be allocated a licence
 - > it represents a community interest
- > it has not decided that the proposed transferee is not a suitable licensee or applicant.

In considering a transfer application, the ACMA generally assesses a proposed transferee against relevant section 84(2) criteria. This is to ensure that the statutory scheme for community broadcasting services is not undermined.

In considering a transfer application, the ACMA also reviews any other relevant matters, either generally or in that particular case. Even if the ACMA is satisfied that all the legal requirements are met, it has an overall discretion to refuse to approve the transfer of a licence.

In deciding whether to exercise its discretion, the ACMA must have regard to the principle that, except in special circumstances, a transfer of a licence should not be approved if consideration has been, or is to be, provided to the application in relation to the proposed transfer. For example, if the proposed transfer is part of a commercial arrangement, this principle may guide the ACMA towards a decision to refuse to approve the transfer. This is to ensure that the transfer mechanism is used for its intended purpose, that is, for changes in corporate arrangements where the community interest remains unchanged. It is not designed to facilitate commercial trading in community broadcasting licences.

Requirements for transferring a licence

A community broadcasting licensee must complete ACMA form B75: *Application to transfer a community broadcasting licence*, or B76: *Application to transfer a licence for a community broadcasting service to serve a remote Indigenous community*. The forms are available on the [ACMA's website](#).

In completing a licence transfer form, a licensee should have regard to the information requirements outlined below.

Section 91A requirements

The proposed transferee must be a company that was formed in Australia or in an external Territory and that represents a community interest (section 91A(4)(a) and (b))

Corporate status

Generally, under the laws of the states and territories, only not-for-profit organisations may register as incorporated associations. Incorporated associations are bound within these jurisdictions by annual audit and reporting provisions regarding their ongoing not-for-profit status.

Proposed transferees wishing to form an incorporated association should consider adopting the model rules for incorporated associations applicable in the relevant state or territory, suitably amending them so that they are applicable for community broadcasting purposes. In this regard, the CBAA has developed a constitution template to provide guidance to community broadcasters.

For community **radio** broadcasting licences, the Broadcasting Services Act defines the word 'company' for the purposes of the allocation of community broadcasting licences as including incorporated associations. 'Company' also includes a company limited by guarantee. The ACMA is of the view that organisations set up as an incorporated association or a company limited by guarantee are best equipped to provide a community broadcasting service.

For community **television** broadcasting licences, the proposed transferee must be a company limited by guarantee within the meaning of the *Corporations Act 2001*. Applicants should refer to guidelines provided by the Australian Securities and Investments Commission in relation to requirements of a proprietary company before drafting or adopting a constitution or replaceable rules.

Representing a community interest

The role of a community broadcasting licensee is to encourage members of the relevant community to participate in the operations and programming of the service. This is also a key way in which licensees represent their community interest. In this regard, the ACMA will carefully analyse details of the proposed transferee's organisation structure, with a view to determining whether the service will continue to meet the existing and perceived future needs of the community.

Aspects that may be taken into account include whether the proposed transferee organisation has:

- > constituting documents that contain:
 - > provisions for open and/or non-exclusive membership
 - > a membership policy that does not discriminate against any member of the community interest that it represents
 - > appeal procedures for membership rejections and grievance mechanisms relating to disciplinary action
- > decision-making processes that are transparent and ensure public accountability to the community served
- > operational procedures that demonstrate decision-making in key areas of the station, such as membership and programming, are in the hands of a cross-section of the community rather than a few individuals
- > measures in place to ensure that the station remains a **community asset**.

Requirements

Applicants **must** include with their application:

- > a copy of the Certificate of Registration or Certificate of Incorporation for the proposed transferee company
- > a complete and certified copy of the of the constitution and/or memorandum and articles of association for the proposed transferee.

The ACMA must not have decided that the proposed transferee is an unsuitable licensee under section 83(2) of the Broadcasting Services Act (section 91A(4)(c))

The ACMA is not required to consider the suitability of a proposed transferee before deciding on the transfer of a licence and will not do so as a matter of course. However, if the suitability of a proposed transferee becomes an issue during the assessment of the transfer application, the ACMA may decide to consider whether the proposed transferee is an unsuitable licensee.

The proposed transferee must represent the same community interest as the original licensee when the licence was allocated or was last renewed, whichever is the latest (section 91A(6))

For example:

- > If a licensee represents the community interest of the general geographic area at the time the licence was allocated or last renewed, the proposed transferee must continue to represent the general community interest.
- > If a licensee represents youth as its community interest at the time the licence was allocated or last renewed, the proposed transferee must continue to represent the youth community interest.

