



# Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022

*Broadcasting Services Act 1992*

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The Australian Communications and Media Authority determines the following standard under subsection 125(1) of the Broadcasting Services Act 1992.

Dated: 23 March 2022

Creina Chapman

[signed]

Member

Cathy Rainsford

[signed]

~~Member~~/General Manager

Australian Communications and Media Authority

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## Part 1 Preliminary

### 1 Name of standard

This standard is the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2022*.

### 2 Commencement

This standard commences on the day after it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This standard is made under subsection 125(1) of the *Broadcasting Services Act 1992*.

### 4 Repeal

The *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012* (Registration No. F2012L00699) is repealed.

### 5 Definitions

In this standard:

**ACMA** means the Australian Communications and Media Authority.

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

**advertisement** means material broadcast:

- (a) which draws public attention to, or promotes directly or indirectly, an organisation, product, service, belief or course of action; and
- (b) for which consideration has been provided by, or on behalf of, an organisation or supplier of the product or service, to a licensee, a related body corporate of a licensee, a presenter or an associate of a presenter.

**associate of a presenter** means:

- (a) a person (other than the licensee of the presenter) who has the authority to enter into agreements for the provision of the presenter's services; or
- (b) a corporation (other than the licensee of the presenter) or a trust in which the presenter has a greater than 50% company or beneficial interest; or
- (c) a corporation (other than the licensee of the presenter) of which the presenter is a director.

**code** means a code of practice for licensees registered by the ACMA under section 123 of the Act.

**commercial agreement** has the meaning given by section 6.

**consideration** means any money, service, benefit or other valuable consideration that is directly or indirectly paid, promised, charged or accepted for material that is broadcast, or is to be broadcast, but does not include a product or service provided free to a person solely for the purpose of having the product or service reviewed.

**current affairs program** means a program a substantial purpose of which is to provide interviews, analysis, commentary or discussion, including open-line discussion with listeners, about current social, economic or political issues.

**disclosure announcement** means a statement broadcast by a presenter that a commercial agreement exists.

**licensee** means a holder of a commercial radio broadcasting licence.

Note: The Act defines commercial radio broadcasting licence in subsection 6(1).

**presenter** means a person who:

- (a) is an on-air presenter of a current affairs program broadcast by a licensee; and
- (b) is not a commentator or guest invited to appear on the program, even if the person appears on the program regularly.

**register** means the register of commercial agreements and other information mentioned in Part 4.

**registered entity** means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

**related body corporate** has the same meaning as in section 50 of the *Corporations Act 2001*.

**related broadcast** means a current affairs program broadcast by a licensee that:

- (a) has been produced or commissioned by another licensee; and
- (b) has been, or is to be, broadcast by the licensee in paragraph (a).

**sponsor** means a person who:

- (a) directly benefits from the things provided by a licensee, a presenter or associate of a presenter under a commercial agreement; and
- (b) is not a licensee or a presenter.

## 6 Meaning of **commercial agreement**

- (1) An agreement, arrangement or understanding (whether in writing or not), between a sponsor, or an agent of a sponsor, and a presenter, or an associate of a presenter (whether or not there are other parties to the agreement), is a **commercial agreement** for the purposes of this standard if it:
  - (a) provides for the presenter, in exchange for consideration provided to the presenter or an associate of the presenter, to:
    - (i) promote the sponsor; or
    - (ii) promote the products, services or interests of the sponsor; or
    - (iii) refrain from making a negative comment about the sponsor; or

- (iv) provide services in respect of publicity, promotion or public relations for the sponsor; or
  - (b) imposes an obligation on a presenter or an associate of a presenter to provide things for the sponsor (other than a thing mentioned in subparagraph (a)(i), (ii), (iii) or (iv)), in exchange for consideration of \$25 000 or more a year, and is not solely to:
    - (i) provide writing services for a publication; or
    - (ii) perform or appear in a film, television program or theatrical production; or
    - (iii) provide voice-over services for an advertisement; or
    - (iv) provide non-commercial services where the sponsor is a registered entity.
- (2) An agreement, arrangement or understanding (whether in writing or not), between a sponsor, or an agent of a sponsor, and a licensee, or a related body corporate of a licensee (whether or not there are other parties to the agreement), is a **commercial agreement** for the purposes of this standard if all of the following apply:
  - (a) the agreement provides for the licensee, in exchange for consideration provided to the licensee or a related body corporate of the licensee, to:
    - (i) promote the sponsor; or
    - (ii) promote the products, services or interests of the sponsor; or
    - (iii) refrain from broadcasting a negative comment about the sponsor;
  - (b) a presenter of the licensee does a thing mentioned in subparagraph (a)(i), (ii) or (iii);
  - (c) the presenter or an associate of the presenter has:
    - (i) a beneficial or legal interest in shares in the licensee or a related body corporate of the licensee; or
    - (ii) if a dividend were declared by the licensee or a related body corporate of the licensee—a beneficial entitlement to be paid or credited a dividend; or
    - (iii) a contractual entitlement to a share of the licensee's income or profits.

