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Radio Investigations 2009
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30 September 2009

ACMA Investigation – Hosted live entertainment radio programs – Adequacy of community safeguards for the protection of participants

Dear Sir/Madam

The NSW Young Lawyers Communications, Entertainment & Technology Law Committee is pleased to provide the **attached** response to the call by the ACMA for submissions.

NSW Young Lawyers is a division of the Law Society of New South Wales. Membership of NSW Young Lawyers is free and automatic for all NSW lawyers under 36 years and/or in their first five years of practice, and law students. Membership of its committees is voluntary.

The Communications, Entertainment & Technology Law Committee (CET) aims to serve the interests of lawyers, law students and other members of the community concerned with areas of law relating to:

- information and communication technology (including technology affecting legal practice);
- intellectual property;
- advertising and consumer protection;
- confidential information and privacy;
- entertainment; and
- the media.

As innovation inevitably challenges custom, CET promotes forward thinking, particularly about the shape of the law and the legal profession as a whole.

Contributors to our written submission included Michael Camilleri, Rebecca Dimaridis, Megan Edwards, Adam Flynn, Rachel Jacqueline, Mitch Kelly, Linda Luu, Kelly Marshall, Rebecca Sandel and Matt Vitins. If you have any questions about our submission, please contact Adam Flynn (Chair) and Tyrilly Bolton (Vice Chair): cet.chair@younglawyers.com.au

Yours sincerely



Adam Flynn
Chair



Tyrilly Bolton
Vice Chair

Communications, Entertainment & Technology Law Committee

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ACMA Investigation

Hosted live entertainment radio programs—
Adequacy of community safeguards for the
protection of participants

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Submission to the Australian Communications and Media Authority

Introduction

We thank the Australian Communications and Media Authority (**ACMA**) for the opportunity to provide a submission with regards to its investigation into the adequacy of community safeguards for the protection of participants in hosted live entertainment radio programs (**Programs**).

Our submission briefly addresses each of the 5 key points covered by the investigation, as set out in the terms of reference.

In our submission, we refer to 'stunt' or 'prank' calls, competitions, challenges and other shock tactics used in Programs. Additionally we also refer to news and marketing content broadcast on radio, television and the Internet.

We believe that this extended view of what we refer to as 'shock tactics' is necessary in order to compare and contrast regulatory regimes dealing with identical content communicated to similar audiences through different media.

Our response to the first 2 key points of the investigation is centred on the following categories of 'shock tactic' content:

- (a) **Underage** – content involving, referring to, or depicting individuals who are too young to engage legally in a particular activity (most especially alcohol consumption and also at times sexual activity); and
- (b) **Disadvantage** – content involving, referring to, or depicting individuals who are disadvantaged. Sources of disadvantage may include, but are not limited to, physical/mental disabilities, socio-economic status, sexual orientation, or ethnic background.

These categories are relevant to our recommendations for reform of the current regulatory arrangements.

1. The level and specific nature of community concern in relation to these types of program elements using the facts and circumstances in the recent 2DayFM episode as a key case study

Community concern about Programs arises from the perceived exploitation of underage and disadvantaged participants (often without their consent or awareness) for entertainment value. Such exploitation can be seen as potentially harmful to the participants and in disregard of the current values held in the community at large.

Underage

The recent example in question is a lie detector segment broadcast on 2 August 2009 with "Kyle & Jackie O". A 14 year old girl was accompanied by her mother to participate in a segment where she would answer queries – while attached to what was purported to be a lie detector (**Lie Detector 02/08/09**). The conduct in question is addressed in the transcript¹ below:

Jackie O: What's your worst fear? Is it the sex? Is it the lying? Is it possibly doing drugs, smoking? What do you think?

Mother: Drugs and sex and older boys. Yeah.

Jackie O: Has she told you she's had sex before? Do you think she's a virgin?

Mother: I think she might have had sex before.

Jackie O: Right but she hasn't said anything?

Mother: No.

Kyle Sandilands: Have you guys, yeah have you discussed it?

Mother: We've discussed it and she doesn't want to go there.

Kyle Sandilands: Is she happy about being here?

Mother: No, let me tell you, no she's not. I think she's nervous about the questions.

Jackie O: We have her hooked up to the lie detector. She's not happy. I just saw her listening to that replay.

Kyle Sandilands: How are you (NAME)?

Daughter: I'm scared. It's not fair.

Jackie O: It wouldn't be fair on any kid, I tell you...

Kyle Sandilands: Is that true? Is that true Charles? Is that true?

