



**SUBMISSION BY COMMERCIAL RADIO AUSTRALIA**

**PRODUCTIVITY COMMISSION INQUIRY INTO AUSTRALIA'S PRODUCTIVITY  
PERFORMANCE**

**March 2022**

Commercial Radio Australia (**CRA**) is the peak industry body representing the entire commercial radio industry in Australia. CRA has 261 member stations.

CRA welcomes the opportunity to provide comments in relation to the Productivity Commission's inquiry into Australia's productivity performance. CRA supports the Commission's intention to provide recommendations on productivity enhancing reform and urges the Commission to support the proposals set out in this submission.

The commercial radio industry currently has significant compliance costs. Industry specific regulations cover a wide range of areas, including local content, program content, advertising, cross media mergers and technical issues. This makes the commercial radio industry one of the most highly regulated industries in Australia. This is a particular problem in regional areas, where the compliance burden is highest – due to local content and trigger event requirements – and the revenue base is smallest.

The industry accepts that some regulation is necessary. However, this regulation must be made as practical and flexible as possible, to prevent it having an overwhelmingly negative effect on the ability of the industry to carry out its core service of providing broadcasting and audio services across Australia.

The commercial radio industry has identified 3 key areas of regulation that currently hamper its productivity:

- 1. Election Advertising Blackout.** Under the *Broadcasting Services Act 1992 (BSA)*, broadcasters are not allowed to broadcast election advertising from the Wednesday before the election until the close of polling. This places commercial broadcasters at a significant commercial disadvantage, as advertisers place their content on alternative platforms. There is no justification for the continuation of this regulatory burden in an era where extensive election advertising is freely published online.
- 2. Advertising Disclaimers.** Advertising disclaimer requirements disproportionately affect radio. Audio is the only means of communicating a message on radio and any spoken disclaimer takes over the entire message. This differentiates radio from other media, such as online, outdoor and print, where a text disclaimer can be added to the other content without reducing the substantive message. This issue must be fixed as soon as

possible if radio is to compete on equal terms with other media platforms.

- 3. Disclosure Standard.** Onerous disclosure obligations exist for current affairs radio broadcasters under the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012*. The obligations are prescriptive and costly for broadcasters. The commercial radio industry is the only industry currently subject to a Standard in relation to the disclosure of commercial interests.

### **Recommendations**

- (i) The prohibition on election advertising in section 3A of Schedule 2 of the BSA is outdated and ineffective. It should be repealed, to enable broadcasters to compete on an equal footing with other media platforms.
- (ii) The *Corporations Act 2001* should be amended to exempt radio stations from providing mandatory information in advertisements under s1018A *Corporations Act 2001*. Alternatively, if an exemption is not available, then radio should be permitted to provide this information on station websites, rather than in the advert itself.
- (iii) The National Consumer laws should be amended as follows:
  - a) the warning required under the *National Consumer Credit Protection Regulations 2010* should be shortened; and
  - b) a statement should be incorporated into the *National Credit Code* and the *National Consumer Credit Protection Regulations 2010* permitting radio stations to fulfil their disclosure requirements (including the mandatory warning statement) via their station websites rather than on-air.
- (iv) The *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012 (Disclosure Standard)* should be moved into the Commercial Radio Code of Practice as soon as possible. It should then be simplified and streamlined. The Disclosure Standard should not be remade upon its expiry this year.

### **1. Election advertising blackout**

Under section 3A, Schedule 2 of the BSA, commercial radio broadcasters are not permitted to broadcast election advertisements during the 'relevant period'.

The 'relevant period' is defined under section 1 of the BSA as 'the period that commences at the end of the Wednesday before the polling day before the election and ends at the close of the poll on that polling day'.

The current blackout rules were enacted in 1992, several years before internet access became commonplace. There is no equivalent to the blackout rules in place for media other than commercial television and radio. Political parties are free to advertise in print and online at any time they like.

This places commercial broadcasters at a significant commercial disadvantage, as advertisers place their content on alternative platforms.

Furthermore, the discrepancy in the rules applicable to traditional and new media makes the blackout rule ineffective. Listeners are inundated with political advertising from other sources, particularly social media, throughout the blackout period. Voters are surrounded by readily accessible political advertising on all other platforms.

