



## Broadcasting Services Clarification Notice 2016

made under paragraph 19(1)(b) of the

*Broadcasting Services Act 1992*

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Dated 18 March 2016

*Richard Bean*  
[signed]  
Member

*Brendan Byrne*  
[signed]  
~~Member~~/General Manager

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## Part 1 Preliminary

### 1 Name of Notice

This Notice is the *Broadcasting Services Clarification Notice 2016*.

### 2 Commencement

This Notice commences on the day after it is registered.

*Note* All legislative instruments are registered on the Federal Register of Legislative Instruments kept under the *Legislation Act 2003*. See <http://www.legislation.gov.au>.

### 3 Revocation

The following instruments are revoked:

- (a) *Broadcasting Services Clarification Notice 2001* [F2006B00446];
- (b) *Broadcasting Services Clarification Notice 2002* [F2006B00438].

### 4 Definitions

In this Notice:

*Act* means the *Broadcasting Services Act 1992*.

*ancillary communication service* has the meaning given in Appendix 2 to the *Broadcasting Services (Technical Planning) Guidelines 2007*;

*locality* means a population cluster that is classified as a locality by the Australian Bureau of Statistics in accordance with the Australian Standard Geographical Classification (ASGC) 2001.

*urban centre* means a population cluster that is classified as an urban centre by the Australian Bureau of Statistics in accordance with the Australian Standard Geographical Classification (ASGC) 2001

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## Part 2 Clarification for AM and FM radio services

### 5 Purpose of Part 2

- (1) For paragraph 19(1)(b) of the Act, this Part clarifies the criteria specified in section 18 of the Act as they apply to a broadcasting service:
  - (a) provided as a radio service; and
  - (b) provided using an AM or FM signal within the broadcasting services bands; and
  - (c) that is not made available only on payment of subscription fees (whether periodical or otherwise).
- (2) If a broadcasting service does not comply with a particular section of this Part, the broadcasting service may still be an open narrowcasting service under section 18 of the Act because of its individual characteristics.

### 6 Low power transmitter: urban centres and localities

- (1) This section applies if the broadcasting service is provided:
  - (a) in an urban centre or locality; and
  - (b) within the FM radio broadcasting band; and
  - (c) using a transmitter with a maximum effective radiated power of 1 watt or less.

*Note* In broad terms, under the Australian Standard Geographical Classification (ASGC) 2001, an urban centre is a population cluster of 1,000 or more people while a locality is a population cluster of between 200 and 999 people.

- (2) The broadcasting service is not an open narrowcasting service by reason only of the maximum effective radiated power of the transmitter used to provide the broadcasting service.

### 7 Limited period

- (1) This section applies if the broadcasting service is provided for:
  - (a) a continuous period of not more than 30 days in any 12 month period; or
  - (b) separate periods which, in total, are not more than 30 days in any 12 month period;in accordance with the conditions of the transmitter licence or licences issued by the ACMA for the provision of a limited-period service.
- (2) The broadcasting service is an open narrowcasting service.

**8 Special event**

- (1) This section applies if the broadcasting service is provided for a continuous period of not more than 30 days to cover an event that:
  - (a) has major cultural significance, sporting significance or other community significance; and
  - (b) is organised by 1 or more persons.
- (2) The broadcasting service is an open narrowcasting service.

*Note* While it is likely that cultural and sporting events of major significance will be organised by 1 or more persons, it should not be presumed that all events are organised in a way that meet the requirements of subsection (1). For example, events such as the Moomba Festival and the Sydney to Hobart Yacht Race are clearly organised. On the other hand, the ski season, which occurs if and when particular weather conditions exist, is an example of an event which is not an 'organised' event for the purposes of this section.

**9 Pre-recorded, regularly repeated audio content**

- (1) This section applies if the broadcasting service has the following characteristics:
  - (a) the content of the broadcasting service consists solely of not more than four hours of pre-recorded material, which is repeated in the same order; and
  - (b) the material is not updated or otherwise varied more than once in any week.
- (2) The broadcasting service is an open narrowcasting service.