Charles Rahim: That is true, yes...

¹ See Radio 2DayFM, *The Kyle and Jackie O Show*, 29th July, 2009 (as reproduced on Media Watch online at <http://www.abc.net.au/mediawatch/transcripts/s2644599.htm>)

Kyle Sandilands: She is scared everyone. Yeah.

Jackie O: Okay, what's your next question, mum?

Mother: Okay. Have you have sex?

Daughter: I've already told you the story of this and don't look at me and smile because it's not funny. Oh, okay. I got raped when I was 12 years old.

Kyle Sandilands: Right. And is that, is that the only experience you've had?"

Both as young Australians and as part of the professional community, we have concerns with the elements presented in some Programs, as demonstrated by the example of Lie Detector 02/08/09. Such concerns arise from the perceived and potentially harmful exploitation of underage participants for entertainment value. We believe this can be seen as disregarding the current values held in the community at large.

We believe the clear inappropriateness of the Lie Detector 02/08/09 gives rise to three key concerns:

- (a) that such content is able to pass internal approvals for broadcast in the first place;
- (b) that such content is continued to be broadcast, despite the early warning signs that broadcasting should cease; and
- (c) that presenters may not be adequately trained or educated on how to deal with the outcome of such broadcasts.

We believe these issues represent at best a failure of 2DayFM to appropriately train staff on issue identification and resolution or to have pre-production processes in place to approve content, and at worst, a complete disregard for the wellbeing of participants and the intended audience.

Internal approvals

We presume that all content broadcasted by 2DayFM is subject to internal review and approval before production and broadcasting. If this is the case, we are concerned that, quite apart from the formal regulatory frameworks, that commercial 'shock tactic' drivers enabled this content to be approved in the first place.

If this is not the case, we consider that such internal approvals should be mandated.

Early warning signs

We consider that 2DayFM had clear warning signals that, if heeded, would have protected the young girl in question. The most important signal should have been when considering whether questions should be asked about sexual activity of a child aged 14, given that the legal age of consent to sex is not reached until the age of 16. Other signals were:

- (a) the mother's concession that her child was not happy about being there;
- (b) Ms Henderson's own observation that the child in her presence was not happy being strapped to the lie detector (we understand that Mr Sandilands was not present in the studio); and

- (c) the child's first answer "*I'm scared. It's not fair*"

Education and Training of presenters

If it is the case that the presenters of Programs are solely responsible for their content, we are concerned that presenters may be ill-prepared to deal with the subject matter they are contending with. Further, we are concerned that consideration in the Lie Detector 02/08/09 was not given to having a more qualified individual to deal with the issue at hand. We consider that this may give rise to a concern that complex social and psychological issues/content on public broadcasts should be supported by more qualified individuals.

Overall, we believe that the child was exploited and treated cruelly by 2DayFM. The broadcast made the exploitation all the more humiliating and public. Understandably, there is significant concern around the circumstances that enabled the girl to be exploited and for such content to be broadcast on Australian radio. We consider that such program elements are not appropriate for public broadcast, particularly when they involve underage participants.

Disadvantage

We believe that the use of underage participants in shock tactics on Programs raises wider concerns regarding disadvantaged individuals more generally.

We wish to draw to the ACMA's attention a number of events staged on 2DayFM which, we believe, demonstrate a pattern of behaviour that involves exploitation of the disadvantaged for the entertainment of others.

Of particular concern are a series of stunts conducted under the banner 'Heartless Hotline'. Each stunt involves a disadvantaged individual being offered a prize which they win on the condition that no individual (purported to be an audience member) calls to 'take' the prize.

A stunt conducted on 3 April 2009 is indicative of the stunts in the series²:

A mother of five children wanted to take her family to the Sydney Royal Easter Show. One child suffered from a heart condition, two suffered from ADHD, and another had severe brain damage and cerebral palsy. The mother was offered seven tickets for her family so long as no individuals called to take the tickets within a 30 second period. A caller rang to take the tickets and the two participants were provided with the opportunity to bicker with each other while the hosts questioned the contestants and prolonging the segment for several minutes. (**Heartless Hotline 03/04/09**).

The Heartless Hotline appears to have run from at least November 2008 until July 2009. Numerous segments are still available on the 2DayFM website³. In each of the segments the disadvantage of the participants is highlighted by the presenters before the audience is invited to call to take the prize. The original participant's disadvantage is frequently referred to by the hosts in the ensuing discussion with the listener who has called to take the prize.