The Joint Select Committee on Electoral Reform reported on this issue in 2019 and concluded that:

The blackout provisions in the BSA are clearly no longer fit for purpose. The JSCEM retains its position as per the *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto* where it recommended an examination of the 'future viability of the broadcast media blackout'.<sup>1</sup>

The current rules are unfair and ineffective. The policy reason for their original enactment has long been undermined, they do not keep pace with current technology and consumer behaviour, and they place commercial broadcasters at a disadvantage compared with other media platforms.

***Recommendation.* The prohibition on election advertising in section 3A of Schedule 2 of the BSA is outdated and ineffective. It should be repealed, to enable broadcasters to compete on an equal footing with other media platforms.**

## **2. Advertising Disclaimers**

The impact of mandatory disclaimers on the radio industry is unique. Audio is the only means of communicating a message on radio and therefore any spoken disclaimer takes over the entire message. This differentiates radio from other media, such as television, online and print, where a text disclaimer can be added to the other content without reducing the substantive message.

Radio advertisements are typically 30 seconds or 15 seconds long. The inclusion of a disclaimer can take up to half of the paid advertising slot. This sometimes forces broadcasters to reduce the cost of spot advertising to reflect the amount of airtime occupied by content that does not help to sell the product.

By taking up a significant portion of the message, the existence of lengthy mandatory disclaimers on radio acts as a disincentive to advertisers to use radio. This damages the radio industry and can divert advertising to other media, such as online and television, where the impact of the disclaimer is less.

Several pieces of regulation recognise radio's unique situation and provide for reduced obligations for radio to include disclaimers in advertisements.

For example, the *Therapeutic Goods Act 1989* and accompanying *Therapeutic Goods Advertising Code 2018* contain exemptions for radio commercials that are 15 seconds or less in duration. Similarly, the *Foreign Interest Transparency Scheme Act 2018* exempts

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<sup>1</sup> Para 5.42, Report on the Conduct of the 2019 Federal Election (Joint Standing Committee on Electoral Matters).

radio advertisements of 15 seconds or less from substantial elements of the required disclaimer.

Nevertheless, many lengthy disclaimers remain applicable to radio. Two industry disclaimers are particularly problematic:

*(a) Financial Product Disclaimers*

When advertising financial products, advertisers are required to include the following information (s1018A *Corporations Act 2001*):

- the issuer of the product;
- a statement that a Product Disclosure Statement for the product is available and where it can be obtained; and
- a statement that the person should consider the Product Disclosure Statement.

The inclusion of this information in radio advertisements can take up to half of a 15 second slot, which significantly impacts on the commercial benefit afforded to advertisers. By contrast, on digital platforms the information is simply placed in text on the screen, while allowing the advertiser to continue communicating its message to listeners.

***Recommendation.* The *Corporations Act 2001* should be amended to exempt radio stations from providing mandatory information in advertisements under s1018A *Corporations Act 2001*. Alternatively, if an exemption is not available, radio should be permitted to provide this information on station websites, rather than in the advert itself.**

*(b) Consumer Credit Disclaimers*

Extensive disclosure requirements apply to the advertising of credit under the *National Consumer Credit Protection Act 2009* and *National Credit Code* Parts 9 and 10:

- the only interest rates that may be disclosed in advertisements are annual percentage rates and comparison rates;
- the advert must include an interest rate if it states the amount of any repayment; and
- if the advert contains an APR, and if fees/charges are payable, it must contain a statement stating that fees/charges are payable and specifying the amount of the fees/charges. If not all the charges can be quantified then it should also add a statement that other fees/charges are payable.

Additional requirements apply if the loan is for a fixed term e.g. bank loan, mortgage, in store finance. These requirements do not apply to continuing credit agreements, such as credit card loans.

If the loan is for a fixed term and includes an interest rate, the advert must:

- disclose the comparison rate;
- disclose the amount of credit and term on which the comparison is based; and

- include the following standard disclaimer:

*“WARNING: This comparison rate is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate.” (section 99, National Consumer Credit Protection Regulations 2010)*

The disclaimer takes approximately 5 seconds to read, and alone comprises around one third of a 15 second radio advert.

