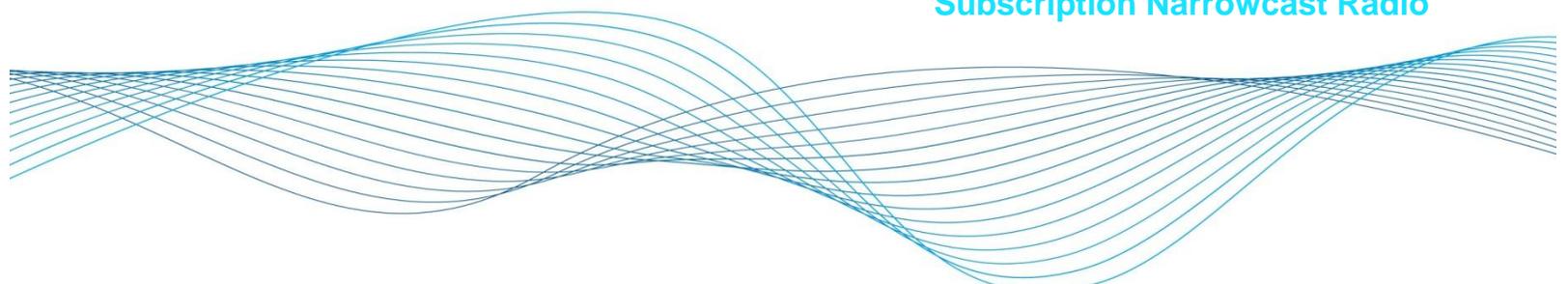




Codes of Practice 2013
Subscription Narrowcast Radio



SUBSCRIPTION NARROWCAST RADIO CODES OF PRACTICE

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INTRODUCTION

(A) PREAMBLE

1. The Australian Subscription Television and Radio Association Inc. ('**ASTRA**') is the industry body representing those operating radio and television narrowcasting services under class licences in accordance with the provisions of the Broadcasting Services Act 1992 (the '**Act**').
2. Narrowcasting services provide a wide range of innovative services, catering to specialised interest. As these services have narrowly defined audiences and appeal, they come under a class licence regime, with lesser levels of regulation.
3. Sections 17 and 18 of the Act define narrowcasting services as broadcasting services whose reception is limited by:
 - being targeted to special interest groups;
 - intended only for limited locations;
 - provided during a limited period of time or to cover a special event;
 - because they provide programs of limited appeal;
 - or for some other reason.
4. Subscription narrowcasting services differ from open narrowcasting services in that they are made available only on payment of subscription fees.

(B) GENERAL LICENCE CONDITIONS

1. As narrowcasters operate under class licences they are subject to the conditions provided under Part 7 Schedule 2 to the Act, which covers matters including:
 - a ban on tobacco advertising;
 - a requirement to comply with any applicable program standards approved by the Australian Communications and Media Authority ('**ACMA**')
 - a condition not to use the broadcasting service to commit an offence; and
 - requirements to comply with the Act in relation to broadcast of political and electoral material (including the requirement to keep records of material broadcast) and advertisements relating to medicines.

The relevant sections of Schedule 2 to the Act form Attachment B to these Codes.

2. The purpose of the Codes is to establish specific obligations for narrowcasters within the co-regulatory framework, in relation to programming, handling of complaints, and where applicable, the classification and placement of programs and customer service.

(C) REVIEW AND AMENDMENT OF CODES

These Codes will be reviewed every three years. Any review will be undertaken in full consultation with the public and representative organisations.

If any substantive changes to the Codes are necessary, such amendments will be made in consultation with the ACMA.

(D) PUBLICISING THE CODES

Narrowcasters will publicise the availability of the ASTRA Codes of Practice at regular intervals in program guides and during broadcast time, where appropriate. Subscription narrowcasters will advise subscribers at the time of subscription via the subscription agreement or other alternative means that the Codes (including complaints procedures) are available. Copies of the Codes will be provided to the public on request. The Codes are also available on the ASTRA website www.astra.org.au.

