

## Investigation Report No. 2261

<b>File No.</b>	2009/2268
<b>Licensee</b>	Cairns Community Broadcasters Inc
<b>Station</b>	4CCR, Cairns
<b>Type of Service</b>	Community Radio
<b>Issue</b>	Policies and procedures not in place as required under Codes of Practice
<b>Relevant Codes</b>	Codes 1.2, 1.4, 1.5, 1.6, 2.1, 2.3 and 2.4 of the <i>Community Radio Broadcasting Codes of Practice 2008</i>

## Investigation Conclusion

The licensee of 4CCR, Cairns Community Broadcasters Inc:

- Breached Codes 1.2 [corporate governance policies and procedures], 1.4 [membership policies], 1.5 [conflict resolution] and 1.6 [complaints handling] of the *Community Radio Broadcasting Codes of Practice 2008*; and
- Breached Codes 2.1 [policies and procedures to encourage participation], 2.3 [volunteering policies] and 2.4 [policy documents will be freely available] of the *Community Radio Broadcasting Codes of Practice 2008*.

## The complaint

On July 10 2009, the Australian Communications and Media Authority (the ACMA) received a complaint alleging that Cairns Community Broadcasters Inc, the licensee of 4CCR, was not complying with the *Community Radio Broadcasting Codes of Practice 2008* (the Codes) because it did not have the required policies and procedures in place in relation to:

- corporate governance (code 1.2);
- the rights and responsibilities of membership (code 1.4);
- the resolution of internal conflict (code 1.5);
- complaints handling (code 1.6);
- community participation (code 2.1); and
- the rights and responsibilities of volunteers (code 2.3).

Additionally, the complainant was concerned that policies and procedures were not freely available to be viewed by the members and general public as required under code 2.4.

The complainant wrote to 4CCR on 6 April 2009, regarding their concerns about the licensee's compliance with the Codes and received a response from the licensee on 3 June 2009. However, the complainant was not satisfied with the response provided, and forwarded the complaint to the ACMA.

## The service

4CCR commenced its service on 1 February 1985 and had its licence renewed on 9 January 2005, with an expiry date of 8 January 2010. When its licence was last renewed, 4CCR was licensed to meet the general community needs of the Cairns RA2 licence area, which includes the local government area of Cairns.

On 9 January 2009, 4CCR applied to have its licence renewed and this investigation is being conducted in conjunction with the assessment of this application.

## Assessment

The assessment is based on:

- The complainant's original email of 6 April 2009 to 4CCR;
- 4CCR's email response of 3 June 2009 to the complainant;
- The complainant's submission to the ACMA, received 10 July 2009;
- 4CCR's submission to the ACMA, received 20 August 2009; and
- 4CCR's additional submissions to the ACMA in response to the preliminary breach finding, received 19 October 2009.

## Issue 1 – Corporate governance

### Code: 1

**Our responsibilities in broadcasting to meet our community interest**

### Purpose:

To make sure that community radio stations operate according to the guiding principles and within a framework of sound corporate governance

1.2 We will have in place written corporate governance policies and procedures that support management, financial, and technical operations to meet all legal requirements.

1.4 We will have written policy documents in place that outline:

- (a) the principles of financial membership,
- (b) the rights and responsibilities of financial members within the organisation, and
- (c) the rights and responsibilities of the organisation to financial members.

A register of financial members will also be kept and made available to ACMA on request.

1.5 We will have written policies and procedures in place to effectively deal with internal conflict.

1.6 We will have policies and procedures in place to handle complaints from our members and volunteers. See *Code 7: Complaints* for more information.

## Complainant's submissions

The complainant's submission included correspondence between the complainant and 4CCR.

In their letter of complaint to the licensee dated 6 April 2009, the complainant submitted that they had concerns about 4CCR's:

[...] level of compliance with the Community Radio Broadcasting Codes of Practice.

The complainant submitted to the ACMA on 10 July 2009 that:

I am concerned that the reply [from 4CCR], after almost the full statutory 60 days has elapsed, addresses a number of the issues simply by saying that documents will be available by the end of September. There has been no advice on the process of development of the documents and as the station's Annual General Meeting is normally held in late September the documents will not be available for discussion at the meeting.