The requirement to include the standard disclaimer, together with the other listed information, makes it extremely difficult to advertise products that involve credit, such as mortgages, on radio. This places the radio industry at a clear disadvantage to other industries when competing for advertising. It also reduces choice for consumers, who are denied the opportunity to hear product detail on radio.

**Recommendation.** The National Consumer laws should be amended as follows:

- a) the warning required under the *National Consumer Credit Protection Regulations 2010* should be shortened; and
- b) a statement should be incorporated into the *National Credit Code* and the *National Consumer Credit Protection Regulations 2010* permitting radio stations to fulfil their disclosure requirements (including the mandatory warning statement) via their station websites rather than on-air.

### **3. Disclosure Standard (*Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012*)**

The commercial radio industry supports the objective of ensuring fair and accurate coverage of matters of public interest. However, the commercial radio industry is currently over-regulated in this respect when compared to other media platforms. The commercial radio industry is the only industry currently subject to a Standard in relation to the disclosure of commercial interests.

#### *Existing framework*

Section 123 of the BSA requires commercial radio broadcasting licensees to develop a Code of Practice applicable to their broadcasting operations.

Relevantly, the Code may relate to:

- *promoting accuracy and fairness in news and current affairs programs; and*
- *preventing the broadcasting of programs that:*
  - *simulate news or events in a way that misleads or alarms the audience.<sup>2</sup>*

The Code covers the treatment of news and current affairs at section 3. There is an additional obligation relating to distinguishability of advertising at section 4.

Section 125 of the *Broadcasting Services Act 1992 (BSA)* provides that the ACMA may determine program standards where:

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<sup>2</sup> BSA, sections 123(2)(d) and (e)(i).

*There is convincing evidence that a code of practice registered under section 123 is not operating to provide appropriate community safeguards...*

Over the last 10 years there have been 2 breaches of the Disclosure Standard by commercial radio stations. This is an exceptionally good compliance record, which strongly supports a case for moving the Disclosure Standard into the *Commercial Radio Code of Practice (Code)*. The inclusion of disclosure obligations in the Code will provide appropriate community standards and, accordingly, the circumstances contemplated by section 125 are absent.

#### *Elements of the Disclosure Standard*

In summary, the Disclosure Standard requires:

- on air disclosure during current affairs programs of certain commercial agreements between sponsors and presenters where the content of the current affairs program may affect the interests of those sponsors<sup>3</sup>;
- on air disclosure during current affairs programs of commercial agreements between licensees and sponsors where a presenter has a financial interest of any size in the radio licensee<sup>4</sup>. This applies for instance where presenters hold just one share in the licensee or licensee related company;
- licensees must keep a register of the above commercial agreements and make it accessible to the public<sup>5</sup>;
- on-air disclosure during current affairs programs of the payment of production costs by advertisers and sponsors<sup>6</sup>;
- presenters are indirectly required (by a requirement on broadcasters to ensure the presenters are required) to disclose their commercial agreements to assist the licensee to comply with relevant obligations that relate to the broadcast of programs imposed on the licensee by the BSA, the Commercial Radio Codes of Practice and the Disclosure Standard<sup>7</sup>; and
- the Disclosure Standard sets out detailed mechanisms for achieving the above.<sup>8</sup>

The industry submits that the Standard should not be remade. Instead, the regulatory gap between commercial radio and other media should be narrowed, by converting the Standard to a Code as soon as possible. This will narrow the disadvantage currently experienced by commercial radio stations.

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<sup>3</sup> Sections 5, 7, and 8 Disclosure Standard.

<sup>4</sup> Sections 5, 7 and 8, Disclosure Standard.

<sup>5</sup> Section 7(c), 10 and 11, Disclosure Standard.

<sup>6</sup> Section 7(b) and 9, Disclosure Standard.

<sup>7</sup> Section 7(f), 12, 14 and 16, Disclosure Standard.

<sup>8</sup> Sections 8 to 14, Disclosure Standard.

CRA has made its position on this matter clear to the ACMA and has requested that the Disclosure Standard is not remade upon its expiry this year.

***Recommendation.*** The ***Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012*** (Disclosure Standard) should be moved into the Commercial Radio Code of Practice as soon as possible. It should then be simplified and streamlined. The Disclosure Standard should not be remade upon its expiry this year.

Please contact the Chief Executive Officer,  
of this submission.

for clarification on any aspect

Commercial Radio Australia