

Political and election matter guidelines

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Political and election matter guidelines

Introduction

During political debate, it is important that audiences are informed about who is trying to persuade them to think or act in a certain way, and that people authorising political matter are accountable for the material broadcast. When proper attribution is absent or the source of political messaging is disguised, the contribution of political communications to the political process can be compromised.¹

The provisions in the *Broadcasting Services Act 1992* (BSA) relating to the broadcast of political matter apply at all times.

Political and election matter

Election matter and election advertisements are specific forms of political matter that relate directly to an election to a parliament or a local government authority of a state or territory. During election campaigns, the BSA places some restrictions on the broadcast of election advertising. It also places certain obligations on licensees to provide access to the licensee's broadcasting service to participants contesting the election.

Who do the rules apply to?

The provisions about political matter, election matter and election advertisements apply to commercial television broadcasting licensees, commercial radio broadcasting licensees, community broadcasting licensees, subscription television broadcasting licensees and persons providing broadcasting services under class licences.

These guidelines are intended to:

- > assist licensees in identifying political and election matter
- > increase awareness and understanding of the obligations relating to the broadcast of political matter, election matter and election advertisements.

Examples used in these guidelines are illustrative only. A licensee's compliance with the BSA will be considered by the ACMA on a case-by-case basis.

Licensees should always obtain their own legal advice about their obligations under the BSA.

The national broadcasters have their own rules about the broadcast of political matter (and in the case of SBS, also election advertisements). These rules are specified in each national broadcaster's respective legislation – the [Australian Broadcasting Corporation Act 1983](#) and the [Special Broadcasting Service Act 1991](#).

Complaints and enforcement

The provisions about political matter, election matter and election advertisements are set out as licence conditions in Schedule 2 to the [BSA](#).

¹ See 'How the Internet is Being Used by Political Organisations: Promises, Problems and Pointers', https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP97_98/98RP11#PROBLEMS, accessed 6 February 2019.

Complaints about compliance with licence conditions can be made directly to the ACMA. There is no need for complainants to go to licensees in the first instance. The ACMA's [website](#) provides more information about this process.

If the ACMA investigates a complaint and finds that a licence condition has been breached, it has a range of compliance and enforcement options, including accepting enforceable undertakings, giving remedial directions or commencing civil penalty proceedings in the Federal Court to obtain civil penalty orders. For more information see the ACMA's [Enforcement Guidelines](#).

Election matter on other platforms

There are rules that apply to the disclosure of authorisation details for matter related to elections on non-broadcasting media platforms (including online, bulk text messages, and robocalls, as well as printed materials such as leaflets and how-to-vote cards).

The authorisation requirements for non-broadcasting electoral communications related to federal elections are administered by the Australian Electoral Commission (AEC), and for state or territory elections by the relevant state or territory electoral authorities.

Complaints and enquiries about electoral matter on these other platforms should be directed to the AEC or relevant state or territory electoral authority. For more information about the authorisation of federal electoral communications, see the Electoral Backgrounder on the [AEC website](#).

Complaints and enquiries about the operation of the *Spam Act 2003* and the *Do Not Call Register Act 2006* should be referred to the ACMA. Complaints and enquiries about the authorisation of robocalls or text messages should be referred to the AEC.

Reviewing these guidelines

When changes are made to regulatory provisions about the broadcast of political and election matter, the ACMA will update these guidelines.

The ACMA will periodically review the relevance of the case studies in these guidelines.

Legislation

The guidelines refer to provisions in the following legislation:

- > *Broadcasting Services Act 1992*
- > *Commonwealth Electoral Act 1918*
- > *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018*
- > *Referendum (Machinery Provisions) Act 1984*

These can be accessed at legislation.gov.au.

Political matter

Broadcasting political matter—the basic rule

If a licensee broadcasts political matter at the request of another person, the licensee must ensure that authorisation details (called ‘required particulars’) are announced (subclause 4(2) of Schedule 2 to the BSA).

The content of the required particulars (see below) is specified in the BSA (subclause 1(2) of Schedule 2) and the *Commonwealth Electoral Act 1918* (subsection 321D(7)) and must be placed in a broadcast in accordance with the requirements in clause 10 of the *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018* (the Commonwealth Electoral Determination).