(E) DEFINITIONS:

In these Codes:

“**narrowcaster**” means the person or organisation providing a narrowcast service as defined in the Act.

“**program**” in relation to a broadcasting service, means:

- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
- (b) advertising or sponsorship matter, whether or not of a commercial kind.

“**program guide**” unless otherwise specified refers to a narrowcaster’s printed or electronic program guide.

“**program promotions**” are announcements and previews advertising scheduled programs.

CODE NO. 1

GENERAL GUIDELINES FOR PROGRAMMING

- 1.1 The content of program material and advertisements delivered on narrowcast services will be consistent with standards acceptable to the relevant specific audiences involved.
- 1.2 Narrowcasters will present accurate and fair news and current affairs programs, and where practicable, will ensure that:
 - (a) factual material will be clearly distinguished from commentary, analysis or simulations; and
 - (b) news or events are not simulated in a way that misleads or alarms the audience.
- 1.3 In broadcasting news and current affairs programs narrowcasters must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there are identifiable public interest reasons for the material to be broadcast.
- 1.4 Narrowcasters will not broadcast any program which is likely in all the circumstances to provoke, or perpetuate intense dislike, serious contempt or severe ridicule against a person or group of persons on the grounds of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference.
- 1.5 Narrowcasters will not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivity of Aboriginal and Torres Strait Islander people or culturally and linguistically diverse communities in Australia.
- 1.6 Narrowcasters will not broadcast programs that:
 - (a) are designed to induce a hypnotic state in the audience; or
 - (b) use the process known as "subliminal perception" or any other technique that attempts to convey information by broadcasting messages below or near the threshold of normal awareness.
- 1.7 A narrowcaster must not broadcast the words of an identifiable person unless:
 - (a) that person has been informed in advance or is aware that the words may be broadcast; or
 - (b) in the case of words which have been recorded without the knowledge of the person, that person has subsequently, but prior to the broadcast, indicated consent to the broadcast of the words.
- 1.8 A narrowcaster will not breach clause 1.2(b), 1.4, 1.5, 1.6(b) or 1.7(b) if a program includes matter said or done reasonably and in good faith:

- (a) in broadcasting an artistic work including comedy and satire;
- (b) in the course of any broadcast or statement, discussion or debate made or held for an academic, artistic or scientific purpose or any other identifiable public interest purpose;
- (c) in broadcasting a fair report of, or a fair comment on, any event or matter of identifiable public interest.

1.9 Narrowcasters must seek to comply fully with all Codes, but a failure to comply will not be a breach of the Codes if that failure was due to:

- (a) a reasonable mistake;
- (b) reasonable reliance on information supplied by another person;
- (c) an act or failure to act of another person, or an accident or some other cause beyond the narrowcaster's control, provided that the narrowcaster took reasonable precautions and exercised due diligence to avoid the failure; or
- (d) an act or failure to act which, in all the circumstances, was clearly peripheral or incidental, and unlikely to offend or materially mislead viewers.

Where it is possible to remedy a failure to comply with the Codes, narrowcasters must do so promptly.

1.10 Narrowcasters will comply with the provisions relating to betting advertising including the promotion of betting odds in Appendix A.

CODE NO. 2

HANDLING COMPLAINTS

- 2.1 In the first instance, complaints should be made to the narrowcaster.
- 2.2 Narrowcasters will make every reasonable effort to resolve complaints except where a complaint is clearly frivolous, vexatious or not made in good faith. Narrowcasters will respond to all complaints in a courteous and comprehensive manner and deal with the substantive issues of the complaint.
- 2.3 Reasonable effort will be made to deal with a telephone complaint during the course of the telephone call. If that is not possible, the complainant may be asked to make the complaint in writing (which may be made by email).
- 2.4 Written complaints will be acknowledged and answered in writing (which may be via email), where possible within the shortest practicable period from the date of receipt of the complaint, but no longer than 60 days after receipt of the complaint. If the complainant has not received a response to a telephone or written complaint within 60 days of making the complaint, or considers the response to be inadequate, he or she may refer the complaint to the ACMA.
- 2.5 With the exception of complaints under the Customer Service Code (Code 3), in responding to a written complaint narrowcasters will advise complainants that if they are not satisfied with the narrowcaster's response, the complaint may be referred to the ACMA.

