



23 December 2013

The Hon Malcolm Turnbull
Minister for Communications
PARLIAMENT HOUSE
CANBERRA ACT

VIA EMAIL

Dear Minister

Review of Regulation - Submission by Commercial Radio Australia

On behalf of the commercial radio industry, Commercial Radio Australia is delighted to have this opportunity to make a submission on proposed reform of regulation, as part of the Government's initiative to create a lower cost environment which is more conducive to business, employment and economic growth, as well as we hope a more technology neutral platform for regulation of the media industry in Australia. As you are aware, Commercial Radio Australia (CRA) represents the commercial radio industry. Attachment One is a short submission developed by CRA in consultation with its members.

The submission has five areas of focus:

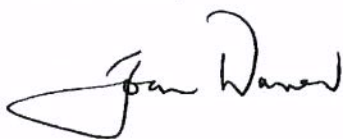
1. Repeal of sector-specific radio regulation, in recognition of the vast changes in the media and information landscape since the *Broadcasting Services Act* was enacted in 1992. Commercial radio should primarily be subject to the general law and self-regulation, as is the case with most other media such as on-line and internet services and print media. This lowering of regulation will provide important benefits for both the industry and consumers. Importantly, it will align commercial radio regulation with other content providers as befits the twenty-first century.
2. Review radio licence fees for use of spectrum and related account-keeping requirements, which are both onerous and out of step with the *Corporations Act*. The licence fee regime for payment of licence fees for radio broadcasters has never been reviewed since the enactment of the legislation, and has been in need of reform for some time.
3. Reform the ACMA by overhauling provisions relating to its membership selection, structure, role and appeal rights. The experience of CRA's members is that the highly interventionist approach of the ACMA is far removed from the original legislative intention of the *Broadcasting Services Act*.
4. Further measures to promote the rollout and take-up of free to air digital radio, including in regional areas. As well as benefiting listeners, these measures will promote the development of Australia's digital economy.
5. A BSA related reclassification issue in relation to simulcast to return to over ten years of policy and practice and ensure fair treatment of radio broadcasters in a converged world. The proposed revoking and reissuing of a determination will permit continued streaming of free to air local broadcasting services on the internet for the convenience of local listeners.

Each of these points is further developed within the attached submission and of course can be even further expanded in discussions with yourself and your department.

For the reasons set out in the attached submission, these reforms will encourage a regulatory environment which is efficient, certain, fair, equalises treatment of services, encourages competition and advances the Government's policy agenda.

CRA would welcome the opportunity to discuss these key issues with you and your Departmental officers.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joan Warner'. The signature is stylized, with a large, sweeping initial 'J' and a cursive 'W'.

Joan Warner
Chief Executive Officer

ATTACHMENT ONE

PROPOSALS FOR SHORT TERM REGULATORY REFORM OF COMMERCIAL RADIO

PROPOSAL ONE:

REMOVE RADIO-SPECIFIC REGULATION AND CREATE REGULATORY PARITY WITH OTHER MEDIA

1	Description of relevant regulation	Provisions of the <i>Broadcasting Services Act</i> which impose higher degrees of regulation than are imposed on on-line and other forms of traditional media and communications providers (such as print and telecommunications providers), including in relation to ownership and control, co-regulation through registration of the ACMA-approved codes and a complaints process, amongst other regulatory imposts identified below.
2	Policy underlying regulation	<p>The regulatory model for commercial radio is largely unchanged since the <i>Broadcasting Services Act</i> was enacted in 1992. Indeed, in some areas such as regional radio content and content standards generally, the level of regulation has increased. The original rationale for the degree of regulation of commercial radio was that commercial radio had higher degrees of influence than other media (except commercial television). This rationale has no place in contemporary Australian society. Current media consumption patterns indicate that:</p> <ul style="list-style-type: none">• an ever increasing proportion of Australians obtain news and information from on-line sources as well as from traditional media;• the ubiquity of mobile devices has resulted in a large number of competitors to radio, including iTunes, podcasts, unlicensed and unregulated online radio and music streaming services and international media. These online services have neither the high set up or ongoing transmission costs of radio so are immediately at a cost advantage;• it is a fact that print media (either in hard copy or on-line) is subject to far lower levels of regulation. For example, print media content is subject only to the general law and voluntary codes.• there is a far greater multiplicity of "traditional" media than in 1992, including 30% household penetration by pay television, a plethora of news and information services and now of free-to-air multichannels;• the ubiquity of the internet has given Australians access to a vast and ever-increasing array of media and information services. <p>The media and information environment has been vastly transformed since 1992. There is no justification in the twenty-first century for imposing higher degrees of regulation on commercial free to air radio than the vast majority of other media.</p>

