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NSW Australia 2009

1 September 1999

Professor Richard Snape
Presiding Commissioner
Productivity Commission
Level 28
Telstra Tower
35 Collins Street
MELBOURNE VIC 3000



Dear Professor Snape

**SUPPLEMENTARY SUBMISSION TO THE PRODUCTIVITY COMMISSION -
BROADCASTING INQUIRY**

Following ASTRA's submission to and appearance at the proceedings of the Broadcasting Inquiry in May 1999, we noted that there were a number of issues raised by the Inquiry that required ASTRA's further attention. ASTRA agreed to report back to the Commission and now provides the Inquiry with the additional information as requested.

Please find our responses to the outstanding issues below:

1. ASTRA CODES OF PRACTICE

We enclose the Codes of Practice for your information as Annexure A.

2. HIGH QUALITY AUSTRALIAN DRAMA

As stated in our initial submission to the Commission, ASTRA's members are committed to producing new Australian programming. We recognise that Australian content has an important role to play in promoting and developing a sense of Australian identity, character and cultural diversity.

The Commission sought examples of specific new Australian drama productions, which have attracted pay TV investment. Apart from investment in employment and development in the Australian film and production sector, major film productions include *Kiss or Kill*, *Family Crackers*, *Two Hands*, *The Boys*, *Radiance*, *In the Winter Dark*, *In a Savage Land* and *Siam Sunset*.

3. INTEROPERABILITY

ASTRA has raised the issue of interoperability with Standards Australia. ASTRA's concern is that any decision on transmission and receiver standards should take into account the needs of all broadcasters including the needs of subscription television broadcasters, delivering their services via cable, MDS and satellite. As a result, Standards Australia has formed an Interoperability Committee chaired by Gerald Grant of Cable and Wireless Optus, as a representative of Digital Convergence Australia (DCA).

ASTRA has pursued its concerns through its membership of Standards Australia, DCA and the Digital Broadcasting Industry Co-ordinating Group (DBICG). ASTRA understands that DBICG (through Tim O'Keefe) has provided the Commission with a comprehensive paper on the issue of interoperability. ASTRA has provided technical and engineering input to this paper.

4. SUBSCRIBER NUMBERS

ASTRA plans to release audited subscriber numbers on a quarterly basis. The first quarterly report is not yet available, however, the latest published subscriber (active residential subscribers) numbers, as at 23 July 1999, for service providers, Optus Television, Foxtel and Austar was 1,038,000.

5. MEDIA RELEASE

We attach an ASTRA Media Release dated 19 August 1999 (as Annexure B) in response to the Seven network's ambit claim to use the publicly owned spectrum to provide multi-channel services. ASTRA has maintained, throughout the digital TV debate, that if the networks were given the full 7MHz and did not keep their promise of providing HDTV, then they should hand back the spectrum.

6. DIGITAL CONVERSION - NARROWCAST RADIO

A number of ASTRA radio narrowcast members made the point in their submissions to the Commission that radio narrowcast operators should not be omitted from the digital conversion plan for radio. While the Commission expressed surprise that any existing players would be excluded from the conversion, ASTRA notes the proposal from the commercial radio broadcast sector to exclude low powered open narrowcast services. Having only been included as part of the broadcasting environment since 1992 and given the competition provided by narrowcasting - this vital and diverse sector should not be excluded.

ASTRA appreciates the opportunity to make these supplementary submissions to the Commission. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Debra Richards
Executive Director

ANNEXURE A: ASTRA CODES OF PRACTICE

1. SUBSCRIPTION TELEVISION BROADCASTING CODES OF PRACTICE
2. TELEVISION OPEN NARROWCASTING
3. RADIO SUBSCRIPTION NARROWCASTING
4. RADIO OPEN NARROWCASTING

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The Australian Subscription Television and Radio Association (ASTRA)

Subscription Television Broadcasting Codes of Practice

April 1999

ASTRA SUBSCRIPTION TELEVISION BROADCASTING CODES OF PRACTICE

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SUBSCRIPTION TELEVISION BROADCASTING CODES OF PRACTICE

1. INTRODUCTION

1.1 Preamble

The Australian Subscription Television and Radio Association ("ASTRA") is the industry body representing, among others, companies allocated subscription television broadcasting licences ("Licensees") by the Australian Broadcasting Authority under Part 7 of the *Broadcasting Services Act 1992*. The majority of Licensee companies, and suppliers of subscription television services are members of ASTRA.

These Codes are intended to apply to all Licensees in accordance with Section 123(1) of the *Broadcasting Services Act 1992* and are registered by the Australian Broadcasting Authority in accordance with Section 123(4) of that Act.

Subscription (multi-channel) television broadcasting, commonly referred to as Pay TV, extends audience choice in terms of the range and diversity of entertainment and information programming. Pay TV services may be delivered by a number of technologies including: multipoint microwave distribution systems (MDS); broadcast direct by satellite to the home (DS or DTH); and broadband cable communications systems (CTV or Cable).

A major distinctive feature of Pay TV is the direct contractual relationship between the service provider and the subscriber. This voluntary relationship between the provider of a retail service and a subscriber to that service, provides subscribers with freedom of choice along with the capability and responsibility to select the programs they wish to receive. In this sense, Pay TV is in the nature of an invited guest, brought into the home in the full and prior knowledge of the guest's character.

The ABA recognised the unique characteristics of Pay TV when it commented in its *Final Report on Australian Content for Pay TV* that, "Pay TV operates by offering as a package a range of 'niche' or specialised programming channels which subscribers must pay to receive. Within this context it enhances viewing options and complements free to air services. Pay TV has a smaller target audience to commercial television which is provided free to air with no direct cost to the viewer ... Pay TV is further differentiated from free to air television in terms of the number of different channels, total hours broadcast, reduced advertising opportunities and the niche nature of much of its programming."

These Codes are designed to recognise the fundamental differences between the mass appeal and mass market target of free to air television and the niche nature of Pay TV. It is especially sensitive to the expectations of the audience about program and advertising content of particular channels at particular times especially as the audience is paying for the service.

Licensees will provide services in accordance with these Codes of Practice which are intended to provide clear and consistent information to enable consumers to make informed decisions about the nature of the programming they elect to receive.

Additionally, Licensees are committed to the protection of subscribers' interests in all aspects of their service provider-subscriber relationships. This will include issues relating to subscriber options, fault repair, subscriber privacy, credit management and billing, all of which are covered by the Codes.

Services providing programs which appeal to a limited audience are known as "narrowcasting" services. They are subject to separate Codes of Practice for that sector of the broadcasting industry administered by ASTRA. Licensees who provide both broadcasting and narrowcasting programming are subject to both sets of Codes of Practice.

Where a subscriber contracts to take a licensee's service by an agent of the licensee, rather than the licensee itself, these Codes will apply to the licensee.

1.2 Compliance with the Codes

Licensees undertake to comply fully with the 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) a reasonable reliance on information supplied by another person;
- (c) an act or default of another person, or an accident or some other cause beyond the Licensee's control, and the Licensee took reasonable precautions and exercised due diligence to avoid the failure.

Where it is possible to remedy a failure to comply with the Codes resulting from one or more of those circumstances, Licensees must do so promptly.

Licensees and subscribers may seek the advice of the Australian Broadcasting Authority in relation to compliance with the Codes.

While individual Licensees and the Pay TV industry are committed to implementing the Codes, it is ultimately the responsibility of the Australian Broadcasting Authority, under the terms of broadcasting regulatory arrangements laid down by the Parliament in the *Broadcasting Services Act 1992*, to require compliance with the Codes by Licensees.