² A recording of this stunt is available at the 2DayFM website:

<http://www.2dayfm.com.au/shows/kyleandjackieo/blog/heartless-hotline-mum-vs-mum/20090403-3q8c.html>;

³ See <http://www.2dayfm.com.au/shows/kyleandjackieo/blog/sydneys-biggest-bitch/20081106-1r2r.html>;
<http://www.2dayfm.com.au/shows/kyleandjackieo/blog/heartless-hotline-sydney-fights-back/20090330-3d50.html>; <http://www.2dayfm.com.au/shows/kyleandjackieo/blog/would-you-steal-a-tv-from-this-little-boy/20090302-2yq2.html>; <http://www.2dayfm.com.au/shows/kyleandjackieo/blog/would-you-steal-this-womans-gastric-band-money/20090227-2xsj.html>;
<http://www.2dayfm.com.au/shows/kyleandjackieo/blog/would-you-steal-this-womans-gastric-band-money/20090227-2xsj.html>.

In March, Mr Sandilands and Ms Henderson ran a promotion to raise funds for the parents of a disabled child. The promotion claimed to have raised \$150,000. On 17 August 2009, the Nine Network's *Today* show revealed that when the family had contacted 2DayFM to collect the money they were provided with the contact details of the callers who had pledged donations⁴. At the time of the *Today* investigation, the parents had been able to collect a little over \$50,000 of the total figure. (**Fundraiser 03/09**)

On 8 September 2009, Mr Sandilands was suspended for the second time from his breakfast program as a result of comments he made in relation to the actress Magda Szubanski. Mr Sandilands suggested that Ms Szubanski, who had recently undergone a well-publicised weight loss program, could lose more weight at a concentration camp (**Concentration Camp 08/09/09**). Ms Szubanski's family is originally from Poland. The incident resulted in significant media comment and debate⁵ as to the appropriateness of humour relating to the suffering of disadvantaged groups.

Concerns

The concerns raised above about internal approvals, early warning signs, and education and training in relation to underage content apply equally to content involving disadvantage. This is so notwithstanding that individuals may agree to participate as subjects, as inflictors or as observers of shock tactics of the types described above..

⁴ AAP, 'Fresh controversy hinders Sandilands' return', *ABC News*, 17 August 2009, <http://www.abc.net.au/news/stories/2009/08/17/2658511.htm>, Accessed 19 September 2009.

⁵ See AAP, 'Kyle Sandilands suspended again: this time for "concentration camp" slur', *Sydney Morning Herald*, 8 September 2009, <http://www.smh.com.au/news/entertainment/tv--radio/kyle-sandilands-suspended-again-this-time-for-concentration-campslur/2009/09/08/1252201226510.html>, Accessed 19 September 2009; Horan, P. & Wright, A., 'Kyle Sandilands suspended from 2DayFM for death camp comments', *Herald Sun*, <http://www.heraldsun.com.au/news/kyle-sandilands-suspended-from-2day-fm-for-death-camp-comments/story-e6frf7jo-1225770790543>, Accessed 19 September 2009; Field, K., 'Kyle Sandilands suspended for concentration camp jibe', *news.com.au*, <http://www.news.com.au/entertainment/story/0,28383,26048456-5013560,00.html>, Accessed 19 September 2009; Ramachandran A., 'Sandilands future in doubt', *Sydney Morning Herald*, 10 September 2009, <http://www.smh.com.au/news/entertainment/tv--radio/sandilandss-future-in-doubt/2009/09/10/1252519579371.html>, Accessed 19 September 2009;

2. The practices, processes and protections already in place in the industry in relation to participants and subjects in such programming elements and in particular, to children.

Practices, Processes and Protections

Presently, the key document setting out the framework of practices, process and protection for participants in Programs in the Commercial Radio Code of Practice (**Code**).

The Code is open to review every 3 years.

The Code was drafted in accordance with the industry self regulatory provisions (including section 123) of the *Broadcasting Services Act 1992* (Cth) (**Act**). It is a self-regulatory scheme for commercial radio which sets out a number of codes in relation to industry best practice.

Relevantly, the Code sets out a Code of Practice (**COP**) in relation to 'Programs Unsuitable for Broadcast' (**COP 1**). COP 1 has the purpose of "prevent[ing] the broadcast of programs which are unsuitable, having regard to prevailing community standards and attitudes." In order to achieve these aims, the Code sets out 'proscribed matters' which a radio broadcaster should not broadcast.