## Licensee's submissions

On 3 June 2009, the licensee submitted to the complainant that:

Our Constitution covers most of the policies and procedures you have named, however, we are aware of our responsibilities as regards the Codes of Practice and are in the process of establishing separate and specific documents pertaining to each of the categories you have named.

On 20 August 2009 the licensee submitted to the ACMA that:

4CCR has a very comprehensive Constitution, which covers to some extent, governance policies and procedures that define management and financial operations. The board is currently considering separating the task and responsibilities of governance and management. Two of the board members are undertaking the Governance course offered by the [Community Broadcasting Association of Australia] (Round 2), so the board will become more familiar with the principles of governance and the duties and responsibilities of board members, present and future. One of our board members is undertaking the Administration course, and the treasurer is doing the course in Financial Management.

While these courses are being completed the documents clearly stating governance policies that define management and financial operations will be refined.

[...]

The Constitution sets out the policy of financial membership [...] All of our volunteers are expected to be financial members, which ensures that they are covered by the rules of the organisation, and the organisation's insurance policy, as set down in the Rules, the Constitution of [4CCR]. There the policies that apply to financial members are the same as apply to volunteers and the procedures followed in the case of financial members are the same as followed for volunteers.

4CCR does have written policies and procedures to effectively deal with internal conflict [...]. As this document has only recently been written further work on the document will produce a more comprehensive coverage of the procedures involved.

Attached to the licensee's 20 August 2009 submission were the following documents:

- Policies of and Procedures for Governance;
- Policies of and Procedures for Financial Management;
- Policies of and Procedures for Technical Operations;
- Policies of and Procedures for Financial Members;
- Policies of and Procedures for Dealing with Internal Conflict; and
- Policies of and Procedures for Complaints.

The licensee further submitted to the ACMA on 19 October 2009 that:

[4CCR] accept that [the ACMA's preliminary breach finding] is a reasonable view as the required documentation was in some instances not prepared and in other cases not in a satisfactory state.

[4CCR is] now working [...] on developing the required procedures and documents. Draft documents are attached in respect of Codes 1.2, 1.5 and the four sections of Code 2.3.

[...]

The document for Code 1.2 identifies both recent developments and work in progress and is intended to advise ACMA of the progress being made on developing effective corporate governance policies and procedures; it is not intended to be a final document.

Codes of Practice documents 1.5, 2.3 (a), 2.3 (b), 2.3 (c) and 2.3 (d) are closer to being finished documents. However, as the Committee elected on 28 September has many issues to be addressed, including establishing improved financial and management procedures, we will need to review and update these documents once those procedures are fully developed and implemented. For example, the procedures for volunteering have been identified in principle but not yet implemented because the various subcommittees proposed have not been established. Several of the functions identified as requiring subcommittees have been undertaken in the past by volunteers on an ad hoc basis or performed by members of the Management Committee.

[...]

We currently expect to provide all Codes of Practice documents in a complete form by the end of November.

The information contained in these documents will indicate the progress being made towards meeting the conditions necessary for the renewal of CBB's broadcast licence.

## Finding

The delegate finds that the licensee has breached codes 1.2, 1.4, 1.5 and 1.6 of the *Community Radio Broadcasting Codes of Practice 2008* as, at the time the complaint was made, it did not have written policies and procedures in place.

## Reasons

In October 2008, following a comprehensive review of the former codes of practice, the Codes were registered with the ACMA by the Community Broadcasting Association of Australia. The Codes include several new obligations, designed to improve the corporate governance of community broadcasters. Community broadcasters were given until 1 April 2009 to update policies and procedures to ensure that they were compliant with the new requirements.

Under the Codes, it is a requirement that all community broadcasters have in place written policies and procedures that govern the operations of the service, including governance, financial management, internal conflict and complaints handling.

In responding to both the original email from the complainant (6 April 2009), and to the ACMA's request for a submission against the complaint (20 August 2009), the licensee has acknowledged that it did not have the necessary written policies and procedures in place. The licensee also stated that the station's Constitution covered much of the required information.

It is noted that, from the information provided by 4CCR in its responses to the complainant and to the ACMA, that it commenced drafting the required policies and procedures in response to the complaint being lodged with the ACMA.