(Note: see clauses 3.3 and 3.4 for referral of complaints under the Customer Service Code (Code 3)).
- 2.6 Narrowcasters will maintain a record of written complaints received, and on written request make a summary available to the ACMA.

CODE NO. 3

CUSTOMER SERVICE

- 3.1 Subscription narrowcasters will provide written agreements for subscribers which, in “plain language” clearly and accurately indicate:
- (a) the service(s) to be provided;
 - (b) the price of the service(s);
 - (c) contract period and termination provisions; and
 - (d) method of billing and credit management.

SUBSCRIBER PRIVACY

- 3.2. Narrowcasters will comply with their obligations under the *Privacy Act 1988* (or any successor or replacement legislation) with respect to subscribers’ personal information.

FAULT REPAIR

- 3.3 Subscribers should initially contact the narrowcaster with questions or disputes about fault repair. In the event that the subscriber is not satisfied with the outcome of discussions, the narrowcaster will advise the subscriber to contact the relevant consumer advisory service of the state or territory in which the subscriber resides. A list of relevant consumer advisory services is attached to these Codes as Attachment A.

CREDIT MANAGEMENT AND BILLING

- 3.4 Subscribers should initially contact the narrowcaster with questions or disputes about credit management and billing. In the event that a subscriber is not satisfied with the outcome of discussions, the narrowcaster will advise the subscriber to contact the relevant consumer advisory service of the state or territory in which the subscriber resides. A list of relevant consumer advisory services is attached to these Codes as Attachment A.

APPENDIX A: BETTING ADVERTISING IN A LIVE SPORTING EVENT

- (1) During a Live Sporting Event, a narrowcaster must not broadcast:
 - (a) a Promotion of Betting Odds during Play, during Scheduled Breaks in Play, or during Unscheduled Breaks in Play; or
 - (b) Betting Advertising during Play.
- (2) A narrowcaster must not broadcast a Promotion of Betting Odds by a Commentator of a Live Sporting Event:
 - (a) within 30 minutes before the commencement of Play; and
 - (b) within 30 minutes after the conclusion of Play.
- (3) Without limiting clause 4, Clause 2 does not prevent the Promotion of Betting Odds other than by a Commentator (including spot commercials and paid, clearly identified sponsorship segments presented by person(s) other than Commentator(s)) before Play has commenced or after Play has concluded.
- (4) Clauses 1(a) and 2 do not prevent the Promotion of Betting Odds other than by a Commentator (including spot commercials and paid, clearly identified sponsorship segments presented by person(s) other than Commentator(s)) during a Long Form Live Sporting Event:
 - (a) before Play has commenced; and
 - (b) during Play, as part of a distinct break of at least 90 seconds and in accordance with the rules set out below for each Long Form Live Sporting Event:

Tennis	Not more than once per Session. To be placed between matches where the broadcast moves from one match to another.
Golf	Not more than once on each day of competition.
Formula 1, Moto GP and V8 Supercars	Not more than once on each day of competition. To be placed no later than the end of the warm-up lap for V8 Supercars Championship Series Race, or the relevant feature race.
Cricket	Not more than once on each day of competition. To be placed between Sessions.
Olympic and Commonwealth Games	Not more than once every 3 hours on each day of competition.

provided that the Promotion of Betting Odds is not for a race, match or game that has already commenced; and

