



CENTRE FOR MEDIA TRANSITION

**Proposal to Remake the Broadcasting Services
(Commercial Radio Current Affairs Disclosure)
Standard 2012**

Consultation paper

Submission to the Australian Communications and Media Authority

Date: 9 February 2022

About the Centre for Media Transition

The Centre (CMT) was established in 2017 as an applied research unit based at the University of Technology Sydney (UTS). It is an interdisciplinary initiative of the Faculty of Arts and Social Sciences and the Faculty of Law, sitting at the intersection of media, journalism, technology, ethics, regulation and business.

Working with industry, academia, government and others, the CMT aims to understand media transition and digital disruption, with a view to recommending legal reform and other measures that promote the public interest. In addition, the CMT aims to assist news media to adapt for a digital environment, including by identifying potentially sustainable business models, develop suitable ethical and regulatory frameworks for a fast-changing digital ecosystem, foster quality journalism, and develop a diverse media environment that embraces local/regional, international and transnational issues and debate.

The CMT is also home to the APAC bureau of the global verification organisation, First Draft, that aims to combat misinformation.

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Thank you for the opportunity to contribute to this consultation. We consider the subject matter of the Disclosure Standard – the need for clear identification of commercial content – is of increasing importance to the community and we look forward to the ACMA’s more comprehensive future review of the standard.

Question 1

- Is the safeguard still required? If not, why not?

We agree with the observation in the Consultation Paper that contemporary community standards and expectations support the continuation of the Disclosure Standard. It is evident from the current licensee registers that personal endorsement from presenters continues to be of value to advertisers. Although endorsement via content that has the appearance of editorial comment can offer greater value to advertisers than pre-produced advertisements, surveys consistently show the importance audiences place on distinguishing commercial from editorial content. As a result, there is a demonstrated need for regulation. While disclosure statements are not a perfect regulatory mechanism, they provide some protection for audiences while also allowing presenters and licensees to enter commercial agreements with advertisers. Given the personal financial benefits that can flow from these agreements and the commercial appeal of content that is less clearly identified as advertising, there is a need for this regulatory intervention to be in the form of a program standard overseen by the ACMA, rather than a rule developed by industry and included in the code of practice.

Question 2

- Is the concept of a ‘licensee agreement’, as a type of commercial agreement provided for in section 5 of the Standard, still effective and efficient?

As the Consultation Paper notes, it is not known whether the absence of these agreements from licensee registers is a result of a movement away from this type of agreement or a failure to disclose them. In our view, before revoking this part of the standard, the ACMA would need to complete a compliance check and be satisfied that no such agreements exist. In any event, as they have been used in the past, and as disclosure would be needed if any new arrangements are entered into, we think the case for revoking the standard is weak. Further, we think it would be reasonable for the ACMA to check that the disclosure obligations are not bypassed by way of incentives offered by licensees to presenters in employment agreements and contracts for service, rather than in the form of company interests. Accordingly, we think the provision should remain at least until the full review of the standard.

Question 3

- Is the ACMA’s proposed amendment to paragraph 5(1)(b) of the Standard – to clarify that the definition of commercial agreements does not include agreements that are not provided in a commercial context (as reflected in new subparagraph 6(1)(b)(iv) of the proposed draft instrument) – appropriate? Why or why not?

We do not support this proposed change to the standard. While some of these arrangements might be widely known or made clear to audiences of the program (for example, performing duties as an ordained minister), others may not. We do not suggest that presenters routinely seek to conceal their financial interests; however, the standard seeks to guard against the incentive to do so. It equips audiences with the information to make their own judgements on the motivations for presenters’ views or the factors that might influence those views. In other words, it is about the presenters’ incentives to support

an entity that provides a benefit; the principle behind disclosure is not altered by the fact that the entity is a charity.

Though it is not proposed here, we would also oppose a suggestion to raise the monetary threshold for disclosure of services other than promotional activities.

Finally, the fact that some licensees appear to be making unnecessary disclosures (eg, 2GB's register entry for Ray Hadley's former column for *The Daily Telegraph*) should not be taken as a failure of the standard itself.

Question 4

- Are any additional amendments to the Standard required, or are there other ways in which it could be enhanced?

We understand this question is primarily directed to the additional amendments to improve clarity and effectiveness for which we have no objection. As indicated above, we would seek to provide more substantive comments on the Disclosure Standard as part of the more comprehensive review mentioned in the Consultation Paper. For now, we have two suggestions:

1. To assist audiences to better judge the effect of these agreements on presenters' comments, there should be an obligation on the licensee to provide some indication of the benefit received by the presenter under the commercial agreement.
2. As the quality of the information provided in some licensees' registers is low (see below), there should be reinstatement of some of the reporting obligations imposed under the former Broadcasting Services (Commercial Radio Current Affairs Compliance) Standard.

We base this second point on our own preliminary review of licensee registers that revealed the following:

- There are inconsistencies in how licensees have described details of commercial agreements, sometimes even between different agreements held by the one presenter. An example is 2GB's register indicates Ben Fordham's obligation to Audi Alto Artarmon is to talk about the benefits of the vehicle but the register is silent on his obligation to Mercedes Benz.
- The 'brief description of the obligations' is sometimes incomplete or otherwise inadequate. For example, FIVEaa has provided no information for nine agreements held by Leon Byner. The entire entry by 2BS's for Kerry Peck is 'has a commercial interest in TravelWorld Bathurst', and while licensee agreements require less information, the website suggests the agreement is held by Kerry Peck not 2BS.
- Some programs (eg, the Ray Hadley program) are syndicated across multiple licensees and it appears that some licensees are not complying with the obligation to provide a link to the information published by the original licensee.
- The links appearing on the homepage of the licensees' websites are variously described as 'disclosures', 'presenter interests', 'commercial agreements', 'compliance' and 'legal'. The utility of some of these terms is highly questionable.

As noted above, these are observations based on our own preliminary review of licensee websites. If the ACMA does not wish to make changes to reporting obligations at this stage, we think it would be beneficial to conduct a formal compliance audit ahead of the full review of the standard.