The principle that, except in special circumstances, the transfer should not be approved if consideration has been, or is to be, provided to the applicant in relation to the proposed transfer (section 91A(7)(a))

The legislative provisions relating to the transfer of a community broadcasting licence are intended to accommodate changes in corporate arrangements where the community interest remains unchanged. It is not designed to facilitate commercial trading in community broadcasting licences.

Consideration may be in cash or in kind, including any arrangement, understanding or promise, whether or not in written form. For example, if a proposed transferee has or will direct certain business contracts to the licensee in relation to the proposed transfer, this may amount to consideration in relation to the proposed transfer.

The ACMA may investigate past, existing or proposed business or other relationship between a proposed transferee and the licensee in determining whether any consideration has been or will be exchanged.

The ACMA may nonetheless approve the transfer, despite consideration being given, if it considers that special circumstances exist. For example:

- > where a licensee has, immediately prior to the transfer, incurred significant capital expenditure to facilitate the provision of a broadcasting service under the licence and seeks to recover those costs
- > where a proposed transferee purchases technical equipment from the licensee to be able to provide a broadcasting service under the licence.

A licensee should include with its transfer application a statutory declaration outlining whether there have been any past or are existing or will be future business arrangements with the proposed transferee.

Other matters the ACMA considers relevant – the section 84(2) requirements (section 91A(7)(b))

In considering a transfer application, the ACMA will generally assess the proposed transferee against the matters at section 84(2) of the Broadcasting Services Act. This is to ensure that the statutory scheme for community broadcasting services is not undermined. Generally, the ACMA will not approve a transfer if it considers that it would not allocate the licence if it were considering whether to allocate the licence to the proposed transferee. A discussion of how the ACMA considers the criteria at section 84(2) is given below.

The extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area (section 84(2)(a))

In the ACMA's view, the expression 'needs of the community' refers to the programming needs of the community (including information, cultural and educational needs). These are particularly important if they are not being met by existing broadcasting services in the licence area.

Applications should include evidence of the extent to which the service to be provided by the proposed transferee will meet the existing and perceived future needs of the community in the licence area. Such evidence may include:

- > relevant research or market surveys conducted by the licensee and/or the proposed transferee (including how the research was conducted)
- > a weekly program schedule listing the programs to be provided, including whether the programs will be locally produced or purchased and, if so, from whom
- > a list of programs that will be provided which are not being provided by existing broadcasting services in the licence area
- > how the programs will meet the needs and interests of the community **now** and **in the future**.

In addition, the licensee should provide the following information about the proposed transferee:

- > an indication that the community has a particular need and interest in the programs
- > plans detailing the strategies and practices that the proposed transferee will use to monitor the perceived future needs of the community and to avoid programming meeting the needs and interests of specific groups in the community at the expense of the community interest that the licensee is licensed to represent (for example, a particular religious or ethnic group where the licensee is licensed to represent the general community)
- > letters of support for the proposed transferee.

The nature and diversity of the interests of that community (section 84(2)(b))

A licensee should give details of the measures that the proposed transferee intends to take to encourage the community in the licence area to participate in the day-to-day operations of the service and in the selection and provision of programming. This is to ensure that sufficient evidence is provided to demonstrate the proposed transferee's ability to provide a service that continues to reflect the nature and diversity of the interests of that community.

The information provided may vary, however, it commonly includes:

- > evidence of promotions of the service and programming, for example, copies of articles or advertisements in the local media, regular newsletters, internet bulletins and on-air announcements
- > numbers of financial members (indicating the numbers residing in the licence area and the numbers from outside the licence area)
- > numbers of volunteers and an indication of the roles performed
- > evidence of collaboration with local organisations, including in community events and school programs
- > information on the committees that are in existence to show community involvement in decision-making in a range of areas.

The nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area (section 84(2)(c))

Community broadcasting licences are made available for allocation by the ACMA when they have been determined in a [licence area plan](#) (LAP). Before a LAP is determined, the ACMA has regard to a number of statutory factors, including the demographics, socio-economic characteristics of, and number of broadcasting services within, a licence area. In this regard, a licensee will need to demonstrate that the nature of the service to be provided by the proposed transferee will continue to contribute to the diversity of other broadcasting services in the licence area, as planned.

Capacity of the transferee to provide the proposed service (section 84(2)(d))

The capacity of the proposed transferee includes the management, financial and technical resources available to it to provide the service.

A licensee should include information about the proposed transferee, detailing:

- > any previous and/or current broadcasting experience at an organisational and/or an individual level (employee, member, volunteer)
- > the names of employees, members, volunteers who have broadcasting experience including experience gained with other organisations.