General

We note the following:

- (a) Section 1.3(c) of COP 1 provides that a radio broadcaster must not broadcast a program that presents as desirable either (i) the misuse of alcoholic liquor; or (ii) the use of illegal drugs, narcotics or tobacco. However, this provision is constricted by section 1.4 which provides that if a program is presented reasonably and in good faith for artistic (including comedy or satire) purposes it is suitable.
- (b) Section 1.5(a) of COP 1 provides that all program content must meet contemporary standards of decency, having regard to the likely characteristics of the audience of the radio broadcaster's service.
- (c) Section 1.6 of COP 1 provides that radio broadcaster's must not broadcast audio of actual sexual acts.
- (d) Section 1.7 of COP 1 provides that radio broadcasters must not broadcast a feature program which has an explicit sexual theme as its core component unless it is broadcast between 9:30pm and 5:00am and an appropriate warning is made prior to commencement of the program and at hourly intervals during broadcast of the program.

Underage

We note that there are no provisions or COP within the Code that deal specifically with participation of underage people in Programs, nor the broadcasting of possible inappropriate content to underage people.

Disadvantage

We note the Code provides a separate section on the portrayal of mental illness on commercial radio (COP 1.3(e)). This COP does not form part of the Code and radio broadcasters are only encouraged to meet the obligations of the COP.

COP 1.3(e) (Portrayal of Mental Illness) provides guidelines on:

- (a) avoiding the use of certain derogatory terminology; and
- (b) remembering that people with a mental illness are not inherently violent, unable to work, weak or unable to get well.

Penalties for failing to comply with the Code

We note the following:

- (a) Under section 148 of the Act, an individual may complain to the ACMA if a radio broadcaster has not complied with the Code.
- (b) On subsequent review, if the ACMA determines that there has been a breach of the Code, it may accept an enforceable undertaking for the purpose of securing future compliance with the Code or impose an additional licence condition under section 43 of the Act requiring a radio broadcaster to comply with the codes (for example, if there is a breach by a number of radio broadcasters relating to the same obligation).
- (c) For a licence condition to be imposed under section 43 of the Act, the ACMA first needs to give the radio broadcaster written notice of its intention to impose the licence condition; the radio broadcaster must be given a reasonable opportunity to make representations to the ACMA in relation to the proposed licence condition and the proposed licence condition must be published in the Commonwealth Gazette before becoming effective. The radio broadcaster can subsequently apply for the ACMA's decision to be reviewed by the Administrative Appeals Tribunal.
- (d) The ACMA may also informally agree to accept measures by broadcasters to improve compliance.
- (e) If a licence condition is imposed and a radio broadcaster breaches such an additional licence condition, then as alternatives to suspending or cancelling the licence, the ACMA has power to issue a remedial direction requiring compliance. In the event that the radio broadcaster does not comply with a remedial direction, the ACMA may:
 - pursue a civil penalty;
 - refer the matter for prosecution as an offence
 - suspend or cancel the licence; or
 - at any time, accept an enforceable undertaking (including provisions dealing with compliance with a code).
- (f) Section 139(3) of the Act makes it an offence for a radio broadcaster to engage in conduct which breaches a condition of the licence. The prescribed penalty is 500 penalty units, being \$55,000 and section 140 of the Act provides that a person who breaches section 139 of the Act is guilty of a separate offence in respect of each day during which the breach

continues.

- (g) Section 140(A)(3) of the Act is the civil penalty provision to section 139(3) of the Act and allows the ACMA to commence proceedings in the Federal Court seeking a civil penalty for a breach. The only case that has been brought under section 140(A)(3) is *ACMA v Radio 2UE Sydney*⁶ where a \$360,000 pecuniary penalty was imposed in respect of 13 breaches. That was in relation to breaches of the Disclosure Standard and not the Code itself.
- (i) Additionally, if the ACMA finds that there has been a failure to comply with Code its powers of enforcement are, to the extent that the failure to comply with the Code evidences that the Code is not “operating to provide appropriate community safeguards” for the subject matter of the Code, to determine a standard in relation to the subject matter (see section 125 of the Act).

⁶ *Australian Communications and Media Authority v Radio 2UE Sydney Pty Ltd (No 2)* [2009] FCA 754 (17 July 2009)

3. Whether industry practices and provisions in the industry's code are sufficient to meet the community's concerns in this area.

Areas where the Code is insufficient

We believe the current co-regulatory regime, as it currently operates, gives unrealistic discretion to radio broadcasters to decide how to treat underage and disadvantaged participants and audiences.

