

ANRA≈

**Codes of Practice
Open Narrowcast Radio**

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INTRODUCTION

(A) PREAMBLE

1. The Australian Narrowcast Radio Association (ANRA) is the industry body representing those operating radio 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 interests. As these services have well-defined audiences and appeal, they come under a class licence regime, with minimum levels of regulation.
3. The Broadcasting Services Act (the Act), under Sections 17 and 18, defines 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;
 - because they provide programs of limited appeal;
 - or for some other reason.

(B) GENERAL LICENCE CONDITIONS AND GUIDELINES

1. As narrowcasters operate under class licences they are subject to the conditions provided under Part 7 Schedule 2 of 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;
 - a condition not to use the broadcasting service to commit an offence;
 - requirements to comply with the Act in relation to broadcast of political and electoral material and advertisements relating to medicines; and
 - requirement to keep a record of material broadcast.

The relevant clauses of Schedule 2 of the Act forms Attachment A to these Codes.

2. The purpose of the Codes is to establish specific obligations for narrowcasters and service providers within the self-regulatory framework, in relation to programming, handling of complaints, and where applicable, the classification of programs and customer service.
3. In addition to the statutory conditions, narrowcasters are expected to have regard for:
 - Privacy guidelines for broadcasters published by the Australian Communications and Media Authority.
 - Clarification Notices made by the Australian Communications and Media Authority under paragraph 19(1)(b) of the Act.

(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 Australian Communications and Media Authority.

(D) PUBLICISING THE CODES

Narrowcasters will publicise the availability of the ANRA Codes of Practice at regular intervals.

Copies of the codes will be available to the public on request. The Codes are also available on the ANRA website www.anra.org.au.

DEFINITIONS:

“narrowcaster” means the person or organization providing a narrowcast service as defined in the Broadcasting Services Act 1992.

“program” as defined in the Broadcasting Service Act 1992, and can reasonably be taken to include all programs, promotions, community service announcements, etc.

“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 Narrowcasters will not broadcast programs which are likely to incite or perpetuate hatred against or vilify any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, colour, physical or mental disability, transgender status or HIV/AIDS status. A narrowcaster may 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 ethnic groups in the Australian community.
- 1.4 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.
- 1.5 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.
- 1.6 A narrowcaster will not breach clauses 1.2(b), 1.3, 1.4(a) or 1.4(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.
- 1.7 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 or service provider’s control, provided that the narrowcaster or service provider took reasonable precautions and exercised due diligence to avoid the failure.

- (d) an act or failure to act which, in all the circumstances, was clearly peripheral or incidental, and unlikely to offend or materially mislead listeners.

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

- 1.8 A narrowcaster must not broadcast information relating to a person's personal or private affairs, or which invades a person's privacy, unless there is a public interest in broadcasting such information.

Guidance on this Clause can be found in privacy guidelines for broadcasters published by the Australian Communications and Media Authority.

- 1.9 Narrowcasters will, where practicable, ensure that advertisements broadcast will be consistent with the relevant industry codes applicable to advertising.

CODE NO. 2

HANDLING COMPLAINTS

- 2.1 In the first instance, complaints should be made to the narrowcaster. Listeners may lodge complaints by telephone, post, e-mail or, where a narrowcaster's website capability allows, electronically.
- 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. Responses to complaints should be courteous and comprehensive and should deal with substantive issues.
- 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.
- 2.4 Written complaints will be acknowledged in writing, within fifteen days from the receipt of the complaint and the narrowcaster will respond substantively to the complaint within thirty days of receipt. If the complainant has not received a response within sixty days or considers that a response within that period is inadequate he or she may refer the complaint to the Australian Communications and Media Authority.
- 2.5 A complainant will be advised that he or she is entitled to refer the matter to the Australian Communications and Media Authority where the complainant is not satisfied with the response to a written complaint.
- 2.6 Narrowcasters will maintain a record of written complaints received, and make a summary available to the Australian Communications and Media Authority on request.

BROADCASTING SERVICES ACT 1992
Schedule 2—Standard conditions

Part 1—Interpretation

1. **Definitions**

In this Schedule:

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 the 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 the 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 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;
 - (b) the person will comply with program standards applicable to the licence under Part 9 of this Act;
 - (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);
 - (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.