In the unlikely event that a Licensee breaches the Codes and makes insufficient effort to correct that breach, the Act enables the Australian Broadcasting Authority to take appropriate action, up to and including imposing a condition of licence requiring that the Licensee comply with the Code. Continued breach of a condition of licence can lead to the revocation of the licence.

1.3 Review and Amendment of the Codes

ASTRA will monitor the operation of these Codes and review them one year from the date of effect. The 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 Broadcasting Authority.

2. PROGRAM CODES

These program codes have been adopted by Licensees to ensure the quality and reliability of services provided to subscribers, and to ensure a system of adequate prior knowledge on the part of subscribers as to the nature of programs being provided.

2.1 General Programs

- (a) Licensees will not knowingly broadcast any program which is likely to incite or perpetuate hatred against, or vilify, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or disability.
- (b) Licensees will not knowingly broadcast programs that:
 - simulate news or events in a way that misleads or alarms the audience;
 - depict the actual process of putting a person into a hypnotic state; or
 - are designed to induce a hypnotic state in the audience; or
 - use or involve the process known as "subliminal perception" or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness.
- (c) Programs will not be contrary to these Codes if said or done reasonably and in good faith:
 - in broadcasting an artistic work including comedy and satire;
 - 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;
 - in broadcasting a fair and accurate report of, or a fair comment on, any event or matter of identifiable public interest.

2.2 News and Current Affairs Programs

- (a) News and current affairs programs, including news updates, broadcast by Licensees must:
 - (i) present news accurately, fairly and impartially;
 - (ii) clearly distinguish the reporting of factual material from commentary, analysis or simulations;
 - (iii) not simulate news or events in a way that misleads or alarms the audience.
- (b) In broadcasting news and current affairs programs to the extent practicable licensees:
 - (i) must not present material in a manner which creates public panic;
 - (ii) must include only sparingly material likely to cause some distress to a substantial number of viewers;
 - (iii) must display sensitivity in broadcasting images of, or interviews with, bereaved relatives and survivors or witnesses of traumatic incidents.

- (c) In broadcasting news and current affairs programs licensees 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.

Note: The question of intrusion into private domains, such as bereavement or personal tragedy, is one of real difficulty for all providers of news and current affairs programs. It is a matter of balance between what should be reported in the interests of the general public and what, if reported, would cause an individual or group of individuals unnecessary anguish.

2.3 Program Promotions and News Updates

Licensees will have particular regard to the need to protect children from unsuitable material in program promotions, news updates and news promotions.

The content of program promotions, news updates and news promotions will be consistent with the classification of the programs during which updates or promotions appear and will, where relevant, include classification information about the programs being promoted, (see Part 3 of these Codes).

The content of news updates and news promotions will be consistent with the classification of the programs during which updates or promotions appear.

Program promotions or station promotions must be readily distinguishable from program material.

2.4 Closed Captioning

Where closed captioning programming is made available it will be clearly identified with program schedule information provided to the press.

When a Licensee considers introducing closed-captioned programming, or extending the range of programs captioned, it will consult with organisations representing deaf and hearing-impaired viewers and organisations specialising in providing closed-captioning.

3. PROGRAM CLASSIFICATION CODE

Licensees will classify films and drama programs, applying the program classification system contained in the *Guidelines for the Classification of Films and Videotapes* issued by the Office of Film and Literature Classification which appear below. Classifications, together with appropriate consumer advice, will be provided to ensure adequate warning regarding program content as set out in clause 3.5.

Licensees will use their best endeavours to ensure that, where other programs are classified they will carry only OFLC classification symbols. This classification will have particular regard to the protection of children and will take into account the OFLC Guidelines below.

3.1 Program Classifications

Licensees will apply the following *Guidelines for the Classification of Films and Videotapes* issued by the Office of Film and Literature Classification to all films and drama programs.

Office and Film and Literature Classification Guidelines for the Classification of Films and Videotapes

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take into account community concerns about:
 - (i) depictions that condone or incite violence, particularly sexual violence; and
 - (ii) the portrayal of persons in a demeaning manner.

Guidelines for Films and Videotapes

Why a movie is rated G?

G General (suitable for all ages)

This is a category which is considered suitable for all viewers.

The G classification symbol does not necessarily indicate that the film is one that children will enjoy. Some G films contain themes or story-lines that are of no interest to children.

Parents should feel confident that children can watch material in this classification without supervision. Material classified G will not be harmful or disturbing to children. Whether or not the film is intended for children, the treatment of themes and other classifiable elements will be careful and discreet.

Violence: Violence may be very discreetly implied, but should:

- have a light tone, or
- have a very low sense of threat or menace, and
- be infrequent, and
- not be gratuitous

Sex: Sexual activity should:

- only be suggested in very discreet visual or verbal references, and
- be infrequent, and
- not be gratuitous

Coarse

Language:

Coarse language should:

- be very mild and infrequent, and
- not be gratuitous

Why a movie is rated PG?

PG Parental Guidance (parental guidance recommended for persons under 15 years).

The PG classification signals to parents that material in this category contains depictions or references which could be confusing or upsetting, to children without adult guidance. Material classified PG will not be harmful or disturbing to children.

Parents may choose to preview the material for their children; some may choose to watch the material with their children. Others might find it sufficient to be accessible during or after the viewing to discuss the content.

<i>Violence:</i>	Violence may be discreetly implied or stylised, and should also be: <ul style="list-style-type: none"> •mild in impact, and •not shown in detail
<i>Sex:</i>	Sexual activity may be suggested, but should: <ul style="list-style-type: none"> •be discreet, and •be infrequent, and •not be gratuitous Verbal references to sexual activity should be discreet
<i>Coarse Language:</i>	Coarse language should be mild and infrequent.
<i>Adult Themes:</i>	Supernatural or mild horror themes may be included. The treatment of adult themes should be discreet and mild in impact More disturbing themes are not generally dealt with at PG level.
<i>Drug Use:</i>	Discreet verbal references and mild, incidental visuals of drug use may be included, but these should not promote or encourage drug use.
<i>Nudity:</i>	Nudity outside of a sexual context should not be detailed or gratuitous

Why a movie is rated M (15+)?

M (15+) Mature (recommended for mature audiences 15 years and over).

The mature category is advisory and not legally restricted. However, material in this category cannot be recommended for those under 15 years.

Films classified M contain material that is considered to be potentially harmful or disturbing to those under 15 years. Depictions and references to classifiable elements may contain detail. However, the impact will not be so strong as to require restriction.

<i>Violence:</i>	Generally, depictions of violence should: <ul style="list-style-type: none"> •not contain a lot of detail and •not be prolonged <p>In realistic treatments, depictions of violence that contain detail should:</p> <ul style="list-style-type: none"> •be infrequent and •not have a high impact and/or •not be gratuitous <p>In stylised treatments, depictions of violence may contain more detail and be more frequent if this does not increase the impact.</p> <p>Verbal and indirect visual references to sexual violence may only be included if they are:</p> <ul style="list-style-type: none"> • discreet and infrequent, and • strongly justified by the narrative or a documentary context.
<i>Sex:</i>	Sexual activity may be discreetly implied. Nudity in a sexual context should not contain a lot of detail, or be prolonged. Verbal references to sexual activity may be more detailed than depictions if this does not increase the impact.
<i>Coarse Language:</i>	Coarse language may be used. Generally coarse language that is stronger, detailed or very aggressive should: <ul style="list-style-type: none"> • be infrequent and • not be gratuitous

<i>Adult Themes:</i>	Most themes can be dealt with, but the treatment should be discreet, and the impact should not be high.
<i>Drug Use:</i>	Drug use may be discreetly shown. Drug use should not be promoted or encouraged.
<i>Nudity:</i>	Nudity outside of a sexual context may be shown but depictions that contain any detail should not be gratuitous.

