

Regulation Impact Statement

Proposed changes to the commercial radio standards

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Background

Regulatory framework applying to commercial radio

The commercial radio sector operates within the co-regulatory framework established by the *Broadcasting Services Act 1992* (the Act) where some matters are regulated under the Act as licence conditions (for example the prohibition on tobacco advertising) and other matters are regulated through industry codes of practice (for example, quotas for Australian music). In addition, program standards can be determined which operate across a whole industry as licence conditions. Under section 125 of the Act, the Australian Communications and Media Authority (the ACMA) has the power to determine program standards where:

- > there is convincing evidence that a code of practice registered is not operating to provide appropriate community safeguards; or
- > no code of practice has been registered for a matter referred to in subsection 123(2) of the Act.¹

It is generally accepted that more serious matters are covered by licence conditions and program standards to enable complaints about alleged breaches to be made directly to the ACMA. In contrast, complaints under industry codes of practice must first go to the licensee concerned rather than to the ACMA (code complaints can only be referred to the ACMA if the complainant is unsatisfied with a licensee's response, or the licensee fails to respond to the complaint).

The commercial radio standards

Three program standards for commercial radio licensees were determined by the ACMA's predecessor, the Australian Broadcasting Authority (ABA), as a result of the *Commercial Radio Inquiry 2000*. Prior to the inquiry, commercial influence in current affairs/talkback programs and advertising on commercial radio were regulated under industry codes of practice.²

In the inquiry, the ABA found that regulations as they stood did not provide appropriate community safeguards. In response, the ABA developed the three commercial radio standards:

- > Broadcasting Services (Commercial Radio Advertising) Standard 2000³ which requires advertisements to be distinguishable from other program material.
- > Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000⁴ which requires the disclosure of commercial agreements made with current affairs presenters where they may influence the content of current affairs programs and oblige licensees to broadcast on-air disclosure announcements and maintain a register/notification process for current commercial agreements.
- > Broadcasting Services (Commercial Radio Compliance Program) Standard 2000⁵ requires licensees to formulate, implement and maintain a compliance program (including prescribed basic elements) to ensure compliance with the requirements of the Act, program standards and industry codes of practice.

The commercial radio standards for advertising and compliance matters commenced on 15 January 2001 and the disclosure instrument commenced on 21 November 2000. The three standards have no set expiry date.⁶

¹ The matters referred to in subsection 123(2) of the Act relevantly include: promoting accuracy and fairness in news and current affairs programs and 'such other matters relating to program content as are of concern to the community'.

² Code 3 (advertising) and code 9 (commercial influence) of the Commercial Radio Codes of Practice (June 1993).

³ Referred to as 'the Advertising Standard' in this document.

⁴ Referred to as 'the Disclosure Standard' in this document.

⁵ Referred to as 'the Compliance Standard' in this document.

⁶ The standards are subject to the sunset provisions of the *Legislative Instruments Act 2003*.

Review of the commercial radio standards

The ACMA has reviewed the three commercial radio standards to ensure that the regulation of commercial radio in these areas delivers appropriate and contemporary community safeguards. The ACMA seeks to make regulation which is stable and predictable and furthers the objects of the Act. Most relevantly, the objects of the Act expect that regulation should encourage commercial radio licensees to:

- > be responsive to the need for a fair and accurate coverage of matters of public interest;⁷ and
- > respect community standards in the provision of programming material.⁸

The ACMA is committed to conducting evidence-based reviews, and in this review it has reconsidered the assumptions behind the community attitudes that ground the three standards. As part of the review the ACMA has:

- > Conducted consumer and listener research to understand current community standards regarding advertising and commercial influence on commercial radio – see research reports published by the ACMA in February 2010: *Community Attitudes to Radio Content* and *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio*.
- > Conducted research into industry attitudes to compliance with the provisions of the Compliance Standard – see report published by the ACMA in February 2010: *Industry Compliance with the Compliance Program Standard*.
- > Released an Issues paper to seek public, industry and stakeholder views on the current standards including the perceived benefits and deficiencies of current regulation. Fifteen submissions were received in response to the Issues paper in May 2010.
- > Released an Options paper (Attachment A) to seek public, industry and stakeholder views on a range of possible reform options – including the possible costs and benefits of the reforms. Three submissions were received in response to the Options paper in May and June 2011.

The research reports, Issues paper, Options paper and submissions received from the public are available on the ACMA's website.⁹ The ACMA utilised investigation data, research and submissions received to develop and assess the proposed outcomes of the review. This Regulation Impact Statement (RIS) – as required by the Office of Best Practice Regulation (OBPR) – identifies the possible impacts of the proposed outcomes of the review.

Stakeholders to the review

The three commercial radio standards regulate only the commercial radio industry. Any changes to the regulation will directly affect all commercial radio licensees of which there are 273 licensees.¹⁰ In addition, any change to these regulations will impact the advertising industry and commercial radio listeners but in a less direct manner.

The commercial radio industry

The commercial radio industry is the key industry that is affected by the commercial radio standards including any change to these regulations.

As part of the review, the ACMA has considered:

- (1) whether there remains a need to regulate advertising, commercial influence and compliance; and
- (2) if there is a need, whether the regulation could be contained within an industry code rather than a program standard.

It has been of particular importance to the ACMA to ensure that overall regulation does not impose unnecessary financial and administrative burdens on commercial radio licensees.

⁷ Section 3(1)(g) of the Act.

⁸ Section 3(1)(h) of the Act.

⁹ http://www.acma.gov.au/WEB/STANDARD.PC/pc=PC_311945

¹⁰ ACMA Annual Report 2010-11, page 51.

The advertising industry

Despite not being regulated under the commercial radio standards, the advertising industry still has a significant interest in the regulations, particularly the Advertising and Disclosure Standards which place limitations on how and when commercial radio can broadcast certain kinds of commercial content.

In conducting the review, the ACMA has taken into account any impacts the regulation or proposed changes to the regulation would have on the advertising industry.

Commercial radio listeners/citizens

In conducting the review, the ACMA has been concerned to ensure that commercial radio licensees are encouraged to meet community standards and to ensure that listeners receive fair and accurate coverage of matters of public interest.

Problem

The commercial radio standards were introduced by the ABA following the *Commercial Radio Inquiry 2000*. The standards are intended to deal with three key problems:

1. The high likelihood that listeners were being misled by advertising on commercial radio.
2. The high likelihood that matters of public interest were not free from commercial influence.
3. The systemic failure of the industry regarding compliance – including a lack of awareness from licensees and station staff about regulatory obligations and a lack of internal systems to ensure compliance with those obligations.

The aim of the ACMA's review of the commercial radio standards is to address the above problems. The ACMA is also keen to identify if the commercial radio standards have created any additional problems, noting the commercial radio industry has consistently expressed concern about the impact and operation of the standards.

In this section, the ACMA describes the problems regarding:

- > Advertising on commercial radio;
- > Commercial influence on commercial radio; and
- > Compliance of commercial radio licensees with regulatory obligations.

Description of the problem – Advertising on commercial radio

Citizen views about advertising on commercial radio

Many radio listeners (60 per cent) accept the realities involved in operating commercial radio services, agreeing that 'advertising on commercial radio doesn't bother me because it's a business that relies on advertising to operate'.¹¹ Many listeners also agree that integrating advertising with other program content on commercial radio is acceptable.¹²

However, the majority of listeners—80 per cent of all regular radio listeners and 79 per cent of regular commercial radio listeners—also consider that advertising content on radio should be clearly distinguishable from other radio content.¹³ In this context, there is evidence that, in some circumstances, live reads cannot be readily distinguished by radio listeners—even by those who are frequent listeners.¹⁴

The ABA identified a high likelihood that listeners were being misled by advertising on commercial radio

Before 2000, both the commercial television and radio industries had separately developed industry codes of practice, containing codes relevant to advertising. The relevant commercial radio codes of practice required advertising to be distinguishable from other program content (a similar requirement in the television codes of practice allowed product placement in television programs so long as end titles of programs disclosed the advertisers concerned).

The ABA's *Commercial Radio Inquiry 2000* raised significant issues regarding the overlap of advertising and other program content on commercial radio. The ABA wanted to ensure that listeners

¹¹ See *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010* at page 3.

¹² Sixty-seven per cent of commercial AM talkback listeners agree that 'integrating advertising with other program content on commercial radio is acceptable so long as advertisers are identified at least once during the program'. Further, 55 per cent of commercial radio listeners agree that integrating advertising with other program content on commercial radio is acceptable so long as advertisers are identified at least once during the program. See *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010* at page 3.

¹³ *Community Attitudes to Radio Content 2010* at page 4.

¹⁴ *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010* at page 32.

were not misled into believing that promotional material had greater credibility because it was not sufficiently distinguishable as advertising.

The ABA identified a sufficiently large number of breaches of the relevant radio advertising code of practice and accordingly concluded there was a high likelihood of listeners being misled by advertising on commercial radio. As a result, the ABA had convincing evidence that the registered industry code of practice was not operating to provide appropriate community safeguards for radio listeners and moved to address the problem by replacing the code with a program standard made under the Act.¹⁵

Assessment of this problem in 2011

As part of its current review of the commercial radio standards, the ACMA has reconsidered whether there is a need for a program standard to deal with the problem of listeners being misled by advertising on commercial radio. In reconsidering a move back to code based regulation, or removal of advertising regulation for commercial radio, the ACMA would require convincing evidence that:

- > the policy problem had diminished significantly;
- > the importance placed by citizens on being able to distinguish advertising was significantly less than in 2000;
- > sufficient community safeguards could be provided (either through a code or without regulation).

The ACMA considers that the regulation in the past decade or so has resulted in increased industry awareness of the problem and improved standards of behaviour. The level of breach findings under the Advertising Standard is not as high now as that found by the ABA in 2000:

Breaches reported by the ABA of the relevant advertising radio code of practice from own motion investigations during 1992-2000 into 5 licensees (2UE, 5AD, 5DN, 6PR, 3AW)	Breaches reported by the ACMA of the Advertising Standard from investigations between 2000-2011 into all commercial radio licensees
45 reaches, including: <ul style="list-style-type: none"> > 30 relating to 2UE; > 11 relating to 6PR; > 4 relating to 5DN.¹⁶ 	2 breaches (from 10 investigations) both relating to 4EL.

The ACMA has identified through attitudinal research that citizens still place considerable value on advertising being distinguishable from other program material (see part 1.5.2 of the Options paper at Attachment A for more detail). Further, listener research indicates that listeners continue to have problems distinguishing current advertising practices from other program content on commercial radio – particularly with integrated advertising practices such as some live reads (this is discussed in more detail at part 1.5.4 of the Options paper).

The likelihood of listeners being misled is therefore assessed as still present in commercial radio broadcasting. This indicates that regulation, via either an industry code or a standard is still warranted. While convergence of media is becoming more prevalent in Australia it has not progressed so far along that the resultant advertising code or standard from this review will apply across various industries. Instead, any regulatory reform from the ACMA's review will remain applicable to only the commercial radio industry.

¹⁵ Final Report of the ABA *Commercial Radio Inquiry 2000*, pages 96 and 97.

¹⁶ Final Report of the ABA *Commercial Radio Inquiry 2000*, page 96.

Concerns with the Advertising Standard identified by the ACMA

During the current review, the ACMA identified the following concerns with the Advertising Standard:

- > The implicit requirement that advertisements be distinguishable at the time they are broadcast.
- > Whether the 'reasonable listener test' is sufficient to regulate integrated advertising.
- > Whether the definition of consideration is sufficient.

In considering how to regulate advertising on commercial radio, the ACMA would also seek to address these concerns.

Implicit requirement that advertisements be distinguishable 'at the time' they are broadcast

Listener research suggests the need for advertising content to be closely accompanied (in time) by common advertising signals and cues in order for advertising content to be most easily distinguishable. The current regulation is not explicit in this requirement. The current Advertising Standard requires that:

Advertisements broadcast by the licensee must be presented in such a manner that the reasonable listener is able to distinguish them from other program material.¹⁷

It therefore requires advertising to be distinguishable but does not explicitly state when a licensee must ensure that the distinction is made—for example, when the content is broadcast or at any time during the related radio program or segment.

When conducting investigations under the Advertising Standard, the ACMA finds that advertisements that are distinguishable *at the time* they are broadcast are more likely to meet the standard. The ACMA identified this as a concern with the current Advertising Standard – remedied by making this implicit requirement explicit in the regulation, thereby reducing the likelihood of listeners being misled by radio advertising. (For more detail, see part 1.5.3 of the Options paper at Attachment A).