3	Reasons regulation is no longer required/ could be amended	See the answer to point 2.
4	Proposal to remove or amend	<p>Remove all provisions which impose sector-specific requirements on free to air commercial radio over and above other media such as on-line, internet services, print and pay television. In particular:</p> <ul style="list-style-type: none"> • remove Code and other content requirements, in relation to areas where the general law already creates a regulatory regime, such as privacy and discrimination, vilification etc; • remove historical requirements which no longer have any place in a modern society, such as the prohibitions on election advertising. These are entirely anomalous and unfair where online and print media have no such restrictions; • remove the yearly reporting requirements for regional radio stations for both local content plans and trigger event reports to be replaced by a baseline report system where reports are only required where elements change and nil returns in all other cases. • remove advertising restrictions which are not found in other media. As a simple example, integrated advertising such as product placement has been widespread for many years in online media, movies and television programs. Radio should not be subject to integrated advertising restrictions which exceed that imposed on other media; • equalise the requirements for local content and Australian music so that some local and Australian music requirements apply to on-line radio and music streaming services.
5	Impact of removal/amendment on industry	<p>Removal of these obligations would allow the free to air commercial radio industry to be far more efficient, by:</p> <ul style="list-style-type: none"> • greatly reducing regulatory costs and burden; • providing for a more flexible control regime, which will bring greater economies and the ability to efficiently provide multiple services; • permitting radio to provide new and innovative services, which are presently constrained by a wide and unnecessary range of content and Code requirements; • providing a more level regulatory playing field for all content providers.
6	Impact of removal/amendment on consumers/individuals	Consumers would benefit from these changes, as innovative and more diverse free to air radio services become available.

PROPOSAL TWO:

REVIEW RADIO LICENCE FEES AND ASSOCIATED REQUIREMENTS

1	Description of relevant regulation	Fees imposed on commercial radio under the <i>Radio Licence Fees Act</i> and associated account-keeping and audit requirements.
2	Policy underlying regulation	These fees represent a tax in return for use of broadcasting spectrum. Audit requirements impose a substantial impost, especially on small stations or stations which are part of a group and should be able to provide consolidated accounts.
3	Reasons regulation is no longer required/ could be amended	<p>Commercial radio does not question the need for payment of spectrum-related fees. However, the level and rate of these fees must be reviewed.</p> <p>These fees have been subject to “bracket creep” over many years, during a period in which radio faces competition from new online and mobile competitors which have low set up costs, little or no content regulation or compliance imposts and no ongoing transmission costs or spectrum fees.</p> <p>In addition, there is no mechanism within the Act for the review of these fees to take into account the changing natures of the industry or the media/communications environment.</p> <p>Requirements for provision of audited accounts for each station are both onerous and out of step with commercial practice and the <i>Corporations Act</i>. These requirements impose unreasonable and unnecessary burdens on small stations and stations which are part of a common network, for example.</p>
4	Proposal to remove or amend	<p>Amend the <i>Radio Licence Fees Act</i> to create a fee structure reflective of the lower international fee environment for radio and include a process for periodic review of that structure.</p> <p>Create an audit waiver in section 205B of the BSA.</p>
5	Impact of removal/amendment on industry	These amendments would greatly benefit the industry, permitting greater funding of programming and other initiatives, especially in the very crowded media environment which now exists and will continue into the future. It will also significantly reduce regulatory costs.
6	Impact of removal/amendment on consumers/individuals	This will benefit consumers as commercial radio licensees have greater funds for programming, community engagement and other initiatives.