## 7 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument is a reference to that other instrument as in force at the commencement of this instrument.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

## **Part 2 Introduction**

### **8 Object of this standard**

The object of this standard is to encourage licensees to be responsive to the need for a fair and accurate coverage of matters of public interest by requiring the disclosure of commercial agreements or other arrangements that have the potential to affect the content of current affairs programs.

### **9 Outline of what this standard does**

This standard requires a licensee to ensure that:

- (a) a disclosure announcement is made on air during a current affairs program about any commercial agreement that may affect the content of the program; and
- (b) a statement is made on air during a current affairs program disclosing the payment of production costs by an advertiser or sponsor; and
- (c) a register of commercial agreements and other information is kept by the licensee; and
- (d) information and documents are kept and given to the ACMA if requested in accordance with section 16; and
- (e) a condition of employment of a presenter is that information or documents in relation to any commercial agreement are provided to the licensee; and
- (f) a presenter is required to assist the licensee to comply with the obligations that relate to the broadcast of programs imposed on the licensee by the Act, the code and this standard.

Note: Paragraph 8(1)(b) of Schedule 2 to the Act provides that a condition of a commercial radio broadcasting licence is that the licensee will comply with program standards applicable to the licence under Part 9 of the Act.

## **Part 3 Disclosure of commercial agreements and other arrangements**

### **10 On-air disclosure of commercial agreements**

- (1) This section applies if:
- (a) a sponsor or an agent of a sponsor has a commercial agreement with a licensee, a related body corporate of a licensee, a presenter of a licensee or an associate of a presenter of a licensee; and
  - (b) the licensee is broadcasting material in a current affairs program that:
    - (i) promotes the name, products or services of the sponsor; or
    - (ii) includes an interview with an agent, employee or officer of the sponsor in relation to a matter that concerns the sponsor, its products, services or interests; or
    - (iii) is requested by the sponsor, or which is based on, or similar to, material provided by the sponsor; or
    - (iv) directly promotes an issue which is directly favourable to the sponsor.
- (2) The licensee must ensure that a disclosure announcement that is clearly identifiable to a reasonable listener as a disclosure announcement, is broadcast on air during the current affairs program at the time of, and as part of, the broadcasting of any material in subparagraph (1)(b)(i), (ii), (iii) or (iv).
- (3) However, a disclosure announcement is not required to be broadcast if the material is:
- (a) a news broadcast or bulletin; or
  - (b) an advertisement that is clearly identifiable to a reasonable listener as an advertisement.

### **11 On-air statement disclosing payment of production costs**

If an advertiser or sponsor pays for, or contributes to, the production costs associated with a current affairs program broadcast by a licensee, the licensee must ensure:

- (a) that a statement is made on air about the payment or contribution at least once per hour throughout the current affairs program; and
- (b) the statement makes clear to a reasonable listener that the production costs associated with a current affairs program are paid for, or contributed to, by the advertiser or sponsor.



## **Part 4 Register of commercial agreements and other information**

### **12 Publicly available online register**

- (1) For a commercial agreement mentioned in subsection 13(1), a licensee must keep a register containing the information mentioned in section 13.
- (2) The licensee must:
  - (a) publish the register on a website operated by, or on behalf of, the licensee that is accessible online by the public; and
  - (b) provide a link from the homepage of the website to the webpage where the register can be accessed.