Additional information specific to a proposed transferee's management, financial and technical capacity is provided below.

Management capacity relates to the proposed transferee's ability to operate the service, including the ability to comply with relevant licence conditions and codes of practice. Key requirements include:

- > the service is not operated for profit or as part of a profit-making enterprise
- > the licensee must encourage members of the community to participate in the operations and programming of the service
- > the service is provided for a community purpose and remains a community asset
- > the licensee will continue to represent the community interest it represented at the time when the licence was allocated or last renewed.

The ACMA will carefully analyse details of the proposed transferee's organisation structure. In this regard, the ACMA may look at the extent to which the operations and decision-making of the proposed transferee ensures public accountability to the community served. Experience has shown that, generally, licensees that are cooperatives have proved to be less effective in meeting the licence condition to encourage participation in the operations and programming of a community service. However, each proposed transferee will be assessed on its own merits, so long as it is a 'company'.

Applications should be accompanied by the following:

- > a diagram setting out details of the organisation structure of the proposed transferee, showing the elected and appointed positions, board and committees and the relationships between them
- > details of relevant management skills and experience that the proposed transferee will bring to the service.

Financial capacity relates to the proposed transferee's ability to ensure that the service has in place robust financial systems and is financially viable. Applications should include information from the proposed transferee that show:

- > estimates of the funds required to provide the service
- > how the funds to provide the service will be raised
- > a plan detailing actions to be taken if the funds to provide the service are not forthcoming.

The ACMA strongly recommends that proposed transferees should address the issue of probity and plan for a range of revenue sources to avoid reliance on 1 or 2 major income streams.

Applications should be accompanied by the following from the proposed transferee:

- > a 5-year budget for the service
- > a 5-year business plan for the service
- > copies of financial statements, including audited accounts and annual reports
- > copies of sponsorship arrangements, including letters from potential sponsors showing the amounts and duration of sponsorship agreements
- > copies of other funding arrangements, including letters from potential donors and subscribers showing the amounts and duration of support.

Technical capacity relates to the proposed transferee's ability to ensure that the service complies with the technical specifications of the licence, to provide a service of adequate transmission quality and to continue to comply with these requirements. Applications should include information from a proposed transferee that show:

- > details of operational and maintenance plans to ensure that the service meets technical specifications
- > the technical skills and expertise that are available to it to continue to provide a service that complies with technical specifications.

Applications should be accompanied by the following for the proposed transferee:

- > the names of members and/or employees who have technical experience, the work they do and the training they have undertaken
- > copies of relevant technical training certificates for members and/or employees
- > copies of letters from individuals and/or organisations detailing their agreement to provide technical advice and support
- > copies of agreements and/or contracts with providers of technical and transmission equipment.

Undesirability of one person being in control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area (section 84(2)(e))

The Explanatory Memorandum to the Broadcasting Services Bill indicates that the intention of this paragraph is to ensure that a broad range of interests are provided for by the community broadcasting services in any particular licence area.

Licensees should provide information about a proposed transferee, including:

- > contracts and/or agreements with other community broadcasting services in the licence area, setting out actions to be taken by the proposed transferee on behalf of those other community broadcasting services
- > contracts and/or agreements of sponsorship, programming and/or other funding arrangements with other community broadcasting services in the licence area
- > contracts and/or agreements with members (particularly directors) and/or employees (particularly station managers) of other community broadcasting services in the licence area, setting out actions to be taken by them for the proposed transferee on behalf of those other community broadcasting services
- > listings of persons such as directors, station managers and program coordinators who also hold similar positions with other community broadcasting services in the licence area.

Undesirability of the Commonwealth, a State or a Territory or a political party being in control of a community broadcasting licence (section 84(2)(f))

The Explanatory Memorandum to the Broadcasting Services Bill indicates that the intention of this paragraph is to prevent community licences becoming 'tools' for political parties or vested party interests.

Licensees should provide information about a proposed transferee, including:

- > contracts and/or agreements with an agency, department or official of the Commonwealth, a state or a territory or a political party, setting out actions to be taken by the proposed transferee on behalf of that agency, department, official or party

- > contracts and/or agreements of sponsorship, programming and/or other funding arrangements with an agency, department or official of the Commonwealth, a state or a territory or a political party
- > contracts and/or agreements with members, employees, contractors and/or volunteers in the employ an agency, department or official of the Commonwealth, a state or a territory or a political party, setting out actions to be taken by them for the proposed transferee on behalf of those agencies
- > listings of persons such as directors, station managers and program coordinators who are affiliated with an agency, department or official of the Commonwealth, a state or a territory or a political party.

