

# Broadcasting and communication of political and election matter

## Background

The Australian Communications and Media Authority (the ACMA) regulates the broadcasting of political and election matters and the content of electronic communications.

This fact sheet provides general background information for broadcasters, political parties and election candidates, advertisers and the general public about the different media and the rules administered by the ACMA that apply to the communication of political and election matters, including specific conditions that apply during election periods.

## TELEVISION AND RADIO

Parts 1 and 2 of Schedule 2 to the *Broadcasting Services Act 1992* contain provisions that deal with access, timing and identification in relation to the broadcast of political and election matter. Election matter, political matter and election period are all defined in clause 1 of Schedule 2 to the *Broadcasting Services Act*.

The rules set out at Parts 1 and 2 of Schedule 2 to the *Broadcasting Services Act* are licence conditions that apply to commercial television broadcasting licensees, commercial radio broadcasting licensees, community broadcasting licensees, subscription television broadcasting licensees and persons providing broadcasting services under class licences (these include subscription and open narrowcasting services).

## Access for all parties

Clause 3 of Schedule 2 to the *Broadcasting Services Act* requires that if any election matter is broadcast during an election period by a broadcaster, then that broadcaster must give all parties contesting the election a reasonable opportunity to have election matter broadcast during the election period. The broadcaster is not required to broadcast material for free.

## Blackout period for election advertising

Clause 3A of Schedule 2 to the *Broadcasting Services Act* requires that a broadcaster must not broadcast an election advertisement from the end of the Wednesday before the polling day until the close of the poll on polling day, where an election is to be held

in an area which relates to a licence area, or an area where a broadcast can normally be received.

## Identifying certain political matter

Subclause 4(2) of Schedule 2 to the *Broadcasting Services Act* requires that, when broadcasting political matter at the request of another person, a broadcaster must cause the announcement of certain particulars in a form approved by the ACMA.

The following is the approved form for announcement of the required particulars, as defined in clause 1 of Schedule 2 of the *Broadcasting Services Act*:

1. *if the political matter is broadcast by radio, the broadcaster shall cause the required particulars to be broadcast in the form of a spoken announcement.*
2. *if the political matter is broadcast by television, the broadcaster shall cause the required particulars (other than those contained in paragraph (c) of the definition of required particulars in clause 1 of Schedule 2) to be broadcast in the form of a spoken announcement, and cause all the required particulars to be broadcast in the form of images of words.*
3. *in all cases, the required particulars must be broadcast in the same language as the political matter.*

The announcement must include details of the person authorising the political matter. A person authorises the broadcast only if they are responsible for the approval of its content and the decision to present it for broadcasting.

This condition applies at all times.

The particulars required to be broadcast about political matter are defined in Clause 1 of Schedule 2 to the *Broadcasting Services Act* as:

- (a) if the broadcasting was authorised by a political party:
  - (i) the name of the political party;
  - (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 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.

### **Keeping records of political matter broadcast at the request of another person**

Subclause 4(3) of Schedule 2 to the Broadcasting Services Act requires that a broadcaster must keep, for the required period, a record of the name, address and occupation of the person (or the name and address of the principal office, if the person is a company) that requests the broadcast of political matter. The required period is the longer of six weeks from the date of the broadcast or until the day on which the election ends (if the matter relates to an election or referendum and was broadcast during the relevant election period). The ACMA can direct a broadcaster (in writing) to keep records for a longer period.

These records must be given to the ACMA if requested by written notice.

### **Records relating to broadcast of a political subject or current affairs**

Subclauses 5(2), (3), (6) and (8) of Schedule 2 to the Broadcasting Services Act require that, if a broadcaster broadcasts matter that is in the form of news, an address, a statement, a commentary or discussion, and that matter relates to a political subject or current affairs, then the broadcaster must make a record of the matter in a form approved by the ACMA. The record must be kept for six weeks, or 60 days if a complaint has been made about the matter. The ACMA can direct a broadcaster in writing to retain a record for a longer period in particular circumstances. A broadcaster must make the record available to the ACMA at no charge.

This condition applies at all times.

### **Disclosure of commercial agreements that have the potential to affect current affairs program content**

The *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000*

(disclosure standard) applies to all commercial radio broadcasting licensees and requires:

- on-air disclosure during current affairs programs of commercial agreements between sponsors and presenters that have the potential to affect the content of those programs; and
- on-air disclosure during current affairs programs of the payment of production costs by advertisers and sponsors; and
- licensees to keep a register of commercial agreements between sponsors and presenters of current affairs programs and make it available to the ACMA and the public; and
- licensees to ensure that a condition of employment of presenters of current affairs programs is that they comply with relevant obligations imposed by the Act, the codes and the disclosure standard.