We believe that the current Code is insufficient to meet the community's concerns in a number of areas. We note:

- (a) the Code does not require radio broadcasters to implement a "kill switch" which could be used by a radio broadcaster to terminate a broadcast;
- (b) the Code does not require radio broadcasters to have in place any training programs or internal processes to pre-approve or identify questionable content which may be included in Programs;
- (c) the Code does not provide for any protection against possible exploitation of underage or disadvantaged persons;
- (d) the Code does not provide guidelines of any nature on how to regulate the participation of individuals (whether considered participants and/or audience members) in Programs;
- (e) the Code does not provide guidelines of any nature on how to regulate the participation of individuals under 18 or 16 (sexual age of consent) in Programs; and
- (f) the Code does not provide that during the hours of 9am and 5:00pm that radio broadcasters may not broadcast content of a sexual nature – the only restrictions are that the theme of a feature program can not be sexual, nor can audible sexual acts be broadcast.

Areas where the Code is partly sufficient

While the Code does provide that program content must meet contemporary standards of decency, having regard to the likely characteristics of the audience – with constantly changing community standards and thresholds of decency which vary between audiences, we believe that the interests of the community are not being met because this approach is reactionary and unsuitable for respecting standards of decency expected by the general population.

4. If not, what additional regulatory arrangements would need to be put in place and what would be the most effective regulatory response.

The adverse reactions to the recent incident and those other incidents referred to above make it clear that the approach being adopted by radio broadcasters in determining appropriate content for Programs is itself inappropriate. Accordingly, we believe that the ACMA must take a stricter regulatory stance.

We would recommend that the following items be added to the Code (under s 123 of the Act) or included in a new standard declared by the ACMA (under s 125 of the Act):

- (a) the requirement for radio broadcasters to have in place suitable training programs and internal processes to pre-approve or identify questionable content which may be included in Programs. Such training programs must require that licensees demonstrate that they train 100% of all people who need training. If licensees fail to do this, they should be required to explain how they will mitigate the resultant risk in their area of business;
- (b) a prohibition against the exploitation of any person (subject to prior consent which should have suitable caveats) during any Program. Particular attention ought to be given to minors, disadvantaged persons and anyone without legal capacity;
- (c) providing guidelines on how to regulate the participation of individuals (whether considered participants and/or audience members) in Programs;
- (d) providing guidelines on how to regulate the participation of individuals under 18 or 16 (sexual age of consent) in Programs. We believe though that exploitation of minors should be prohibited, regardless of parental consent;
- (e) penalty provisions for instances of breach;⁷ and
- (f) the requirement for radio broadcasters to implement a short broadcast delay and a “kill switch” which could be used by a radio broadcasters to terminate a broadcast in appropriate situations.

Additionally, we believe that the industry should be required to cooperate in the creation of guidelines on base levels of decency and community standards which the current regime does not enforce e.g. activities that are illegal (e.g. rape). Additionally, regardless of parental consent the Code should be ensuring that participants, particularly those who are underage and disadvantaged, are not exploited.

Grey areas could be dealt with through:

- prescriptive measures such as those used by commercial television broadcasters (see the CAD service offered by FreeTV); or
- the recommended “kill switch” noted above.

⁷ For example, the United States' Code - Title 18 - Part 71: Obscenity, which regulates the broadcasting of obscene language (see section 1464), provides that a breach can result in criminal fines and/or imprisonment for not more than two years. See <http://www.fcc.gov/eb/oip/>. Certainly, we would hope such a response would not be necessary, however, the examples of inappropriate content cited above illustrate that some broadcasters require closer scrutiny and may only be encouraged to take reasonable care of minors and/or disadvantaged persons through the incentive of avoiding criminal sanction.

The recent 2DayFM incident and those other incidents referred to above make it clear that a common sense approach is not being adopted by radio broadcasters as to appropriate content for Programs. Accordingly, we believe that the ACMA must take a stricter regulatory stance.

The ACMA, could for example, benefit from the experiences and regulations of other jurisdictions in assessing its appropriate response.

The United Kingdom provides a sound example in this instance. This jurisdiction, not unlike our own, has implemented as part of its Broadcasting code a specific section regarding the protection of minors (**the UK Code**).⁸

The UK Code makes two distinctions as to people under 18 years. The first being people under the age of 18 years who are generally referred to as "minors". It further defines "children" as people under the age of 15 years and provides more specific guidelines to broadcasters regarding these people. In doing so, the UK Code requires broadcasters to take responsibility for "taking all reasonable steps to protect minors". It restricts broadcasts that "might seriously impair the physical, mental or moral development" of minors. There can be no doubt that the recent 2DayFM incident would fall into this restriction if broadcast in the UK, and we would submit that there is no reason why broadcasts of this nature should be restricted in Australia.

