# SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

## PRODUCTIVITY COMMISSION ANNUAL REVIEW

## REGULATORY BURDENS ON BUSINESS

***Social and Economic Infrastructure Services***

**February 2009**

# SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

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# SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

Commercial Radio Australia (**CRA**) welcomes the opportunity to participate in the Productivity Commission's Annual Review of Regulatory Burdens on Business (**Review**).

CRA is the peak national industry body for Australian commercial radio stations. CRA has 261 members and represents approximately 99% of the commercial radio broadcasting industry in Australia.

The commercial radio industry falls within section 561 (*Radio Broadcasting*) of Division J of the listed services covered by the Review.

CRA is keen to assist the Productivity Commission (**Commission**) in identifying specific areas of Australian Government regulation that are unnecessarily burdensome, complex, redundant or duplicative.[1]

## A. SUMMARY

CRA's primary comments are:

- CRA strongly supports the Government's stated aims of alleviating the regulatory burden on Australian business, ensuring that regulation is efficient, and identifying priority areas where regulation needs to be improved, consolidated or removed.[2]
- The commercial radio industry is highly regulated. Industry specific regulations cover a wide range of areas, including program content, advertising, cross media mergers and technical issues.
- The industry accepts that some regulation is necessary. However, such regulation must not be allowed to reach a level where it has an overwhelmingly negative effect on the ability of the industry to carry out its core service of radio broadcasting across Australia.
- CRA urges the Commission to take account of the nature of the commercial radio industry, when considering the nature and extent of the compliance burden that should fairly be imposed upon it. Of CRA's 261 member stations, only 40 are in metropolitan cities, with the remaining 221 in regional areas.
- The commercial radio industry does not have the resources to accommodate excessive compliance burdens. Regional stations often operate with few staff, many of whom undertake several different functions within the organisation. It is unreasonable to further stretch these limited resources by demanding excessive and repetitive compliance reporting.
- CRA has identified 3 areas where the compliance burden on the industry is so excessive that it threatens the industry's viability:
    - *Local Content*. The local content provisions under the *Broadcasting Services Amendment (Media Ownership) Act 2006* (**Media Reform Act**) oblige

[1] Productivity Commission Issues Paper December 2008, page 6.

[2] *ibid*, page 5.

commercial radio licensees to follow complex guidelines to determine what constitutes local content, keep daily audio records of broadcasts, publish daily local content statements and report annually to the Australian Communications and Media Authority (**ACMA**).

- *Trigger Event*. The Media Reform Act imposed further restrictions on regional stations following a "trigger event".[3] Of particular concern is the requirement that stations maintain "at least the existing level of local presence" – in terms of staffing and production facilities. This effectively freezes stations in time, and prevents them from operating efficiently and profitably.

- *Current Affairs Disclosure Standard*. The *Broadcasting Service (Commercial Radio Current Affairs Disclosure) Standard 2000* (**Disclosure Standard**) requires all licensees to make on air disclosure of commercial agreements between sponsors and presenters. The Disclosure Standard also imposes onerous record keeping requirements on licensees.

A discussion of these points, together with suggested recommendations for change, is below.

## B. NATURE OF THE COMMERCIAL RADIO INDUSTRY

1. The commercial radio industry includes many small operators, who are ill equipped to deal with excessive regulatory requirements. There are 261 commercial radio stations in Australia.[4] The majority of commercial radio stations are in regional markets, with only 40 in the metropolitan areas of Adelaide, Brisbane, Melbourne, Perth and Sydney.

2. The current excessive level of regulation makes it difficult for the commercial radio industry to remain commercially viable. This is a particular problem in regional areas, where the compliance burden is highest – due to the local content and trigger event requirements – and the revenue base is smallest.

3. Regulatory requirements have a disproportionate effect on the viability of small licensees. Such licensees have few staff and limited infrastructure. Many staff within such organisations fulfil a number of different roles. These stations struggle to meet their compliance obligations while maintaining focus on their core business of radio broadcasting.

4. Commercial Radio Australia's members in both regional and metropolitan areas already serve their local communities well, by providing listeners with programs that are relevant, informative and entertaining.

5. The local content and trigger event regulations and the Disclosure Standard threaten this service, as every dollar spent to meet the requirements of unnecessary regulation takes a dollar away from the amount that radio licensees have available to spend on programming.

