

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

Broadcasting Services Act 1992

Paragraph 205(a)

STATEMENT OF REASONS FOR DECISION TO IMPOSE ADDITIONAL CONDITION ON COMMERCIAL RADIO BROADCASTING LICENCE NO. 4142

Issued pursuant to paragraph 205(a) of the *Broadcasting Services Act 1992* (BSA).

1. DECISION

For the reasons set out below, the Australian Communications and Media Authority (the ACMA) has made the decision to impose the additional condition, as set out in the “Additional Condition on Commercial Radio Broadcasting Licence No. 4142 Notice”, dated 13 March 2026 (the Notice) on the commercial radio broadcasting licence identified by the licence number 4142, held by Double T Radio Pty Ltd (the Licensee).

2. LEGISLATION

2.1. Subsection 43(1) of the BSA states, inter alia, that the ACMA may, by notice in writing given to a commercial radio broadcasting licensee, impose an additional condition on the licence.

2.2. Section 44 of the BSA sets out the matters to which conditions may relate. It states, inter alia, the following:

- (1) Conditions of commercial radio broadcasting licenses must be relevant to the broadcasting services to which those licences relate.*
- (2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a commercial radio broadcasting licensee:*
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or*
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.*

2.3. Section 204 of the BSA states that an application may be made to the Administrative Review Tribunal (ART) by the licensee for a review of a decision to impose new conditions on its licence under subsection 43(1) of the BSA.

2.4. Section 205 of the BSA provides that if the ACMA makes a decision that is reviewable under section 204 of the BSA, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and

- (b) a statement to the effect that an application may be made to the ART for a review of the decision.

3. BACKGROUND

- 3.1. The *Kyle & Jackie O Show* (the Show) was a breakfast radio program, broadcast by the Licensee on weekdays from 6.00am to 10.00am on KIISFM 101.1 and syndicated across the KIIS network by Australian Radio Network (ARN). The Show was hosted by presenters Mr Kyle Sandilands and Ms Jacqueline Henderson, popularly known as Jackie O.
- 3.2. In the additional licence condition, 'Program' is defined as: the Kyle & Jackie O Show or any other show hosted by and/or featuring Kyle Sandilands and/or Jacqueline Henderson, alone or in combination with another presenter(s) or guest(s). This is a broader scope than the Kyle & Jackie O Show which is referred to in this document as the Show.

Relevant breaches requiring remedial action

- 3.3. The ACMA conducted 4 investigations into broadcasts of the Show between 7 June 2024 and 5 December 2024.
- 3.4. The ACMA found the Show's content to be highly offensive and to contain strong and explicit sexual references on numerous occasions.

Broadcast 1 – BI-703

- 3.5. In November 2024, the ACMA commenced into the 7 June 2024 broadcast of the Show. The ACMA had received a complaint alleging that the Show contained inappropriate sexual language in 2 separate segments (BI-703).
- 3.5.1. In relation to segment 1, the ACMA considers that the phrases used during the discussion to describe explicit sexual activity such as oral sex, masturbation and ejaculation, were lewd and explicit sexual descriptions.
- 3.5.2. In segment 2, particularly during the discussion with the male contestant, the discussion included graphic sexualised descriptions of the contestant's sex toy collection, including reference to the cleanliness and smell of used 'butt plugs', which were sustained and vulgar.
- 3.6. On 28 March 2025, the ACMA found that the Licensee breached clause 2.2 of the Commercial Radio Australia Code of Practice 2017 (revised in 2018) (the Code). The reasons for this finding are outlined in investigation report for BI-703.