- (c) after Play has concluded.
- (5) For a Long Form Live Sporting Event (other than tennis) which lasts for more than 1 day, Play commences 5 minutes before the broadcast coverage of the run of play or active progress of competition for that day commences, and concludes 5 minutes after the broadcast coverage of the run of play or active progress of competition for that day concludes. Play does not include periods of analysis, re-play footage or discussion that occur before and after the coverage of the run of play or active progress of the event for each day.
- (6) Clause 1(b) does not prevent the broadcast of Betting Advertisements:
- (a) before Play has commenced;
 - (b) during Scheduled Breaks in Play;
 - (c) during Unscheduled Breaks in Play; and
 - (d) after Play has concluded.
- (7) Clause 6 applies to each sporting event or game in a tournament for a single sport (such as the Rugby World Cup) or a Long Form Sporting Event (such as the Australian Open Tennis) as if each sporting event or game was broadcast on an individual match basis.
- (8) During a Live Sporting Event, representatives of gambling or betting organisations must be clearly identifiable as such and must not appear as part, or as a guest, of the commentary team at any time.
- (9) During a Live Sporting Event, representatives of gambling or betting organisations:
- (a) undertaking a Promotion of Betting Odds; or
 - (b) appearing in a Betting Advertisement,
- must not be at or around, or appear to be at or around, the sports venue where the event which is the subject of the Live Sporting Event is taking place.
- (10) Promotions of Betting Odds and Betting Advertisements during a Live Sporting Event must be:
- (a) socially responsible; and
 - (b) accompanied by a responsible gambling message.
- (11) Promotions of Betting Odds and Betting Advertisements during a Live Sporting Event must not:
- (a) mislead or deceive the audience;

- (b) be directed at children;
- (c) portray children as participating in betting or gambling;
- (d) portray betting or gambling as a family activity;
- (e) make exaggerated claims;
- (f) promote betting or gambling as a way to success or achievement; or
- (g) associate betting or gambling with alcohol.

(12) This Appendix does not apply to a Live Sporting Event of horse racing, harness racing or greyhound racing.

(13) It will not be a breach of this Appendix if:

- (a) a failure to comply arises from a Live Sporting Event originating from outside Australia; and
- (b) the narrowcaster has not added the Promotion of Betting Odds or Betting Advertisement; and
- (c) the narrowcaster does not receive any direct or indirect benefit for the Promotion of Betting Odds or the broadcast of the Betting Advertisement in addition to any direct or indirect benefit received from broadcasting the event; and
- (d) it is not reasonably practicable for the narrowcaster to remove the Promotion of Betting Odds or Betting Advertisement.

(14) In this Appendix:

“Accidental” means an unscripted and unplanned reference (including remarks by a Commentator) for which the narrowcaster does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the narrowcaster receives for broadcasting the Live Sporting Event).

“Betting Advertisement” means, an advertisement by, or a distinct promotional reference for, a gambling or betting organisation during a Live Sporting Event, and includes any writing, still or moving pictures, signs, symbols or other visual images or any audible message(s) (or any combination of those things) that provides generic information about the organisation’s brand, business or services. A Betting Advertisement does not include an advertisement or a reference:

- (a) relating to such things as Government lotteries, lotto, keno or contests;

- (b) relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use; or
- (c) that is Accidental; or
- (d) that is an Incidental Accompaniment.

“**Betting Odds**” means comparative, generally monetary, odds offered in respect of a game or event for a bet on the chance of any occurrence or outcome within that particular game or event, or the overall outcome of the game or event. For the avoidance of doubt, **Betting Odds** includes comparative odds for horse, harness and greyhound racing.

“**Commentator**” means a person who is a host, guest or otherwise participating in a Live Sporting Event and includes a person calling, or providing analysis on the sporting event or game, but does not include discrete or distinguishable contributors, including clearly identified representatives of gambling or betting organisations.

“**Incidental Accompaniment**” means a reference or other material which occurs or is included in the normal course of broadcasting a Live Sporting Event for which the narrowcaster does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the narrowcaster receives for broadcasting the Live Sporting Event) and includes:

- the name of a sporting venue;
- a player’s or official’s uniform; or
- advertising or signage at the venue of the event which is the subject of the Live Sporting Event, for example, on a field barrier, big screen or scoreboard.

“**Live Sporting Event**” means a live-to-air broadcast of a sports event. A Live Sporting Event does not include broadcasts of programs that contain only analysis, award presentations or information.