[3] The concept of a "trigger event" was intended to cover situations where there was a cross media merger. However, it was defined too broadly and has introduced unintended effects. It captures many types of changes that have nothing to do with media diversity, such as internal restructuring and group consolidation.

[4] 257 of those stations are members of Commercial Radio Australia.

## C. MEDIA REFORM ACT - LOCAL CONTENT PROVISIONS

### a) Current regulation

6. The Media Reform Act amended the *Broadcasting Services Act 1992* (**BSA**) so as to impose a range of new regulatory obligations upon regional commercial radio licensees.

7. Since 1 January 2008, all commercial radio licensees have been required to broadcast the applicable number of hours of local content ("material of local significance") during daytime hours (5am to 8pm) on all business days.[5] The applicable number of hours are:

    - 5 minutes for racing and remote area service licences;
    - 30 minutes for small and section 40 licences; and
    - three hours for all other licences.

8. Licensees are further obliged to undertake a number of onerous reporting and record keeping obligations in relation to the broadcast of local content. They must:

    - submit an annual report to the ACMA, showing that they have complied with the requirement to broadcast applicable hours of local significance;
    - make a record in audio form of the applicable number of hours of local content that they broadcast (racing service licensees must make records in audio and written form);
    - keep the records for 6 weeks from the broadcast (racing service licensees must keep the records for 60 days). The ACMA has the right to request access to the records at any time;
    - compile a local content statement for each business day after 1 January 2008 and make it available to the public. The statement must record the material of local significance broadcast by the licensee on each business day; and
    - provide copies of the local content statements for a week specified by the ACMA each year. The ACMA is entitled to request copies at any time.

*Remote area broadcasters and racing radio services*

9. The requirement to broadcast material of local significance currently applies to all regional commercial radio broadcasters, including remote area broadcasters and racing radio services. This reflects a failure to acknowledge the special nature of these services.

10. Remote area commercial radio licences were originally issued so that services could be provided to remote regions that lay outside established commercial radio licence areas, and which did not receive any commercial radio services. The remote zones cover very large, but sparsely populated, geographic areas.

11. For this reason, remote zone licensees are not required to establish transmission facilities at any particular sites, and must provide the same service across the entire remote licence area.

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[5] Section 43C of the BSA, and the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Material of Local Significance) Notice 19 December 2007*.

12. Some commercial radio licences are used to provide racing radio services to regional areas. These services are networked from capital cities to regional centres and do not usually broadcast "material of local significance". For instance, in Shepparton and Ballarat, commercial radio licences are used to relay the service from Sport 927 in Melbourne.

13. It is unreasonable and inconsistent to expect these categories of licensees to comply with the localism obligations.

*Days when "material of local significance" is counted*

14. Under the current legislation, licensees may only count material broadcast on "business days" towards their "material of local significance" quota.[6] This excludes public holidays and weekends.

15. Some licensees provide local content on weekends – particularly relating to weekend sports coverage. It would be reasonable for those licensees to be allowed to count that material towards their s43C licence condition obligations.

*Compliance period*

16. The section 43C licence condition provides that licensees must comply with the local content provisions for 52 weeks a year.

17. This takes no account of the fact that when on-air staff take annual leave it is common practice in the regional radio industry to use nationally syndicated programming during such leave periods.

18. In these circumstances, a 52 week annual compliance obligation is not reasonable. On-air staff are usually entitled to 5 to 6 weeks of annual leave, and it generally will not be feasible to locate and engage short term casual presenters to fill in during these times.

### b) Local content - Costs of Compliance

19. The costs incurred by the commercial radio industry in regional markets in relation to compliance with the local content rules would be far in excess of the costs contemplated by the legislature and regulator.

20. One industry network estimates that external legal costs are around $25,000 per annum, per regional station.

21. The internal costs associated with compliance are substantial. Most networks find that they need at least one person to work full time on the reporting process for about a month before the reports are submitted to the ACMA. This is in addition to the ongoing administrative burdens throughout the year.

### c) Local content - Recommendations

- ***Recommendation 1: Exempt remote area broadcasters and providers of racing radio services from all the local content provisions.***

[6] Section 43C(1), BSA.

22. The imposition of local content obligations on remote area broadcasters and racing radio providers fails to acknowledge the special nature of those services.