Broadcasts 2, 3 and 4 – BI-729, BI-731 and BI-734

- 3.7. On 7 February 2025, the ACMA opened investigations into the compliance of 3 broadcasts of the Show with clause 2.2 [decency] of the Code:
- (a) 14 August 2024 – This broadcast contained a guessing game run by the Show’s hosts that involved listening to 6 audio clips of staff urinating and other staff guessing who each audio clip pertained to. This involved discussion of the staff member’s varying penis sizes and shapes (BI-729).
 - (b) 15 August 2024 – This broadcast contained a similar guessing game as above, involving 5 audio clips of female staff members urinating. The audio of each urination ‘stream’ was discussed in graphic detail, including with references to sexual acts, descriptions of genitals, and menstruation (BI-731).
 - (c) 4 September 2024 – This broadcast contained a regular segment called ‘Tradie vs Lady’, where contestants from the general public were asked to call in and provide their favourite sex position. A contestant noted his favourite sex position of the ‘butcher’s wheelbarrow’ and, after prompting from the Show’s hosts, provided a graphic description and discussed with the hosts (BI-734).
- 3.8. On 5 September 2025, the ACMA found that the Licensee breached clause 2.2 of the Code in relation to each of the above broadcasts. The reasons for the ACMA’s findings in relation to this Licensee are set out in investigation reports BI-729, BI-731 and BI-734.
- 3.9. Review of broadcasts aired after the breach findings detailed in paragraphs 3.5 to 3.8 demonstrated that there were no material changes made to the Show’s format, including segments that were the subject of several breaches, such as Tradie vs Lady. The ACMA considers that the Licensee has not adequately managed its compliance with the Code in respect of the Show.
- 3.10. The explicit, vulgar and sustained nature of the sexual references that continued to be made on the Show and broadcast by the Licensee is of concern to the ACMA and it considers that there is a real risk of future non-compliance with clause 2.2 of the Code if an additional licence condition is not imposed. Accordingly, the ACMA has decided to impose an additional licence condition on the Licensee under subsection 43(1) of the BSA.

4. NOTICE OF INTENTION TO IMPOSE AN ADDITIONAL CONDITION ON THE LICENCE AND SUBMISSIONS FROM THE LICENSEE (subsection 43(2))

- 4.1. On 11 November 2025, in accordance with paragraph 43(2)(a) of the BSA, the ACMA gave the Licensee written notice of its intention to impose an additional licence condition (Notice of Intention (NOI)) (Attachment A) and, in accordance with paragraph 43(2)(b) of the BSA, invited the Licensee to make representations in relation to the ACMA’s proposal to impose this additional licence condition.

- 4.2. On 12 November 2025, the “Notice of Intention to Impose an Additional Condition on Commercial Radio Broadcasting Licence No. 4142” (NOI) was gazetted in accordance with paragraph 43(2)(c) of the BSA.
- 4.3. The ACMA received written representations from the Licensee on 2 December 2025.
- 4.4. In its representations, the Licensee:
 - 4.4.1. accepted Conditions 1 and 3 outlined in the NOI;
 - 4.4.2. submitted that Condition 2 should not be imposed; and
 - 4.4.3. submitted that Condition 4 should be amended to allow it time to consider the auditor’s recommendations.

5. EVIDENCE AND REASONS FOR DECISION

Evidence

- 5.1. In making its decision to impose an additional licence condition on the Licensee, the ACMA considered:
 - 5.1.1. The requirements under the Code and BSA;
 - 5.1.2. Breaches of clause 2.2 of the Code by the Licensee in relation to the Show;
 - 5.1.3. The NOI given to the Licensee on 11 November 2025; and
 - 5.1.4. The written representations of the Licensee dated 2 December 2025.

Reasons for decision

- 5.2. The ACMA has decided to impose the additional licence condition for a period of 5 years from the date it is published in the *Gazette* so that the Licensee can demonstrate that it can uplift and maintain compliance over time. A duration of 5 years is also required to satisfy the ACMA that the Licensee has time to implement any improvements to the Governance Framework required by Conditions 3 and 4 and embed a culture of compliance within its operations to ensure ongoing compliance with clause 2.2.

- 5.3. Condition 1

- 5.3.1. Condition 1 of the additional licence condition is:

The Licensee must, in respect of the Program, comply with clause 2.2 of the Commercial Radio Australia Code of Practice 2017 (revised in 2018) (the **Code**), or any equivalent provision in any replacement code registered by the ACMA under section 123 of the BSA.

- 5.3.2. Paragraph 44(2)(a) of the BSA provides that:

Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a commercial television broadcasting licensee or a commercial radio broadcasting licensee:

- (a) requiring the licensee to comply with a code of practice that is applicable to the licensee...

5.3.3. Clause 2.2 of the Code provides:

Program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant Program.

5.3.4. As set out above, the ACMA has found that the Licensee has breached clause 2.2 of the Code on 4 occasions between June 2024 and December 2024 in relation to broadcasts of the Show.

5.3.5. Given the number of breaches of this clause, the ACMA has decided that an additional licence condition will be imposed on the Licensee in respect of the Show, requiring the Licensee to comply with clause 2.2 of the Code.

5.3.6. In its representations to the ACMA, the Licensee accepted Condition 1.

5.4. Condition 2

5.4.1. Condition 2 of the additional licence condition is:

Without limiting paragraph 1, the Licensee must ensure that the Program does not broadcast content which is highly offensive to an ordinary reasonable listener or which contains strong and explicit Sexual References by the standards of an ordinary reasonable listener.