Why a movie is rated MA (15+)?

MA (15+) Mature (restrictions apply to persons under the age of 15 years)*

***The MA category is legally restricted. Children under fifteen will not be allowed to see MA films in the cinema or hire them on video unless in the company of a parent or adult guardian.**

Material classified MA deals with issues or contains depictions which require a mature perspective. This is because the impact of individual elements or a combination of elements is considered likely to be harmful or disturbing to viewers under 15 years of age.

Violence: Generally, depictions of violence should not have a high impact.
Depictions with a high impact should be infrequent, and should not be prolonged or gratuitous.

Realistic treatments may contain detailed depictions, but these should not be prolonged.

Depictions of violence in stylised treatments may be more detailed and more frequent than depictions of violence in close to real life situations or in realistic treatments if this does not increase the impact.

Visual suggestions of sexual violence are permitted only if they are not frequent, prolonged, gratuitous or exploitative.

Sex: Sexual activity may be implied.
Depictions of nudity in a sexual context which contain detail should not be exploitative.

Verbal references may be more detailed than depictions if this does not increase the impact.

Coarse Language: Coarse language may be used.
Coarse language that is very strong, aggressive or detailed should not be gratuitous.

Adult Themes: The treatment of themes with a high degree of intensity should be discreet.

Drug Use: Drug use may be shown, but should not be promoted or encouraged.
More detailed depictions should not have a high degree of impact.

Why a movie is rated R (18+)?

R (18+) Restricted (restricted to adults 18 years and over).

The R category is legally restricted to adults. Material which is given a restricted classification is unsuitable for those under 18 years of age. Material classified R deals with issues or contains depictions which require an adult perspective.

The classification is not intended as a comment on the quality of the material. Some material may be offensive to some sections of the adult community. Material which promotes or incites or instructs in

matters of crime and/or violence is not permitted.

- Violence:* Depictions of violence which are excessive will not be permitted.
- Strong depictions of realistic violence may be shown but depictions with a high degree of impact should not be gratuitous or exploitative.
- Sexual violence may only be implied and should not be detailed.
- Depictions must not be frequent, gratuitous or exploitative.
- Gratuitous, exploitative or offensive depictions of cruelty or real violence will not be permitted.
- Sex:* Sexual activity may be realistically simulated; the general rule is "Simulation, yes - the real thing, no".
- Nudity in a sexual context should not include obvious genital contact.
- Verbal references may be more detailed than depictions.
- Coarse Language:* There are virtually no restrictions on coarse language at R level.
- Adult Themes:* The treatment of any themes with a very high degree of intensity should not be exploitative.
- Drug Use:* Drug use may be shown but not gratuitously detailed.
Drug use should not be promoted or encouraged.
Detailed instruction in drug misuse is not permitted.

Since May 1989, films and videos that are classified at a level higher than "G" (except those films classified RC) also carry, in addition to the classification symbol, a consumer advice line. The consumer advice gives the principal elements which have contributed to the classification of a film or video and indicates their intensity and/or frequency.

The list which follows is not exhaustive, but contains those elements appearing most often. They may, of course, be used in various combinations.

On those occasions when the consumer advice on this list is not appropriate for a particular film, or, very rarely, when elements in a "G" film may warrant a warning, the Censorship Board will use its discretion in applying a suitable brief advice.

G Some scenes may be unsuitable for very young children.

- PG *Violence:* Low level violence, medium level violence.
Sex: Low level sex scenes, medium level sex scenes.
Language: Low level coarse language, medium level coarse language.
Other: Drug references, adolescent themes/issues, adult themes, nudity, sexual references, war footage, supernatural theme, comic horror, martial arts instruction, safety awareness, motor accident footage.
- M 15+ *Violence:* Low level violence, medium level violence.
Sex: Low level sex scenes, medium level sex scenes.
Language: Low level coarse language, medium level coarse language.
Other: Nudity, drug references, drug use, adolescent themes/issues, adult themes, sexual references, supernatural theme, horror theme, war footage, martial arts instruction.
- MA 15+ *Violence:* Medium level violence, high level violence.
Sex: Medium level sex scenes, high level sex scenes.
Language: Medium level coarse language, high level coarse language.
Other: Drug use, nudity, sexual references, adult themes, horror theme, martial

arts instruction, contains graphic images of injuries.

<u>R</u>	<i>Violence:</i>	Medium level violence.
	<i>Sex:</i>	Medium level sex scenes, high level sex scenes.
	<i>Language:</i>	Medium level coarse language, high level coarse language.
	<i>Other:</i>	Drug use, nudity, sexual references, sex education, health education, drug education, adult themes, horror theme, martial arts instruction, mainly concerned with sex (special genre only).

The terms "adult themes" and "sexual references" are used to describe numerous different elements as follows:

ADULT THEMES issues dealing with aspects of adult life that are potentially harmful to minors, or disturbing. Adult themes may include verbal references to and depictions associated with issues such as suicide, crime, corruption, marital problems, emotional trauma, drug and alcohol dependency, death and serious illness, racism, religious issues.

3.2 Programs not to be Broadcast

Licensees will ensure that access to programs classified as "R", if and when permitted by Parliament, can be restricted by disabling devices acceptable to the Australian Broadcasting Authority.

Note: It is a condition of licence that:

X-rated programs and programs classified 'RC' (refused classification) by the Office of Film and Literature Classification will not be broadcast by Licensees.

Programs classified as "R" will not be broadcast by Licensees until Parliament has approved the broadcast of such programs on subscription television.

3.3 Disabling Devices

Licensees will ensure that information on the operation of such disabling devices will be provided to subscribers on installation.

3.4 Television Classification Symbols

For programs classified "PG" and above, the classification symbol for the film or drama program being shown will be clearly displayed at the commencement of the program and in program guides.

3.5 Consumer Classification Advice

For "M" and "MA" films and drama programs consumer advice concerning the reasons for a classification must be given prior to the commencement of a program. The advice will be in a style consistent with the guidelines on consumer advice published by the Office of Film and Literature Classification.

4. SUBSCRIBER CODE

As the basis of all subscription television broadcasting is dependent on a direct contractual relationship between the supplier and the consumer, Licensees will inform prospective subscribers about the nature of the service they are subscribing to, including service options, prices and program content.

Licensees are conscious of the importance of being open and informative in their relationship with subscribers and the need to implement arrangements which ensure fairness in their dealings with subscribers. These considerations will be reflected in management processes, methods of billing, responsibility for fault repair, service costs, credit arrangements and subscriber privacy.

Licensees will express agreements with subscribers in "plain English".

4.1 Subscriber Options

If a Licensee rents domestic reception equipment to a subscriber, the rental agreement must allow the subscriber to terminate the agreement on giving one month's written notice to the Licensee.

Note: It is a requirement of the Broadcasting Services Act 1992 that Licensees must make available as an option, domestic reception equipment on a rental basis.

4.2 Fault Repair

Licensees will ensure a high quality service is available to subscribers. This includes timely response to reported service faults.

Subscribers should initially contact the Licensee with questions or disputes about Fault Repair. In the event that a subscriber is not satisfied with the outcome of discussions with the Licensee, the relevant consumer advisory service of the state or territory in which the subscriber resides should be contacted for advice. A list of relevant consumer advisory services prepared by the ABA is attached to these Codes as Attachment B.