Compliance with the disclosure standard is a licence condition (see subclause 8(1)(b) of Schedule 2 to the Broadcasting Services Act).

This requirement applies at all times.

### **Extra advertisements on free to air commercial television**

Under clause 5.9 of the *Commercial Television Industry Code of Practice 2004*, where a licensee, for no charge, broadcasts a political debate between leaders of political parties at any time or a policy speech during an election period, then the non-program matter that has been displaced may be transferred to another time within 14 days of the shortfall (to a maximum of one minute in any one hour).

Extra advertisements are allowed on free-to-air commercial television during an election period. Clause 5.7.2 of the code provides that, between 6.00 pm and midnight during an election period, commercial free-to-air networks are allowed to broadcast an additional minute of non-program matter but the additional minute must comprise political matter and the network must provide a summary of all relevant non-program matter to Free TV Australia for public release.

### **Complaints**

Complaints about compliance with licence conditions or the provisions of the Broadcasting Services Act can be made directly to the ACMA. The ACMA must investigate any complaint received, unless the complaint is frivolous or vexatious, or not made in good faith.

Complaints about compliance with Codes (such as the Commercial Television Code of Practice) must be directed to the broadcaster in the first instance. The ACMA responds to such complaints only when the

complainant has not received a response from the broadcaster within 60 days of making the complaint or when the complainant is not satisfied with the response from the broadcaster and complains in writing to the ACMA.

## Enforcement

If a licence condition in relation to political or election matter is breached, the ACMA may take enforcement action, including the issue of remedial directions, or the acceptance of enforceable undertakings.

If a provision of the Commercial Television Code of Practice is breached, the ACMA may take enforcement action including the acceptance of enforceable undertakings, or the imposition of an additional licence condition.

## ELECTRONIC MESSAGES

The *Spam Act 2003* prohibits the sending of ‘unsolicited commercial electronic messages’, including email, short message service (SMS) and multimedia messaging service (MMS) messages.

Electronic messages authorised by certain bodies are exempted from this prohibition. The exemptions include messages authorised by:

- a government body;
- a registered political party;
- a religious organisation; and
- a charity or charitable institution.

To be exempted, the message must relate to goods or services and the individual or organisation that authorised the message must be the supplier of those goods or services. Purely factual messages with no commercial content are also exempted, but the sender must include accurate information to identify the individual or organisation as the authorised sender of the message.

This condition applies at all times.

## TELEMARKETING AND RESEARCH CALLS

The *Do Not Call Register Act 2006* provides that telemarketing calls authorised by a registered political party, an independent member of parliament; or a person who is a candidate for election for parliament, legislative assembly or local governing body are designated telemarketing calls under the Do Not Call Register Act. They are exempt from the prohibition on making a telemarketing call to an Australian number registered on the Do Not Call Register.

Designated telemarketing calls that are exempt from the Do Not Call Register Act must nonetheless comply with the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* in relation to prohibited

calling times. Research calls as defined under the industry standard—calls for the purposes of conducting opinion polling or to carry out standard questionnaire-based research—are prohibited outside specified calling times. These calling times apply to all Australian telephone numbers, not just those listed on the Do Not Call Register. For further information please refer to the Overview of industry standard – *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* available from [www.acma.gov.au](http://www.acma.gov.au)

Times when callers must not make or attempt to make calls without prior consent, as set out in the Telemarketing and Research Calls Industry Standard, are shown in the following table:

	Research calls	Telemarketing calls other than research calls
Weekdays	before 9.00 am or after 8.30 pm	before 9.00 am or after 8.00 pm
Saturday	before 9.00 am or after 5.00 pm	before 9.00 am or after 5.00 pm
Sunday	before 9.00 am or after 5.00 pm	All day
National public holidays	All day	All day

## ACMA RESPONSIBILITIES

While the ACMA has various responsibilities as highlighted in this Fact Sheet, it is not responsible for:

- making or administering rules about the authorisation of electoral advertisements—this is regulated by the Australian Electoral Commission and relevant state legislation; or
- election or political matter appearing on the internet (unless that material is prohibited content, potential prohibited content or unsolicited commercial electronic messaging); or
- determining whether an election or political advertisement is misleading or untrue; or
- dealing with complaints about false or defamatory statements about the personal character or conduct of a candidate.

*Please note: this document is intended as a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.*