Whether the 'reasonable listener test' is sufficient to regulate integrated advertising

The Advertising Standard does not prescribe how advertising material should meet the 'reasonable listener' test. Determining whether an advertisement is distinguishable to a 'reasonable listener' requires an objective, case-by-case consideration of factors including content, style, tone, scripting and placement of the advertisement.

Commercial Radio Australia (CRA) and commercial radio networks submitted in response to the ACMA issues paper that the reasonable listener test of the Advertising Standard is too vague to be workable and its interpretation by the ACMA leads to inconsistent and unpredictable outcomes.¹⁸

The ACMA has conducted research to identify which commercial radio advertising practices led to the most difficulty for radio listeners in distinguishing advertising. This research assists the ACMA to be consistent and predictable in its application of the reasonable listener test. In general, the research found that advertising material which is less structured, more interactive and multi-faceted (use of talkback, discussions or expert interviews) caused the most difficulty for listeners.¹⁹ This type of advertising is generally called 'integrated advertising'.

The research results indicated that listeners found 'live reads' (advertising material read live to air by presenters) difficult to distinguish as advertising especially where:

- > a presenter moved from editorial commentary directly into a live read
- > the product, service, brand or contact details were mentioned only towards the end of a live read.²⁰

¹⁷ Section 6 of the Advertising Standard.

¹⁸ CRA submission to the ACMA issues paper at page 2 and Fairfax Radio Network submission to the ACMA issues paper at page 3

¹⁹ *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010*

²⁰ See the findings regarding participant reactions to audio clips at pages 14-35 of *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010*.

Further, investigations by the ACMA have found breaches of the Advertising Standard in circumstances where advertisements were integrated into live interviews.²¹ The research and investigation outcomes indicate that there is a material gap between industry and community views on whether such integrated advertising is sufficiently distinguishable as advertising.²² CRA however indicates that substantive changes should not be made to the existing regulation on the basis of the above research.²³

Whether the definition of consideration is sufficient

The ACMA's investigations demonstrate difficulties establishing whether 'consideration' (defined in the Advertising Standard as 'any valuable consideration other than the provision, at no charge, of a product or service solely for review') has been provided for a *particular* advertisement, especially where:

- > a licensee or presenter gains an interest or benefit (which may not fall within the current definition of consideration under the Advertising Standard); or
- > the link between the provision of valuable consideration and the broadcast of the material is indirect or otherwise difficult to establish.

The concern about the definition of 'consideration' in the current Advertising Standard could be addressed to ensure that all advertising practices are regulated to reduce the likelihood of listeners being misled. (For more detail, see part 1.5.2 of the Options paper at Attachment A).

Description of the problem – Commercial influence on commercial radio

Citizen views about advertising on commercial radio

Commercial radio retains its importance as a source of information and opinion for Australians, with 27 per cent of all radio listeners and 33 per cent of commercial radio listeners finding it an extremely or very important source of news and current affairs.²⁴ Fifty per cent of commercial AM talkback listeners identified talkback programming as similarly important in informing them about social, political or economic matters.²⁵ Research indicates there is broad agreement that talkback is one of the main vehicles for informing radio listeners and bringing issues to the attention of citizens.²⁶ There is also a strong view that commercial radio presenters should address the important public interest obligations at stake when presenting commercial radio program formats involving news and current affairs.²⁷

Attitudinal research indicates that no matter the program format concerned, 81 per cent of commercial radio listeners agree that the on-air opinions of radio personalities should not be influenced by their personal sponsorship deals.²⁸ Fifty-five per cent of commercial radio listeners think that it is extremely or very important for them to be informed of commercial agreements made with radio personalities.²⁹

The ABA identified a high likelihood that matters of public interest were not free from commercial influence on commercial radio

One of the objects of the Act is to encourage licensees to be responsive to the need for fair and accurate coverage of matters of public interest. It is accepted that matters of public interest include material for the coverage of news and current affairs. In the *Commercial Radio Inquiry 2000* the ABA

²¹ See Investigation Report 2180 and Investigation Report 2302 both into the *John MacKenzie Show* broadcast by Prime Radio (Cairns-AM) Pty Ltd, available at: www.acma.gov.au/WEB/STANDARD/pc=PC_310231

²² *Listener Attitudes to Advertising, Sponsorship and Influence on Commercial Radio 2010*.

²³ See CRA submission to the ACMA issues paper at page 20.

²⁴ *Community Attitudes to Radio Content 2010* at pages 49 and 53.

²⁵ *Community Attitudes to Radio Content 2010* at pages 49 and 53.

²⁶ *Review of Literature on Commercial Influence in News and Current Affairs Programs on Commercial Radio 2010* at pages 18 and 27–28.

²⁷ *Review of Literature on Commercial Influence in News and Current Affairs Programs on Commercial Radio 2010* at pages 18 and 27–28.

²⁸ *Community Attitudes to Radio Content 2010* at page 45.

²⁹ *Community Attitudes to Radio Content 2010* at page 52.

identified that the coverage of news and current affairs on commercial radio was being undermined because of commercial agreements with program presenters.

The ABA also indicated that there were a large number of breaches of the relevant commercial influence code of practice, and accordingly there was a high likelihood that matters of public interest were not free from commercial influence. As a result, the ABA had convincing evidence that the registered industry code of practice was not operating to provide appropriate community safeguards and moved to address the problem by replacing the code with a program standard made under the Act.³⁰

Assessment of this problem in 2011

As part of its current review of the commercial radio standards, the ACMA has reconsidered whether there is a need for a program standard to deal with the problem of commercial influence in the coverage of matters of public interest. In reconsidering a move back to code based regulation, or removal of commercial influence regulation for commercial radio, the ACMA would require convincing evidence that:

- > the policy problem had diminished significantly;
- > that citizen concern for accurate and fair coverage of matters of public interest was significantly less;
- > sufficient community safeguards could be provided (either through a code or without regulation).

Since 2000, there have only been a small number of investigations regarding compliance with the Disclosure Standard. Industry asserts that the problem is now isolated to individual licensees or presenters. While it is true that there have been only a few formal investigations into the standard, those investigations have led to a large number of separate breach findings.³¹ These investigations demonstrate that this policy problem remains significant and serious – with 49 breach findings of the Disclosure Standard in only nine investigations. Further, licensee compliance with the standard could be improved (for more detail, see part 2.3 of the Options paper).

The ACMA's consumer and listener research demonstrates that community concern is still high of presenters being influenced by commercial interests (see part 2.2 of the Options paper for more detail). Submissions to the ACMA's issues paper generally supported the need for regulation of commercial influence on matters of public interest on commercial radio. The submissions and research, taken together, do not support removing the regulation of commercial influence on matters of public interest. Therefore, the problem that listeners may not have access to fair and accurate coverage of matters of public interest is still of a significant magnitude to warrant regulation.

Concerns with the Disclosure Standard identified by the ACMA

During the current review, the ACMA identified the following concerns with the Disclosure Standard:

- > Whether the definitions of 'consideration' is sufficient.
- > Whether the definitions of 'commercial agreement' is sufficient.
- > The provision of scripted on-air disclosure announcements in the standard is inflexible.
- > The burden on industry from the register and notification requirements.

In considering how to regulate commercial influence on commercial radio, the ACMA would also seek to address these concerns.

Whether the definition of 'consideration' is sufficient

The ACMA's investigations demonstrate difficulties in establishing whether 'consideration' (defined in the Disclosure Standard as 'any valuable consideration other than the provision, at no charge, of a

³⁰ Final Report of the ABA *Commercial Radio Inquiry 2000*, page 88.

³¹ Within the nine formal investigations published on the ACMA website as at October 2010, 49 separate breaches of the Disclosure Standard were found.

product or service solely for review') has been provided under a *particular* commercial agreement, especially where:

- > a licensee or presenter gains an interest or benefit (which may not fall within the current definition of consideration under the Disclosure Standard); or
- > the link between the provision of valuable consideration and the broadcast of the material is indirect or otherwise difficult to establish.

The concern about the definition of 'consideration' in the current Disclosure Standard could be addressed to reduce the likelihood of commercial influence in the coverage of matters of public interest. (For more detail, see part 2.5.2 of the Options paper at Attachment A).

Whether the definitions of 'commercial agreement' is sufficient

Investigations under the Disclosure Standard have also shown that commercial arrangements not covered by the definition of 'commercial agreement' in the Disclosure Standard (which primarily focuses on agreements made with presenters) can influence the coverage of matters of public interest on commercial radio. For instance, in small regional centres a licensee owner may also be a presenter of a current affairs program on the station, without having a 'commercial agreement' as defined in the current standard.

Another instance was investigated in 2004 by the Australian Broadcasting Authority (ABA). The ABA found that Telstra paid Harbour Radio Pty Ltd (licensee of 2GB) through the Macquarie Network to ensure current affairs presenter Mr Alan Jones made announcements regarding Telstra products. This arrangement was not disclosed, but there was no breach of the Disclosure Standard because:

- > Mr Jones was not party to the agreement, which was between Telstra and Macquarie Radio Network (the parent company of the licensee).
- > The payment of consideration under the agreement was to Macquarie Radio Network, not Mr Jones.
- > The terms of the agreement did not impose any editorial restrictions or obligations on Mr Jones.³²

While Mr Jones did not directly receive consideration under the agreement, he did own shares in Macquarie Radio Network and was entitled to 20 per cent of the increase in value of Macquarie Radio Network that might occur as a result of his role as presenter on 2GB.

The ABA also indicated in the investigation that Mr Jones' on-air commentary on Telstra (which was previously critical) became predominantly positive, supporting Telstra's service standards, public image and credibility at the time the agreement between Telstra and Macquarie Radio Network was in place. The ABA also noted that Mr Jones' views on the privatisation of Telstra changed over time.

This example and highlights that for community standards to be met, the same disclosure standards should apply, irrespective of whether a commercial arrangement is with a program presenter or a licensee. This supports the view that the scope of the disclosure regulation should be extended.

The CLC submitted that regulatory safeguards should capture any person who is in a position to influence the content of a program.³³ In contrast, CRA argued against extending the scope of any disclosure regulation to 'all commercial agreements with the potential to affect program content' because, they said, it would be impossibly vague and onerous.³⁴

The concern about the current definition of 'commercial agreement' could be addressed to reduce the likelihood of commercial influence of matters of public interest. (For more detail, see part 2.5.3 of the Options paper).

The provision of scripted on-air disclosure announcements in the standard is inflexible.

³² See the investigation report available at: www.acma.gov.au/WEB/STANDARD/pc=PC_310230.

³³ CLC submission to the ACMA issues paper at page 5.

³⁴ CRA submission to the ACMA issues paper at page 15.

The current Disclosure Standard includes six scripted phrases which are required to be used to ensure a licensee properly makes an on-air disclosure announcement. This requirement on the form of on-air disclosure announcements is too inflexible for licensees and may not assist in reducing the likelihood of commercial influence in the coverage of matters of public interest – as revealed during investigations under the Disclosure Standard and in submissions from the commercial radio industry. (For more detail, see part 2.5.5 of the Options paper).

The burden on industry from the register and notification requirements.

The current standard imposes somewhat strict register and notification requirements on licensees, creating significant administrative burdens on licensees which may be more than what is necessary to reduce the likelihood of commercial influence in the coverage of matters of public interest. (For more detail, see part 2.5.6 of the Options paper at Attachment A).

Description of the problem – Compliance of commercial radio licensees with regulatory obligations

The ABA identified a systemic failure of the industry regarding compliance – including a lack of awareness from licensees and station staff about regulatory obligations and a lack of internal systems to ensure compliance with those obligations

Commercial radio licensees are required to comply with regulatory obligations under codes of practice, licence conditions and program standards. In the *Commercial Radio Inquiry 2000*, the ABA noted a systemic failure of the industry regarding compliance – including a lack of awareness from licensees and station staff about regulatory obligations and there being no internal systems in place to ensure compliance with those obligations.

The ABA identified that this problem was significant because there was no industry culture that respected and enforced the industry codes of practice. There was a high degree of ignorance about the codes on the part of presenters and producers, and a low degree of commitment on the part of licensees and the industry in general.³⁵ As a result the ABA introduced the Compliance Standard.