“**Long Form Live Sporting Events**” include:

- sporting events of extended duration, such as golf, cricket (excluding 20/20 cricket) and motor sports events;
- tournaments for single sports that involve concurrent games or matches, such as tennis championships; and
- multi-sport events, such as the Olympic and Commonwealth Games.

“**Play**” means the period of the actual run of play or active progress of the sporting event or game which is the subject of the Live Sporting Event. It commences at the time the players enter the area of play directly before the start of the event or game and concludes at the time the players leave the area of play following the end of the event or game. It includes *ad hoc* unscheduled breaks such as:

- stoppages for injuries;
- stoppages for adjudication by third or TV umpires/referees; and
- time outs and substitutions in games such as basketball.

For the avoidance of doubt, **Play** does not include:

- periods of training or warm-up in the area of play before a sporting event or game where players or participants subsequently return to the dressing rooms or sheds before formally re-entering the area of play;
- in relation to tennis, any period prior to the first coin toss for a Session or any period commencing 5 minutes after the broadcast coverage of the run of play or active progress for each Session concludes.

“Promotion of Betting Odds” means a distinct promotional reference that provides Betting Odds and includes any writing, still or moving pictures, signs, symbols or other visual images, or any audible message(s) (or any combination of those things). A Promotion of Betting Odds includes superimposed text and graphics such as banner advertisements and sponsorship logos but does not include a reference or material that is:

- Accidental; or
- An Incidental Accompaniment.

“Scheduled Break in Play” means stoppages in a sporting event or game that is the subject of a Live Sporting Event. A Scheduled Break in Play will differ depending on the sporting event or game that is the subject of the broadcast, for example:

Sport	Scheduled Break
Test Cricket	<ul style="list-style-type: none"> • Between each Session (ie., lunch break and tea break) • Drinks break • Change of innings
One Day International Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Drinks break
T20 Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings
Rugby League	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of golden point
Rugby Union	<ul style="list-style-type: none"> • Half-time
Football (Soccer)	<ul style="list-style-type: none"> • Half-time • Between full time and extra time
AFL	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time
Tennis	<ul style="list-style-type: none"> • Between each set • A distinct break of at least 90 seconds (including when during a Session the broadcast switches from one match still in Play to another match in Play at the same time), such break to occur not

Sport	Scheduled Break
	more than once every hour
Basketball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Netball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time
Golf / V8 Supercars endurance races / Swimming Championships	<ul style="list-style-type: none"> • A distinct break of at least 90 seconds, such break to occur not more than once every hour
Formula 1 / MotoGP / V8 Supercars non-endurance races	<ul style="list-style-type: none"> • Between each practice round, qualifying round and race
Olympic Games & Commonwealth Games	<ul style="list-style-type: none"> • Between each day, twilight and night session • A distinct break of at least 90 seconds (including when during a session the broadcast switches from one event still in Play to another event in Play at the same time), such break to occur not more than every 2 hours

This is not an exhaustive list and other sporting events or games may also contain a Scheduled Break in Play, as determined by the rules and regulations of that sport.

“**Session**” means:

- in relation to tennis, the day, twilight, or evening session of matches as scheduled by the organisers of the relevant tournament or competition; and
- in relation to test cricket, any of the three distinct sessions of a match that are divided by lunch and the tea break; and
- in relation to one-day cricket, an innings.

“**Unscheduled Break in Play**” means the period when Play is suspended or delayed due to rain or other unforeseen event, the participants have left or are yet to enter the area of play and the broadcast of replacement or stand-by programs has not commenced.

ATTACHMENT A: CONSUMER ADVISORY SERVICES

In most instances, consumers will have rights under both federal and state or territory consumer protection legislation. The main source of federal consumer protection law is the *Competition and Consumer Act 2010* (CCA) which is administered by the Australian Competition and Consumer Commission (the ACCC).

The ACCC is unlikely to accept single consumer complaints relating to fault repair, credit or billing. If a person wishes to make a formal complaint about such issues it will usually be more appropriate for them to approach the relevant fair trading or consumer protection agency in their state or territory. Each state and territory has laws that regulate fair trading, consumer claims, credit management and contracts. While some agencies will provide advice over the telephone, in most instances, action will only be taken for written complaints.