PROPOSAL THREE:

REFORM THE ACMA

1	Description of relevant regulation	<i>Broadcasting Services Act and ACMA Act</i>
2	Policy underlying regulation	<p>The underlying policy is reflected in section 4 of the BSA. Paraphrasing that section, the legislative intention was that regulation must be imposed efficiently and without creating unnecessary imposts.</p> <p>CRA supports this objective, but the experience of its members is that the ACMA has become an increasingly interventionist body, with an approach that is far removed from the ABA when first established and from the intention of the Parliament.</p>
3	Reasons regulation is no longer required/ could be amended	The intention of Parliament, to create an efficient light-touch regulator, needs to be reinforced.
4	Proposal to remove or amend	<p>To achieve this objective CRA recommends an overhaul of the ACMA-related regulation to:</p> <ul style="list-style-type: none">• create a more consultative process in relation to ACMA appointments to ensure equally representative experience of all parts of the broadcasting and communications sector is present on the ACMA;• separate the functions of Chair and CEO of ACMA, in accordance with accepted approaches in the commercial world to reflect basic governance principles;• review and reform the ACMA complaints process, for example, to prevent the ACMA investigating stale complaints which have not fallen within the complaints period as set out in the Codes; to minimise the use of the complaints process as a voice for special interest groups that are unrepresentative of listeners or consumers of media services, to ensure that a natural person and not an organisation is a complainant and to ensure that the person who is complaining has actually heard the broadcast and is not acting on a 2nd or 3rd party report;• provide for a mechanism for a right of appeal to the Administrative Appeals Tribunal in relation to the outcome of ACMA complaints. The current appeal process is limited to the exercise of particular ACMA powers and ignores the effect on a licensee or the industry of adverse complaint findings, which of themselves can be very serious and require an avenue of appeal.

5	Impact of removal/amendment on industry	<p>This overhaul would be very positive to the industry, by lowering regulatory costs and developing a more certain, predictable and fairer regulatory environment which is better aligned with the position of radio in the twenty-first century.</p> <p>In that regard see the submissions above in relation to Proposal One.</p>
6	Impact of removal/amendment on consumers/individuals	<p>Consumers can have confidence that the regulator is being run on best practice principles and with appropriate corporate governance structures as well as making best use of taxpayers' funds.</p> <p>One part of the proposal however will reduce the ability of interest groups who are not consumers of the relevant media from using the complaints process to further a political agenda.</p>

PROPOSAL FOUR:

IMPLEMENT FURTHER MEASURES TO PROMOTE DIGITAL RADIO

1	Description of relevant regulation	Regulation of digital radio under the <i>Broadcasting Services Act</i> the <i>Radiocommunications Act</i>
2	Policy underlying regulation	<p>The <i>Broadcasting Services Act</i> introduced a “dual transmission” approach to digital radio, under which commercial broadcasters provide both analogue and digital radio services.</p> <p>CRA supports this model, which provides certainty for consumers while also encouraging the development of Australia's digital economy.</p> <p>Nevertheless, it is apparent the digital radio services will require further support and a more certain investment environment over longer time horizons.</p>
3	Reasons regulation is no longer required/ could be amended	The current policy is to promote rollout of digital radio infrastructure while maintaining a co-transmission model. CRSA supports this policy but believes that it requires further legislative support.
4	Proposal to remove or amend	<p>CRA proposes that:</p> <ul style="list-style-type: none">• the date for new digital radio entrants to enter the metropolitan market should be extended from 2015 to 2025, in recognition of the need for radio listeners to change over the average of five analogue radios in each household; for radio broadcasters to continually invest in digital radio content to create a significant listenership, and, for radio broadcasters to bed down the co-transmission model;• rollout of digital radio in regional areas should receive Government financial assistance over a period of years just as was given to free to air TV for the rollout of digital television. While the L-Band has been reserved for digital radio, radio may consider withdrawing any claim to L-Band for regional digital radio rollout to allow a digital dividend to be earned to fund the regional rollout on Band 3 by the sale of L-Band.• DAB+ broadcast digital radio should be mandated for all new cars being assembled in, or imported into, Australia and a DAB+ broadcast chip should be mandated for all mobile telephones being sold in Australia under the <i>Radiocommunications Act</i>. These actions will encourage digital radio take-up.• planning approval for digital radio transmission sites should be the subject of a national planning regime, as occurred with the rollout of telecommunications infrastructure, under the <i>Radiocommunications Act</i>.