Assessment of this problem in 2011

Given the seriousness of the systemic failure up until 2000, the ACMA would need convincing evidence that the policy problem had diminished sufficiently in order to revoke the regulation in this area. In 2009, a survey of commercial radio broadcasters and their compliance with provisions of the Compliance Standard demonstrated that 95% of respondents had developed a compliance program as required under the standard (for more detail, see part 3.5.1 of the Options paper at Attachment A). The ACMA considers that industry compliance culture has improved since 2000 and the problem is now much less significant.

The survey results and the reduced investigation numbers suggest there is convincing evidence that there is no longer a systemic failure of industry compliance and that licensee and station staff are aware of their regulatory obligations.

Concerns with the Compliance Standard identified by the ACMA

During the review, the ACMA identified the following concerns with the Compliance Standard:

- > Investigations under the three standards demonstrate that meeting the Compliance Standard does not ensure that a licensee is meeting its regulatory obligations under the Advertising Standard or the Disclosure Standard. For example, a licensee may have in place a compliance policy and appropriate training of presenters and staff, but still fail, on a case-by-case basis to disclose commercial agreements and maintain a register as required by the Disclosure Standard.
- > Industry compliance research, as well as industry submissions, indicates that meeting the requirements of the Compliance Standard causes financial and administrative burdens for licensees. While it was widely accepted at the time of the *Commercial Radio Inquiry 2000* that the

³⁵ Final Report of the ABA *Commercial Radio Inquiry 2000*, page 99.

extra financial and administrative burdens were necessary to ensure that the objects of the standard were met, this justification has diminished over time especially because there is an improved compliance culture.

Objective of regulatory review

The ACMA's review of the commercial radio standards has had the object of ensuring that the regulation of commercial radio in respect of advertising, commercial influence and industry compliance can effectively, efficiently and appropriately redresses the policy problems described above. As part of this, the ACMA has wanted to ensure that any regulation is:

- > stable and predictable;
- > meets community standards; and
- > does not impose unnecessary financial and administrative burden on licensees.

Options

This section describes the regulatory options suggested by the ACMA in the Options paper regarding:

- > Advertising on commercial radio,
- > Commercial influence on commercial radio; and
- > Compliance of commercial radio licensees with regulatory obligations.

Throughout the review, it has been open to the ACMA to present options that maintain the status quo provided and retain the existing commercial radio standards. However, as the research findings and the submissions to the Issues paper clearly supported reform of the standards, the Options paper focussed on viable *reform* options to address the policy problems and concerns with the current regulations (identified above). For completeness, this RIS also considers maintaining the status quo as an outcome option for the current review.

In addition to direct regulatory options (program standards), the ACMA also suggested reform options that include co-regulatory components (through industry codes of practice) to address industry and community concerns.

Options for advertising on commercial radio

Despite the Advertising Standard being in place for over ten years, there still remains a high likelihood that listeners are being misled by advertising on commercial radio because material is not sufficiently distinguishable as an advertisement.

As concluded above (page 4), the ACMA views this problem as sufficiently significant to continue the regulation of advertising – whether through a program standard (direct regulation) or an industry code of practice (co-regulation).

Status Quo option – Maintain direct regulation through the Advertising Standard without change

Maintaining the current program standard is an option that would address the problem of listeners being misled by advertising on commercial radio by requiring licensees to ensure that advertisements broadcast by the licensee are presented in a manner that the reasonable listener is able to distinguish them from other program material. This option recognises that despite the concerns identified above (above, page 5 and described in more detail in Chapter 1 of the Options paper), the current standard has aspects that:

- > are appropriate;
- > do not impose unnecessary financial and administrative burdens on licensees; and
- > deliver benefits to citizens.

Reform Option 1 – Strengthen the current standard

Maintaining direct regulation is an option that could address the concerns of the current Advertising Standard and the problem of listeners being misled by advertising on commercial radio (identified above, page 4 and discussed in more detail in Chapter 1 of the Options paper), because a varied program standard could be made more appropriate and deliver greater benefits to citizens by:

- > Having a more comprehensive definition of 'consideration' thereby requiring more advertising to be distinguishable – meeting community standards and addressing the issues identified by the ACMA during investigations.
- > Explicitly requiring advertising to be distinguishable at the time of the broadcast which would result in more stable and predictable regulation.
- > Prohibiting or explicitly regulating integrated advertising, which have been shown to be a type of advertising on commercial radio to cause difficulty for listeners to distinguish as advertising – thereby providing more stringent community safeguards.

Reform Option 2 – Permit co-regulation through the development and registration of an industry code of practice (with the current standard to be revoked)

Introducing co-regulation is an option that could address the problem of listeners being misled by advertising on commercial radio as well as address the concerns identified by the ACMA with the current Advertising Standard. However, this depends on the content of the industry code of practice and its eventual registration by the ACMA. Due to the co-regulatory premise of broadcasting industry codes, the content and requirements of a code would need to be developed by the commercial radio industry itself before being provided to the ACMA for registration under Part 9 of the Act.

Options for commercial influence on commercial radio

The problem identified by the ABA that matters of public interest were not free from commercial influence on commercial radio, remains a serious and significant problem in 2011. As discussed above (page 6), the large numbers of breach findings for the small number of investigations under the Disclosure Standard supports continuing regulation – whether through a program standard (direct regulation) or an industry code of practice (co-regulation).

Status Quo option – Maintain direct regulation through the Disclosure Standard without change

Maintaining the current program standard is an option that would address the problem of commercial influence in the coverage of matters of public interest on commercial radio – by requiring licensees to disclose commercial agreements made with current affairs presenters of current affairs programs.

This is achieved under the current Disclosure Standard because licensees must:

- > broadcast an on-air disclosure announcement during a current affairs program, at the time of and as part of the relevant commercial content;
- > ensure the on-air disclosure announcement is in the form of one of six phrases specified;
- > keep a register of current commercial agreements, making it available at the station premises for inspection upon request by any member of the public and publishing the register on the licensee's website;
- > notify the ACMA in writing of relevant commercial agreements within prescribed time limits; and
- > require presenters of current affairs programs to comply with the standard, including the obligation to provide copies of relevant agreements to the licensee.

This option recognises that despite the concerns (identified above, page 6-7 and described in more detail in Chapter 2 of the Options paper) and burden imposed through regulation, the current standard has aspects that deliver a range of benefits to citizens.

Reform Option 1 – Strengthen the current standard

Maintaining direct regulation is an option that could address the concerns with the current Disclosure Standard (identified above and in more detail in Chapter 2 of the Options paper), because a varied standard be made more appropriate for the commercial radio industry and citizens by:

- > Applying to more than just current affairs programs, for instance applying to 'factual programs' or to 'all matters of public interest on commercial radio' – providing increased community safeguards.
- > Having a more comprehensive definition of 'consideration' thereby requiring more commercial agreements to be disclosed – meeting community standards and addressing the issues identified by the ACMA during investigations.
- > Applying to a wider range of agreements (for example licensee agreements where current affairs presenters receive benefits and/or any other agreement where the person concerned has significant influence on the content of material broadcast) – providing increased community safeguards.
- > Allowing on-air announcements in different forms which would provide more flexibility for licensees while maintaining community safeguards.
- > Lessening the register and notification requirements, thereby alleviating some financial and administrative burdens on licensees.

Reform Option 2 – Permit co-regulation through the development and registration of an industry code of practice (with the current standard to be revoked)

Introducing co-regulation is an option that could address the problem of commercial influence in the coverage of matters of public interest on commercial radio as well as address the concerns identified by the ACMA with the current Disclosure Standard depending on the content of the code of practice. Due to the co-regulatory premise of broadcasting industry codes, the content and requirements of a code would need to be developed by the commercial radio industry itself before being provided to the ACMA for registration under Part 9 of the Act.

Reform Option 3 – Maintain direct regulation through a program standard, but introduce an editorial independence approach

Maintaining direct regulation but introduce an editorial independence approach as an option that could address the problem of commercial influence in the coverage of matters in the public interest on commercial radio because a varied standard of this type could deliver increased benefits to citizens by:

- > Prohibiting any sponsorship of news programs and requiring impartiality of *all* editorial material.
- > Making disclosure announcements redundant as any content giving undue prominence to commercial entities or products would be prohibited.

Options for compliance of commercial radio licensees with regulatory obligations

The problem identified by the ABA in 2000, that there was a systemic failure of the industry regarding compliance – including a lack of awareness from licensees and station staff about regulatory obligations and a lack of internal systems to ensure compliance with those obligations – has lessened since the introduction of the Compliance Standard. Further, as the Act provides mechanisms to deal with licensee breaches of regulatory obligations (through enforceable undertakings and remedial directions), there is a possibility that regulating through a program standard across the entire industry is no longer required.

Status Quo option – Maintain direct regulation through the Compliance Standard without change

Maintaining the current program standard is an option that would address the problem of industry awareness of regulatory obligations and provide for internal systems to ensure compliance – by requiring licensees to formulate, implement and maintain a compliance program to ensure compliance

with the requirements of the Act, standards and codes. Under the current Compliance Standard, a licensee's compliance must include basic elements:

- > A written compliance policy;
- > Staff training at induction and at least once a year;
- > Monitoring; and
- > An annual audit.

This option recognises that the Compliance Standard has been appropriate and has delivered benefits to both citizens and industry since its introduction and may continue to improve the compliance culture in industry.

Reform Option 1 – Maintain direct regulation through a program standard which maintains the main features of the current standard but minimises some of the financial and administrative burden on licensees

Maintaining direct regulation is an option that could address the problem of industry awareness of its regulatory obligations as well as address the concerns with the current Compliance Standard (identified above, page 7 and in more detail in Chapter 3 of the Options paper). This is because a varied standard could lessen some of the financial and administrative burdens of the Compliance Standard – for example, by requiring an annual compliance program update to the ACMA.

Reform Option 2 – Remove direct regulation by revoking the current standard and rely on the Act to deal with individual breaches of regulatory obligations.

Removing direct regulation is an option that recognises that the magnitude of the problem of industry awareness of its regulatory obligations has lessened significantly since the *Commercial Radio Inquiry 2000*. This option recognises that compliance issues could be addressed more effectively, efficiently and appropriately, because:

- > Breaches of regulatory obligations could still be dealt with by the ACMA on an individual licensee basis utilising enforcement powers under the Act.
- > Financial, administrative and regulatory burdens on licensees would be lessened.
- > Licensees would be encouraged to educate employees on regulatory obligations in any way they saw fit – providing flexibility.

Impact analysis

As part of the current review, the ACMA published the report *Reform of the Commercial Radio Standards: A review of the expected economic costs* in March 2011 – seeking to identify possible economic impacts of reforming the commercial radio standards. At the time of this work the paper identified that many of the benefits likely to arise from reforming the standards would not be economic. Rather they may be intangible benefits in the form of benefits to society, for example preventing commercial arrangements from influencing current affairs reporting and public debate. Some reforms would give rise to an economic impact, however as no data was available to the ACMA to estimate the economic costs/benefits, the paper only considered the types of costs and potential benefits.

In response to the Options paper of May 2011, the ACMA received some submissions on predicted costs and benefits of the suggested options proposed. These have been considered and utilised in this impact analysis. It should be noted that the ACMA has not independently verified these predicted costs and benefits as provided by submitters. Although, the costs and benefits would need to be scrutinised by ACMA or independent assessment if a fully costed assessment of the proposed regulations was to take place.

This section discusses the impact of each of the suggested options on the following groups:

- > The commercial radio industry;
- > The advertising industry;
- > Citizens.

Impact of advertising options

The following table sets out estimated economic impacts provided in most cases by Commercial Radio Australia (CRA) of the advertising options presented in the Options paper. More detail explanation of these economic impacts and well as the intangible costs/benefits is provided in the text below.

	Estimated economic impacts of suggested advertising options		
	Status Quo option	Reform Option 1 – varied standard	Reform Option 2 – industry code
Estimated economic impacts to the whole commercial radio industry	Same economic impacts as current regulation: <ul style="list-style-type: none"> • \$6.1 million per year in current compliance costs.³⁶ 	Additional economic costs: <ul style="list-style-type: none"> • \$3.3 million one off cost to renegotiate advertising contracts.³⁷ • \$4.8 million per year for additional training.³⁸ 	Additional economic costs: <ul style="list-style-type: none"> • \$4.8 million per year for training. • \$500,000 one off to develop and consult on industry code. • 2% increase in complaint handling costs per year.
Estimated economic impacts to the advertising	No additional impacts.	Economic costs: <ul style="list-style-type: none"> • \$83.7 million per year in lost surplus.³⁹ 	No economic impacts.

³⁶ CEG Report at page 10 provided as part of CRA's submission to the ACMA's options paper, June 2011.