5.4.2. In the NOI, proposed Condition 2 was:

Without limiting paragraph 1, ensure that the Program does not broadcast content which is highly offensive to an ordinary reasonable listener or which contains strong and explicit Sexual References.

Note: A Sexual Reference can be any single reference within the Program and does not need to be recurring throughout the Program.

5.4.3. For the purpose of the additional licence condition 2, Sexual References are defined as:

Sexual References includes spoken words and/or sound effects that would be understood by the ordinary reasonable listener as having a sexual meaning.

5.4.4. In the NOI, Sexual References were defined as:

Sexual References means references to sexual activity or sexual descriptions. Sexual references include spoken words, innuendo and/or sound effects that would be understood by the ordinary reasonable listener as having a sexual meaning.

5.4.5. In its representations to the ACMA, the Licensee submitted that Condition 2 should not be imposed because it is unreasonable, inconsistent with the co-regulatory framework, uncertain in scope, and beyond the ACMA's power, submitting that:

... proposed Condition 2 applies a standard that differs from and exceeds the requirements of clause 2.2 of the Code, with which proposed condition 1 will already compel compliance...Condition 2 will capture and proscribe content that does not breach the Code, in addition to capturing and proscribing content that does...

...Condition 2 unreasonably exceeds the scope of clause 2.2 because it reframes the applicable test from whether content "offends generally accepted standards of decency" to whether the Program "contains strong and explicit Sexual References"...

...a licence condition must be clear, precise and unambiguous so that the Licensee can determine, in advance and with confidence, whether content may contravene it...

5.4.6. The ACMA has given careful consideration to the Licensee's submissions, but has decided to retain Condition 2 with minor changes. The reasons for this are set out below.

5.4.7. Paragraph 44(2) of the BSA provides that:

Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a commercial television broadcasting licensee or a commercial radio broadcasting licensee:

- (a); or
- (b) designed to ensure that a breach of a condition by the licensee does not recur.

5.4.8. The ACMA notes that each of the breach findings outlined in paragraphs 3.5 – 3.8 above involved either highly offensive content or content that contained strong and explicit sexual references, demonstrating repeated similar breaches by the Licensee. While noting that the previous breaches were breaches of the Code and not of a licence condition, the ACMA notes that paragraph 44(2)(b) is inclusive and considers that Condition 2 should be imposed to ensure that content of this nature is not broadcast in future.

5.4.9. In addition, during the ACMA's investigations into the above matters, it found that there was nothing about the demographic characteristics of the Licensee's audience that differed from the ordinary reasonable listener.

5.4.10. In response to the submissions made by the Licensee that Condition 2 in the NOI was unreasonable, inconsistent with the co-regulatory framework and uncertain in scope, the ACMA made the following amendments to Condition 2:

- (a) redrafted to make clear the standards of an ordinary reasonable listener apply to both content which is highly offensive and which contains strong and explicit Sexual References. The ACMA recognises that community standards around what is 'highly offensive' and 'strong and explicit' will evolve over time and will assess individual matters in this context;
- (b) removed the terms 'sexual descriptions' and 'innuendo' from the definition of Sexual References.; and
- (c) removed the note at Condition 2 that a Sexual Reference can be a single reference and does not need to be recurring in the Program.

5.5. Conditions 3 and 4

5.5.1. Conditions 3 and 4 of the additional licence conditions are:

- 3. The Licensee must commission an independent audit of the Governance Framework by a compliance expert on the basis that:
 - (a) the audit will be completed no later than 6 months after the date of Commencement of this licence condition; and
 - (b) the auditor's report of the independent audit will be provided to the Licensee and the ACMA within 7 days after completion of the independent audit.
- 4. The Licensee must:
 - (a) within 3 months of receipt of the independent auditor's report, provide the ACMA with a board-approved implementation plan setting out the steps the Licensee has taken, or will take, to implement all recommendations made by the auditor, including timeframes within which those recommendations will be implemented, (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from the Licensee);
 - (b) comply with the board-approved implementation plan and timeframes (save to the extent to which that plan or timeframes may be modified as permitted by a written approval from the ACMA); and

- (c) produce a written report to the ACMA 12 months after the date the implementation plan is provided to the ACMA, and every 12 months after this date for the duration of the licence condition, which details the status of recommendations made in the audit report and progress against the implementation plan.

5.5.2. In the NOI, proposed Conditions 3 and 4 were:

- 3. The Licensee must commission an independent audit of the Governance Framework by a compliance expert.

