

**Submission
No 417**

**INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN
NEW SOUTH WALES**

Organisation: Commercial Radio Australia Limited

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The Hon Paul Green MLC
Committee Chair
Portfolio Committee No 6 – Planning and Environment
Legislative Council
Parliament House
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Dear Mr Green

INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN NSW

CRA RESPONSE TO COMMENTS MADE IN PUBLIC HEARING

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA appreciates the opportunity to respond to the comments made during the public hearing on 26 March 2018, relating to the inquiry into the music and arts economy in NSW (**Inquiry**).

CRA is pleased to note that the continuing significance and influence of radio was mentioned by several in the public hearing.¹ Commercial radio continues to support and promote the broadcast of Australian music in accordance with its regulatory obligations.

CRA notes the comments made by Ms Brooke McClymont during the public hearing relating to compliance with the Commercial Radio Code of Practice (**Code**). Ms McClymont's comments appear to reflect a misunderstanding of the regulatory structure governing the

¹ Mr Dean Ormston (CEO APRA AMCOS): 'Radio is still a very important part of the marketing and revenue mix for career artists...'

Ms Emily Collins (Managing Director, MusicNSW): "Radio plays a really crucial part in [the] ecosystem and allows artists to go to new places and be supported by fans from that town.'

Mr Dan Rosen (CEO ARIA): 'I think radio is still a very successful and important part of the mix in music. They have actually done a fantastic job through digital disruption about maintaining their relevance'.

broadcast of Australian music on commercial radio. The prevailing view – both in the commercial radio industry and music industries – is that commercial radio is ‘generally compliant with the existing local content obligations under the Code’.²

The regulatory structure and compliance with its provisions by the radio industry is addressed in more detail below.

1. Current co-regulatory framework

The *Broadcasting Service Act 1992 (BSA)* provides at section 123 that codes of practice governing the commercial radio industry must be developed in consultation with the Australian Communication and Media Authority (**ACMA**). The codes may relate to ‘the broadcasting of Australian music’ (section 123(2)(g) BSA).

The framework is co-regulatory and requires the ACMA to be involved in the development of a code, the assessment of community safeguards and consultation with the public. It is not open to the commercial radio industry to draft or enforce its own code.

Before registering a code, the ACMA must be satisfied that:

- the code of practice contains appropriate community safeguards; and
- members of the public have been given an adequate opportunity to comment on the code (section 123(4) BSA).

The current Code was registered by the ACMA on 15 March 2017 following an extensive period of public consultation and discussions with the ACMA that lasted over 12 months.

The obligation to play Australian music is set out in section 5 of the Code. In summary, this provides that:

- licensees must play the applicable proportion of music performed by Australians during the Australian Performance Period (section 5.1);
- Australian Performance Period means the total period of 126 hours occurring in each week between the hours of 6.00am and 12.00 midnight daily (see Definitions section);
- Australian means a person who is a citizen of or ordinarily resident in Australia;
- the applicable portion of total time is determined based upon the predominant format of the licensee’s service and ranges from 0 (e.g. talk stations) to 25% (e.g. Top 40 stations). This is set out in a table at section 5.2 of the Code;

² Page 5, APRA AMCOS submission to the Senate Standing Committee *Inquiry into the economic and cultural value of Australian content on broadcast radio and streaming services* (Feb 2018).

- there are additional obligations for some categories of station (A, B and C) to play New Australian Performances as a proportion of their total Australian performances (section 5.3); and
- New Australia Performances means a sound recording of a previously unpublished performance performed by an Australian, which has been on sale for a period not exceeding 12 months from the date recorded in the ARIA Report as the date of its initial release in Australia.

CRA provides yearly reports to ARIA detailing Australian music use in the commercial radio industry.

Digital only services (i.e. those that use only DAB+ technology to broadcast) are exempt from the provisions of section 5 of the Code (section 5.10) and therefore have no Australian music obligations. This is to ensure that niche formats – for example, Greek music – can continue broadcasting and serving their listening audiences.

The Code provides a mechanism for making complaints regarding non-compliance. The ACMA oversees this complaint mechanism and conducts investigations. If any individual has concerns regarding compliance, then the Code provides an appropriate route for dealing with such concerns. CRA is not aware of any complaints regarding commercial radio compliance with Australian music obligations.

2. Compliance with the Australian music quotas

Each commercial radio station must individually report its Australian music use. These figures are made publicly available by ARIA (and previously were published by AMPCOM). The stations' reported figures indicate substantial compliance.

CRA is currently working cooperatively with the Australian music industry bodies ARIA and APRA AMCOS to monitor in more detail compliance with the Australian music quotas in the Code.

Both ARIA and APRA have acknowledged the cooperative nature of the current discussions between the industries.

APRA has said that it 'considers the commercial radio industry to be generally compliant with the existing local content requirements under the Code'. It further mentions that 'a small number of commercial radio broadcasters may not be meeting their local content obligations under the Code. APRA AMCOS is involved in constructive ongoing discussions with CRA to address these concerns'.³

³ Ibid.

Similarly, ARIA has said that radio stations 'have actually done a fantastic job through digital disruption about maintaining their relevance. We want to ensure that they are meeting their quotas. So far, to their credit, they are working with us positively on that'.⁴

We note that Ms McClymont's comments do not accurately reflect the regulatory framework that governs the broadcast of Australian music, as set out above.

For example, Ms McClymont claims that commercial radio stations are failing to meet their obligations under the Code because:

- stations are 'failing ... to play 25% local content'; and
- some stations 'are playing only 11% or 7%'.⁵

This shows a misunderstanding of the applicable obligations:

- the percentage of Australian music that stations are obliged to broadcast varies depending on the amount of music played by that station. This ranges from 25% down to 0%. There is no blanket obligation for a commercial radio station to play 25% music;
- the Australian music obligations are measured during the hours 6.00am to midnight. The obligation is to play 126 hours weekly. Any measurement of the amount of music played must accurately reflect these requirements. For example, measuring music played across a 24 hour period or over a period of less than one week does not measure compliance with the Code; and
- the current Australian music quotas could not be universally increased to 25% (or any other level of increase) as to do so would breach the provisions of the Australia – United States Free Trade Agreement, which has been in effect since 2005.

3. Triple J

CRA does not agree with Ms McClymont's comments regarding Triple J.

Triple J is a publicly funded radio station, with a style developed under the ABC Charter. Commercial radio stations are funded entirely by advertising and serve a different and wider audience.

It is vital that diversity of radio stations is maintained in order to maximise choice for listeners. Listeners currently may choose from a wide variety of music stations, including contemporary hits, country, jazz, rock, alternative and classic hits. This should not be eroded.

⁴ Mr Dan Rosen's comments in the Inquiry public hearing, 26 March 2018.

⁵ Ms McClymont's evidence at the Inquiry public hearing, 26 March 2018.

4. Further assistance

CRA would be pleased to provide any further assistance, as required by the Committee.

Thank you for the opportunity to respond to comments made in the Inquiry.

Yours sincerely

Joan Warner
Chief Executive Officer