If a matter cannot be resolved through direct contact with the business or by the intervention of a government agency, consumers can consider using an independent mediator or dispute resolution body, or pursuing the matter in the court system.

The collection, use, disclosure and storage of a subscriber's personal information is protected under the federal *Privacy Act 1988* (Cth). The Office of the Australian Information Commissioner investigates complaints from individuals about interferences with privacy under the Privacy Act.

STATE & TERRITORY GOVERNMENT AGENCIES

Australian Capital Territory

ACT Office of Regulatory Services

Website: <http://www.ors.act.gov.au>

Email: ors@act.gov.au

Phone: (02) 6207 3000

Shopfront location:

255 Canberra Avenue

Fyshwick ACT 2609

Postal Address:

GPO Box 158

CANBERRA CITY ACT 2601

New South Wales

New South Wales Fair Trading

Website: <http://www.fairtrading.nsw.gov.au>

Phone: 13 32 20

Head Office:

1 Fitzwilliam Street
PARRAMATTA NSW 2150

Postal Address:

PO Box 972
PARRAMATTA 2124

Northern Territory

Northern Territory Consumer Affairs

Website: <http://www.nt.gov.au/justice/consaffairs>

Phone: (08) 8999 1999 or 1800 019 319

Email: consumer@nt.gov.au

Darwin Street Address:

1st Floor, The Met Building,
13 Scaturchio St
Casuarina

Alice Springs Street Address:

Level 1 Belvedere House
Parsons Street
Alice Springs

Mailing Address:

Department of Justice

PO Box 40946
CASUARINA NT 0801

Queensland

Queensland Office of Fair Trading

Website: <http://www.fairtrading.qld.gov.au>

Phone: 13 74 68

Street Address:

Queensland Government Service Centre
Upper Plaza Terrace
33 Charlotte Street

Brisbane QLD 4000

Postal Address:
GPO Box 3111

Brisbane QLD 4001

South Australia

Consumer and Business Services

Website: <http://www.ocba.sa.gov.au/>
Phone: 131 882

Street Address:
Chesser House
91-97 Grenfell Street, ADELAIDE

Postal Address:
GPO Box 1719
ADELAIDE SA 5001

Tasmania

Consumer Affairs & Fair Trading

Website: <http://www.consumer.tas.gov.au/>
Phone: 1300 65 44 99

Head Office:
Level 3, 15 Murray St
Hobart TAS 7000

Postal Address:
GPO Box 1244
Hobart TAS 7001

Victoria

Consumer Affairs Victoria

Website: <http://www.consumer.vic.gov.au/>
Phone: 1300 55 81 81

In person:

Victorian Consumer and Business Centre
113 Exhibition Street
MELBOURNE VIC 3000

Postal Address:

GPO Box 123
MELBOURNE VIC 3001

Western Australia

Consumer Protection WA

Website: <http://www.commerce.wa.gov.au/consumerprotection>
Phone: 1300 30 40 54

Street Address:

219 St Georges Terrace

PERTH WA 6000

Postal Address:

Locked Bag 14
Cloisters Square WA 6850

FEDERAL GOVERNMENT AGENCIES

Australian Competition and Consumer Commission (ACCC)

Website: <http://www.accc.gov.au>

The information line phone number is 1300 302 502.

TTY Service for people with hearing or speech difficulties: 1300 303 609.

Adelaide office

Street address:

Level 2
19 Grenfell Street
Adelaide SA 5000

Postal address:

GPO Box 922
Adelaide SA 5001

Ph: (08) 8213 3444
Fax: (08) 8410 4155

Brisbane office

Street address:
Level 24
400 George Street
Brisbane Qld 4000

Postal address:
PO Box 12241
George Street Post Shop
Brisbane Qld 4003

Ph: (07) 3835 4666
Fax: (07) 3835 4653

Canberra office

Street address:
23 Marcus Clarke Street
Canberra ACT 2601

Postal address:
GPO Box 3131
Canberra ACT 2601
Phone: (02) 6243 1111
Fax: (02) 6243 1199