The Licensee must commission the independent audit on the basis that:

- a. the audit will be completed no later than 6 months after the date this licence condition comes into effect; and
 - b. the auditor's report of the independent audit will be provided to the Licensee and the ACMA within 7 days after completion of the independent audit.
- 4. If the auditor recommends improvements to the Governance Framework, these must be implemented by the Licensee no later than 3 months after the receipt by the Licensee of the auditor's report.

5.5.3. For the purpose of the additional licence condition, Governance Framework is defined as:

Governance Framework means the Licensee's systems, processes, contracts, policies and training that are relevant to the Licensee's compliance with clause 2.2 of the Commercial Radio Australia Code of Practice 2017 (revised in 2018) (the **Code**), or any equivalent provision in any replacement code registered by the ACMA under section 123 of the BSA. For the purposes of this definition, **contracts** include program supply agreements and employment contracts.

5.5.4. In the NOI, Governance Framework was defined as:

Governance Framework means the Licensee's systems, processes, contracts, policies and training that are relevant to compliance with items 1 and 2 of this licence condition. For the purposes of this definition, **contracts** include program supply agreements and employment contracts.

5.5.5. It is the ACMA's intention that Conditions 3 and 4 extend to the Licensee's governance structure as relevant to its compliance with clause 2.2 of the Code. The Licensee is required to undertake the independent audit regardless of the status of the Show or whether either or both of Mr Sandilands and Ms Henderson host, co-

host or appear as guests on any other Programs broadcast by the Licensee in the future.

5.5.6. The ACMA is of the view that these conditions are required to address:

5.5.6.1. the systemic nature of non-compliance with the Code by the Licensee; and

5.5.6.2. ensuring future compliance by the Licensee with the Code.

5.5.7. In its representations to the ACMA, the Licensee accepted Condition 3, but disputed Condition 4. The Licensee submitted that:

... in ARN's submission, proposed Condition 4 is unreasonable because:

(a) it pre-judges both the reasonableness and appropriateness of any findings or recommendations made by the independent auditor; and

(b) it predetermines the capacity of the Licensees to implement those recommendations within a fixed period of three months, irrespective of their scope, complexity, or operational implications.

5.5.8. The ACMA has given careful consideration to this submission. However, the ACMA is of the view that there needs to be certainty about what audit recommendations must be implemented and when this implementation must occur.

5.5.9. The Licensee submitted that:

A more appropriate and effective approach is a staged, evidence-based implementation process. ARN proposes that, following receipt of the independent auditor's report:

(a) ARN undertakes a detailed internal review of the recommendations, including assessment of operational feasibility, contractual implications, staffing impacts, and technical requirements.

(b) ARN consults with the ACMA in relation to the proposed prioritisation and sequencing of recommendations.

(c) A jointly agreed implementation plan is developed, including realistic timelines, milestones, and resource allocation.

(d) Implementation commences in accordance with the agreed plan, with appropriate oversight, with periodic reporting to the ACMA on progress and any emerging issues.

5.5.10. The ACMA has given careful consideration to the Licensee's submissions.

5.5.11. The ACMA does not accept the Licensee's proposal in paragraphs (b) and (c) because:

5.5.11.1. there is a compliance risk that the Licensee is not required to implement agreed recommendations in its implementation plan;

5.5.11.2. there is no recourse for the ACMA if Licensee does not implement agreed recommendations; and

5.5.11.3. if the Licensee is not required to implement the recommendations of the independent audit, the ACMA will not be able to monitor compliance uplift.

5.5.12. Accordingly, the ACMA has amended the condition such that Condition 4 requires:

5.5.12.1. the Licensee be given the opportunity to provide the ACMA with its implementation plan; and

5.5.12.2. all recommendations to be implemented by the Licensee (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from the Licensee).

5.5.13. Condition 4(c) reflects paragraph (d) of the Licensee's submissions, by requiring annual updates from the Licensee to the ACMA on implementation of the recommendations.

5.5.14. This accommodates the Licensee's concerns about the feasibility of implementing the auditor's recommendations under the timeframes set out in the NOI.

6. DECISION

6.1. Following consideration of the evidence referred to in Part 5 above, the ACMA has made the decision under subsection 43(1) of the BSA, to impose on the Licensee, the following additional licence condition:

Definitions

In this licence condition:

Commencement means the date of Gazettal of this licence condition.

Sexual References includes spoken words and/or sound effects that would be understood by the ordinary reasonable listener as having a sexual meaning.