³⁷ CEG Report at pages 44-45 provided as part of CRA's submission to the ACMA's options paper, June 2011.

³⁸ CEG Report at pages 11, 45-46 provided as part of CRA's submission to the ACMA's options paper, June 2011.

³⁹ CEG Report at pages 9-10 provided as part of CRA's submission to the ACMA's options paper, June 2011.

industry			
Estimated economic impacts to citizens	No additional impacts.	Economic costs: <ul style="list-style-type: none"> • \$291 million in nuisance costs if increase in spot ads.⁴⁰ 	No economic impacts, some intangible costs.

Status Quo option – Maintain direct regulation through the Advertising Standard without change

Impact on the commercial radio industry

The Status Quo option is likely to have *no net impact on commercial radio licensees* because they would be expected to comply with the same regulation that has been in place since 2000.

CRA submitted a report by the Competition Economists Group (CEG) that estimates the compliance costs of the current Advertising Standard is on average \$23,435 per year per licensee – which amounts to approximately \$6.1 million per year for the whole of the commercial radio industry.⁴¹ CEG indicates that these compliance costs include: salaries, employee on-costs, payments to external contractors and fees for legal services.

If the Status Quo option is maintained by the ACMA for regulating commercial radio advertising, no additional costs would be incurred by the commercial radio industry but nor would any additional benefits be delivered to the industry.

Impact on the advertising industry

Similarly, for the advertising industry there would be *no net impact* by selecting the Status Quo option because there would be no change to the types of advertising practices permitted on commercial radio. Therefore the advertising industry would continue with its current business practices, regulatory understanding and arrangements with commercial radio.

Impact on citizens

Given the concern identified by the ACMA in the Options paper that the current Advertising Standard does not cover all instances of advertising, maintenance of the current regulation under the Status Quo option would for the reasons outlined in the problem section not deliver appropriate community safeguards in all instances of advertising.

Reform Option 1 – Maintain direct regulation through a program standard which maintains the main features of the current Advertising Standard but also addresses the Options paper findings in Chapter 1

Impact on the commercial radio industry

Reform Option 1 proposes to regulate through a program standard maintaining the main features of the current Advertising Standard. As such, it is accepted that the estimated compliance costs of the current standard would also be incurred with Reform Option 1.

As stated above, CEG estimates these costs are \$23,435 per year per licensee – which amounts to approximately \$6.1 million per year for the whole of the commercial radio industry.⁴² Although this could be reduced as CEG agrees that it is possible that some proportion of the current compliance costs may no longer be incurred under changed regulations.⁴³

Implementation of new obligations under Reform Option 1 is likely to impose *economic costs on commercial radio licensees*, including the retraining of staff. CEG estimates that the more stringent rules proposed for advertising in the Reform Option 1 would require an additional two days of training

⁴⁰ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁴¹ CEG Report at page 43 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁴² CEG Report at page 43 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁴³ CEG Report at page 45 provided as part of CRA's submission to the ACMA's options paper, June 2011.

for 75% of staff at each station, costing on average \$18,524 per year per licensee or \$4.8 million across the whole commercial radio industry a year. The ACMA notes that some savings might be afforded due to the networked nature of the commercial radio industry in Australia. For example, where individual stations do not have compliance officers but rather the parent network employs the compliance staff. It is arguable that an increase in training costs would accrue only in the first year then be subsumed into the long term compliance costs.

CEG submits that if integrated advertising is prohibited under Reform Option 1, licensees will need to renegotiate existing advertising contracts that permit integrated advertising. CEG has estimated that this amounts to an additional \$3.3 million cost to the commercial radio industry.⁴⁴ CEG bases this calculation on the sample average number of advertising agreements with integrated advertising and the sample average number of sales/advertising staff commercial licensees currently employ. The ACMA expects the cost of \$3.3 million is likely to be reduced if advertising agreements were common across networked stations. In any event, this cost is considered a one off cost impact as all future advertising contracts would be negotiated under the new obligations proposed under Reform Option 1.

In the longer term, the regulatory change regarding integrated advertising would affect the value and location of advertising revenue, because it is likely that integrated advertising and spot advertisements are substitutes and that:

- > If they are good substitutes then changes to the regulation will likely result in transfers between parties within the economy rather than economic costs.
- > If they are not good substitutes then there may be economic costs involved with changes to the regulation. i.e. revenues may move away from commercial radio to other kinds of advertising.

CEG's analysis suggests that commercial radio licensees would be no-worse off under Reform Option 1 as any integrated advertising would be replaced with spot advertising – with an increase in the demand for spot ads and an increase in the price of spot ads.⁴⁵

Impact on the advertising industry

CEG submits that the proposal to prohibit integrated advertising in Reform Option 1 would *increase economic costs to the advertising industry* as integrated advertising is efficient in practice (with less production and promotion costs than spot advertising). CEG submits that advertisers might need to spend more to get the same effect from spot advertising. CEG estimates that the market for advertising using live reads is \$83.7 million in excess of that from spot advertising, meaning that the advertising industry would lose this amount in surplus if integrated advertising was prohibited.⁴⁶

The ACMA notes that the increased value of integrated advertising over spot advertising discussed by CEG, is a result of a reduction in consumer judgement/awareness. This is because, integrated advertising or any other advertising that is not distinguishable to the listener, may lead consumers to make purchasing decisions they would not have made, had they appreciated that a product or service was not genuinely or spontaneously endorsed. Consumers respond to and process information which they know to be advertising differently from information which they do not know to be advertising. This suggests that any surplus to advertisers in maintaining integrated advertising may well have countervailing detriments to listeners (discussed below in 'impact on citizens').

The ACMA notes that it is possible that a reform to advertising regulation may motivate a move by the advertising industry from radio advertising to television or online advertising. This would deliver a cost to the advertising industry, given television advertising in particular costs more overall (securing prime advertising time and the more expensive production costs) than radio advertising. Although, given the rapid change in the media environment over the last decade, any advertising substitution away from

⁴⁴ CEG Report at pages 44-45 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁴⁵ CEG Report at pages 55 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁴⁶ CEG Report at pages 9-10 provided as part of CRA's submission to the ACMA's options paper, June 2011.

radio would be difficult to isolate from broader industry wide trends such as the growth of advertising on the internet.⁴⁷

Impact on citizens

CEG submits that regulating integrated advertising under Reform Option 1 is likely to result in an increase in spot advertisements which would likely mean more interruptions to radio programming causing a *nuisance cost on listeners amounting to \$291 million*.⁴⁸ CEG's calculations are based on a 1999 US study about the value radio listeners place on uninterrupted or ad-free radio listening. The ACMA questions whether the US study is a good indication of these costs to Australian listeners in 2011.

Reform Option 1 has the potential to deliver *intangible benefits to citizens* as consumers' consumption patterns become more efficient as a result of their choices not being influenced by a radio presenter's endorsement or positive discussion of a product that was not clearly paid advertising.⁴⁹ These benefits are inherently difficult to quantify as it requires an estimate of the number of consumers who would purchase different products.⁵⁰ CEG submits that in principle this benefit would be zero or negative, because:

- > Advertising is welfare enhancing, with an important role in information dissemination.
- > There are already existing requirements on radio advertising.
- > Consumptive decision will likely be influenced by endorsements from other personalities in spot schedules.
- > Radio personalities have strong incentives to preserve their reputation by endorsing only reputable products.

Reform Option 2 – Permit co-regulation through the development and registration of an industry code of practice (with the current standard to be revoked)

Impact on the commercial radio industry

Reform Option 2 provides the commercial radio industry with the opportunity to develop an industry code of practice on advertising. The particular requirements under such a code are unknown at this stage. It is assumed that the obligations would be similar to the current standard, and because a code is developed by the industry they are unlikely to be more stringent. Therefore the compliance costs under such a code would be no more than the current compliance costs of \$6.1 million per year across the whole industry.

Implementation of new obligations under Reform Option 2 will likely impose *economic costs on commercial radio licensees*, including the retraining of staff. The magnitude of these costs will depend on how the new codes obligations compare to the current Advertising Standard. However, it is unlikely that the training costs would exceed those estimated by CEG for the training for the regulatory reform under Reform Option 1 of \$18,524 per year per licensee or \$4.8 million across the whole commercial radio industry a year.

The development of the relevant advertising code would be the responsibility of the commercial radio industry. CRA, as the peak body for the commercial radio industry would therefore develop, based on consultation with its membership, the relevant code and release for public consultation before providing the code to the ACMA for registration. Code reviews generally take between three and 12 month to complete, depending on the complexity of the matter. It is estimated that this process would impose a cost across the whole industry of approximately \$500,000.⁵¹

⁴⁷ *Reform of the Commercial Radio Standards: A Review of the Expected Economic Costs 2010* at page 16.

⁴⁸ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁴⁹ CEG Report at page 32 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁵⁰ CEG Report at page 32 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁵¹ This estimate is reckoned from code development costs recognised in the telecommunications industry. On a number of occasions the ACMA has agreed that reasonable code development costs range from \$250,00 to \$450,000 – for example see *ACMA Annual Report 2008-09*, page 93.

Complaints under the current Advertising Standard are made directly to the ACMA, however if the regulation was contained within an industry code, commercial radio licensees would need to deal with complaints in the first instance. All commercial radio licensees have in place complaint handling mechanisms for the existing codes of practice, with the industry dealing with around 226 code complaints annually.⁵² On average, the ACMA conducts five investigations annually into compliance with the current Advertising Standard⁵³ – which would mean a 2% increase across the commercial radio industry in complaint handling costs.

Impact on the advertising industry

As the particular code provisions have not yet been drafted, the *exact costs and benefits for the commercial industry and the advertising industry are unknown*. Although, it would be expected that the commercial radio industry would seek the most beneficial, least cost outcome as possible.

Impact on citizens

Generally, regulation through program standards seeks to ensure that appropriate community safeguards are provided especially where industry codes of practice have been shown to have failed. The ABA identified in the *Commercial Radio Inquiry 2000* that the relevant advertising industry code of practice was not providing sufficient safeguards and there was a high likelihood that listeners were being misled by advertising on commercial radio.

Regulation through industry codes of practice could deliver benefits comparable to the status quo at reduced costs if industry codes of practice are followed by industry. The extent to which industry might follow these codes is uncertain. Revocation of current regulation may alternatively risk failure to provide appropriate community safeguards as identified in the problem section. For example, removing direct monitoring and investigation by the ACMA may lead to systemic lapses by licensees – as occurred before 2000

⁵² Based on the number of code complaints dealt with by commercial radio licensees in the 2010-11 financial year as reported quarterly to the ACMA and published at: http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_410153.

⁵³ *ACMA Annual Report 2009-10*, pages 103-104.

Impact of commercial influence options

The following table sets out the estimated economic impacts as proposed by CRA and the ACMA of the suggested commercial influence options as presented in the Options paper. More detail explanation of these economic impacts as well as intangible costs/benefits is provided in the text below.

	Estimated economic impacts of suggested commercial influence options			
	Status quo option	Reform Option 1 – varied disclosure standard	Reform Option 2 – industry code	Reform Option 3 – editorial independence standard
Estimated economic impacts on the whole commercial radio industry	<p>Same economic impacts as current regulation:</p> <ul style="list-style-type: none"> • \$2.4 million per year as current compliance costs.⁵⁴ 	<p>Additional economic costs:</p> <ul style="list-style-type: none"> • \$3.5 million per year if agreements with 'persons with influence over current affairs program content'.⁵⁵ • \$2.8 million per year if presenters of 'infotainment'.⁵⁶ • \$21 million per year in lost benefits if on-air disclosure in infotainment programs.⁵⁷ • \$21.8 million per year in monitoring costs.⁵⁸ <p>Economic cost savings –</p> <ul style="list-style-type: none"> • \$1 million per year by reducing register and notification obligations. 	<p>Additional economic costs:</p> <ul style="list-style-type: none"> • \$4.8 million per year for training. • \$500,000 to develop and consult on industry code. • 1.3% increase in complaint handling costs per year. 	<p>Additional economic costs:</p> <ul style="list-style-type: none"> • \$2.8 million per year if extend to stations with 'infotainment'. <p>Economic cost savings:</p> <ul style="list-style-type: none"> • \$1 million per year by reducing register and notification obligations. • \$21 million per year in benefits if on-air disclosure not required and can be replaced with advertising.⁵⁹ • \$21.8 million per year in monitoring costs
Estimated economic	No additional impacts.	Economic costs: \$83.7 million per	No economic impacts.	Economic costs: \$83.7 million per

⁵⁴ CEG Report at page 13 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁵⁵ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁵⁶ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁵⁷ CEG Report at page 13 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁵⁸ CEG Report at page 15 provided as part of CRA's submission to the ACMA's options paper, June 2011 estimates this amount also includes monitoring costs for changes to the Advertising Standard.