Note: The viability of subscription television broadcasting is directly dependent on the level of customer service achieved, including ensuring the subscribers' service is always in full working order.

4.3 Subscriber Privacy

- (a) Licensees have a general duty of confidentiality towards subscribers and will take reasonable steps to protect the privacy of subscribers.
- (b) Licensees will not, without a subscriber's express consent, disclose personal information, except to a related entity of the Licensee for the purpose of providing a subscription television service. A related entity is one which provides services related or ancillary to subscription broadcasting, such as installation of the necessary reception equipment and fault repair.
- (c) Licensees will inform subscribers as to the intended use of personal information collected by the licensee, prior to, or at the time of receipt of that information.
- (d) Licensees may only use personal information about a subscriber for a purpose otherwise than as indicated in 4.3(c), with the subscriber's consent.

4.4 Credit Management and Billing

Subscribers should initially contact the Licensee with questions or disputes about credit management and billing. In the event that a subscriber is not satisfied with the outcome

of discussions with the Licensee, the Licensee will refer the subscriber to the relevant consumer advisory service of the state or territory in which the subscriber resides (see Attachment B).

4.5 Review of Subscriber Code

ASTRA will monitor subscriber response to credit management, billing, fault repair and servicing and give specific consideration to this area when Codes of Practice are being reviewed.

5 COMPLAINTS CODE

This section applies to any matter covered by the preceding Codes which is the subject of a complaint to a Licensee. Licensees will ensure that relevant staff are aware of the Codes and their provisions, the importance of handling customer complaints professionally and the procedures to be followed in doing so.

5.1 Oral and Written Complaints

A complaint in the first instance should be made to the Licensee. A complaint must adequately identify the matter complained of, the nature of the complaint, and the identity of the complainant.

- (a) Every effort will be made to deal with a telephone complaint during the course of the telephone call. If the complaint cannot be properly dealt with immediately Licensees will respond within the shortest possible period from initial receipt of the complaint.
- (b) In some circumstances complainants may be asked to put their complaint in writing, for example, if it concerns a matter which is too complex to be dealt with in a telephone conversation. Licensees will respond to written complaints within the shortest practicable period from the date of receipt of the complaint. If the complainant has not received a response within 60 days of making the complaint, or considers the response to be inadequate, he or she may refer the complaint to the Australian Broadcasting Authority.
- (c) The Licensee will make every reasonable effort to resolve complaints except where a complaint is frivolous, vexatious or not made in good faith.
- (d) If a Licensee receives a written complaint within 30 days of the date of broadcast, then the licensee will use its best endeavors to ensure that the tape of the program will be retained by the licensee until the matter is resolved.

Licensees will maintain a record of written complaints received and make a summary available to the Australian Broadcasting Authority annually or on request.

5.2 Referral of Complaints to the Australian Broadcasting Authority

In responding to a written complaint Licensees will advise complainants that if he or she is not satisfied with the Licensee's response, the complaint may be referred to the Australian Broadcasting Authority.

5.3 Publicising of Codes

Licensees will publicise the availability of the ASTRA Codes of Practice at regular intervals in program guides and will advise subscribers at the time of subscription that the Codes (including complaints procedures) are available. Copies of the Codes will be provided to the public on request.

6. ADVERTISING CODE

6.1 Content of Advertising

(a) *Adopting Other Codes*

Advertisements broadcast by Licensees must comply with the Australian Association of national Advertisers Code of Ethics and Licensees must refer advertising complaints to the Advertising Standards Bureau where appropriate.

Licensees must, to the extent applicable, ensure advertisements promoting goods or services defined in the:

- Weight Management Code of Practice;
- Therapeutic Goods Advertising Code; and
- Alcohol Beverages Advertising Code,

comply with those Codes and must refer any specific complaints relating to these types of advertisements to the body administering those Codes.

(b) *Offensive Advertising*

Advertising shall not deliberately cause serious offense to the intended audience of the channel on which the program, with which the advertisement is broadcast, is shown.

(c) *Compliance with Legislation*

Advertising must comply with all relevant requirements of State and Federal Law, including without limitation the *Trade Practices Act*.

(d) *Dangerous Behaviour*

Advertising shall not promote illegal or unsafe road usage practices or encourage other similar, dangerous behaviour.

(e) *Discrimination*

Advertising shall not unlawfully discriminate against any individual or group.

(f) *Tobacco Advertising*

A Licensee shall not, in contravention of the *Tobacco Advertising Prohibition Act, 1992*, broadcast a tobacco advertisement within the meaning of that Act.

(g) *Competitions*

Advertising inviting the public to take part in competitions shall comply with relevant laws.

6.2 Classification of Advertisements

All advertisements must be given an appropriate television classification based on the usual classification criteria of the Office of Film and Literature Classification.

6.3 Advertising Directed at Children

This code recognises that special care must be shown in the broadcast of advertisements on channels intended for consumption by children. This clause applies only to advertising broadcast within a block or blocks of programming aimed at children ("**Children's Advertising**").

- (a) No products or services may be advertised, or advertising styles deployed, that could place children in physical, mental or moral jeopardy. All Children's Advertising must be clearly distinguishable from the programming in which it appears.
- (b) Children's Advertising should not seek to exploit children's innate credulity, loyalty and sense of fair play.
- (c) Each channel that broadcasts Children's Advertising will publish its own code specifically addressing advertising directed at children.
- (d) For the purposes of this code, unless specifically stated, "children" are defined as those people within the pre-school or the primary school age range.

6.4 Approval of Advertisements

Where the Licensee is responsible for the production of any of the content of an advertisement to be carried it shall be responsible for ensuring that the advertisement complies with the requirements set out in clause 6.2 of this Code.

6.5 Scheduling of Advertisements

This clause has been developed to acknowledge the unique relationship between a Licensee and its audience. It also acknowledges the technology available to Pay Television subscribers which includes the ability to entirely block out the channel or in some instances to block certain levels of classified material ("**Parental Lock**").

- (a) The Licensee must take into account the intellectual and emotional maturity of its intended audience when scheduling advertisements in the following categories:
 - Advertising of Alcoholic Beverages
 - Advertising relating to Betting or Gambling
 - Advertising relating to intimate products such as condoms, sanitary napkins and tampons etc

- Advertising for cinema or video, particularly those products aimed at an adult audience
 - Advertising relating to religion
 - Advertising inviting responses via a *Premium Rate Telephone Service* (ie, 0055, 1 900 numbers)
 - Advertising relating to merchandising particularly when associated with children's programming
 - Advertising directed at children
 - Advertising relating to competitions.
- (b) Each Channel Provider will be expected to develop an individual Code of Practice for that particular Channel and lodge a copy of those Standards and Practices with ASTRA and the Australian Broadcasting Authority.
- (c) Where appropriate the Licensee will promote the use of the Parental Lockout device or other similar technology.

ATTACHMENT A - DEFINITIONS

"ABA" is the Australian Broadcasting Authority.

"Advertising" means all advertising for which the Licensee receives payment or other valuable consideration for broadcast in breaks within or between the programs or by visual and/or oral superimposition on a program. For the avoidance of doubt Advertising does not include on-air station ID's promotional spots or image campaigns for the individual channel nor does it include community service announcement or advertisements on behalf of election authorities.

"broadcasting service" is a service that delivers television and radio programs to persons having equipment appropriate for receiving that service, irrespective of the delivery technology, but does not include a service that is no more than text or is available on demand on a point-to-point basis.

"Channel Provider" means an entity which provides an entire channel of programming to a Licensee in return for payment or other valuable consideration.