Governance Framework means the Licensee's systems, processes, contracts, policies and training that are relevant to the Licensee's compliance with clause 2.2 of the Commercial Radio Australia Code of Practice 2017 (revised in 2018) (the **Code**), or any equivalent provision in any replacement code registered by the ACMA under section 123 of the BSA. For the purposes of this definition, **contracts** include program supply agreements and employment contracts.

Program means the *Kyle & Jackie O* or any other hosted by and/or featuring Kyle Sandilands and/or Jacqueline Henderson, alone or in combination with another presenter(s) or guest(s).

This licence condition will be in effect for a period of 5 years from Commencement.

1. The Licensee must, in respect of the Program, comply with clause 2.2 of the Code, or any equivalent provision in any replacement code registered by the ACMA under section 123 of the BSA.
 2. Without limiting paragraph 1, the Licensee must ensure that the Program does not broadcast content which is highly offensive or which contains strong and explicit Sexual References by the standards of an ordinary reasonable listener.
 3. The Licensee must commission an independent audit of the Governance Framework by a compliance expert on the basis that:
 - a. the audit will be completed no later than 6 months after the date of Commencement of this licence condition comes into effect; and
 - b. the auditor's report of the independent audit will be provided to the Licensee and the ACMA within 7 days after completion of the independent audit.
 4. The Licensee must: If the auditor recommends improvements to the Governance Framework, these must be implemented by the Licensee no later than 3 months after the receipt by the Licensee of the auditor's report.
 - a. within 3 months of receipt of the independent auditor's report, provide the ACMA with a board-approved implementation plan setting out the steps the Licensee has taken, or will take, to implement all recommendations made by the auditor, including timeframes within which those recommendations will be implemented (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from the Licensee);
 - b. comply with the board-approved implementation plan and timeframes (save to the extent to which that plan or timeframes may be modified as permitted by a written approval from the ACMA); and
 - c. produce a written report to the ACMA 12 months after the date the implementation plan is provided to the ACMA, and every 12 months after this date for the duration of the licence condition, which details the status of recommendations made in the audit report and progress against the implementation plan.
- 6.2. As required by subsection 43(4) of the BSA, the fact of the imposition of an additional licence condition will be published in the *Gazette*.

7. APPEAL RIGHTS

- 7.1 Under section 204 of the BSA, the Licensee may apply to the ART for a review of this decision to impose an additional licence condition.

7.2 Further information about making an application for review can be obtained through the ART website at www.art.gov.au or by telephoning the Tribunal on 1800 228 333.



AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

Broadcasting Services Act 1992

NOTICE OF INTENTION TO IMPOSE AN ADDITIONAL CONDITION ON COMMERCIAL
RADIO BROADCASTING LICENCE NO. 4142

Pursuant to paragraph 43(2)(a) of the *Broadcasting Services Act 1992* (**BSA**), the Australian Communications and Media Authority (the **ACMA**) hereby gives notice that it proposes to impose an additional condition on the commercial radio broadcasting licence number 4142 held by Double T Radio Pty Ltd (the **Licensee**) in the following terms:

Proposed condition

Definitions

In this licence condition:

Governance Framework means the Licensee's systems, processes, contracts, policies and training that are relevant to compliance with items 1 and 2 of this licence condition. For the purposes of this definition, **contracts** include program supply agreements and employment contracts.

Program means the *Kyle & Jackie O Show* or any other show hosted by and/or featuring Kyle Sandilands and/or Jacqueline Henderson, alone or in combination with another presenter(s) or guest(s).

Sexual References means references to sexual activity or sexual descriptions. Sexual references include spoken words, innuendo and/or sound effects that would be understood by the ordinary reasonable listener as having a sexual meaning.

For a period of 5 years from the date that this condition comes into effect the Licensee must:

1. In respect of the Program, comply with clause 2.2 of the Commercial Radio Australia Code of Practice 2017 (revised in 2018) (the **Code**), or any equivalent provision in any replacement code registered by the ACMA under section 123 of the BSA.
2. Without limiting paragraph 1, ensure that the Program does not broadcast content which is highly offensive to an ordinary reasonable listener or which contains strong and explicit Sexual References.

Note: A Sexual Reference can be any single reference within the Program and does not need to be recurring throughout the Program.

3. The Licensee must commission an independent audit of the Governance Framework by a compliance expert.

The Licensee must commission the independent audit on the basis that:

- a. the audit will be completed no later than 6 months after the date this licence condition comes into effect; and
 - b. the auditor's report of the independent audit will be provided to the Licensee and the ACMA within 7 days after completion of the independent audit.
4. If the auditor recommends improvements to the Governance Framework, these must be implemented by the Licensee no later than 3 months after the receipt by the Licensee of the auditor's report.