23. A provision should be added to the BSA, stating that remote area broadcasters and providers of racing radio services are not required to broadcast "material of local significance".

- ***Recommendation 2: Permit material of local significance to be counted over any 5 days of the week.***

24. Section 43C of the BSA should be amended so that material of local significance broadcast over any 5 days of the week may be counted when calculating the amount of local content broadcast.

- ***Recommendation 3: Reduce the compliance period from 52 weeks per year to 46 weeks per year for all the local content provisions.***

25. The section 43C licence condition should be amended so that the requirement to broadcast "material of local significance" applies only to 46 weeks in the year.

26. This allows for the fact that, when on-air staff take annual leave, it is common practice in the regional radio industry to use nationally syndicated programming during such leave periods.

## D. MEDIA REFORM ACT - TRIGGER EVENT PROVISIONS

### a) Current regulation

27. The Media Reform Act further amended the BSA so as to impose a range of additional local news and information and local presence obligations upon regional commercial radio licensees, following a "trigger event".[7]

*Excessively broad definition of trigger event*

28. The definition of trigger event in the BSA is unreasonably broad.[8] This means that an unnecessarily large number of commercial radio stations are subject to these additional local content and local presence regulations.

29. The industry understands that the purpose of the "trigger event" framework was to address the possible impact of cross-media mergers in regional areas, particularly with regard to combining newsrooms across two different types of media organisations (e.g. radio/television; radio/newspaper).

30. However, the current definition of "trigger event" extends well beyond these situations. It is not limited to a situation where there is a "cross-media" merger. It therefore captures many types of changes which have nothing to do with media diversity within a licence area, and which apply irrespective of the size of the relevant licensee's market.

31. The definition captures situations where there is a "change in control" of a "registrable media group".[9] A "registrable media group" includes a "radio-only" group – i.e. two commonly controlled commercial radio licences in the same licence area.[10]

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[7] Sections 43B, 61CD and 61CE of the BSA; Division 5C of the BSA; and the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

[8] Section 61CB of the BSA.

32. As a result, a number of seemingly unintended consequences arise from the "trigger event" definition. For example:

    - Internal consolidations or restructures will fall within section 61CB(3) if they involve a transfer of a licence between corporate entities within the group.
    - "Radio only" to "radio only" sales will be caught. By this, we mean the sale of a regional commercial radio licence to a person who holds no other media interests in the relevant licence area.
    - Changes in existing joint venture arrangements will be caught. Some commercial radio licences are controlled through joint venture arrangements. If one joint venture party sells its stake in the licensee to the other joint venture party, this would be a "trigger event" under section 61CB(3).

33. In the above circumstances – and in others too lengthy to list here – there is no apparent policy or legal reason why changes in the structure of those businesses should result in significantly increased regulatory obligations for commercial radio licensees.

*Local presence requirements*

34. Under section 43B(1) of the BSA the ACMA must impose an additional licence condition upon all regional commercial radio licensees, requiring that:

> "if a trigger event for a regional commercial radio broadcasting licence occurs, then after the occurrence of the event, the licensee must maintain **at least the existing level of local presence**".

35. The ACMA interprets "local presence" to mean:

    - staffing levels:

    "For staffing levels the existing level of local presence is maintained if at the conclusion of each financial year there has been no material reduction in the average monthly staffing levels in the licence area in relation to the licence for that financial year or part thereof, compared with the staffing levels [during the 3 month period before the day on which the trigger event occurred]" [11]; and

    - the use of studios and other production facilities in the area:

    "For studios and other production facilities, the existing level of local presence is maintained if at the conclusion of each financial year there has been no material reduction in the number of average monthly broadcast hours produced during that financial year or part thereof, using studio and other production facilities in the licence area, when compared with the number of average monthly broadcast hours produced using studios and other production facilities [over the three month period before the day on which the trigger event occurred]"[12].

36. The effect of this provision is that, following a trigger event, stations are not allowed to decrease either the number of staff they employ, or the local facilities that they use. This provision lasts for an indefinite period of time.

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[9] s61CB(3) of the BSA.

[10] This has been permitted under the BSA since its inception in 1992.

[11] Sections 9(1) and 5(2) *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

[12] Sections 9(2) and 5(3) *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007.*

37. These regulations clearly constrain the ability of the industry to operate its businesses in an efficient and profitable way.