"Classification Board" is the statutory authority responsible for the classification of films and videotapes, and is located with the Sydney office of the Office of Film and Literature Classification.

"closed captioning" means the subtitling of programs for the hearing impaired, visible on Teletext-capable receivers.

"Codes" are rules, developed and endorsed by the subscription television broadcasting industry, formulated to reflect community standards in program content and presentation, and to ensure fair dealing with customers with regard to billing, fault repair, privacy and credit management.

"domestic reception equipment" is defined by the ABA as meaning all equipment supplied by the licensee, including both hardware and software, that is necessary to receive the service for home consumption by a subscriber. This includes the device that is used to descramble electromagnetic signals to allow programs to be displayed, for example, on a conventional television set used by the subscriber.

"disabling device" is an appliance which allows consumers to disable reception of a particular program or channel by the domestic reception equipment.

"drama" for the purposes of these Codes drama includes:

- (a) a feature film of the kind that is commonly screened as a main attraction in commercial cinemas; and
- (b) a film that is similar in nature to a feature film but was produced for broadcasting on television; and
- (c) a mini series produced for broadcasting on television comprising an extended but self-contained drama and that is designed to be broadcast in 2 or more sequential parts; and
- (d) a drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes each of which:
 - (i) has a self-contained plot; and

- (ii) can be broadcast in any order; and
- (e) a continuing drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes that are arranged into a consecutive series for broadcasting.

"Guidelines" refers to the current Guidelines for the Classification of Films and Videotapes, approved by the Commonwealth, State and Territory Classification Ministers, which came into effect in July 1996.

"Licensee" means a holder of a subscription television broadcasting licence allocated by the ABA under the *Broadcasting Services Act 1992*.

"licence" means a licence allocated by the ABA under the *Broadcasting Services Act 1992*.

"news and current affairs programs" means programs which report on current or recent happenings and include short bulletins, filmed coverage of international, national and local events, report on weather and essential services.

"Office of Film and Literature Classification" provides administrative support to the Classification Board as well as policy advice to government regarding classification and other related issues.

"personal information" are details provided by the subscriber to the Licensee for the purposes of the provision of a subscription television broadcasting service.

"program" in relation to a broadcasting service, means:

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

"program promotions" are announcements and previews advertising scheduled programs.

"subscriber" means a person that enters into an agreement with a subscription television broadcaster to receive a subscription television broadcast service.

"subscriber classification advice" is a printed or spoken notification explaining why a program is classified as "PG", "M", "MA" or "R", indicating the presence and level of violence, explicit sex scenes and/or language in the program.

"subscription fee" means any form of consideration given or requested in exchange for the reception of programs.

"subscription broadcasting service" are broadcasting services that:

- (a) provide programs that, when considered in the context of the services being provided, appear to be intended to appeal to the general public; and
- (b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and

- (c) comply with any determinations or clarifications under section 19 of the *Broadcasting Services Act 1992* in relation to subscription broadcasting services.

"subscription television broadcast services" are subscription broadcasting services that provide television programs to subscribers.

ATTACHMENT B - CONSUMER AGENCIES

Contact Details by State

The majority of agencies set out below are state based offices. All except the Australian Competition and Consumer Commission (the ACCC) and those under the "Federal" heading on the final page, handle consumer complaints under state legislation.

The ACCC, which administers the *Trade Practices Act*, now includes the former Prices Surveillance Authority. In most instances, consumers will have rights under both the *Trade Practices Act* ("TPA") and state consumer legislation. However, the ACCC is unlikely to accept single consumer issues relating to fault repair or credit and billing issues. Also, while the TPA is limited to transactions between corporations and consumers, state consumer legislation, such as the NSW Fair Trading Act is not. It would therefore seem to be in the complainant's best interest to refer them to the nearest state based agency which administers consumer legislation.

While agencies will offer advice over the telephone, in most instances action will only be taken for written complaints.

It is the ABA's understanding that each state consumer/fair trading agency administers matters such as fair trading, consumer claims, credit and contracts under the relevant state government acts. The referral of complaints relating to fault repair, credit management and billing is therefore able to be dealt with in each Australian state or territory in which the complainant resides.

For example, in New South Wales, following legislation, potentially relevant to ASTRA Codes is administered by the NSW Department of Fair Trading; the Commercial Tribunal Act; Consumer Claims Tribunal Act; Fair Trading Act and Credit Act.

Consumer information is also available on the Internet. These are identified with each state listing. The general address is [HTTP://www.nla.gov.au/oz/gov/...](http://www.nla.gov.au/oz/gov/) under the "state governments" listing. These home pages offer information on consumer rights as well as some contact information for state agencies.

A somewhat different organisation, the Australian Commercial Disputes Centre, which is based in Sydney, provides a service for resolving commercial disputes using Alternative Dispute Resolution (ADR) techniques which include mediation and conciliation.

Where possible, new Telstra telephone numbers are shown in contact details listed below.

AUSTRALIAN CAPITAL TERRITORY

Consumer Affairs Bureau

Level 2, GIO House
250 City Walk
CANBERRA ACT 2601
(GPO Box 158 CANBERRA 2601)
(02) 6207 0400
Fair Trading: (02) 6207 0722
www.consumer.act.gov.au

Small Claims Court

(02) 6217 4272

ACCC
470 Northbourne Avenue
(PO Box 1199)
DICKSON ACT 2602

(02) 6243 1111

VICTORIA

Office of Fair Trading and Business Affairs

Level 2, 452 Flinders Street
MELBOURNE VIC 3000
(GPO Box 123A MELBOURNE VIC 3001)
(03) 9627 6000
1 800 634 389 – gives regional callers nearest available agency
www.justice.vic.gov.au
(03) 9627 6020 – TTY

Consumer Credit Legal Service
(03) 9670 5088

Victorian Civil & Administrative Tribunal (for small claims)
Level 7, 55 Kings Street
MELBOURNE VIC 3000
(03) 9628 9755

ACCC
Level 35, 360 Elizabeth Street
MELBOURNE VIC 3000
(03) 9290 1800

TASMANIA

Office of Consumer Affairs & Fair Trading

99 Bathurst Street
HOBART TAS 7000
(GP Box 1244J HOBART 7001)
(03) 6233 4567
1 800 005 220
www.justice.tas.gov.au/ca
Fax: (03) 6233 4509

Devonport
8 Griffith Street
DEVONPORT TAS 7310
(03) 6421 7858

ACCC
AMP Building
Level 3/86 Collins Street
HOBART TAS 7000
(GPO Box 1210M HOBART 7001)
(03) 6234 5155

NEW SOUTH WALES

Department of Fair Trading
Head Office
1 Fitzwilliam Street
PARRAMATTA NSW 2150
(PO Box 972 PARRAMATTA 2124)
(02) 9895 0119 – General Office
(02) 9685 2144 – Consumer Enquiries
www.fairtrading.nsw.gov.au

Sydney Office
Level 15, 33 Bligh Street
SYDNEY NSW 2000
(02) 13 32 20

Blacktown Office
87 Main Street
BLACKTOWN NSW 2148
(02) 9261 4444

Hurstville Office
Level 4, 4-8 Woodville Street
HURSTVILLE NSW 2220
(02) 9570 5544

Liverpool Office
Level 1/47 Scott Street
LIVERPOOL NSW 2170
(02) 9602 2555

Penrith Office
518 High Street
PENRITH NSW 2750
(02) 9338 4999

Interpreter Service
13 14 50

Consumer Claims Tribunal
Level 7, 175 Castlereagh Street
SYDNEY NSW 2000
(PO Box E166, St James 2000)
(02) 9895 2070