### **13 Contents of register**

- (1) The register must contain the following information for each current commercial agreement to which a licensee, related body corporate of the licensee, presenter of the licensee or associate of a presenter of the licensee is a party:
  - (a) the parties to the commercial agreement;
  - (b) a brief description of the obligations imposed on the licensee, presenter, or associate of the presenter under the commercial agreement;
  - (c) the name of each person providing consideration under the commercial agreement;
  - (d) if the presenter or associate of the presenter is a party to the commercial agreement—the name of the current affairs program that the presenter presents;
  - (e) for an agreement, arrangement or understanding mentioned in subsection 6(2)—the name of the presenter doing the thing mentioned in subparagraph 6(2)(a)(i), (ii) or (iii) and the name of the current affairs program that the presenter presents.
- (2) However, if a presenter of the licensee is the presenter of a related broadcast, the register must contain the following information in relation to the related broadcast:
  - (a) the name of the current affairs program;
  - (b) the name of the licensee which produced or commissioned the program;
  - (c) the website where the register of current commercial agreements of the licensee which produced or commissioned the program can be accessed by the public.

- (3) Subsections (1) and (2) do not apply to a presenter who is an on-air presenter of a current affairs program broadcast by a licensee for less than an average of 3 hours a week over any 4 week period.

## **Part 5 Licensee requirements in relation to presenters**

### **14 Licensee to require presenters to disclose commercial agreements to licensee**

- (1) A licensee must require a presenter of the licensee to provide to the licensee the information or documents mentioned in subsection (3) for any commercial agreements the presenter or an associate of the presenter is party to with a sponsor or an agent of a sponsor:
  - (a) for an existing commercial agreement—within 7 days of the commencement of this standard; and
  - (b) for an agreement entered into after the commencement of this standard—within 7 days of the agreement being entered into.
- (2) In relation to any commercial agreements to which the presenter or associate of the presenter of a related broadcast is a party, the licensee who produced or commissioned the current affairs program is the licensee required to comply with subsection (1).
- (3) For subsection (1), the following information or documents must be provided to the licensee:
  - (a) if the commercial agreement is in writing—a copy of the commercial agreement;
  - (b) if the commercial agreement is not in writing—the following:
    - (i) the date of the commercial agreement;
    - (ii) the parties to the commercial agreement;
    - (iii) a brief description of the obligations imposed on the presenter or associate of the presenter under the commercial agreement;
    - (iv) the name of each person providing consideration under the commercial agreement;
    - (v) the amount or value of consideration to be provided under the agreement.

### **15 Licensee must keep commercial agreements**

- (1) A licensee must keep the information and documents mentioned in sections 13 and 14 for each commercial agreement to which a licensee, related body corporate of the licensee, presenter of the licensee or associate of a presenter of the licensee is a party.
- (2) The information and documents must be kept for 12 months after the expiration of the commercial agreement.

### **16 Information or documents to be provided to the ACMA**

- (1) The ACMA may request in writing any of the following:

- (a) any information in relation to a commercial agreement required by section 13 to be contained in the licensee's register;
  - (b) a copy of a commercial agreement mentioned in subsection 6(2) or provided to the licensee under paragraph 14(3)(a);
  - (c) any information provided to the licensee under paragraph 14(3)(b);
  - (d) any information and documents required by section 15 to be kept by the licensee;
  - (e) particular information contained in the information and documents required by section 15 to be kept by the licensee.
- (2) If the ACMA makes a request under subsection (1), the licensee must provide the information or documents within 14 days of the request.
- (3) The licensee must comply with subsection (4) if, within 28 days after information or documents are provided to the ACMA, the licensee becomes aware that:
- (a) incorrect or incomplete information or documents were provided to the ACMA; or
  - (b) there is a change to the information or documents provided to the ACMA; or
  - (c) information or documents have become available that, had they been available at the time of the request, would have been required to have been provided to the ACMA.
- (4) The licensee must provide the correct, complete, updated or recently available information or documents to the ACMA within 14 days of becoming aware of a matter in paragraph (3)(a), (b) or (c).

### **17 Licensee must not engage or continue to engage presenters that do not assist the licensee to comply with obligations**

A licensee must not engage, or continue to engage, the services of a presenter unless it is a condition of that engagement that the presenter comply with the requirements imposed by the licensee under section 14.

### **18 Licensee to require presenters to comply with certain obligations**

A licensee must require that a presenter assist the licensee to comply with the obligations that relate to the broadcast of programs imposed on the licensee by the Act, the code and this standard.