38. The requirements effectively freeze a regional commercial radio station in time, and deny it the rights enjoyed by other free enterprises – including the right to respond to market changes and to conduct its business as it sees fit. For instance:

    - a requirement to maintain the number of studios and production facilities by reference to a particular point in time ignores the rapid advance of new technologies. Business processes must be able to change to take advantage of technological developments;

    - the freezing of staff levels at a minimum number is commercially unjustifiable. Regional commercial radio licensees must be allowed to implement changes aimed at improving productivity. This may involve changes to staffing levels, particularly in bad economic climates, or when technological improvements permit a reduction in labour costs;

    - rather than protecting localism, the local presence requirements are likely to stand in the way of deconsolidation and decentralisation. For example, if a commercial radio broadcaster buys a station that has been a "hub" station of another commercial radio broadcaster (i.e. providing services to other stations outside the licence area where the "hub" is located), it may be difficult for the purchaser to decentralise such operations without risking a reduction of "local presence" in the licence area where the "hub" is located; and

    - the local presence requirement fails to recognise that consolidations of operations and centralisation of certain radio functions often work to the benefit of radio staff, by providing them with a career path, prospects for promotion and the offer of more interesting work. Increased efficiencies also benefit audiences, by allowing better quality programmes at a lower cost.

39. The local presence requirements operate to devalue existing regional commercial radio businesses. Potential purchasers of regional radio businesses must now take account of the fact that the ACMA has dictated how many production facilities and how many staff must be utilised in the business, irrespective of whether this number is efficient or effective. This has the potential to damage the long term future of regional commercial radio.

40. Further, the section 43B scheme assumes that commercial radio licensees are readily able to find replacement staff when staff leave to take up positions elsewhere. This does not reflect the reality experienced by many regional radio licensees, particularly those in areas far from major regional centres, who frequently find it difficult to recruit permanent staff.

*Minimum service standards*

41. Under sections 61CD and 61CE of the BSA, regional licensees affected by a trigger event are required to meet the minimum service standards for local news and information. This includes the obligation to broadcast a minimum number of:

    - local news bulletins;

    - local weather bulletins;

    - community service announcements; and

- emergency warnings.

*Reporting and record keeping obligations*

42. The trigger event reporting and record keeping obligations are unnecessarily burdensome.[13] Following the occurrence of a trigger event, licensees must:

    - submit a draft local content plan to the ACMA for approval within 90 days of the trigger event. The local content plan must state how the licensee intends to meet the minimum service standards for local news, weather, community service announcements and emergency warnings;

    - submit a Statement of Broadcasting Operations. This must report on the existing level of local presence in the licence area in relation to the licence;

    - report annually to the ACMA on their compliance with the approved local content plans;

    - keep weekly details – times of broadcasts, number of broadcasts and total daily duration – of broadcasts required by the minimum service standards. The ACMA requests this information annually for a "specified week", which could be any week in the year; and

    - report each year on their compliance with the requirement to maintain the existing level of local presence.

43. Further, all licensees (including those not affected by a trigger event) must make and retain records sufficient to calculate details of the studios and other production facilities and staffing levels in the licence area in relation to the licence.[14]

**b) Trigger Event - Costs of Compliance**

44. The costs incurred by commercial radio stations affected by trigger events are too high for the regional radio industry to bear.

45. In addition to the substantial external legal costs – estimated by one station to be around $50,000 per annum, per regional station – the internal administrative costs and time make the regime unworkable.

46. For example, a senior individual in one network affected by a trigger event spent almost 6 weeks coordinating compliance reporting, prior to the ACMA 2008 reporting deadline. Individuals at each station were also heavily involved in recording, collating and reporting information required by the trigger event regulations.

47. Regional stations already operate with limited staff and do not have the manpower to absorb this level of additional administration.

48. A further significant – and potentially fatal – cost to the industry is the devaluation of existing regional commercial radio businesses. The value of regional radio stations will decrease to reflect the fact that the ACMA has dictated how many production facilities

[13] *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

[14] Section 8, *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*

and how many staff must be utilised in the business, irrespective of whether this number is efficient or effective.

### c) Trigger Event - Recommendations

- ***Recommendation 1: Restrict the definition of "trigger event" to cross media mergers***

49. Our understanding is that the purpose of the "trigger event" framework was to address the possible impact of cross-media mergers in regional areas, particularly with regard to combining newsrooms across two different types of media organisations.

