



**Australian  
Broadcasting  
Authority**

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Ms Helen Donaldson  
Secretary  
Senate Finance and Public Administration Legislation Committee  
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Dear Ms Donaldson

## **Inquiry into Bills concerning Political Honesty and Accountability**

Thank you for your letter dated 15 January 2001 and the opportunity to provide a submission to the Senate Finance and Public Administration Legislation Committee (Committee) on the four Bills.

The Australian Broadcasting Authority's (ABA) submission is limited to comments on the *Electoral Amendment (Political Honesty) Bill 2000* and its proposed amendments to the *Commonwealth Electoral Act 1918* (Electoral Act).

The ABA understands that the proposed amendments contained in the *Electoral Amendment (Political Honesty) Bill 2000* prohibit the printing, publication or distribution of any electoral advertisement containing a statement, purporting to be a statement of fact, that is inaccurate or misleading to a material extent and that the assessment of this matter is to be the jurisdiction of the Electoral Commissioner.

As you will be aware, the *Broadcasting Services Act 1992* (BSA) contains provisions regulating the broadcasting of election and political matter. More specifically, the ABA regulates:

- > the broadcasting of election advertisements [Clause 1, Part 1 of Schedule 2 to the BSA];
- > the broadcasting of election matter [Clause 1, Part 1 of Schedule 2 to the BSA];
- > the relevant period in relation to an election (commonly referred to as the 'blackout period') [Clause 3A; Part 2 of Schedule 2 to the BSA];
- > the requirement on broadcasters of political matter to broadcast the 'required particulars' (commonly known as political tags) [Clause 4, Part 2 of Schedule 2 to the BSA]; and



- the special conditions relating to the broadcasting of political or controversial material [Clause 3, Part 2 of Schedule 2 to the Act].

I have attached a copy of the relevant provisions of Schedule 2 for your information.

The provisions mentioned above are conditions on licences for commercial television and commercial radio licences, as well as community and subscription licences and services provided under class licences. It is the responsibility of the ABA to take appropriate enforcement action against licensees in breach of these licence conditions.

The ABA submits that its regulatory responsibilities and functions under the BSA in relation to the broadcasting of electoral and political matter are distinct from those proposed in the amendments to the Electoral Act, as the latter are concerned with the factual and legal content of such an advertisement. The ABA further submits that as the Electoral Commissioner is to be responsible for assessing whether or not an electoral advertisement contravenes the proposed section, the administration and enforcement of the proposed new section be the responsibility of the Australian Electoral Commission (AEC), and not the ABA.

The ABA takes this opportunity to reiterate the point made by the then Department of Communications in its letter to the AEC of 23 March 1998 that any proposed changes will need to have regard to the existing self-regulatory arrangements such as the FACTS Code of Practice and the FACTS Commercial Acceptance Division (CAD) as well as the AANA advertising industry code of ethics, under which the Advertising Claims Board has the power to resolve disputes concerning truth and accuracy in advertising.

For the reasons outlined above and in accordance with previous correspondence between the Department of Communications and the AEC in 1998, the ABA considers that the proposed amendments to the Electoral Act are not of issue to us as the jurisdictional aspects are clear, including an understanding by the relevant parties of their respective roles.

Should you require any further assistance in relation to this matter, please contact Tony Fielding by phone on (02) 9334 7883 or e-mail [Anthony.Fielding@ABA.gov.au](mailto:Anthony.Fielding@ABA.gov.au).

Yours sincerely



Giles Tanner  
General Manager

cc. DCITA



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## 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;

Clause 1

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- (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

Clause 2

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- (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 ABA, 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

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(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 ABA.

- (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 ABA any particulars of the record that the ABA, 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 ABA.
- (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 ABA, 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

Clause 6

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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 ABA 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 ABA 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 ABA, 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 ABA, 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.

Clause 6

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- (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.

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- (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.