Darwin office

Street address:
Level 8 National Mutual Centre
9-11 Cavenagh St
DARWIN NT 0800

Postal address:
GPO Box 3056
DARWIN NT 0801

Ph: (08) 8946 9666
Fax: (08) 8946 9600

Hobart office

Street address:

3rd Floor, AMP Building
86 Collins Street
(Cnr Elizabeth & Collins Streets)
Hobart Tas 7000

Postal address:

GPO Box 1210
Hobart Tas 7001

Ph: (03) 6215 9333

Fax: (03) 6234 7796

Melbourne office

Street address:

Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

Postal address:

GPO Box 520
Melbourne Vic 3001

Ph: (03) 9290 1800

Fax: (03) 9663 3699

Perth office

Street address:

3rd floor, East Point Plaza
233 Adelaide Terrace
Perth WA 6000

Postal address:

PO Box 6381
East Perth WA 6892

Ph: (08) 9325 0600

Fax: (08) 9325 5976

Sydney office

Street address:

Level 20

175 Pitt Street
Sydney NSW 2000

Postal address:
GPO Box 3648
Sydney NSW 2001

Ph: (02) 9230 9133
Fax: (02) 9223 1092

Townsville office

Street address:
Level 6, Central Plaza
370 Flinders Mall
Townsville Qld 4810

Postal address:
PO Box 2016
Townsville Qld 4810

Ph: (07) 4729 2666
Fax: (07) 4721 1538

Office of the Australian Information Commissioner

Website: <http://www.oaic.gov.au>
Phone: 1300 363 992

Postal Address:
GPO Box 5218
Sydney NSW 2001

ATTACHMENT B: EXTRACTS FROM THE BROADCASTING SERVICES ACT

Schedule 2—Standard conditions

Part 1—Interpretation

1 Definitions

In this Schedule:

Classification Board means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

election means an election to a Parliament or a local government authority of a State or Territory.

election advertisement, in relation to an election, means:

- (a) an advertisement:
 - (i) that contains election matter that relates to that election; and
 - (ii) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or
- (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
- (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party.

election matter, in relation to an election, means matter of any of the following kinds:

- (a) matter commenting on, or soliciting votes for, a candidate at the election;
- (b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;
- (c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;
- (d) matter referring to a meeting held or to be held in connection with the election.

election period means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (b) in relation to any other election to a Parliament—the period that starts on:

- (i) the day on which the proposed polling day for the election is publicly announced; or
 - (ii) the day on which the writs for the election are issued;
- whichever happens first, and ends at the close of the poll on the polling day for the election; and
- (c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
 - (d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and
 - (e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day.

person includes a political party, a corporation and any other association (whether incorporated or unincorporated).

political matter means any political matter, including the policy launch of a political party.

radiocommunications device has the same meaning as in the *Radiocommunications Act 1992*.

referendum means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced.

relevant period, in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

required particulars, in relation to a political matter that is broadcast, means:

- (a) if the broadcasting was authorised by a political party:
 - (i) the name of the political party; and
 - (ii) the town, city or suburb in which the principal office of the political party is situated; and
 - (iii) the name of the natural person responsible for giving effect to the authorisation; and
- (b) if the broadcasting of the political matter was authorised by a person other than a political party:
 - (i) the name of the person who authorised the broadcasting of the political matter; and
 - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter.

required period, in relation to the keeping of a record in relation to political matter, means:

- (a) subject to paragraph (b), the period of 6 weeks commencing on the day on which the matter was broadcast; or
 - (b) if the matter relates to an election or referendum and was broadcast during the election period in relation to the election or referendum—the period commencing on the day on which the matter was broadcast and ending:
 - (i) at the end of the period referred to in paragraph (a); or
 - (ii) if that period ends before the end of the election period in relation to the election or referendum—the day on which that election period ends;
- or such longer period as the ACMA, before the end of that period, directs by notice in writing to the broadcaster concerned.