In reviewing these policy documents provided with the 20 August 2009 submission, it is noted that *Policies of and Procedures for Governance* and *Policies of and Procedures for Financial Management* appear to be extracts of the relevant sections of 4CCR's Constitution. While the Constitution should provide the policy context for the operations and governance of the service, the Codes require licensees to have both policies and **procedures**. Accordingly, the policy documents required under the Codes need to contain greater detail, including delegations, responsibilities and, where applicable, timeframes.

This detail is required to ensure that all members of the organisation understand their rights and responsibilities. For example, in the procedures for the *Policies of and Procedures for Dealing with Internal Conflict*, timeframes should be assigned to each stage of the process of dealing with the conflict. This level of detail provides the clarity required to ensure that conflict is dealt with effectively.

The revised policies and procedures provided with 4CCR's 19 October 2009 submission indicate that additional work has been undertaken to ensure that the licensee is complying with the requirements of the Codes, in particular the policy and procedure for internal conflict, which clearly outlines the steps that are required to be undertaken. However, further work is required by the licensee in implementing the policies and procedures into the operations of the service.

Based on the information before the ACMA, the delegate finds that the licensee is in breach of Codes 1.2, 1.4, 1.5 and 1.6 in that it did not have in place, at the time the complaint was made, written policies and procedures in relation to corporate governance (code 1.2), the rights and responsibilities of membership (code 1.4), the resolution of internal conflict (code 1.5) and complaints handling (code 1.6).

## Issue 2 – Diversity and Independence

### Code: 2

#### Principles of diversity and independence

### Purpose:

To make sure that community radio stations have written policies and procedures in place that promote diversity and encourage community participation

2.1 Our station will make sure that people in our community who are not adequately served by other media are encouraged and assisted to participate in providing our service. We will have in place policies and procedures to support this commitment. We will document evidence of our efforts to encourage community participation.

2.3 We will have policy documents in place that outline:

- (a) the principles of volunteering,
- (b) the rights and responsibilities of volunteers within the organisation,
- (c) the rights and responsibilities of the organisation to volunteers, whether they are members or not, and
- (d) grounds and procedures for the dismissal of volunteers.

2.4 All policy documents will be freely available.

## Complainant's submissions

The complainant's submission included correspondence between the complainant and 4CCR.

In their letter of complaint to the licensee dated 6 April 2009, the complainant submitted that they had concerns about 4CCR's:

[...] level of compliance with the Community Radio Broadcasting Codes of Practice.

The complainant submitted to the ACMA on 10 July 2009 that:

I am concerned that the reply [from 4CCR], after almost the full statutory 60 days has elapsed, addresses a number of the issues simply by saying that documents will be available by the end of September. There has been no advice on the process of development of the documents and as the station's Annual General Meeting is normally held in late September the documents will not be available for discussion at the meeting.

## Licensee's submissions

On 3 June 2009, the licensee submitted to the complainant that:

Our Constitution covers most of the policies and procedures you have named, however, we are aware of our responsibilities as regards the Codes of Practice and are in the process of establishing separate and specific documents pertaining to each of the categories you have named.

[...]

A document will be available for perusal by the end of September 2009 covering the points on volunteering addressed here according to the Constitution and the Act.

On 20 August 2009, the licensee submitted to the ACMA that:

4CCR has a written document in place defining policies and procedures that outline how the station encourages community participation.

[...]

4CCR has a document in place outlining:

- (a) the principles of volunteering
- (b) the rights and responsibilities of volunteers within in the organisation, whether they are members or not
- (c) grounds and procedures for the dismissal of volunteers

[...]

These documents are freely available to all members and volunteers, in hard copy in the Reception area of the station premises, will be emailed to all members upon request, and are soon to be available to the broader community via the website [www.cairnsfm891.org.au](http://www.cairnsfm891.org.au). Copies will be mailed to members of the mailing list upon request.

Attached to the licensee's submission were:

- Policies of and Procedures for Volunteering;
- Policies of and Procedures for Community Participation; and
- Policies of and Procedures for Dismissal and Disciplinary Action.

The licensee further submitted to the ACMA on 19 October 2009 that:

[4CCR] accept that [the ACMA's preliminary breach finding] is a reasonable view as the required documentation was in some instances not prepared and in other cases not in a satisfactory state.