⁵⁹ CEG Report at page 13 provided as part of CRA's submission to the ACMA's options paper, June 2011.

impacts on advertising industry		year in lost surplus.		year in lost surplus.
Citizens	No additional impacts.	No economic impacts, some intangible costs and benefits.	Economic costs: • \$291 million in nuisance costs if increase in spot ads. ⁶⁰	Economic costs: • \$291 million in nuisance costs if increase in spot ads. ⁶¹

Status Quo option – Maintain direct regulation through the Disclosure Standard without change

Impact on the commercial radio industry

The Status Quo option is likely to have *no net impact on commercial radio licensees* because they would be expected to comply with the same regulation that has been in place since 2000. In 2009, CRA submitted that the costs of compliance with the current Disclosure Standard are excessive and reported that one commercial radio network estimated a cost in excess of \$100,000 per station per year was spent on external legal fees alone.⁶²

On behalf of CRA, CEG provided more recent estimates of the compliance costs by surveying 12 commercial radio stations that broadcast locally produced current affairs programs. On average, those stations reported that the annual cost of complying with the current Disclosure Standard was \$46,200 per licensee per year, including \$6,806 in legal fees.⁶³ Noting that not all commercial radio licensees broadcast locally produced current affairs programs, CEG estimates the compliance cost across industry to be \$2.4 million per year. This assumes 55.5 stations (around 20% of commercial radio licensees) are subject to the current standard.⁶⁴ CEG indicates that, as well as legal fees, these compliance costs include: salaries, employee on-costs and payments to external contractors.

Irrespective of which estimate of compliance costs is most accurate, if the Status Quo option is adopted no additional economic costs would be incurred by the commercial radio industry but nor would any additional benefits be delivered to the industry.

Impact on the advertising industry

Similarly, for the advertising industry there would be *no net impact on the advertising industry* by selecting the Status Quo option because there would be no change to the types of commercial agreements regulated.

Impact on citizens

Given the concern identified by the ACMA (above, page 6 and in the Options paper) that the Disclosure Standard does not cover all instances of commercial influence, maintenance of the current regulation under the Status Quo option would not deliver appropriate community safeguards in all instances of commercial influence, only programs falling within the current definition. The costs cannot be quantified because it is difficult to calculate the financial impact of citizens not understanding or scrutinising public interest material that is influenced by commercial agreements.

Reform Option 1 – Maintain direct regulation through a program standard which maintains the main features of the current standard but minimises some of the financial and administrative burden on licensees

Impact on the commercial radio industry

As Reform Option 1 would regulate commercial radio licensees through a program standard maintaining the main features of the current Disclosure Standard, it is accepted that the estimated

⁶⁰ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁶¹ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁶² CRA's submission at page 11 to the ACMA's issues paper, May 2010.

⁶³ CEG Report at page 49 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁶⁴ CEG Report at page 49 provided as part of CRA's submission to the ACMA's options paper, June 2011.

compliance costs of the current standard would be incurred with Reform Option 1. As stated above, various estimates provided by CRA have estimated the compliance costs of the current standard to be between \$46,200 and \$100,000 per year per station broadcasting current affairs programs.

Some of these compliance costs would be diminished with the proposed regulatory relaxation of the current register and notification requirements. CRA previously submitted to the Productivity Commission that the register and notification requirements under the current Disclosure Standard create 'substantial administrative burden'.⁶⁵ Unfortunately, CRA did not provide a financial estimate of this burden. Under the notification and register reforms of Reform Option 1 commercial radio licensees would be expected to have less compliance costs as they will no longer be required to:

- > Maintain a register of current commercial agreements at station premises for inspection free of charge by members of the public.
- > Notify the ACMA in writing, in a form approved by the ACMA, in 14 days of the particulars of each commercial agreement concerning presenters of current affairs programs, provided to the licensee by each presenter or an associate of a presenter. These particulars are:
 - (a) the date of the commercial agreement;
 - (b) the parties to the commercial agreement;
 - (c) a brief description of the obligations of the presenter under the commercial agreement;
 - (d) the identity of each person providing a benefit or consideration under the commercial agreement; and
 - (e) the amount or value of the benefit or consideration to be provided under the agreement.
- > Notify the ACMA in writing, in a form approved by the ACMA, in 14 days of the particulars of each commercial agreement concerning part-time presenters of current affairs programs, provided to the licensee by each part-time presenter or an associate of a part-time presenter. These particulars are:
 - (a) the parties to the commercial agreement; and
 - (b) a brief description of the obligations of the part-time presenter under the commercial agreement.

The cost of station staff carrying out these tasks would be reduced. CEG estimated that of the \$2.4 million annual costs across the industry for complying with the current Disclosure Standard, \$1.2 million is spent on salaries and wages, the ACMA contends that the notification and register reforms will save around \$1 million across the industry in salaries and wages.

Implementation of new obligations under Reform Option 1 will likely impose *economic costs on commercial radio licensees*. As presented in the Options paper, Reform Option 1 includes a number of internal options which the ACMA still needs to decide on, for instance whether the regulation should apply to a wider range of programming and/or more commercial agreements. The magnitude of the possible economic costs of Reform Option 1 will vary depending on which internal options are selected. For example, extending the regulation to factual/infotainment programs but still restricted to presenters' commercial agreements would have less economic impact than extending the regulation to all public interest material on commercial radio and extending the regulation to cover licensee commercial agreements and commercial agreements with persons with influence over program content.

CEG provided economic cost estimates for a number of the internal options of Reform Option 1, namely:

- > \$3.5 million per year across the industry would be incurred if regulation is widened to cover commercial agreements with 'persons with influence over current affairs program content'.⁶⁶

⁶⁵ Submission by Commercial Radio Australia to the Productivity Commission Annual Review Regulatory Burdens on Business: Social and Economic Infrastructure Services, February 2009 at page 14.

⁶⁶ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

CEG's estimate is based on an average of eight additional employees per licensee that broadcast current affairs programs who would be covered by the proposed standard.⁶⁷

- > An additional \$2.8 million per year across the whole industry if regulation is widened to cover factual/infotainment programs.⁶⁸ CEG's estimate is based on an increase in the number of commercial radio licensees covered, as some stations do not currently broadcast current affairs programs but do broadcast infotainment programs – it is estimated that these broadcasters will incur four times more in compliance costs than those licensees already complying with the current Disclosure Standard. CEG has also estimated the cost based on each licensee having two infotainment presenters.
- > An additional \$21 million per year in lost benefits if licensees are required to broadcast on-air disclosure announcements during infotainment programs.⁶⁹ CEG's estimate is based on on-air disclosure announcements replacing time currently used for advertising.
- > An additional \$21.8 million per year in monitoring costs.⁷⁰ CEG's estimate includes staff costs, legal fees and external contractor costs to closely monitor broadcasts to ensure compliance not only with the proposed strengthening of the commercial influence regulation, but also the proposed reforms of the advertising regulation which maintain a program standard are require monitoring of integrated advertising.

In the longer term, any regulatory change that requires increased disclosure of commercial agreements (either by capturing more agreements or applying to more programs) would affect the value and location of advertising revenue, because it is likely that commercial agreements and spot advertisements are substitutes. CEG's analysis regarding integrated advertising is pertinent here too. If a prohibition of integrated advertising will mean that commercial radio licensees would be no-worse off because such advertising would be replaced with spot advertising, with an increase in the demand for spot ads and an increase in the price of spot ads⁷¹ – then the same could be assumed for commercial agreements.

Impact on the advertising industry

Reform Option 1 may make commercial agreements less attractive for advertisers because of the broadening of regulation. The *Commercial Radio Inquiry 2000* supports the proposition that advertising can substitute for commercial agreements.⁷² Therefore, if this reform makes commercial agreements less attractive, the advertising industry could substitute that spend with advertising spend. However, commercial agreements often offer a better return on investment than paid advertising.⁷³ So, these are not perfect substitutes: substitution away from commercial agreements may require additional amounts of money to be spent on standard advertisements to achieve an equivalent effect for the advertisers.⁷⁴

Consequently, Reform Option 1 is likely to impose an *economic cost on the advertising industry*. Although CEG did not provided an estimate for this cost regarding the proposed disclosure reforms, the estimate provided regarding the advertising reform may be relevant here too. CEG estimated \$83.7 million in lost surplus if live reads were prohibited and advertisers moved to spot advertising. Commercial influence in current affairs can be considered another form of live read.

As with integrated advertising generally, the increased value for advertisers of influencing the coverage of matters of public interest is a result of a reduction in consumer judgement/awareness. This is because consumers respond to and process commentary on current affairs which they know to be commercially paid for differently from commentary that is not influenced in this way. This

⁶⁷ CEG Report at page 50 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁶⁸ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁶⁹ CEG Report at page 53 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁷⁰ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁷¹ CEG Report at pages 55 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁷² *Reform of the Commercial Radio Standards: A Review of the Expected Economic Costs 2010* at page 11.

⁷³ *Reform of the Commercial Radio Standards: A Review of the Expected Economic Costs 2010* at page 12.

⁷⁴ *Reform of the Commercial Radio Standards: A Review of the Expected Economic Costs 2010* at page 12.

suggests that any surplus to advertisers in having commercial agreements in place may well have countervailing detriments to listeners (discussed below).

In addition to the substitution of commercial agreements with advertising on radio, advertisers may also switch some proportion of their commercial agreement dollars to other advertising avenues, such as television, the internet or in-store advertising. As discussed above, this may also impose a cost to the advertising industry because of television advertising in particular would be more expensive to produce and purchase.

Impact on citizens

Reform Option 1 delivers *intangible benefits to citizens* by providing a higher level of community safeguards than self-regulation; it aims to reduce the likelihood of citizens/listeners being misled by commentary this is influenced by commercial interests.

If Reform Option 1 widens the regulation to cover more agreements or more programs (such as factual programs or all matters of public interest on commercial radio) this would likely lead to an increase in on-air disclosure announcements which would mean more interruptions to relevant programming by on-air disclosure announcements. CEG submitted that such costs could be quantified as *nuisance cost on listeners*. In respect of the previously discussed integrated advertising reform, CEG submitted these costs to be \$291 million a year.⁷⁵ If this estimate is accepted, the ACMA would expect a similar magnitude of costs for the broadest application of the standard proposed under Reform Option 1. Although, depending on what aspects of Reform Option 1 would be finally selected, these nuisance costs may be much less than \$291 million as the reforms would apply to infotainment and current affairs programs being broadcast rather than general advertising in all programs.

Reform Option 2 – Permit co-regulation through the development and registration of an industry code of practice (with the current standard to be revoked)

Impact on the commercial radio industry

Reform Option 2 provides the commercial radio industry with the opportunity to develop an industry code of practice on commercial influence. The particular requirements under such a code are unknown at this stage. It is assumed that the obligations would be no more stringent than those under the current standard. Therefore, the compliance costs under such a code would be no more than the current compliance costs of \$2.4 million per year across the whole commercial radio industry.

Implementation of new obligations under Reform Option 2 is likely to impose an *economic cost on commercial radio licensees*, including the cost of retraining staff. The magnitude of these costs will depend on how the new code obligations compare to the current Disclosure Standard. However, it would seem unlikely that the training costs would exceed those estimated by CEG for the training under the reform options for the advertising standard – that is \$18,524 per year per licensee or \$4.8 million across the whole commercial radio industry a year.

The development of the relevant commercial influence code would be the responsibility of the commercial radio industry. CRA, as the peak body for the commercial radio industry would therefore develop, with consultation with its membership, the relevant code and release for public consultation before providing the code to the ACMA for registration. Code reviews generally take between three and 12 months to complete, depending on the complexity of the matter. It is estimated that this process would impose a cost across the whole industry of approximately \$500,000.

Complaints under the current Disclosure Standard are made directly to the ACMA, however if the regulation was contained within an industry code, commercial radio licensees would need to deal with complaints in the first instance. All commercial radio licensees have in place complaint handling mechanisms for the existing codes of practice, with the industry dealing with around 226 code complaints annually.⁷⁶ On average, the ACMA conducts three investigations into compliance with the

⁷⁵ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁷⁶ Based on the number of code complaints dealt with by commercial radio licensees in the 2010-11 financial year as reported quarterly to the ACMA and published at: http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_410153.

current Disclosure Standard annually⁷⁷ – which would mean a 1.3% increase across the commercial radio industry in complaint handling costs.