Consumer Credit Legal Centre

72 Cooper Street

SURRY HILLS NSW 2010

(02) 9212 4216

ACCC5th Floor, 77 Castlereagh Street,

SYDNEY NSW 2000

(GPO Box 3648 SYDNEY 2001)

(02) 9230 9133

ACCC Tamworth

(02) 67612 000

Department of Fair Trading – NSW Regional Centres

Albury	(02) 6041 3222
Armidale	(02) 6773 8100
Broken Hill	(02) 8087 8033
Coffs Harbour	(02) 6651 2847
Dubbo	(02) 6884 2611
Gosford	(02) 4324 6300
Goulburn	(02) 4822 1277
Grafton	(02) 6643 1705
Lismore	(02) 6622 1620
Newcastle	(02) 4929 5362
Orange	(02) 6361 9866
Port Macquarie	(02) 6584 1330
Queanbeyan	(02) 6299 3433
Tamworth	(02) 6766 3155
Tweed Heads	(07) 5599 5211
Wagga Wagga	(02) 6921 5166
Wollongong	(02) 4228 3433

QUEENSLAND**Office of Fair Trading**

State Law Building

50 Ann Street

BRISBANE QLD 4000

(PO Box 3111 BRISBANE 4001)

General Inquiries (07) 3246 1500 phone

(07) 3246 1504 fax

(07) 3246 1588 TTY

www.consumer.qld.gov.au**Consumer Affairs Bureau – Regional Queensland Offices****Bundaberg**

PO Box 5398

WEST BUNDABERG Q 4670

(07) 4121 8000

Cairns

PO Box 2362

CAIRNS Q 4870

(07) 4042 3300

Mackay

PO Box 146

MACKAY Q 4760

(07) 4944 0793

Maroochydore

PO Box 870

MAROOCHYDORE Q 4558

(07) 5430 8900

Maryborough

PO Box 134

MARYBOROUGH Q 4650

(07) 4123 0145

Rockhampton

PO Box 303

ROCKHAMPTON Q 4700

(07) 4920 6600

Southport

PO Box 2565

SOUTHPORT Q 4215

(07) 5581 3300

Toowoomba

PO Box 841

TOOWOOMBA Q 4350

(07) 4632 4028

Townsville
PO Box 2009
TOWNSVILLE Q 4810
(07) 4753 2200

Small Claims Tribunal
50 Ann Street
BRISBANE QLD 4000
(07) 3247 4578

ACCC
10th Floor, 500 Queen Street
BRISBANE QLD 4000
(GPO Box 91 BRISBANE QLD 4001)
(07) 3825 4666

ACCC
Floor 6/Flinders Mall
TOWNSVILLE QLD 4810
(PO Box 2016 TOWNSVILLE QLD 4810)
(07) 4771 2712

WESTERN AUSTRALIA**Ministry of Fair Trading**

4th Floor, 251 Hay Street
EAST PERTH WA 6004
(PO Box 6355 EAST PERTH 6892)
(08) 9222 0666
1800 199 117 - Country callers
(08) 9222 0742 TTY
www.fairtrading.wa.gov.au

Ministry of Fair Trading - Regional WA Offices**Albany**

2/129 Aberdeen St
ALBANY WA 6330
(08) 9842 8366

Bunbury

65 Wittenoom Street
BUNBURY WA 6230
(08) 9791 2409

Geraldton

Geraldton Shopping Centre
1st Floor, 8 Chapman Road
GERALDTON WA 6530
(08) 9964 5644

Kalgoorlie

377 Hannan Street
KALGOORLIE WA 6430
(08) 9021 0811

Karratha

State Government Building
Cnr. Welcome Road
KARRATHA WA 6714
(08) 9185 0122

ACCC

3rd Floor, Eastpoint Plaza
233 Adelaide Terrace
PERTH WA 6000
(PO Box 6381 EAST PERTH WA 6892)
(08) 9325 3622

SOUTH AUSTRALIA**Office of Consumer & Business Affairs**

Level 4/91-97 Grenfell Street

ADELAIDE SA 5000

(GPO Box 1719 ADELAIDE SA 5001)

(08) 8204 9777

Country Callers: 131 882 gives information for nearest regional officewww.ocba.sa.gov.au**Small Claims Court**

Civil Courts

260-280 Victoria Square

ADELAIDE SA 5000

(08) 8226 1777

ACCC

13 Grenfell Street

ADELAIDE SA 5000

(GPO Box 922 ADELAIDE SA 5001)

(08) 8205 4242

NORTHERN TERRITORY**Office of Consumer and Business Affairs**

43 Mitchell Street

DARWIN NT 0800

(GPO Box 1722 DARWIN NT 0801)

(08) 8999 5184

1800 019 319

www.nt.gov.au/caft**Alice Springs**

67 North Stuart Highway

ALICE SPRINGS NT 0870

(08) 8951 8606

Small Claims Court

Cnr Cavenagh and Bennett Streets and Nichols Place

DARWIN NT 0800

(08) 8999 7350

ACCC

Level 8, National Mutual Building

9 Cavenagh Street

DARWIN NT 0800

(08) 8943 1499

FEDERAL

The Community Relations Officer
Office of Film and Literature Classification
Level 1, 255 Elizabeth Street, Sydney 2000
Telephone (02) 9581 7000

Privacy Commissioner

(relates to consumer credit issues only - Australia wide - no state based offices)

Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
(GPO Box 5218 SYDNEY 2001)
(02) 9284 9600

1800 023 985 toll free
1300 363 992 hotline

Prices Surveillance Authority

This authority is now merged with the ACCC.

OTHER**Australian Commercial Disputes Centre**

Level 4, 50 Park Street
SYDNEY NSW 2000
(02) 9267 1000

ASTRA CODES OF PRACTICE

**TELEVISION
OPEN
NARROWCASTING**

REGISTERED BY ABA , 20TH MAY 1999

AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION Inc.

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Attachment B:	Office of Film and Literature Classification Guidelines for the Classification of Films and Videotapes.

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.
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 Section 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.
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 of the Act, which covers matters including:
 - a ban on tobacco advertising;
 - a requirement to comply with these Codes and any applicable program standards approved by the ABA;
 - a condition not to use the broadcasting service to commit a legal 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 record of material broadcast.

The relevant sections 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 and placement of programs, and customer service.

(C) REVIEW & AMENDMENT OF THE CODES

1. These Codes will be reviewed within two years of taking effect, and thereafter every three years. Such reviews will include a process of wide community consultation.
2. Where changes to Codes are necessary the Australian Subscription Television and Radio Association Inc. will consult with the Australian Broadcasting Authority.

(D) PUBLICISING THE CODES

1. Narrowcasters and service providers will publicise the availability of the ASTRA Codes of Practice at regular intervals in program guides and/or during broadcast time, where appropriate.

DEFINITIONS:

"narrowcaster" means the person or organisation providing a narrowcast service as defined in the Broadcasting Services Act.

"service provider" is the distributor of a narrowcasting service, and may be a distinct legal entity to the 'narrowcaster'.

"closed captioning" means the subtitling of programs for the hearing impaired, visible on Teletext-capable receivers.

"personal information" are details provided by the subscriber to the narrowcasters and service providers for the purpose of the provision of a subscription narrowcasting service.

"program" as defined in the Broadcasting Services 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.

"consumer advice" is a printed and spoken notification explaining why a program is classified for example as 'PG', 'M', or 'MA', indicating the presence and level of violence, explicit sex scenes and/or language in the program.