50. As drafted, the definition of "trigger event" is too broad, and captures many situations that have nothing to do with media diversity in the licence area. This creates unnecessary compliance burdens on licensees.

51. The definition of "trigger event" should be restricted to instances where a cross-media merger occurs.

- ***Recommendation 2: Repeal of the "local presence" requirements under section 43B of the BSA***

52. The local presence requirements are so unreasonable and burdensome that they threaten the survival of the regional commercial radio stations. The industry's strong preference would be the repeal of the section in its entirety.

53. If the repeal of section 43B is not possible, the industry recommends that a "sunset clause" be inserted, so that the maximum duration of the local presence licence condition is 6 to 12 months, after which time the licensee should be able to make efficiency improvements as it sees fit.

## E. DISCLOSURE STANDARD

### a) Current regulation

54. The Disclosure Standard[15] came into force on 15 January 2001, with a scheduled expiry/review date of 2 April 2003. It was subsequently extended indefinitely in March 2003, without further review.

55. In summary, the Disclosure Standard requires the following[16]:

    - on air disclosure during current affairs programs of commercial agreements between sponsors and presenters that have the potential to affect the content of those programs;

    - on-air disclosure during current affairs programs of the payment of production costs by advertisers and sponsors;

[15] Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000.

[16] Section 5, Disclosure Standard.

- licensees must keep a register of commercial agreements between sponsors and presenters of current affairs programs and make it available to the ACMA and the public; and

- licensees must ensure that a condition of employment of presenters of current affairs programs is that they comply with relevant obligations imposed by the BSA, the Commercial Radio Codes of Practice and the Disclosure Standard.

56. The Disclosure Standard sets out detailed, prescriptive and onerous mechanisms for achieving the above.[17]

57. Commercial radio is the only medium required to comply with such prescriptive regulations. There are no similarly onerous requirements under the Commercial Television Industry Code of Practice or the Australian Journalists' Association Code of Ethics.

58. The commercial radio industry supports the objective of ensuring fair and accurate coverage of matters of public interest, including the disclosure of commercial agreements that affect the content of current affairs programs. However, the Disclosure Standard is heavy-handed, outdated and unnecessarily burdensome.

*Timing of on-air disclosure announcements*

59. On-air disclosure announcements must be broadcast "at the time of and as part of" the broadcast of material caught by the Disclosure Standard.[18]

60. The ACMA interprets this provision as meaning that the on-air disclosure must be made "in the same breath" as the mention of the sponsor (or other material caught by the Standard).

61. The ACMA's approach causes significant difficulties for licensees in ensuring compliance with the Disclosure Standard. For example, a presenter who made the on-air announcement within 90 seconds of the relevant material was found by the ACMA to have "breached" the Disclosure Standard.

62. The industry sees no reason why this approach – which is disruptive for the listener and difficult for the presenter – is taken by the ACMA. It ignores the practical reality of the circumstances in which talk radio presenters operate, using unscripted, listener reactive and spontaneous material.

63. A more reasonable alternative would be to allow presenters to make the announcements at the beginning or end of each segment, or, alternatively, to broadcast regular announcements listing all of the relevant commercial agreements.

*Difficulty in ensuring compliance*

64. The highly prescriptive nature of the Disclosure Standards make it almost impossible to achieve compliance, no matter how vigilant management and presenters may be.

[17] Sections 7 to 14, Disclosure Standard.

[18] Disclosure announcements must be made in relation to (a) material in which the name, products or services of a sponsor are mentioned; (b) material in which an agent, employee or officer of a sponsor is interviewed in relation to any matter concerning the sponsor, its products, services or interests; (c) any broadcast requested by a sponsor based on or similar to material provided by a sponsor; or (d) a broadcast of material that directly promotes any issue directly favourable to the sponsor – section 7(1), *Disclosure Standard*.

65. When talk radio presenters are on-air, there are many demands on their time and concentration. They are live-to-air and almost always unscripted. They cannot plan what callers or interviewees might say – but in the interests of a free-flowing, informative and entertaining program must react, comment and move on. All the while they are receiving instructions and information from their producers and panel operators and have to control discussion to meet strict time limits to ensure that advertisements and other segments, such as news bulletins, run as scheduled.