*Note* A service of this kind is also known as a pre-recorded, regularly repeated audio content service.

**10 Information service**

- (1) This section applies if the content of the broadcasting service:
  - (a) relates only to specific information about a subject; and
  - (b) does not include general news.
- (2) The broadcasting service is an open narrowcasting service.

*Note* Information services may include, for example, stock market reports, weather services, real estate information and entertainment information.

**11 Religious service**

- (1) This section applies if the broadcasting service is provided for 1 or more of the following purposes, and for no other purpose:
  - (a) the propagation of religious beliefs, religious values and religious lifestyles;
  - (b) the broadcasting of religious rituals and events of religious significance;
  - (c) the provision of information and services relevant to religious beliefs, religious values and religious lifestyles.

- (2) A broadcasting service does not comply with subsection (1) if the content of the service includes material that is not relevant to 1 or more of those purposes.

*Note* 'Mainstream' music which has no obvious religious significance, and is not broadcast for the purpose of analysis or commentary, is material that is not relevant to the purposes mentioned in subsection (1).

- (3) The broadcasting service is an open narrowcasting service.

## **12 Non-English language service**

- (1) This section applies if the content of the broadcasting service is provided:
- (a) wholly in a language other than English; or
  - (b) in a language other than English, except to the extent that the broadcasting service includes content in English that is incidental to the provision of the service in the other language.

*Note* Examples of incidental content for paragraph (1)(b) include interviews broadcast in English with a translation into the other language, and broadcasts in English of station identification.

- (2) The broadcasting service is an open narrowcasting service.

## **13 Racing service**

- (1) This section applies if the broadcasting service has the characteristics set out in subsections (2), (3) and (4).
- (2) At least 80% of the content of the broadcasting service on a day (except Christmas Day or Good Friday) is:
- (a) descriptions of any combination of horse races, harness races and greyhound races; and
  - (b) the provision of information directly related to horse racing, harness racing or greyhound racing (including selections, scratchings, betting information and track conditions); and
  - (c) material (such as music, news reports, weather reports, announcements and advertisements) that is:
    - (i) incidental to the provision of the content mentioned in paragraphs (a) and (b); and
    - (ii) provided only during periods between particular races on that day; and
    - (iii) provided to the minimum extent practicable between particular races; and
    - (iv) provided for a total of not more than 15 minutes in each hour of the day.

*Note* For subparagraph (2)(c)(iv), the hours to be used are the hours starting at midnight, 1am, 2am, and so on.

- (3) A significant proportion of the content of the broadcasting service other than the content described in subsection (2) is:

- (a) relevant to horse racing, harness racing or greyhound racing; or
  - (b) of interest mainly to persons involved in horse racing, harness racing or greyhound racing.
- (4) The broadcasting service is promoted, in the content of the broadcasting service:
- (a) as a service of interest mainly to persons involved in horse racing, harness racing or greyhound racing; or
  - (b) using the words ‘racing radio service’.
- (5) The broadcasting service is an open narrowcasting service.

#### **14 Ancillary service**

- (1) This section applies if the broadcasting service is provided by way of an ancillary communication service.
- Note* A service of this kind is provided using a subcarrier channel.
- (2) The broadcasting service is an open narrowcasting service.

#### **15 Services targeted on the basis of age of audience**

- (1) This section applies if the broadcasting service is targeted to persons of a particular age, or a particular range of ages.
- Note* If a broadcasting service is targeted at an audience described in terms such as ‘Generation X’ or ‘baby boomers’, the broadcasting service is likely to be targeted to persons of a particular age or range of ages.
- (2) If the broadcasting service is targeted to persons less than 10 years old, the broadcasting service is an open narrowcasting service.
- (3) If subsection (2) does not apply, the broadcasting service is not an open narrowcasting service by reason only of being targeted to the persons.

#### **16 Groups other than formal groups**

- (1) A group is able to be a special interest group for the purposes of subparagraph 18(1)(a)(i) of the Act whether or not the group is organised on a formal basis.
- (2) Subsection (1) is not intended to affect the operation of section 15.