5	Impact of removal/amendment on industry	These measures will greatly promote the rollout and development of free to air broadcast digital radio services.
6	Impact of removal/amendment on consumers/individuals	<p>The proposal will greatly benefit consumers, by giving them access to a greater range of free to air broadcast digital radio services over time and, in particular, promoting the regional rollout of digital radio so that a greater degree of diversity of free to air radio is available to regional Australians free to air as is now available to metropolitan Australians.</p> <p>The inclusion of a DAB+ broadcast chip in mobile phones will be positive for consumers as this a have less negative effect on battery life than streaming through an app and will not impact at all on data usage as does an app.</p>

PROPOSAL FIVE:

CREATE A MORE CERTAIN COPYRIGHT ENVIRONMENT

1	Description of relevant regulation	<i>Broadcasting Services Act</i> - Ministerial determination to be reissued to re-establish that an exact online simulcast of a free to air broadcast is a broadcast under paragraph (c) of the definition of "broadcasting service" under the <i>Broadcasting Services Act</i> .
2	Policy underlying regulation	<p>Simulcast - In 2000 the then Minister made a determination under paragraph (c) of the definition of "broadcasting service" of the <i>Broadcasting Services Act</i>.</p> <p>Under this determination it was widely accepted for over 10 years that an exact online simulcast of a free to air BSB broadcast was classified as a broadcast and covered by broadcast regulation and the broadcast copyright licence. This was challenged by the record industry in order to obtain additional payment for the exact simulcast. Radio won the first case but the appeals court took a literal interpretation of the 2000 Determination and noted that it did not exactly say that an exact online simulcast was part of the broadcast. The appeals court made no comment on the policy issues but the consequence of the literal interpretation was that over ten years of policy certainty was overturned.</p> <p>As a result a policy anomaly now exists where radio broadcasters will need to pay for a further copyright licence for exact online simulcasts of free to air broadcasts where no additional revenue is gained. To avoid doubt, broadcasters already pay substantial licence fees to various collecting societies (for onward distribution) for these broadcast rights.</p> <p>Additional significant payments being demanded for exact online simulcasts now represent an unexpected and unintended windfall to content providers, in circumstances where the economics of radio broadcasting are finely balanced.</p> <p>As noted, internet music streaming providers and online radio services do not have any of the set up or ongoing transmission costs of free to air broadcast radio, nor any of the regulatory imposts/costs or compliance costs. This additional payment just makes the competitive landscape for free to air radio broadcasters more unfair and precarious.</p> <p>The Government can simply and quickly reinstate long accepted policy and practice by issuing a clear determination under the BSA to ensure that an exact online simulcast of a free to air BSBS broadcast is considered to be part of the broadcast.</p>

3	Reasons regulation is no longer required/ could be amended	See the answer to paragraph 2.
4	Proposal to remove or amend	Revoke the 2000 Ministerial Determination and issue a new Ministerial Determination.
5	Impact of removal/amendment on industry	<p>This proposal will reinstate long held and workable policy and practice and will allow a return to policy certainty for radio broadcasters.</p> <p>This proposal will also provide a more stable environment for planning and investment in commercial radio services and allow all free to air radio broadcasters to commence or continue to fulfil the terms of their broadcast licences to make free to air radio services as available as possible to all listeners in their licence areas.</p> <p>This proposal will be in step with the Government's stated desire to have content treated the same across platforms in a converged world. For radio broadcasters to be forced by a court's literal interpretation of a Ministerial Determination to pay a significant unaffordable additional impost for the same content contradicts this stated policy aim.</p>
6	Impact of removal/amendment on consumers/individuals	Consumers will benefit because radio will continue to be ubiquitous and listeners will be able to listen to their local radio services via streaming where the broadcast signal is weak or cannot reach.