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 and service providers 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 and service providers will not broadcast programs which are likely to incite or perpetuate hatred against or gratuitously vilify any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, colour, physical or mental disability. A narrowcaster or service provider may not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivities of Aboriginal and Torres Strait Islander people or of ethnic groups or racial groups in the Australian community.
- 1.4 Narrowcasters and service providers will not broadcast programs that:
 - (a) depict the actual process of putting a person into a hypnotic state; or
 - (b) are designed to induce a hypnotic state in the audience; or
 - (c) 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 Narrowcasters and service providers are subject to relevant Federal and State law when broadcasting interviews and telephone conversations.
- 1.6 Except for Clause 1.4(b), none of the matters in Clauses 1.2(b), 1.3 and 1.4 will be contrary to this section if 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 and service providers 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 viewers.

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

- 1.8 Where closed captioning programming is made available it will be clearly identified with program schedule information provided to the press.

When a narrowcaster or service provider considers introducing closed captioned programming, or extending the range of programs captioned, it will endeavour to consult with organisations representing deaf and hearing impaired viewers and organisations specialising in providing closed-captioning.

CODE No. 2**HANDLING COMPLAINTS**

- 2.1 In the first instance, complaints should be made to the narrowcaster or service provider.
- 2.2 Narrowcasters and service providers will make every reasonable effort to resolve complaints except where a complaint is clearly frivolous, vexatious or not made in good faith.
- 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 and answered in writing, within sixty days from the receipt of the complaint. If the complainant has not received a response within sixty days they may refer the complaint to the Australian Broadcasting Authority.
- 2.5 A complainant will be advised that they are entitled to refer the matter to the Australian Broadcasting Authority, where they are not satisfied with the response.
- 2.6 Narrowcasters and service providers will maintain a record of complaints received, and on request make available to the Australian Broadcasting Authority a summary of complaints received. The record of complaints shall include the name of the narrowcasting service, the name of the program and the date and time it was broadcast, the date and time each complaint is received, the name, address and/or telephone number of the complainant (if provided), the substance of the complaint and the substance and date of the response.

CODE No. 3**CLASSIFICATION AND PLACEMENT
OF PROGRAMMING**

- 3.1 Television open narrowcasters and service providers will apply the program classification system of the Office of Film and Literature Classification (OFLC) to the classification of films and drama programs. The OFLC Guidelines form Attachment B to these Codes of Practice.
- 3.2 Classification symbols for films and drama programs will be displayed at the commencement of the program, and during a program promotion for the program. Program promotions will be at the same or lower classification level to the program within which the promotion appears.
- 3.3 Written and spoken consumer advice on the reasons for program classification will be given at the commencement of film and drama programs classified M or stronger.
- 3.4 Programs that are either refused classification, classified X (or which would be so rated if presented for classification) by the OFLC will not be broadcast by Television Open Narrowcasters.
- 3.5 MA classified material may only be shown between 9.00 pm and 5 am each day. Material rated R for cinema or video release (or would be so rated if presented for classification) may only be shown when modified to come within the MA classification criteria. Material classified MA due to its violent content may only be shown between 9.30 pm and 5 am each day.
- 3.6 Program material will be scheduled with appropriate sensitivity to the audience and, as far as possible, the likely composition of the audience at the time of broadcast. Narrowcasters and service providers will have particular regard to ensure the protection of children from harmful or distressing material in the selection and scheduling of programs, program promotions and advertisements.
- 3.7 An open narrowcaster or service provider will, where practicable, ensure that it does not broadcast any locally originated advertisement designed to put undue pressure on children to ask their parents or other people to purchase an advertised product or service, and that no advertisement may state or imply:
- (a) that a product or service makes children who own or enjoy it superior to their peers; or
 - (b) that a person who buys an advertised product or service for a child is more generous than a person who does not.
- 3.8 An open narrowcaster or service provider will, where practicable, ensure that locally produced advertisements :
- (a) must accurately represent the advertised product or service,
 - (b) will not include ambiguous claims,
 - (c) (i) in which children are depicted using products (including toys and games) must fairly represent the performance which a child of the age depicted can obtain from those products.

-
- (ii) in which the size of the product is not clear in a live action advertisement it must be made clear by reference to something which a child can readily recognise.
 - (d) in which accessories (for example batteries, transformers or doll's clothes) are needed to operate or enjoy a product depicted in an advertisement then:
 - (i) this must be able to be clearly understood by children;
 - (ii) reference to price must clearly differentiate between the price of the product and the price of any accessories.
 - (e) in which prices are mentioned, they must be accurately presented in a way which can be clearly understood by children, and not minimised by words such as 'only' or 'just'.
 - (f) if for a food product then it may not contain any misleading or incorrect information about the nutritional value of that product.
- 3.9 An open narrowcaster or service provider will, where practicable, in a locally originated program ensure that :
- (a) if competitions for children are referred to in programs or advertisements, a summary of the basic rules must be stated, and
 - (b) any statement about the chance of winning must be clear, fair and accurate.
- 3.10 Advertisements broadcast will seek to be consistent with the relevant codes applicable to advertising, and:
- (a) broadcast advertisements appropriately in the light of current community attitudes and the need to limit exposure of children to material intended for adult viewing;
 - (b) subject television advertisements for products and services which are of particular concern or sensitivity to additional placement restrictions;
 - (c) reasonably restrict public health and safety messages;
 - (d) comply with the Federal and State law in respect of television commercials.

ASTRA CODES OF PRACTICE

RADIO SUBSCRIPTION NARROWCASTING

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 - a condition not to use the broadcasting service to commit a legal 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 record of material broadcast.

The relevant sections 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 and placement of programs and customer service.

(C) REVIEW AND AMENDMENT OF THE CODES

1. These Codes will be reviewed within two years of taking effect, and thereafter every three years. Such reviews will include a process of wide community consultation.
2. Where changes to Codes are necessary the Australian Subscription Television and Radio Association Inc will consult with the Australian Broadcasting Authority.

(D) PUBLICISING THE CODES

1. Narrowcasters and service providers will publicise the availability of the ASTRA Codes of Practice at regular intervals in program guides and/or during broadcast time, where appropriate. Providers of subscription services will advise subscribers at the time of subscription that the Codes (including complaints procedures) are available.

DEFINITIONS:

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

“service provider” is the distributor of a narrowcasting service, and may be a distinct legal entity to the ‘narrowcaster’.

“personal information” are details provided by the subscriber to the narrowcasters and service providers for the purpose of the provision of a subscription narrowcasting service.

“program” as defined in the Broadcasting Services 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 and service providers 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 and service providers will not broadcast programs which are likely to incite or perpetuate hatred against or gratuitously vilify any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, colour, physical or mental disability. A narrowcaster or service provider may not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivities of Aboriginal and Torres Strait Islander people or of ethnic groups or racial groups in the Australian community.
- 1.4 Narrowcasters and service providers 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 or service provider 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 broadcast, indicated consent to the broadcast of the words.
- 1.6 Except for Clause 1.4(a), none of the matters in Clauses 1.2(b), 1.3 and 1.4 will be contrary to this section if 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 and service providers 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 viewers.