2 Interpretation—certain things do not amount to broadcasting of advertisements

- (1) For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:
 - (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.
 - (2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:
 - (a) community information material or community promotional material; or
 - (b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence, whether or not the announcement:
 - (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
 - (ii) promotes activities, events, products, services or programs of the person; or
 - (c) material that announces or promotes a service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the service or services provided under the licence;
- is not taken to be the broadcasting of an advertisement.

Part 2—Special conditions

3 Broadcasting of political or controversial material

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election, being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.
- (3) This clause does not require a broadcaster to broadcast any matter free of charge.

3A Broadcasting of election advertisements

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If:
 - (a) a broadcaster has a licence that has a licence area; and
 - (b) an election to a Parliament is to be held; and
 - (c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.
- (3) If:
 - (a) a broadcaster has a licence that does not have a licence area; and
 - (b) an election to a Parliament is to be held; and
 - (c) a broadcasting service under the licence is normally received in the area of Australia to which the election relates;the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

- (4) If:
- (a) a broadcaster provides a broadcasting service under a class licence; and
 - (b) an election to a Parliament is to be held; and
 - (c) the broadcasting service is normally received in the area of Australia to which the election relates;
- the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of the service.

4 Identification of certain political matter

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the ACMA.
- (3) A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period and must give to the ACMA any particulars of the record that the ACMA, by written notice, requires.
- (4) For the purposes of this clause, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

5 Records of matter broadcast

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the ACMA.
- (3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
 - (b) if a complaint has been made about the matter—for 60 days from the date on which the matter was broadcast;
- or for such longer period as the ACMA, in special circumstances, directs in writing.
- (4) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subclause (3), the person may give to the broadcaster a notice in writing informing the broadcaster that the record may be required for the purposes of the proceedings.
 - (5) If such a notice is given to a broadcaster in respect of a record, the broadcaster must, subject to this clause, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.
 - (6) If the proceedings are not instituted within a period of 3 months after the notice is given to the broadcaster, subclause (5) ceases to apply to the record at the end of that period.
 - (7) The obligation imposed by this clause on a broadcaster to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.
 - (8) If the ACMA is of the opinion that a matter of which a record has been made under this clause is of sufficient historic interest to justify its being permanently preserved, the ACMA may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or authority specified by the ACMA, and the person to whom the direction is given must comply with the direction but is entitled to fair compensation.
 - (9) A broadcaster must, without charge, make available to the ACMA, upon request, any specified record made by the broadcaster under subclause (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).

6 Advertisements relating to medicines

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a subscription television broadcasting licensee; or
 - (d) a person providing broadcasting services under a class licence.
- (2) A broadcaster must not broadcast an advertisement relating to therapeutic goods that is required to be approved under the *Therapeutic Goods Act 1989* unless the text of the advertisement has been so approved.

Part 7—Services provided under class licences

11 Conditions applicable to broadcasting services provided under class licences

- (1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (ab) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the person will comply with subsection 121E(2) (section 121E is about requiring the ACMA’s permission to provide certain television services in regional areas);
 - (b) the person will comply with program standards applicable to the licence under Part 9 of this Act;
 - (ba) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
 - (baa) in the case of a person who provides:
 - (i) a subscription radio broadcasting service; or
 - (ii) a subscription radio narrowcasting service; or
 - (iii) an open narrowcasting radio service;transmitted using a digital modulation technique—the licensee will comply with standards under section 130AA (which deals with technical standards for digital transmission);
 - (bb) the licensee will comply with standards under subsection 130V(1) (which deals with industry standards);
 - (bc) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision;
 - (c) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
 - (d) the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6;
 - (e) the person will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of *broadcasting services bands* in subsection 6(1) to provide broadcasting services under the licence.
- (2) The provision by a person of a subscription broadcasting service or a subscription narrowcasting service under a class licence is also subject to the condition that subscription fees will continue to be the predominant source of revenue for the service.
- (3) The provision by a person of an open narrowcasting television service under a class licence is also subject to the following conditions:
 - (a) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;

- (b) the licensee will not broadcast films that are classified as “R 18+” unless the films have been modified as mentioned in paragraph 123(3C)(b).
- (4) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board.