Using the UK Code as a guide, we believe that the ACMA should consider measures such as:

- providing guidance to broadcasters as to when extra care should be taken, for example, at "the school run" time, when children and minors are more likely to be listening;
- providing pre-program warnings regarding content that may upset or distress children/minors at the times they are likely to be listening; and
- requiring broadcasters to take care in respecting the minor/child's physical, mental or emotional welfare, including the dignity of those minor's/children who partake in either pre-recorded or live entertainment programs broadcast via radio.

We would also suggest that the ACMA consider establishing a "watershed" for radio broadcasters that operates in a similar way to Australia's current watershed applied to television broadcasters, i.e. material of a certain nature should not be broadcast before 9pm or after 5:30am.⁹

We would also suggest that the ACMA consider applying these and any further regulations that it establishes to pre-recorded programs in the same manner as it does live entertainment programs.

Particularly as radio moves onto digital platforms, the concern is that unsuitable content can be broadcast to an even wider, (and arguably younger) audience. In this way, commercial digital radio content can be likened to commercial content made available over the Internet. Accordingly, the most appropriate approach available to the ACMA may be to bring digital radio content under the purview of Schedule 7 of the Broadcasting Services Act. If radio broadcasters cannot responsibly monitor content and take care for

⁸ Ofcom Broadcasting Code - Section 1: Protecting Minors. Available via <http://www.ofcom.org.uk/tv/ifi/codes/bcode/protecting18/>.

⁹ For example, the United States' Code - Title 18 - Part 71: Obscenity regulates the broadcasting of obscene language (see section 1464). Available via <http://codes.lp.findlaw.com/uscode/18/1/71>. Essentially, it is a violation of United States federal law to broadcast obscene programming at any time. The Federal Communications Commission governs this area and is able to issue civil monetary penalties, revoke broadcast licences and deny the renewal of applications. Additionally, conduct that is successfully prosecuted in the Federal Court carries with it criminal fines and/or imprisonment for not more than two years. See <http://www.fcc.gov/eb/oip/>.

minors and/or disadvantaged persons, then a stricter approach must be taken, including forced classifications of radio programs and content censorship.

5. Any other relevant matters.

Following on from our analysis, we would pose the following queries:

- Is the co-regulatory scheme working?
- Do the parameters that allow the broadcasting industry to take responsibility for compliance with their own programming guidelines need to be widened so as to require these broadcasters to be held more accountable?

There is a strong argument that the inconsistent regulation of different media containing the same content should be justified or reformed.

If Australia continues to segment the regulation of content and continue to differentiate between delivery platforms, we will be left with an inconsistent and incoherent regulatory structure. Particularly as radio content moves into the digital arena, this content should be dealt with in a similar way.

Clearly, some of Australia's radio broadcasters, in a bid for expanding their listener base, have resorted to extraordinary and highly inappropriate methods and have caused great upset and concern in the community in doing so. We respectfully submit that it is time that the ACMA be allowed to regulate this industry more closely than it has in the past. In other words, the recent fallout from recent use of shock tactics demonstrates that the ACMA can no longer rely on a common sense approach to be taken in respect to this content.

Whilst we recognise that antics, such as those employed by 2DayFM for example, make up a small proportion of the content broadcast via radio in Australia, the offending material is so concerning to the community that it now requires closer scrutiny. It is likely that those broadcasters who do not employ these antics will not be grossly affected by changes to the regulation of live hosted entertainment programs. Accordingly, any regulation that the ACMA wishes to institute will be welcomed by the community given the recent concern for the protection of minors listening to or partaking in broadcast radio programs.

Conclusion

A more pro-active approach is required to ensure protection of those participants and subjects in live-hosted entertainment programs. The reactionary approach is not working. Industry practices and provisions in the Code are currently failing to satisfy the community's concern with regard to content involving underage and disadvantaged subject matter.

An amendment of the Code or the introduction of a new standard is required. We believe that this is possible within the co-regulatory scheme established by the Act and would better protect community values by holding broadcasters more accountable. This could be done in a way which serves the interests of participants, the community and broadcasters.

We commend the ACMA on its investigation and welcome its review of regulation falling within its powers.