

LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 – Explanatory Statement

Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2011* made under the *Broadcasting Services Act 1992

On 24 March 2011, the Australian Communications and Media Authority (the ACMA) determined the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2011* (the 2011 Standard). The determination has been made under subsection 125(2) of the *Broadcasting Services Act 1992* (the BSA).

The 2011 Standard replaces the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2008* (the 2008 Standard). The main variation to the 2008 Standard is the addition of a new section 9, which prohibits the broadcast of programs that advocate the doing of a terrorist act.

Intended impact and effect of the Standard

The ACMA intends the 2011 Standard to improve community safeguards by imposing restrictions on the broadcast of terrorist-related material by providers of open narrowcasting television services.

Under the 2011 Standard, licensees cannot broadcast a program that:

- advocates the doing of a terrorist act;
- would be reasonably understood as directly recruiting a person to join, or participate in the activities of, a listed terrorist;
- would be reasonably understood as soliciting funds for a listed terrorist, or assisting in the collection or provision of funds for a listed terrorist.

The 2011 Standard holds a licensee responsible for what they broadcast, even if they claim they were unaware of the content of the program. This is to encourage licensees to set up effective systems for checking programs before they are broadcast.

The 2011 Standard does not remove the need for licensees to comply with other anti-terrorism laws, such as those contained in the *Criminal Code Act 1995*.

Consultation

On 9 December 2010, the ACMA published (on its website) the details of a proposed reform to the 2008 Standard to restrict programs that ‘advocate the doing of a terrorist act’. Public comment was invited on the proposal, with a closing date of 12 February 2011.

The ACMA received relevant submissions from the following bodies: Australian Subscription Television and Radio Association, Australia/Israel & Jewish Affairs

Council, Executive Council of Australian Jewry Inc, and the Gilbert and Tobin Centre of Public Law, University of NSW.

Description of the provisions of the standard

Section 1 Name of standard

Section 1 names the standard as the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2011*.

Section 2 Commencement

Section 2 provides a commencement date for the standard of 1 July 2011.

Section 3 Revocation

Section 3 revokes the 2008 Standard at the commencement of the new standard.

Section 4 Object of standard

Section 4 sets out the object of the standard, namely to prevent the broadcasting of programs that advocate the doing of a terrorist act, or encourage people to join or finance listed terrorists.

The 2011 Standard provides greater community safeguards by prohibiting the broadcast of material that attempts to incite the doing of a terrorist act, even though it could not be reasonably understood as directly recruiting persons, or soliciting funds, for a listed terrorist.

Section 5 Application

Section 5 specifies that the standard will apply to persons who provide open narrowcasting television services under a class licence determined under paragraph 117(e) of the BSA.

Section 6 Definitions

Section 6 defines terms used throughout the standard.

Section 7 Recruiting for a listed terrorist

Section 7 of the standard prohibits a licensee from broadcasting a program which would be reasonably understood as directly recruiting a person to join, or participate in the activities of, a listed terrorist.

For the purposes of the standard, the term 'recruit' is given the non-exhaustive meaning in section 6 of the standard, 'to induce, incite and encourage'.

The emphasis in section 7 is on programs that *directly* recruit a person to join or participate. In assessing programs prior to their broadcast in Australia, a licensee should have regard to such matters as whether the program:

- provides contact details of a listed terrorist;
- informs viewers of meeting times and places;
- refers viewers to training material and other information that could be used to prepare for participation in the activities of a listed terrorist.

A licensee will be in breach of this section regardless of whether it knew the program could be reasonably understood as recruiting for membership or participation in a listed terrorist.

Section 8 Financing terrorism

Section 8 of the standard prohibits a licensee from broadcasting a program that would be reasonably understood as soliciting funds for a listed terrorist, or assisting in the collection or provision of funds for a listed terrorist.

The standard defines ‘listed terrorist’ in section 6 as:

- (a) a listed terrorist organisation within the meaning of the *Criminal Code*; or
- (b) a proscribed person or entity listed in the *Gazette* by the Minister for Foreign Affairs pursuant to section 15 of the *Charter of the United Nations Act 1945*.

The list of terrorist organisations in the *Criminal Code Regulations 2002* is available online at www.nationalsecurity.gov.au. Information about proscribed persons and entities designated as such by the Minister for Foreign Affairs is available from the DFAT website (www.dfat.gov.au).

A licensee will be in breach of this section regardless of whether it knew the program would be reasonably understood as soliciting funds for a listed terrorist, or assisting in the collection or provision of funds for a listed terrorist.

Section 9 Advocating the doing of a terrorist act

Section 9 of the standard prohibits a licensee from broadcasting a program that advocates the doing of a terrorist act.

Under this section, a program advocates the doing of a terrorist act if it directly or indirectly urges the doing of a terrorist act or provides instruction on the doing of a terrorist act. The provision also prohibits directly praising the doing of a terrorist act in circumstances where there is a substantial risk that the praise might lead a person (regardless of their age or of any mental impairment) to engage in a terrorist act. Section 6 of the standard defines ‘terrorist act’ to have the meaning given by section 100.1 of the *Criminal Code*. That definition covers actions or threats of action.

A licensee will be in breach of this section regardless of whether it knew the program advocates the doing of a terrorist act.

Subsection 9(4) provides that a depiction or description of a terrorist act will not contravene subsection 9(1) if it could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.

Section 10 Programs of political opinion not affected

Section 10 provides that the standard does not prohibit broadcasts of informative program content (for example, news, current affairs and documentary programs) that merely informs viewers about the activities, beliefs or opinions of a listed terrorist, provided the program content does not advocate the doing of a terrorist act, or solicit funds, or directly recruit, for a listed terrorist.

Section 11 Bona fide reports and comments not affected

Section 11 enables a licensee to broadcast an excerpt of a program which would otherwise be prohibited by section 7, 8 or 9 of the standard if:

- the excerpt is part of a news report, current affairs program, documentary or other program; and
- the excerpt is included as part of a bona fide report or comment on a matter of public interest.

This section provides a limited exception for the broadcast of material that would otherwise be prohibited by sections 7, 8 and 9.