

COMMERCIAL TELEVISION BROADCASTING LICENCES

LICENCE CONDITIONS

Section 42 of the Act refers to the conditions of commercial television broadcasting licences as follows:

42(1). Each commercial television broadcasting licence is subject to:

- (a) the conditions set out in Part 3 of Schedule 2; and*
- (b) such other conditions as are imposed under section 43.*

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.

medicine means a drug within the meaning of the Therapeutic Goods Regulations made under the *Therapeutic Goods Act 1989*, but does not include such a drug that, under paragraph 3(2)(b) of that Act, is not therapeutic goods for use in humans.

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 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, 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 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 ACMA any particulars of the record that 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 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 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 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, 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 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 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 a medicine unless the text of the proposed advertisement has been approved:
 - (a) by the Secretary to the Department of Community Services and Health under subclause (3); or
 - (b) by the Minister on appeal to the Minister under this clause.
- (3) A person may apply, in writing, to the Secretary to the Department of Community Services and Health for approval of the text of a proposed advertisement relating to a medicine.
- (4) If an application is made, the Secretary to the Department of Community Services and Health may, in writing, approve or disapprove the text.
- (5) The Secretary to the Department of Community Services and Health must give the applicant written notice of the approval or disapproval.

- (6) If:
- (a) an application is made under subclause (2); and
 - (b) the Secretary to the Department of Community Services and Health does not notify the applicant of the Secretary's approval or disapproval of the text within 60 days after the day on which the application was made;
- the Secretary is taken to have approved the text under subclause (3) at the end of that period.
- (7) The Secretary to the Department of Community Services and Health may, by signed instrument, delegate his or her power under this clause to approve the text of an advertisement to:
- (a) a medical officer of a State; or
 - (b) the Proprietary Medicines Association of Australia or any other body:
 - (i) carrying out, or associated with, research into medicines; or
 - (ii) formed to represent the interests of manufacturers or distributors of medicines.
- (8) An applicant may appeal in writing to the Minister from a decision of the Secretary to the Department of Community Services and Health under this clause, and the Minister must decide the appeal.

Part 3—Commercial television broadcasting licences

7 Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
- (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 licensee will comply with program standards applicable to the licence under Part 9 of this Act;
 - (c) the articles of association of the licensee will at all times contain provisions under which:
 - (i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and
 - (ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and
 - (iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and
 - (iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act; and
 - (v) any election of directors to the board of the licensee will be invalid if the election would result in more than 20% of the directors of the licensee being foreign persons;
 - (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
 - (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;

- (f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises operation by the licensee of the radiocommunications devices used to provide the broadcasting service;
- (g) the licensee will not broadcast a program that has been refused classification, or has been classified as 'X', by the Office of Film and Literature Classification;
- (ga) the licensee will not broadcast films that are classified as 'R' unless the films have been modified as mentioned in paragraph 123(3A)(b);
- (h) the licensee will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
- (ha) the licensee will not contravene the anti-hoarding rule (within the meaning of section 146E);
 - (i) the licensee will commence to provide broadcasting services within one year of being allocated the licence or within such longer period as is notified in writing by ACMA;
- (ia) the licensee will comply with the requirements set out in section 205B;
- (j) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6.
- (k) the licensee will comply with the requirements of the commercial television conversion scheme in force under clause 6 of Schedule 4 other than either of the following requirements:
 - (i) a requirement covered by paragraph 6(3)(a) or (b) of that Schedule;
 - (ii) a requirement of Part B of the scheme to commence digital transmission;
- (l) the licensee will comply with so much of an implementation plan:
 - (i) given by the licensee to ACMA in accordance with the commercial television conversion scheme in force under clause 6 of Schedule 4; and
 - (ii) approved by ACMA;
 as does not relate to either of the following requirements:
 - (iii) a requirement covered by paragraph 6(3)(a) or (b) of that Schedule;
 - (iv) a requirement of Part B of the commercial television conversion scheme to commence digital transmission;
- (m) if there is a simulcast period for the licence area of the licence—the licensee will not broadcast a television program in SDTV digital mode during the simulcast period for the licence area unless the program is broadcast simultaneously by the licensee in analog mode in that area;
- (n) the licensee will comply with standards applicable to the licence under Division 1 of Part 4 of Schedule 4 (which deals with digital broadcasting format);
- (na) the licensee will comply with standards applicable to the licence under Division 2 of Part 4 of Schedule 4 (which deals with HDTV quotas);
- (o) the licensee will comply with standards applicable to the licence under clause 38 of Schedule 4 (which deals with captioning of television programs for the deaf and hearing impaired);
- (oa) the licensee will comply with any regulations made for the purposes of clause 36B of Schedule 4 (which deals with the accessibility of domestic reception equipment);
- (p) if the licensee holds a transmitter licence under section 102 or 102A of the *Radiocommunications Act 1992* that authorises the operation of a transmitter—the licensee will not operate, or permit the operation of, that transmitter to transmit in digital mode:
 - (i) a commercial broadcasting service that provides radio programs; or
 - (ii) a subscription radio broadcasting service; or
 - (iii) a subscription television broadcasting service; or
 - (iv) a subscription radio narrowcasting service; or
 - (v) a subscription television narrowcasting service; or

- (vi) an open narrowcasting radio service; or
 - (vii) an open narrowcasting television service.
- (2) Each commercial television broadcasting licence is also subject to the following conditions:
- (a) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;
 - (b) the licensee will remain a suitable licensee;
 - (c) the licensee will broadcast matter of a religious nature during such periods as ACMA determines and, if ACMA so directs, will do so without charge;
- (2A) Each commercial television broadcasting licence is also subject to the condition that the licensee will not provide commercial television broadcasting services under the licence outside the licence area of the licence unless:
- (a) the provision of those services outside that licence area occurs accidentally; or
 - (b) the provision of those services outside that licence area occurs as a necessary result of the provision of commercial television broadcasting services within the licence area; or
 - (c) both:
 - (i) the licensee satisfies ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and
 - (ii) ACMA has given permission in writing; or
 - (d) all of the following subparagraphs apply:
 - (i) the first-mentioned licensee satisfies ACMA that there is a person (the **eligible person**) who is in a commercial television broadcasting licence area (the **second licence area**) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a commercial television broadcasting service provided by a commercial television broadcasting licensee for the second licence area;
 - (ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;
 - (iii) ACMA has given permission in writing.
- (2B) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to another commercial television broadcasting licensee:
- (a) in a timely manner; and
 - (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
- if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.
- (2C) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to a national broadcaster (within the meaning of Schedule 4):
- (a) in a timely manner; and
 - (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
- if required to do so by that national broadcaster for the purpose of compiling information for an electronic program guide.

- (2D) For the purposes of the application of subclause (2B) to information provided to a commercial television broadcasting licensee, **electronic program guide** has the same meaning as in subclause 6(24) of Schedule 4.
- (2E) For the purposes of the application of subclause (2C) to information provided to a national broadcaster, **electronic program guide** has the same meaning as in subclause 19(24) of Schedule 4.
- (3) An expression used in paragraph (1)(m) or (p) and in Schedule 4 has the same meaning in that paragraph as it has in that Schedule.
- (4) Subclause 6(8) of Schedule 4 applies to paragraph (1)(m) of this clause in a corresponding way to the way in which it applies to paragraph 6(3)(c) of Schedule 4 and subclause 6(7) of Schedule 4.

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