Impact on the advertising industry

As the particular provisions have not yet been drafted, the *exact costs and benefits for the commercial industry and the advertising industry are unknown*. Although it would be expected that the commercial radio industry would seek to ensure that an industry code would not have substantial economic impacts on the advertising industry.

Impact on citizens

Generally, regulation through program standards seeks to ensure that appropriate community safeguards are provided especially where industry codes of practice have shown to have failed. The ABA identified in the *Commercial Radio Inquiry 2000* that the relevant disclosure industry code of practice was not providing sufficient safeguards and there was a high likelihood that the coverage of matters of public interest on commercial radio was influenced by commercial interest.

Regulation through industry codes of practice could deliver benefits comparable to the status quo at reduced costs if industry codes of practice are followed by industry. The extent to which industry might follow these codes is uncertain. Revocation of current regulation may alternatively risk failure to provide appropriate community safeguards as identified in the problem section. For example, removing direct monitoring and investigation by the ACMA may lead to systemic lapses by licensees – as occurred before 2000.

Reform Option 3 – Maintain direct regulation through a program standard, but vary so it is informed by an editorial independence approach

Impact on the commercial radio industry

As Reform Option 3 would regulate through a program standard, it is accepted that the estimated compliance costs of the option would be similar to those incurred with Reform Option 1. As stated above, various estimates provided by CRA have estimated the compliance costs of the current standard to be between \$46,200 and \$100,000 per year per station that broadcasts current affairs programs.

As presented in the Options paper, Reform Option 3 would require the complete separation of sponsored material and editorial content. By not allowing sponsorship, there will be no register or notification requirements, thereby *saving at least \$1 million across the commercial radio industry* in salaries in wages (as discussed above with Reform Option 1).

As Reform Option 3 would apply to all editorial content on commercial radio – not just current affairs programs it will likely impose *additional economic costs on commercial radio licensees*. Utilising CEG's estimate that an extra \$2.8 million per year across the industry would be incurred by broadening of the current disclosure regime to factual/infotainment programs⁷⁸ – we can estimate that a similar cost would be incurred if Reform Option 3 was adopted.

A consequence of the required separation of sponsored material and editorial content is that on-air disclosure announcements would be redundant. This means that there would be significant *cost savings for commercial radio industry* because, by no longer having on-air disclosure announcements; licensees should have more airtime for spot advertising. CEG estimated that \$21 million per year would be lost if licensees replaced advertising time in infotainment programs with on-air disclosure.⁷⁹ Inversely, commercial radio licensees could gain the benefit of this by no longer having disclosure announcements in current affairs programs.

Further, the additional \$21.8 million per year in monitoring costs that CEG estimated would be required to closely monitor broadcasts to ensure compliance with the strengthened disclosure and

⁷⁷ ACMA Annual Report 2009-10, pages 103-104.

⁷⁸ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁷⁹ CEG Report at page 53 provided as part of CRA's submission to the ACMA's options paper, June 2011

integrated advertising reforms⁸⁰ could be seen as a saving under Reform Option 3 – as monitoring would not be required where there is a prohibition on influence.

Reform Option 3 would prohibit commercial agreements with respect to editorial content which would affect the value and location of advertising revenue for commercial radio licensees. However, it is anticipated, like CEG's analysis of the impact of prohibiting integrated advertising, spot advertising could replace commercial agreements. Therefore, as suggested by CEG, such prohibition will mean that commercial radio licensees would be no-worse off because such agreements would be replaced with spot advertising, with an increase in the demand for spot ads and an increase in the price of spot ads.⁸¹

Impact on advertising industry

While the current regulation allows sponsorship of editorial content in current affairs programs so long as the relevant agreements are disclosure to listeners, Reform Option 3 would not permit such sponsorship. As such, this would impose an *economic cost on the advertising industry* as advertisers would need to move spending to traditional advertising on radio (rather than commercial agreements with presenters), or move advertising to other media.

As discussed above (in 'impact on commercial radio industry'), spot advertising may not be as cost effective as the sponsorship agreements advertisers have been utilising with commercial radio presenters. It is therefore likely that the difference in effectiveness of the two practices would accord with CEG's estimate of the lost effectiveness between integrated advertising and spot advertising – that is a loss in surplus of around \$83.7 million.⁸²

As discussed above, this increased value to advertisers associated with commercial agreements derives from a reduction in consumer judgement. This is because consumers respond to and process editorial material which they know to be commercially paid for differently from editorial material that is not influenced in this way. This suggests that any surplus to advertisers in having commercial agreements in place may well have countervailing detriments to listeners (discussed below in 'impact on citizens').

In addition to the substitution of commercial agreements with advertising on radio, advertisers may also switch some proportion of their commercial agreement dollars to other advertising avenues, such as television, the internet or in-store advertising. As discussed above (in 'impact on commercial radio industry'), this may also impose a cost to the advertising industry because of television advertising in particular would be more expensive to produce and purchase.

Impact on citizens

Reform Option 3 is likely to provide a higher level of community safeguards than self-regulation. The option aims to clearly prohibit citizens/listeners being misled by commentary that is influenced by commercial interests. Under Reform Option 3 listeners would have greater confidence that all editorial material on commercial radio was free from commercial influence.

As Reform Option 1 removes the need for on-air disclosure announcements there would be another benefit to listeners in the form of more fluid programming of editorial content. This benefit may be undermined however if there was a resultant increase in spot advertising – resulting in what CEG has termed the *nuisance cost on listeners*. For the integrated advertising reform, CEG submitted these costs to be \$291 million a year.⁸³ If this estimate is accepted, the ACMA would expect that this estimate could represent the maximum costs for the application of the standard proposed under Reform Option 3.

⁸⁰ CEG Report at page 14 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁸¹ CEG Report at pages 55 provided as part of CRA's submission to the ACMA's options paper, June 2011

⁸² CEG Report at pages 9-10 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁸³ CEG Report at pages 38-39 provided as part of CRA's submission to the ACMA's options paper, June 2011.

Impact of compliance options

The following table sets out the estimated economic impacts of the suggested compliance options as presented in the Options paper. More detail explanation of these economic impacts as well as intangible costs/benefits is provided in the text below.

	Estimated economic impacts of suggested compliance options		
	Status quo option	Reform Option 1 – varied standard	Reform Option 2 – industry code
Estimated economic impacts to the whole commercial radio industry	Same current economic impacts as current regulation: <ul style="list-style-type: none"> • \$53.9 million per year. 	Economic cost savings: <ul style="list-style-type: none"> • \$4.8 million per year in salaries and wages of staff attending training. • \$4.5 million per year on salary of senior manager for compliance activities. 	Economic cost savings: <ul style="list-style-type: none"> • \$53.9 million per year in all costs.
Estimated economic impacts to the advertising industry	N/A	N/A	N/A
Estimated economic impacts to citizens	No additional impacts.	No economic costs or intangible costs/benefits.	No economic costs or intangible costs/benefits.

Status Quo option – Maintain direct regulation through the Compliance Standard without change

Impact on commercial radio industry

The Status Quo option is likely to have *no net impact on commercial radio licensees* because they would be expected to comply with the same regulation that has been in place since 2000.

During the current review, the commercial radio industry did not submit financial estimates of the compliance costs for the current Compliance Standard.

The ACMA's research into industry compliance with the Compliance Standard⁸⁴ revealed the types of resources utilised to develop, implement and maintain compliance programs. Utilising these descriptions, the ACMA has estimated the annual compliance costs in the table below.

Resources	Cost per licensee	Cost for whole industry
Legal fees to develop and review written compliance policies as well as to provide advice on annual audits. ⁸⁵	\$10,000 ⁸⁶	\$2.7 million ⁸⁷

⁸⁴ *Industry Compliance with the Compliance Program Standard*, February 2010 available at: www.acma.gov.au.

⁸⁵ *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 18-23 and 48-52.

⁸⁶ This estimate was provided by a networked licensee as the minimum cost of engaging external lawyers; see *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 50.

⁸⁷ Based on the cost per licensee scaled up to 273 commercial radio licensees.

Salaries and wages of staff to take time from core activities to attend training (at induction for new staff and at least annually for existing staff). ⁸⁸	\$18,524 ⁸⁹	\$4.8 million ⁹⁰
Salaries and wages of a full-time senior manager as compliance officer who is responsible for compliance, including developing and presenting training programs and conducting an annual audit. ⁹¹	\$128,728 ⁹²	\$4.5 million ⁹³
Costs of producing copies of compliance manuals which are distributed to each staff member. This includes updated manuals when produced. ⁹⁴	\$5000	\$1.4 million ⁹⁵

Under the Status Quo option no additional costs would be incurred but nor would there be any additional benefits delivered to the commercial radio industry.

Impact on citizens

It is considered that the Status Quo option would maintain current obligations and protections.

Reform Option 1 – Maintain direct regulation through a program standard which maintains the main features of the current standard but minimises some of the financial and administrative burden on licensees

Impact on the commercial radio industry

Reform Option 1 would maintain direct regulation through a program standard. It would keep the main features of the current standard, therefore compliance costs of the current standard would likely be incurred with Reform Option 1.

As Reform Option 1 would seek to reduce burdens on the commercial radio licensee in complying with the regulation, there is likely to be *cost savings for commercial radio licensees*. Licensee burdens could be reduced, for example, by allowing more flexibility in the way licensees could comply with the obligations under the standard. These changes could reduce the required frequency of staff training, audit activities and the need for a full-time compliance officer at a senior manager level, saving some \$9.3 million per year.

⁸⁸ *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 21-23.

⁸⁹ Based on CEG's estimate of training 75% of licensee staff for two days on proposed changes to advertising regulation. A similar amount would be incurred for training staff around compliance programs – CEG Report at pages 45-46 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁹⁰ Based on CEG's estimate of training costs across the whole industry - CEG Report at pages 45-46 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁹¹ *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 21-23 and 26-31.

⁹² Based on CEG's estimate of industry salary for advertising sales employee - CEG Report at pages 45 provided as part of CRA's submission to the ACMA's options paper, June 2011.

⁹³ Based on cost per licensee scaled up to 35 full-time compliance officers, as it is most likely that there would be one full-time compliance officer per network, rather than per licensee and CRA's *Radio Facts* brochure (available at: http://www.commercialradio.com.au/index.cfm?page_id=1007) advises there are 35 operators in the industry.

⁹⁴ *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 21-25.

⁹⁵ Based on the cost per licensee scaled up to 273 commercial radio licensees.

Impact on citizens

It is considered that Reform Option 1 would have *no cost or benefit implications for citizens*, because the reform would minimise burdens on licensees without compromising the community safeguards delivered through the fact that the matter is regulated by a program standard.

Reform Option 2 – Remove direct regulation by revoking the current standard and rely on the Act to deal with individual breaches of regulatory obligations.

Impact on the commercial radio industry

Reform Option 2 would revoke the current program standard and consequently deliver *significant economic benefits to commercial radio licensees*, because it would not require licensee's to incur any of the compliance costs listed above.

Without the requirement to develop and maintain compliance programs, licensees would have the flexibility to formulate their own innovative strategies for compliance. DMG submitted that irrespective of the ACMA's decision on the Compliance Standard, there would be no cost/benefit as DMG would continue its compliance program activities.

This option is supported by licensee responses to *Industry Compliance with the Compliance Program Standard* that indicated the compliance with the current standard imposes obligations that were seen as irrelevant to some licensees.⁹⁶ In addition, CRA supported this suggested reform, agreeing that the burden on industry caused by the Compliance Standard was unnecessary.

Impact on citizens

It is considered that the revocation of the standard would have *no cost or benefit implications for citizens*, because the ACMA maintains mechanisms under the Act to deal with licensee breaches of regulatory obligations – thereby, maintaining a protection for citizens.

⁹⁶ *Industry Compliance with the Compliance Program Standard*, February 2010 at pages 48-49.

Consultation

The ACMA has consulted with industry and the public a number of times throughout the review.

Taking into account all of the submissions received throughout the course of the review, along with commissioned research, the ACMA has proposed reforms it believes will deliver the best regulatory outcomes by delivering benefits to citizens but also lessening the burden on industry where it is appropriate.

Consultation on the Issues paper

In February 2010, the ACMA invited submissions on its Issues paper as well as four research reports. The purpose of this first round of public consultation was to elicit views on the current regulatory arrangements, including perceived deficiencies or problems with the current commercial radio standards. To further the public debate, the ACMA also held a public forum and a series of roundtables during the consultation period for key issues in the review to be discussed, including the need for and scope of regulation.