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

CODE No. 2

HANDLING COMPLAINTS

- 2.1 In the first instance, complaints should be made to the narrowcaster or service provider.
- 2.2 Narrowcasters and service providers will make every reasonable effort to resolve complaints except where a complaint is clearly frivolous, vexatious or not made in good faith.
- 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 and answered in writing, within sixty days from the receipt of the complaint. If the complainant has not received a response within sixty days they may refer the complaint to the Australian Broadcasting Authority.
- 2.5 A complainant will be advised that they are entitled to refer the matter to the Australian Broadcasting Authority, where they are not satisfied with the response.
- 2.6 Narrowcasters and service providers will maintain a record of complaints received, and on request make available to the Australian Broadcasting Authority a summary of complaints received. The record of complaints shall include the name of the narrowcasting service, the name of the program and the date and time it was broadcast, the date and time each complaint is received, the name, address and/or telephone number of the complainant (if provided), the substance of the complaint and the substance and date of the response.

CODE No. 3

CUSTOMER SERVICE

- 3.1 Subscription narrowcasters and service providers 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.
- 3.2 (a) Narrowcasters and service providers have a general duty of confidentiality towards subscribers and will take all reasonable steps to protect the privacy of subscribers.
- (b) Narrowcasters and service providers will not, without a subscriber's express consent, pass on customer information, except to a related entity of the narrowcaster for the purpose of providing a subscription narrowcasting service. A related entity is one which provides services related or ancillary to subscription narrowcasting, such as installation of the necessary reception equipment and fault repair. Narrowcasters and service providers have the responsibility to advise related entities of their obligations to protect the privacy of subscribers.
- (c) Narrowcasters and service providers will inform subscribers as to the intended use of personal information collected, prior to, or at the time of receipt of that information.
- (d) Narrowcasters and service providers may only use personal information about a subscriber for a purpose otherwise than as indicated in (b) and (c), with the subscriber's consent.
- 3.3 Subscribers should initially contact the service provider with questions or disputes about fault repair. In the event that the subscriber is not satisfied with the outcome of discussions, the subscriber will be referred to the relevant consumer advisory service of the state or territory in which the subscriber resides.
- 3.4 Subscribers should initially contact the narrowcaster or service provider with questions or disputes about credit management and billing. In the event that a subscriber is not satisfied with the outcome, the relevant consumer advisory service of the state or territory in which the subscriber resides should be contacted for advice. Relevant contact details will be provided by the narrowcaster or service provider.

**ATTACHMENT A
BROADCASTING SERVICES ACT 1992
SCHEDULE 2 – STANDARD CONDITIONS**

PART 1 – INTERPRETATION

Definitions

1. 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 the ABA, before the end of that period, directs by notice in writing to the broadcaster concerned.

Interpretation – certain things do not amount to broadcasting of advertisements

- 2. (1) For the purpose 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 purpose 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

Broadcasting of political or controversial material

- 3. (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.

Broadcasting of election advertisements

3A (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.

Identification of certain political matter

4. (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.

Records of matter broadcast

5. (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 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).

Advertisements relating to medicines

6. (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 7 - SERVICES PROVIDED UNDER CLASS LICENCES

Conditions applicable to broadcasting services provided under class licences

11. (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;
 - (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.
- (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.

ASTRA CODES OF PRACTICE

RADIO OPEN NARROWCASTING

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For additional copies of these Codes of Practice, please contact the
ASTRA Secretariat, 121 George Road, Wilberforce, NSW 2756.

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.
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 Section 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.
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 of the Act, which covers matters including:
 - a ban on tobacco advertising;
 - a requirement to comply with these Codes and any applicable program standards approved by the ABA;
 - a condition not to use the broadcasting service to commit a legal 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 record of material broadcast.

The relevant sections 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 and placement of programs and customer service.

(C) REVIEW AND AMENDMENT OF THE CODES

1. These Codes will be reviewed within two years of taking effect, and thereafter every three years. Such reviews will include a process of wide community consultation.
2. Where changes to Codes are necessary the Australian Subscription Television and Radio Association Inc will consult with the Australian Broadcasting Authority.

(D) PUBLICISING THE CODES

1. Narrowcasters and service providers will publicise the availability of the ASTRA Codes of Practice at regular intervals in program guides and/or during broadcast time, where appropriate. Providers of subscription services will advise subscribers at the time of subscription that the Codes (including complaints procedures) are available.

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 - (c) in broadcasting a fair report of, or a fair comment on, any event or matter of identifiable public interest.

- 1.7 Narrowcasters and service providers 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:
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 - (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 and service providers must do so promptly.

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HANDLING COMPLAINTS

- 2.1 In the first instance, complaints should be made to the narrowcaster or service provider.
- 2.2 Narrowcasters and service providers will make every reasonable effort to resolve complaints except where a complaint is clearly frivolous, vexatious or not made in good faith.
- 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 and answered in writing, within sixty days from the receipt of the complaint. If the complainant has not received a response within sixty days they may refer the complaint to the Australian Broadcasting Authority.
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- 2.6 Narrowcasters and service providers will maintain a record of complaints received, and on request make available to the Australian Broadcasting Authority a summary of complaints received. The record of complaints shall include the name of the narrowcasting service, the name of the program and the date and time it was broadcast, the date and time each complaint is received, the name, address and/or telephone number of the complainant (if provided), the substance of the complaint and the substance and date of the response.

**ATTACHMENT A
BROADCASTING SERVICES ACT 1992
SCHEDULE 2 – STANDARD CONDITIONS**

PART 1 – INTERPRETATION

Definitions

1. In this Schedule:

“election” means an election to a Parliament or a local government authority of a State or Territory;

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 - (i) that contains election matter that relates to that election; and
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- (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 the ABA, before the end of that period, directs by notice in writing to the broadcaster concerned.

Interpretation – certain things do not amount to broadcasting of advertisements

2. (1) For the purpose 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 purpose 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

Broadcasting of political or controversial material

3. (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.

Broadcasting of election advertisements

3A (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.

Identification of certain political matter

4. (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.

Records of matter broadcast

5. (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 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).

Advertisements relating to medicines

6. (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 7 – SERVICES PROVIDED UNDER CLASS LICENCES

Conditions applicable to broadcasting services provided under class licences

- 11. (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;
 - (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.
- (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.

ANNEXURE B: ASTRA MEDIA RELEASE

Thursday 19 August 1999

MEDIA RELEASE

SEVEN'S BACKFLIP ON DIGITAL TV UNDERMINES CASE FOR FREE SPECTRUM

"Mr Kerry Stokes' admission today that the Seven network wants to use its valuable gift of publicly owned spectrum to provide multi-channel services flies in the face of their own argument for continued protection and exclusive use of that spectrum," said Mr John Porter, Chairman of ASTRA.

"This is the same tactic used by the broadcasters in the United States," Mr Porter said. "Once they were allocated the spectrum they moved away from HDTV and announced plans to explore multi-channelling."

From as early as 1997, ASTRA argued that the commercial television networks' grab for exclusive use of the digital spectrum, ie a full 7MHz each to provide HDTV, was a highly dubious proposition. Their whole argument which was accepted by Parliament, with the passing of the *Digital Conversion Act*, was predicated on the notion that the spectrum would be used for high definition television (HDTV).

ASTRA maintained throughout the digital TV debate that if the networks' were given the full 7MHz and did not keep to their promise of providing HDTV then they should hand back the spectrum. Mr Porter said "They should use it or lose it."

ASTRA's previous submissions to Government drew attention to this very issue as raised by senior US regulators and commentators.

The former Chairman of the US Federal Communications Commission Reed Hundt, is quoted in Time Magazine on 1 September, 1997 as saying "The great myth here is that this was all about HDTV...HDTV has been a fraud by the broadcasters all these years".

The Wall Street Journal on 12 September 1997 said that, "HDTV had little or nothing to do with consumer demand; it was born out of a power grab by the broadcasting community in the 1980's as a way to keep valuable spectrum from being parceled out to paging companies and other data-communications concerns."

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