The process after the ACMA's decision

Transfer applications that are approved

If the ACMA approves a transfer application, the licensee has 90 days, from the date of the ACMA's approval, to transfer the licence.

After a licence has been transferred, the transferee is required to complete [ACMA form B77](#) to notify the ACMA of the transfer within 7 days of the transfer occurring.

On receipt of ACMA form B77, the ACMA updates its databases and reports on its website.

Transfer applications that are not approved

If the ACMA does not approve a transfer application, the licensee or the proposed transferee may apply to the Administrative Appeals Tribunal for a review of the decision.

In either case, the ACMA may issue a media release announcing its decision.

Extracts from the *Broadcasting Services Act 1992*

15 Community broadcasting services

Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

81 When licences must not be allocated

- (1) A licence is not to be allocated to an applicant if:
 - (a) in the case of an applicant for a CTV licence the applicant is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or
 - (b) the ACMA decides that subsection 83(2) applies to the applicant.

Note: See also section 96B of the Radiocommunications Act 1992, which provides that CTV licences must not be granted to new holders after 30 June 2021.

- (2) Paragraph (1)(b) does not require the ACMA to consider the application of subsection 83(2) in relation to an applicant before allocating a licence to the applicant.

83 When persons are regarded as suitable

- (1) For the purposes of this Part, a company is a suitable community broadcasting licensee or a suitable applicant for a community broadcasting licence if the ACMA has not decided that subsection (2) applies to the company.
- (2) The ACMA may, if it is satisfied that allowing a particular company to provide or continue to provide broadcasting services under a community broadcasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;decide that this subsection applies to the company.
- (3) In deciding whether such a risk exists, the ACMA is to take into account:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of the chief executive and each director and secretary of the transferee; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the

requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

84 Allocation of community broadcasting licences

- (1) The Minister may give directions to the ACMA to give priority to a particular community interest or interests, whether generally or in a particular licence area, in allocating community licences that are broadcasting services bands licences.
- (2) In deciding whether to allocate a community broadcasting licence that is a broadcasting services bands licence to an applicant or to one of a group of applicants, the ACMA is to have regard to:
 - (a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and
 - (b) the nature and diversity of the interests of that community; and
 - (ba) in the case of a community radio broadcasting licence—the extent to which the proposed service or services would provide material of local significance; and
 - (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and
 - (d) the capacity of the applicant to provide the proposed service; and
 - (e) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
 - (f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.
- (3) For the purposes of paragraph (2)(ba), material is of local significance if
 - (a) it is hosted in the licence area of the proposed licence; or
 - (b) it is produced in the licence area of the proposed licence; or
 - (c) it relates to the licence area of the proposed licence.

91A Transfer of community broadcasting licences

Application for approval of transfer

- (1) A community broadcasting licensee may apply to the ACMA for approval of the transfer of the community broadcasting licence to another person.
- (2) Applications must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined in writing by the ACMA.

Decision about approval of transfer

- (3) After considering an application for approval of the transfer of a community broadcasting licence, the ACMA must, by written notice given to the applicant:
 - (a) approve the transfer; or
 - (b) refuse to approve the transfer.

Criteria

- (4) The ACMA must not approve the transfer of a community broadcasting licence that is a broadcasting services bands licence if:
 - (a) the proposed transferee is not a company that:
 - (i) was formed in Australia or in an external Territory; and
 - (ii) represents a community interest; or

- (b) in the case of a transfer of a CTV licence—the proposed transferee is not a company limited by guarantee within the meaning of the Corporations Act 2001;
or
 - (c) the ACMA decides that subsection 83(2) applies to the proposed transferee.
- (5) Paragraph (4)(c) does not require the ACMA to consider the application of subsection 83(2) in relation to a proposed transferee before approving the transfer of a licence to the proposed transferee.
- (6) The ACMA must not approve the transfer of a community broadcasting licence unless the ACMA is satisfied that:
- (a) if the licence has not been renewed—the proposed transferee represents the same community interest as the original licensee represented when the licence was allocated; or
 - (b) if the licence has been renewed on one or more occasions—the proposed transferee represents the same community interest as the applicant for renewal represented when the licence was last renewed.
- (7) In deciding whether to approve the transfer of a community broadcasting licence, the ACMA must have regard to:
- (a) the principle that, except in special circumstances, the transfer should not be approved if consideration has been, or is to be, provided to the applicant in relation to the proposed transfer; and
 - (b) such other matters (if any) as the ACMA considers relevant.

Transfer

- (8) If the ACMA has approved the transfer of a community broadcasting licence to a particular person, the community broadcasting licensee may, within 90 days after the approval was given, transfer the community broadcasting licence to the person.