[4CCR is] now working [...] on developing the required procedures and documents. Draft documents are attached in respect of Codes 1.2, 1.5 and the four sections of Code 2.3.

[...]

Codes of Practice documents 1.5, 2.3 (a), 2.3 (b), 2.3 (c) and 2.3 (d) are closer to being finished documents. However, as the Committee elected on 28 September has many issues to be addressed, including establishing improved financial and management procedures, we will need to review and update these documents once those procedures are fully developed and implemented. For example, the procedures for volunteering have been identified in principle but not yet implemented because the various subcommittees

proposed have not been established. Several of the functions identified as requiring sub-committees have been undertaken in the past by volunteers on an ad hoc basis or performed by members of the Management Committee.

[...]

We currently expect to provide all Codes of Practice documents in a complete form by the end of November.

The information contained in these documents will indicate the progress being made towards meeting the conditions necessary for the renewal of CBB's broadcast licence.

## **Finding**

The delegate finds that the licensee breached codes 2.1, 2.3 and 2.4 of the *Community Radio Broadcasting Codes of Practice 2008* as, at the time the complaint was made, it did not have written policies and procedures in place.

## **Reasons**

In responding to the original email from the complainant (6 April 2009) the licensee stated that the policies and procedures were in development and would be finalised by the end of September 2009. This clearly is well outside of the 1 April 2009 implementation date.

In relation to the policies and procedures provided to the ACMA with the submission of 20 August 2009, it is noted that greater detail is required to ensure that all members and volunteers of the organisation understand their rights and responsibilities. For example, in the procedures for the *Policies of and Procedures for Dismissal and Disciplinary Action*, timeframes should be assigned to each stage of the process of dealing with the dismissal, especially the timeframe for the appeal process. It is also noted that the policies and procedures have been taken directly from the Codes without any modification to reflect the particular circumstances of 4CCR. It is noted that the examples attached to the Codes are provided for guidance only, with the expectation that licensees will modify and amend as relevant.

The documents provided with 4CCR's 19 October 2009 submission show that additional work has been put into the policies and procedures that address some of the issues identified above. However, the policies and procedures require additional revision.

Based on the information before the ACMA, the delegate finds that the licensee is in breach of Codes 2.1, 2.3 and 2.4 in that 4CCR did not have in place, at the time the complaint was made, written policies and procedures in relation to community participation (code 2.1) and the rights and responsibilities of volunteers (code 2.3). Accordingly, the licensee is in breach of code 2.4 as it was not able to make these policies and procedures freely available (code 2.4).

## **Action Taken**

The investigation has been conducted in conjunction with the licence renewal process for Cairns Community Broadcasters Inc, the licensee of 4CCR. In renewing the licence, the

ACMA accepted a number of measures designed to strengthen the capacity of the service in several areas. The agreed measures were submitted by 4CCR on 7 December 2009 and accepted by the ACMA on 11 December 2009.

As part of the agreed measures, 4CCR has committed to:

[...] undertake a review of documentation required under the *Community Radio Broadcasting Codes of Practice 2008*, and formulate a timetable for the development and implementation of the required policies. 4CCR will provide the ACMA with:

- a list of the policies and procedures that need to be developed and/or revised;
- a timetable for when the policies will be developed and implemented;
- copies of the finalised policy and procedure documents; and
- copies of the minutes of Board of Management meetings at which the new policies and procedures are discussed and approved.


The ACMA considers these actions address the compliance issues raised by the investigation. Further, as part of the agreed measures the licensee is required to report to the ACMA about progress against the measures, and the ACMA will continue to monitor the licensee's performance in this regard.

## Decision

I, Desa Bajic, A/g Manager, Community Renewals and Investigations Section, Community Broadcasting Group, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that the licensee, Cairns Community Broadcasters Inc:

- Breached Codes 1.2, 1.4, 1.5 and 1.6 of the *Community Radio Broadcasting Codes of Practice 2008*; and
- Breached Codes 2.1, 2.3 and 2.4 of the *Community Radio Broadcasting Codes of Practice 2008*.

Signed

  
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Desa Bajic

dated this

18<sup>th</sup>

day of December 2009