The ACMA received 14 written submissions to the Issues paper. Submitters included CRA (the peak body representing commercial radio licensees), individual commercial radio licensees, advertising industry peak bodies, public interest advocacy bodies such as the Communications Law Centre (CLC), and individual members of the public.

How the submissions to the Issues paper were utilised by the ACMA

The ACMA considered and utilised these submissions to develop some of the proposed reform options as set out in the Options paper. The table below explains how the most persuasive submissions to the Issues paper influenced the ACMA's development of the proposed reform options in the Options paper.

Advertising	
<i>Key submissions that informed the development of the proposed reform options</i>	<i>Proposed reform options as set out in the Options paper</i>
<p>Advertising industry peak body Media Federation of Australia submitted that for stability, the current regulation should be maintained.</p> <p>Commercial radio licensee DMG agreed that the Advertising Standard had provided appropriate community safeguards.</p> <p>Public interest advocacy body CLC submitted that regulation should apply where material is broadcast in exchange for 'consideration, interest or benefit'.</p> <p>Citizens submitted advertising should be obvious, separate from program content and be where they are expected to be, at the beginning, end and at obvious breaks in programs.</p>	<p>Reform Option 1</p> <p>Maintain direct regulation through a program standard which has the main features of the current standard but also addresses findings regarding:</p> <ul style="list-style-type: none"> • Definition of consideration • Advertising distinguishable 'at the time' • Integrated advertising.
<p>CRA, commercial radio licensees and representatives of the advertising industry submitted that advertising could be regulated via industry codes.</p>	<p>Reform Option 2</p> <p>Permit co-regulation through an industry code of practice.</p>

Commercial influence	
<i>Key submissions that informed the development of the proposed reform options</i>	<i>Proposed reform options as set out in the Options paper</i>
<p>Public interest advocacy groups submitted that the operation of the standard could be improved by extending the application to 'factual programs' or 'all public interest material'.</p> <p>Public interest advocacy body CLC submitted that regulation should apply where material is broadcast in exchange for 'consideration, interest or benefit'.</p> <p>Citizens and public interest advocacy groups submitted that the regulation should capture more than just agreements with presenters as other persons may have commercial agreements in place and may influence program content.</p> <p>CRA, commercial radio licensees and a public advocacy body submitted that the prescribed words for on-air disclosures should be broadened.</p> <p>CRA and commercial radio licensees submitted that the current register and notification requirements extend beyond the level needed to inform listeners of the existence of a commercial agreement.</p>	<p>Reform Option 1</p> <p>Maintain direct regulation through a program standard which has a disclosure model but also addresses findings regarding:</p> <ul style="list-style-type: none"> • Formats • Definition of consideration • Agreements covered • Form of on-air disclosure announcements • Register and notification.
<p>CRA, commercial radio licensees and representatives of the advertising industry submitted that commercial influence could be regulated via industry codes.</p>	<p>Reform Option 2</p> <p>Permit co-regulation through an industry code of practice.</p>
<p>Public interest advocacy group CLC submitted that disclosure is not sufficient to remedy the harm of commercial influence but editorial independence would prevent programming as well as presentation bias.</p>	<p>Reform Option 3</p> <p>Maintain direct regulation through a program standard, but vary so it is informed by an editorial independence approach.</p>
Compliance	
<i>Key submissions that informed the development of the proposed reform options</i>	<i>Proposed reform options as set out in the Options paper</i>
<p>CRA and commercial radio licensees submitted that the Compliance Standard imposes unnecessary financial and administrative burdens on industry.</p> <p>A public interest advocacy body submitted that where a disclosure model is maintained for commercial influence, maintenance of the Compliance Standard is also desirable.</p>	<p>Reform Option 1</p> <p>Maintain direct regulation through a program standard which has the main features of the current standard but minimises some of the financial and administrative burden on licensees.</p>
<p>CRA and commercial radio licensees submitted that the compliance culture has improved since the Compliance Standard was introduced, and therefore regulation is no longer necessary.</p>	<p>Reform Option 2</p> <p>Remove direct regulation by revoking the current standard and rely on the Act to deal with individual breaches of regulatory obligations.</p>

Consultation on the Options paper

The Options paper was released for public consultation on 31 March 2011. In total, the ACMA received three written submissions, from stakeholders: CRA, DMG (a commercial radio network operator) and a small/medium IT enterprise. In addition, four citizens posted comments in response to the Options paper on the ACMA's interactive beta site www.engage.acma.gov.au.

The table below explains how submissions to the Options paper assisted the ACMA to decide between the proposed options and develop the final recommended outcomes (note that more detail is provided in the Conclusion and Preferred Options section of this RIS).

Advertising	
<i>Recommended outcome</i>	<i>How the ACMA used submissions to the Options paper to develop the final recommended outcome</i>
<p>Reform Option 1 Maintain direct regulation through a program standard which has the main features of the current standard but also addresses findings regarding:</p> <ul style="list-style-type: none"> • Definition of consideration • Advertising distinguishable 'at the time'. <p>In addition, if the commercial radio industry develops an appropriate code on advertising, the ACMA will revoke the standard.</p>	<p>It was proposed in the Options paper as part of Reform Option 1 that integrated advertising be explicitly regulated in the varied advertising standard. The final recommended outcome does not seek to pursue this element of the reform, as the ACMA accepts submissions from CRA and DMG that regulating integrated advertising would impose significant burdens on industry (see below, page 32). CRA provided commissioned economic analysis by Competition Economists Group (CEG) providing estimated costs to industry of this aspect of the regulation.</p> <p>Another reform option proposed in the Options paper was to regulate advertising through an industry code of practice rather than a program standard. The ACMA accepts submissions by CRA that advertising could be regulated via an industry code and therefore proposes that if the commercial radio industry develops an appropriate code, the ACMA will revoke the varied advertising standard (see below, page 31).</p>
Commercial influence	
<i>Recommended outcome</i>	<i>How the ACMA used submissions to the Options paper to develop the final recommended outcome</i>
<p>Reform Option 1 Maintain direct regulation through a program standard which has a disclosure model but also addresses findings regarding:</p> <ul style="list-style-type: none"> • Definition of consideration • Agreements covered • Form of on-air disclosure announcements • Register and notification. 	<p>It was proposed in the Options paper as part of Reform Option 1 that regulation extend to radio formats other than current affairs programs – for example 'factual programs' or 'all material of public interest'. The final recommended outcome does not seek to pursue this element of the reform, as the ACMA accepts submissions from CRA and DMG that non current affairs programs do not generally provide serious analysis of public interest material (see below, page 34).</p> <p>It was proposed in the Options paper as part of Reform Option 1 that regulation extend to cover more than just presenter's agreements, by also including:</p> <ul style="list-style-type: none"> • licensee agreements where current affairs presenters receive benefits or have a beneficial interest in the licensee company; and • any other agreement where the person concerned has significant influence on the content of material broadcast. <p>In response to this proposal CRA and DMG submitted that extending the regulation to other station staff goes beyond the problem that was identified by the ABA regarding commercial influence. The final recommended outcome is that the regulation</p>

	applies to presenter's agreements (as in current standard) as well as licensee agreements where the relevant current affairs presenter has a beneficial interest in the licensee company(see below, page 34-5). While the commercial radio industry will still maintain concerns about this extension, the ACMA weighted this against the known deficiencies of the current standard identified in investigations, and that these types of agreements are of concerns to citizens.
Compliance	
<i>Recommended outcome</i>	<i>Submissions that informed the development of the recommended outcome</i>
Reform Option 2 Remove direct regulation by revoking the current standard and rely on the Act to deal with individual breaches of regulatory obligations.	In response to the proposed Reform Option 2 in the Options paper, a small/medium IT enterprise submitted that the ACMA should retain the current Compliance Standard as there is a strong risk that the current compliance culture will dissipate should the standard be removed without adequate replacement. The ACMA considered this submission, but weighed it against the original intention of the ABA in introducing the standard as well as the fact the ACMA can still deal with regulatory breaches under the Act.

Final consultation

Before making regulatory changes to the commercial radio standards, the ACMA will release the proposed draft standards for public consultation. This consultation is expected to be in accordance with the *legislative Instruments Act* and Section 126 of the Act.

Conclusion and preferred options

This section sets out the recommended outcomes of the ACMA's review regarding:

- > Advertising on commercial radio;
- > Commercial influence on commercial radio; and
- > Compliance of commercial radio licensees with regulatory obligations.

In forming the recommendations on the preferred options for reform, the ACMA considered the research, all submissions made and the impact analysis above. The recommended outcomes below strengthen regulation where it is most critical to address the relevant policy problems and deliver benefits to citizens but also lessens the burden on industry where it is appropriate.

Recommended outcome for advertising on commercial radio

Reform Option 1 is the preferred option but with a view that industry move to a code similar to the proposed Reform Option 2.

It is recommended that advertising on commercial radio continue to be regulated by a program standard, with key changes to address more instances of advertising and to provide stability and predictability to the regulation – but only until such time as the industry produces an appropriate advertising code of practice.

The changes to the standard will provide more stability and predictability than the current regulation. The preferred option also acknowledges that the problem that listeners will be misled by advertising on commercial radio has diminished somewhat and the ACMA is willing to consider revoking the standard if industry can develop an appropriate code and demonstrate a commitment to ensuring that community safeguards are maintained under the code.

Reasons for preferred option

In response to the options paper, CRA submitted that there was no case for more regulation under the suggested Reform Option 1; therefore, the ACMA should allow an industry code of practice to regulate advertising and address the problem of listeners being misled by advertising.⁹⁷

Given the history of the Advertising Standard and how seriously the policy problem was regarded in 2000, the ACMA could not support movement to a code based solution to the problem unless there was convincing evidence that:

- > the policy problem had diminished significantly; or
- > the importance placed by citizens on being able to distinguish advertising was significantly less; or
- > industry could provide sufficient community safeguards through a code.

CRA argued that the policy problem had diminished and citizen concern was less because listeners were now exposed to, and more used to, integrated advertising in various media.⁹⁸ CRA also submitted that adequate community safeguards would exist in a co-regulatory environment as its co-regulatory code structure was stable. It suggested that incorporating the advertising regulation into the CRA codes of practice would be more user-friendly for citizens than separate rules in codes and standards with differing regulatory approaches and complaints handling procedures.⁹⁹

The ACMA is of the view that the policy problem has diminished since 2000. Tighter regulation appears to have increased industry awareness and improved standards of behaviour. Accordingly, so long as an industry code provides sufficient community safeguards, a program standard may no

⁹⁷ CRA's submission to the ACMA's options paper, June 2011 at page 19.

⁹⁸ CRA's submission to the ACMA's options paper, June 2011 at page 20.

⁹⁹ CRA's submission to the ACMA's options paper, June 2011 at page 22.

longer be necessary. However, the ACMA requires industry to develop an appropriate code on advertising before the ACMA will revoke the program standard regulating how advertising should be distinguished.

For these reasons, the ACMA will vary aspects of the current Advertising Standard to more effectively promote community standards and provide more stable and predictable regulation. This varied standard will remain in place, with a view to revocation, until such time as the commercial radio industry has developed an appropriate code of practice dealing with advertising.

Elements of the proposed advertising standard

The preferred option is that the following elements be incorporated in the advertising program standard:

1. Advertising provisions will apply to all program material.
2. 'Consideration' will be defined expansively to capture:
any money, service or other valuable consideration or benefit that is directly or indirectly paid, or promised to or charged or accepted in respect of the material broadcast.
3. Advertising will be required to be distinguishable at the time it is broadcast.
4. The 'reasonable listener test' will be maintained so that licensees must ensure advertisements are distinguishable to the reasonable listener as advertisements.

As a result of the submissions, these elements differ from the proposed Reform Option 1 in the Options paper (see Attachment A), particularly with regard to integrated advertising. In the Options paper, the ACMA suggested that integrated advertising could be regulated in one of the following ways:

- > maintain the 'reasonable listener test' but apply the research concerning listeners' particular difficulties in distinguishing integrated advertising in making its decisions; or
- > prohibit integrated advertising (such as live reads); or
- > explicitly state in the program standard that integrated advertising must:
 - contain details of the commercial sponsor at the start of the advertisement; and
 - have the tone and style of an advertisement.

