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The Manager
Broadcasting Carriage Policy Section
Australian Communications and Media Authority
PO Box 78
Belconnen ACT 2616

Email: BCP@acma.gov.au

CBAA response to ACMA Consultation Paper: Proposal to remake the apparatus and broadcasting licence condition determinations

The CBAA thanks the Australian Communications and Media Authority (ACMA) for the opportunity to provide feedback on the ACMA proposals outlined in a November 2024 Consultation Paper to:

- remake the Apparatus LCD 2015 with minor changes
- remake the Broadcasting LCD 2015, incorporating most of the operational provisions of the TCBL LCD 2015 (which will be repealed), and with other minor changes.

Our Response

CBAA has reviewed the ACMA's proposed legislative instruments:

- Transmitter LCD 2025
- Broadcasting LCD 2025
- TCBL LCD 2015 (to be repealed)

In reviewing the proposals one of our key concerns has been to ensure the changes do not result in any additional operational or administrative burden to either temporary community broadcasting licences (TCBLs) or community broadcasting licensees (CBLs).

Through our reading and constructive meetings with ACMA personnel on this matter, the CBAA is satisfied the intent of the new instruments represents no substantive change from operational or administrative requirements set out in the existing instruments and Technical Guidelines and that apply to CBLs and TCBLs, noting there is an alignment for TCBLs to follow standard industry practice when first starting-up.

We have provided comments we hope will assist the ACMA to clarify the LCD drafting.

Comments on draft Broadcasting LCD 2025

Transmitter licences for Community and Commercial broadcasting services are issued under section 102 of the *Radiocommunications Act 1992* (RA). Transmitter licences for Temporary Community Broadcasting Licenses (TCBLs) are issued under section 101A. Other transmitter licences are issued under section 100.

The Broadcasting Services (Technical Planning) Guidelines (TPGs) document is a determination made under section 33 of the *Broadcasting Services Act 1992* (BSA), and sets out start-up, interference, as well as other operational provisions.

The Broadcasting LCD is in place as a separate determination as the ACMA considers the TPGs do apply to transmitter licences issued under section 102 of the RA in respect of Community and Commercial and broadcasting services, but do not apply to transmitter licences issued under section 100 of the RA in respect of (some) National, Narrowcasting, Narrowband Area and Re-Transmission services, nor to transmitter licences issued under section 101A of the RA in respect of Temporary Community Broadcasting License (TCBL) services.

Section 6 of the TPGs, specifically interprets a "broadcasting service transmitter licence" to mean "a transmitter licence issued under section 101A or section 102 of the *Radiocommunications Act*"; and a "transmitter licence" to mean "any of the following licences:

- a) a licence issued under section 101A of the *Radiocommunications Act*;
- b) a licence issued under section 102 of the *Radiocommunications Act*;
- c) a datacasting transmitter licence;
- d) a digital radio multiplex transmitter licence;
- e) a licence issued under section 100 of the *Radiocommunications Act* that authorises the transmission of a narrowcasting service".

CBAAs suggests the ACMA consider if this is an ambiguity in the drafting the TPGs and if the Broadcasting LCD 2025 should include Part 5 covering transmitter licences in respect of TCBLs at all, as TCBLs may be already covered under the scope of the existing TPGs.

- If the TPGs do apply to transmitter licences in respect of TCBLs, the CBAAs would consider Part 5 of the Broadcasting LCD 2025 would be best removed.
- If the TPGs do not apply to transmitter licences in respect of TCBLs, the CBAAs suggests a Note be inserted into the Broadcasting LCD 2025, to make explicit and plain that the TPGs are the relevant document for transmitter licences issued in respect of Community and Commercial broadcasters, as they are issued under RA section 102, and refer the reader to the TPGs.

The TPGs scope includes provisions that do not apply to all license types. Therefore some provisions do not apply to TCBLs, such as references to operating in accordance with an LAP or DRCP (if any). Otherwise, the provisions of the Broadcast LCD 2025 and the provisions of the TPGs are analogous.

Comments on draft Transmitter LCD 2025

The CBAAs considers the requirements and arrangements set out in the Transmitter LCD 2025 represent no substantive change from the existing requirements set out in the Apparatus LCD 2015 or as already applied to individual licences.

The CBAAs notes that the Transmitter LCD 2025 includes a change in language compared to the Apparatus LCD 2015 to use the term "person" rather than "licensee", and that a "person" is not defined. Presumably this is intentional and/or due to the legal drafters looking to the RA as a starting point, rather than the existing LCD. The RA generally uses the term "person".

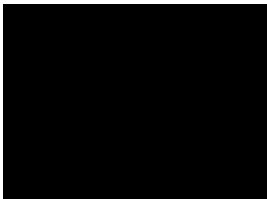
The term "person" may be read by some to broaden how some requirements of the LCD might be interpreted, given that, in this context, a "person" might be taken to be a licensee, a facility provider, an agent, or someone else entirely, eg, a rogue operator. Even so, as the LCD is a licence condition it seems likely that, if there were an issue, the ACMA would seek information on compliance from the relevant licensee, in the first instance. Historically, broadcasting licensees behave highly responsibly and the ACMA has not been heavy-handed in its approach on this subject.

As well as making the above points, the CBAA suggests:

- At section 11 and 15, changing the words “low risk” to be “Level 1”. That terminology is as used in the existing LCD.
- At section 12, 15 and Part 4, changing the words “higher risk” to be “Level 2”. That terminology is as used in the existing LCD.
- At section 17 (3), amending the text to say, “If a matter included in a declaration made for the purposes of paragraph 1(a) changes in a material way or becomes incorrect, a new declaration must be made”.

Thank you again for the opportunity to comment. We would welcome the opportunity to clarify any of our feedback as required.

Sincerely,



Jon Bisset
Chief Executive Officer

About CBAA

Founded in 1974 the CBAA is the national peak body for community broadcasting licensees.

As a cultural organisation established for the promotion of community broadcasting, including both radio and television, we are proud to have over 90 per cent of all community radio and television licensees, including those with a First Nations, faith, disability, LGBTIQ+ and multicultural community interest, as members.