66. The ACMA's insistence on prescriptive detail - which appears to have little to do with the substantive objectives of the Disclosure Standard - is entirely unreasonable and results in a largely unworkable regime.

67. For example, one commercial station was found to have breached the Disclosure Standard when the presenter referred to his sponsor as "sponsors of ours" or "sponsors" rather than "sponsors of mine". The ACMA's view was that only "sponsors of mine" was acceptable.

*Excessively broad scope*

68. The wording in the Disclosure Standard is excessively broad. This makes it difficult to interpret and results in seemingly unintended consequences.

69. In particular, section 7(1)(a) requires disclosure announcements during broadcasts "*in which the name, products or services of a sponsor are mentioned*". Section 7(1)(d) requires disclosure announcements during broadcasts "*of any material that directly promotes any issue which is directly favourable to a sponsor*".

70. The experience of our members shows that compliance with the Disclosure Standard can result in some unusual and seemingly unintended outcomes. Examples include:

    - a presenter who has an agreement with a record company is required to make a disclosure announcement when mention is made of any artist or song signed to that record company;

    - a presenter interviewing the Prime Minister is required to make a disclosure announcement as part of the interview if the Prime Minister mentions the name of the presenter's sponsor; and

    - a presenter updating listeners on an important news event is required to declare a commercial relationship as part of the broadcast. For instance, if a presenter has a commercial agreement with Qantas and a Qantas plane crashes killing everyone on board, the presenter would need to declare as part of the broadcast that "Qantas is a sponsor of mine".

*Register of commercial agreements imposes an unreasonable burden*

71. The Disclosure Standard obliges commercial radio stations to keep a register of current commercial agreements between sponsors and presenters of current affairs programs. This register must be made publicly available on the licensee's website and also must be made available for public inspection at the station.[19]

72. The information that must be kept on the register is detailed and sensitive. Of most concern is the requirement to record the value of the contract as either:

[19] Section 9, Disclosure Standard.

- $10,000 or less per annum;
- $10,000 to $100,000 per annum; or
- more than $100,000 per annum.

73. The industry sees no reason why this information should be made available to the general public. It does not help to achieve the objectives of the Disclosure Standard. If a commercial agreement exists, there is an interest that needs to be disclosed. The disclosure of consideration provides no additional benefit to listeners.

74. The requirement places radio at a disadvantage compared with other media when recruiting presenters. Television presenters are sometimes reluctant to accept radio roles, as they wish to avoid the disclosure of their remuneration levels with other sponsors.

75. The requirement creates a substantial administrative burden. In particular:

- discussions with the sponsor are usually required, particularly as the agreements commonly include a confidentiality clause;
- the register must be available both on the station's website and at the station's offices. This creates unnecessary duplication – disclosure of the register on the station website should be sufficient; and
- the level of detail required on the register is excessive.[20]

*Provision of copies of commercial agreements*

76. Presenters are further required to provide the radio station with a physical copy of all existing commercial agreements within 7 days of each agreement being entered into.[21]

77. The ACMA insists that this provision is only satisfied where the agreement contains no redactions. Accordingly, presenters are not entitled to redact sensitive information, such as the consideration payable.

78. The basis for this requirement is unclear. The issue that the Disclosure Standard addresses is disclosure of possible conflicting interests. The presenter's remuneration and the other terms of the contract should not be relevant.

79. This provision also causes administrative difficulties. The presenters frequently are represented by agents who, understandably, will not pass on the agreements to the radio stations without written instructions from their clients. This creates delays and can make the 7 day timetable impossible to achieve.

**b) Disclosure Standard - Costs of compliance**

80. The costs of compliance with the Disclosure Standard have been far in excess of anything the legislature or regulator could have anticipated when the Disclosure Standard was first introduced.

[20] Section 10, Disclosure Standard.

[21] Section 12, Disclosure Standard.

81. One industry network estimates that external legal fees alone, per talk back station, per annum, to ensure compliance, exceed $100,000 per station in an ordinary year, when no particular issues of non compliance arise.

82. The additional internal costs associated with compliance are extremely high. One station employs two staff members specifically to ensure compliance with the Disclosure Standard. Substantial amounts of time are also devoted by presenters, producers, station managers and legal teams.