DMG and CRA expressed strenuous concern over the prohibition or explicit requirements for integrated advertising. The submitted cost estimates of the impact of these changes indicated to the ACMA that a significant cost burden would be delivered to the commercial radio industry (discussed above in Impact Analysis).

Having considered the policy problem to be addressed, and the views of these stakeholders, the ACMA has concluded that integrated advertising will not be prohibited or expressly regulated. Instead, the ACMA will retain the current 'reasonable listener test' to integrated advertising (as is already the case). The ACMA considers that maintaining the 'reasonable listeners test' is sufficiently flexible to address the policy problem without prohibiting or further regulating integrated advertising specifically. It is acknowledged that integrated advertising can be a valuable, efficient advertising practice while still being distinguishable to the reasonable listener.

Cost impacts of the proposed advertising standard

The submissions on the costs of the integrated advertising reform were persuasive. By not proceeding with prohibition of integrated advertising, the economic impact on the commercial radio industry, the advertising industry and citizens will be significantly less, because:

- > Commercial radio industry will not incur the estimated \$3.3 million one off cost to renegotiate advertising contracts.
- > Commercial radio industry will be unlikely to incur the full estimated \$4.8 million annual cost of additional training.

- > Advertising industry will be unlikely to incur the estimated \$83.7 million annual lost surplus due to a move from integrated advertising to spot advertising.
- > Citizens will be unlikely to incur the estimated \$291 million annual cost in nuisance costs due to the increase in spot advertising to replace integrated advertising.

Recommended outcome for commercial influence on commercial radio

Reform Option 1 is the preferred option

It is recommended that commercial influence on commercial radio be regulated by a program standard, based on a disclosure model, but that key regulatory changes are implemented to address the likelihood that matters of public interest are not free from commercial influence on commercial radio.

The preferred option also acknowledges industry concerns about the financial and administrative burden of current regulation, while seeking to reduce those burdens where it is possible and practical to do so. This reform will ensure that the regulation is more effective, efficient and appropriate at meeting the relevant community standards.

Reasons for preferred option

In response to the Options paper, CRA submitted that there was not a case for more regulation, only less and therefore the ACMA should either keep the Status Quo or reduce regulation by allowing an industry code of practice under the suggested Reform Option 2. The ACMA was not convinced of CRA's arguments. The ACMA remains of the view that commercial influence can undermine the fair and accurate coverage of matters of public interest and that this problem remains significant and serious. Therefore, the ACMA could not agree to a move back to regulation through an industry code unless there was convincing evidence that industry could provide sufficient community safeguards through an industry code of practice.

CRA failed to provide sufficient evidence that the cost burden of a commercial influence program standard were significantly high compared to the intangible benefits for citizens delivered because of the standard. The ACMA remains concerned that without the ACMA maintaining oversight of these matters, the problem of commercial influence in the coverage of matters of public interest on commercial radio would not be sufficiently addressed.

Some submitters to the Issues paper, particularly the Communications Law Centre, supported an editorial independence approach.¹⁰⁰ While submissions to the Options paper from DMG and CRA were strenuously opposed to the suggested editorial independence model under Reform Option 3 – as it would have significant impacts on the way licensees would run their business. Considering international developments in radio advertising regulation,¹⁰¹ the ACMA agreed with the submissions of industry and decided not to proceed with the proposal to introduce editorial independence.

Elements of the proposed commercial influence standard

The preferred option is that the following elements be incorporated in the commercial influence program standard:

1. Commercial influence provisions would apply to current affairs programs (as per the definition in the current standard).
2. 'Consideration' will be defined expansively to capture:

any money, service or other valuable consideration or benefit that is directly or indirectly paid, or promised to or charged or accepted in respect of the material broadcast.

¹⁰⁰ Communications Law Centre's submission to the ACMA's issues paper, May 2010.

¹⁰¹ Particularly the recent move by UK media regulator, Ofcom removing an editorial independence approach from its radio advertising regulations in favour of an approach more consistent with Australia's current Advertising Standard requiring advertising to be distinguishable.

3. Licensees will be required to be responsible for:
 - > presenter's agreements (same as the current definition); and
 - > licensee's agreements where a relevant presenter has an actual or beneficial interest in the licensee company.
4. Licensees will be required to make an 'identifiable sponsorship announcement' at the time of, and as a part of the relevant content that makes clear to listeners that there is a relevant commercial agreement.
5. Licensees will be required to keep a public online register for the information of citizens and licensees will be required to provide further information on commercial agreements to the ACMA when requested.

As a result of the submissions to the Options paper, these elements differ from the proposed commercial influence Reform Option 1 in the Options paper, particularly with regard to program formats, and agreements covered by the regulation.

Program Formats

In the Options paper the ACMA proposed that, in order to cover more material of public interest (other than just current affairs programs), the standard could apply to:

- > factual programs, including current affairs and infotainment programs. Current affairs programs would be defined as in the current standard. Infotainment programs would be defined as meaning 'a program that has the dominant purpose of presenting factual material in an entertaining way'; or
- > all public interest material whenever broadcast, regardless of the format of the program.

Both DMG and CRA submitted that the regulation should not extend beyond current affairs programs' as 'factual programs' was too vague a term and the extension would be contrary to the ABA's inquiry in 2000 and the findings about public interest. Further, it was asserted that on commercial radio it is current affairs programs (and their presenters) that have the most influence, rather than other 'infotainment' type programs. The submitted cost estimates of the impact of extending the regulation to other program formats indicated a significant cost burden would be delivered to the commercial radio industry (discussed above in Impact Analysis).

The ACMA considered these submissions and agreed with the substance of them although cannot verify or scrutinise the costs claimed. The ACMA has therefore decided that the varied standard will only apply to current affairs programs as already defined in the current standard. The ACMA is of the view that the application to current affairs programs is sufficient to address the policy problem. An extension is not justified by the policy problem, noting that there are very few influential 'factual programs' on commercial radio that would not fall within the current affairs definition.

Agreements covered

In the Options paper the ACMA proposed that under a varied standard, licensees would be required to be responsible for all of the following:

- > presenter's agreements (same as the current definition);
- > licensee's agreement where a relevant presenter has an actual or beneficial interest in the licensee company; and
- > any other agreements where the person concerned has significant influence on the content of material broadcast. The onus will be on the licensee to determine, who are the persons associated with the broadcaster that may significantly influence program content.

Both DMG and CRA strongly disagreed with this proposal. DMG submitted that to extend beyond presenter's agreements went beyond the intent of the Disclosure Standard which was meant to redress presenter influence. CRA also submitted that the widening out of agreements to 'any other agreements...' would be difficult to enforce. The submitted cost estimates of the impact of extending the regulation to agreements with 'persons that has influence on the content of material broadcast' indicated a significant cost burden would be delivered to the commercial radio industry (discussed above, pages 17-20).

The ACMA agrees that the regulation should be focussed on addressing the policy problem of commercial influence in the coverage of matters of public interest – primarily exerted by presenters. The ACMA also agrees that the widest scope of agreements may cause enforcement difficulties. The ACMA has therefore decided that the varied standard will apply to presenters' agreements *as well as* licensee agreements where a presenter has a beneficial interest in the licensee company. This expansion will help address the policy problem more comprehensively because it will capture situations where current affairs presenters may not be party to the agreement but are on the licensee board and still receive a benefit from the agreement. Simultaneously this expansion does not extend regulation beyond the main concern, being the influence of presenters.

Cost impacts of the proposed commercial influence standard

The submissions on the costs of extending the regulation to apply to more program formats and agreements were persuasive. By not proceeding with the expanded program format and agreement elements proposed, the economic impact of the proposed standard on the commercial radio industry and the advertising industry will be significantly less, because:

- > Commercial radio industry will not incur the estimated \$3.5 million annual cost to disclose agreements made with 'persons with influence over current affairs programs'.
- > Commercial radio industry will not incur the estimated \$2.8 million annual cost to disclose commercial agreements of infotainment/factual program presenters.
- > Commercial radio industry will not incur the estimated \$21 million annual loss in benefits due to the on-air disclosure announcements during infotainment/factual program presenters.
- > Commercial radio industry will be unlikely incur the full estimated \$21.8 million annual cost in monitoring.
- > Advertising industry will be unlikely to incur the estimated \$83.7 million annual lost surplus due to a move from commercial agreements to spot advertising.

Recommended outcome for compliance of commercial radio licensees with regulatory obligations

Reform Option 2 is the preferred option

It is recommended that compliance of commercial radio licensees with regulatory obligations no longer needs to be regulated by a program standard. The reform, which would revoke the current Compliance Standard, will lessen financial and administrative burdens on licensees and means the ACMA will deal with regulatory breaches (on an individual licensee basis) under existing provisions of the Act rather than under a program standard.

Reasons for preferred option

CRA has supported the ACMA's suggestion to revoke the Compliance Standard under Reform Option 2 – agreeing with the ACMA's research that shows the improved compliance culture across the commercial radio industry since 2000. On this point, the ACMA was also encouraged by DMG's submission to the Options paper that compliance program activities would continue irrespective of whether the Compliance Standard was revoked.

Only one of the three submitters to the Options paper (the small/medium IT enterprise) did not support the proposal to revoke the compliance standard. This submitter was concerned that without the Compliance Standard, the industry would have little encouragement to maintain the compliance culture.

For these reasons, the ACMA therefore concludes that the preferred option is to revoke the Compliance Standard, noting that:

- > The benefits of maintaining a program standard across industry is not as persuasive as dealing with individual licensee breaches as they arise.

- > This option reduces the financial and administrative burden on industry in complying with the program standard.
- > The ACMA can utilise the current regulatory mechanisms under the Act for breaches of regulatory obligations.

Implementation and review

The commercial radio standards are disallowable instruments and must be tabled in Parliament for the purpose of final acceptance. If the recommendations proceed, the ACMA would seek to have the legislative instruments take effect from 1 February 2012.

The ACMA will review the regulatory instruments for commercial radio advertising and commercial influence five years after they have been on operation.

As indicated above, the ACMA is open to revoking the varied advertising program standard if the commercial radio industry can develop an appropriate industry code of practice on advertising and demonstrate that industry is committed to ensuring that community safeguards are maintained under the code.

The commercial radio industry reviews the relevant industry codes of practice every three years, with the next review in 2012. During such processes, the ACMA would encourage industry to provide information on the effects of the reformed standard/s.

The determination of standards in the current circumstances would not forgo the opportunity of a code being introduced to deal with the relevant matters if it was agreed that the conditions indicated that was appropriate.

Compliance and enforcement

The commercial radio program standards act as licence conditions across the commercial radio industry. Accordingly, all commercial radio broadcasting licensees are required to comply with the commercial radio program standards. The Act contemplates a complaints-based compliance system whereby citizens can complain directly to the ACMA about potential breaches of licence conditions. In addition, the ACMA can also initiate its own investigations into potential breaches, under section 170 of the Act.

The enforcement options available to the ACMA under the Act include:

- > agreed measures which encourage voluntary compliance,
- > alerting licensees to achieve informal resolution of minor non-compliance or issues of concern,
- > imposing administrative action to change corporate behaviour, (e.g. accepting enforceable undertakings, giving a remedial direction, imposing/varying licence conditions, suspending and cancelling licences),
- > commencing civil and criminal action in certain circumstances to obtain civil penalty order, injunctive relief and orders to enforce an enforceable undertaking.

The ACMA adopts a graduated and strategic risk-based approach to compliance and enforcement. This approach recognises that breaches of the Act and relevant instruments will be dealt with effectively and efficiently. The ACMA also recognises the role of co-regulation set out in the legislation and consequently engages with regulated industries to promote compliance.

In applying penalties for breaches, the ACMA seeks to:

- > foster industry compliance with, and contribution to, the regulatory framework without imposing undue financial or administrative burdens
- > encourage a compliance culture within the communications and media sector and adherence to regulatory obligations
- > promote a communications and media sector that is respectful of community standards and diligent in responding to community complaints.

Accordingly, where the ACMA is of the view that a breach of a licence condition has occurred, it will take regulatory action commensurate with the seriousness of the breach and the level of harm. The

ACMA will generally use the minimum power or intervention necessary to achieve the desired result, namely, compliance with the relevant obligation.

The ACMA provides information on its compliance and enforcement actions at http://www.acma.gov.au/WEB/STANDARD/pc=PC_311061 and the ACMA's enforcement guidelines which *set out the matters that the ACMA takes into account in making enforcement decisions* are available at: <http://www.comlaw.gov.au/Details/F2011L01778>

Attachment A – Review of the commercial radio standards – Options paper