### c) Disclosure Standard - Recommendations

- ***Recommendation 1: Simplify the Disclosure Standard***

83. The generally accepted practices of commercial radio broadcasters have moved a long way since the introduction of the Disclosure Standard. The principles enshrined in the Standard are now commonly accepted and universally applied in the industry.

84. As a result, the heavy-handed approach of the Disclosure Standard is no longer required and it should be reduced to just a small number of clauses. Those clauses would simply state the general principles and require commercial radio broadcasters to take whatever steps are appropriate to draw to the attention of listeners the existence of commercial arrangements entered into by current affairs presenters.

85. **In addition to the specific recommendations below, the Disclosure Standard should be generally simplified so that radio stations are able to make disclosure in the most appropriate way, knowing that they are required to do so, but without having to get so caught up in form filling, website updating and compliance with other detailed and prescriptive requirements.**

- ***Recommendation 2: Permit regular disclosure***

86. Commercial radio licensees should be permitted to broadcast regular disclosure announcements, rather than announcements made at exactly the same time as the broadcast of the relevant material.

87. Such an approach would enable the *licensee* to control the making of required disclosures, rather than relying on the presenter to make them. It would also remove the difficulties of identifying relevant material, particularly the interpretation of section 7 of the Disclosure Standard.

88. The approach of regular disclosure is used in comparable situations. The Broadcasting Services Amendment (Media Ownership) Act 1996 (**Media Ownership Act**) gives commercial radio licensees the option of adopting a 'regular disclosure method', requiring a radio outlet regularly to disclose a cross-media relationship in such a way and with such frequency that the prime-time audience of the commercial radio broadcaster would be reasonably likely to be aware of the cross-media relationship.

89. The explanatory memorandum to the Media Ownership Bill notes that the regular disclosure method is provided as an option in the case of radio, because commentary on radio is generally unscripted.

90. Clearly, the legislature has recognized that the unscripted nature of radio makes a requirement for 'spontaneous' disclosure too onerous for radio licensees. It is difficult to see why current affairs disclosure should be treated differently from cross media ownership disclosure.

91. **It would be entirely consistent with the object of the Disclosure Standard if it were amended to mirror the requirements for cross-media disclosure under the Media Ownership Act in respect of sponsorship disclosure. That is, by requiring that the licensee either during the program or in the "credits" of the program to adequately bring the existence of any such commercial arrangement to the attention of listeners in a way that is readily understandable to the reasonable person.**

- ***Recommendation 3: Remove the obligation to specify the amount or value received by the presenter in the register of commercial agreements.***

92. The requirement for the register of current commercial agreements to specify the amount or value of the benefit received by the presenter should be removed.[22]

93. The register should include agreements where the benefits received by presenters exceed a material threshold (e.g. more than $1,000). Whether the benefit received only just exceeds this material level, or greatly exceeds it, is irrelevant – it is the fact that a benefit is received that should be disclosed.

- ***Recommendation 4: Remove the obligation for presenters to provide the licensee with copies of each commercial agreement***

94. The requirement for presenters to provide radio stations with a copy of existing commercial agreements within 7 days is onerous and unnecessary and should be removed.

95. The object of the Disclosure Standard is to record the existence of commercial agreements that have the capacity to affect accurate coverage of matters of public interest. The precise terms of those agreements are irrelevant.

## F. OVERALL REGULATORY BURDEN

96. The commercial radio industry urges the Commission to consider the particular regulatory burdens outlined above in the context of the high level of regulation governing **all** areas of the commercial radio industry.

97. Commercial radio is a highly regulated industry. Industry specific regulations cover a wide range of areas including: program content; Australian music; advertising; technical broadcast issues; local content; emergency information reporting; current affairs reporting; media ownership; disclosure standards; financial reporting; spectrum management; and digital radio.

98. Broadcasters accept that they will be subject to some level of regulation, designed to maximise the use of the available spectrum and to benefit the community. However, the level of regulation has become unmanageable in recent years, particularly for the smaller players in the market.

99. The commercial radio industry is spending an increasing amount of time complying with regulatory requirements, rather than conducting its core business of broadcasting radio. This increasing concentration of resources on compliance – rather than programming – is likely to have a negative effect on radio broadcasting, to the detriment of the listening public.

[22] Section 10(5), Disclosure Standard.

CRA would welcome the opportunity to discuss or amplify any of these points with the Productivity Commission. The Commission should contact Joan Warner on 9281 6577 if it wishes to do so.