Clause 10 of the Commonwealth Electoral Determination requires that:

- > for a broadcast by radio, the required particulars must be announced at the end of the communication in the language used for the rest of the communication
- > for a broadcast by television, the required particulars must be announced and shown at the end of the communication in the language used for the rest of the communication.

If the ACMA investigates compliance with the relevant licence condition, it will ask:

- > Did the broadcast material include political matter?
- > If so, was the broadcast made at the request of another person?
- > If so, were the required particulars broadcast correctly?

Key terms include:

- > licensee
- > political matter
- > request of another person
- > required particulars.

These terms are each discussed below.

Which licensees are included?

These provisions apply to commercial television broadcasting licensees, commercial radio broadcasting licensees, community broadcasting licensees, subscription television broadcasting licensees and persons providing broadcasting services under class licences.

Provisions relating to the ABC and SBS are included in their respective acts.

The provisions do not apply to non-broadcasting platforms, for example printed material, online streaming and on-demand services, including when such platforms are operated by licensed broadcasters.

What is ‘political matter’?

This is a fundamental question with the potential to cause most uncertainty.

'Political matter' is defined very broadly in the BSA (clause 1 of Schedule 2) to mean 'any political matter, including the policy launch of a political party'. Guidance as to the sort of material that may constitute political matter is provided primarily through the ACMA's decision-making, reflected in reports of political matter investigations.

What is political matter is an objective test and must be determined on a case-by-case basis. The balance can be a fine one.

When conducting an investigation under the BSA, the ACMA determines whether broadcast material is political matter by having regard to:

- > the content of the broadcast
- > the overall presentation of the material, including the tone, style and emphasis
- > the nature and style of accompanying audio or visual material
- > the context surrounding the broadcast.

The content of the broadcast

The understanding of the ordinary reasonable viewer with regards to the nature of the message or messages communicated by the broadcast is a consideration for the ACMA in determining whether material is political. The question is asked: Does the content convey a message about matters that are or could be the subject of public political discussion?

Some matter broadcast will obviously be political matter—for example, a broadcast designed to affect how a person will vote in an election. However, it is not necessary for material to explicitly promote a political party, candidate or policy for it to be political matter.

The content need only engage with a matter of public contention or discussion, in a meaningful way that objectively seeks to influence the audience's position with respect to that matter.

Promotion of brands, products or services is not determinative

Some material promotes brands products and services while including political references. In considering whether particular material might be political matter, the ACMA takes into account a range of factors including the content, overall presentation of the material and emphasis and style.

For example, material may promote a brand, product or service, and also refer to something that is political, but does so in a way that is attempting to influence the audience's position with respect to the brand rather than influence the audience's position with respect to the political content (see [case study 3](#)). Such material is unlikely to be regarded as political matter. Conversely, other material might contain content that promotes a brand, product or service, but also includes other content that does engage with matters of public contention or discussion in meaningful way. Such material may well be regarded as political matter.

Material may highlight certain actions taken, or beliefs held by an organisation or business about matters of public contention or discussion as a way of promoting that organisation to an audience. Such material may become political if it engages with the broader issues underpinning those actions or beliefs.

The overall presentation of the material, including the tone, style and emphasis

Material may be political matter if it seeks to persuade the audience to a political point of view, even if at the time there is no public proposal to change the law about the issue.

It may also be enough if the broadcast is likely to influence the audience about a political issue, regardless of the intention of the person requesting the broadcast of the matter. It is also not essential that the approach be express, rather than indirect, for the broadcast to be political matter.

Further consideration about the intent of a broadcast can be found at [case study 5](#).

The nature and style of accompanying audio or visual material

Political matter may include individual components that contribute to the communication of a political message. These may be images or audio that the ordinary reasonable viewer associates with a particular political position with respect to matters that are or could be the subject of public political discussion.

The context surrounding the broadcast

It is not necessary that there be a high level of current public discourse at a government level about a matter for it to meet the threshold of political matter. The content need only engage with a matter of public contention or discussion in a meaningful way that objectively seeks to influence the audience's position with respect to that matter.

Further discussion on what constitutes political matter can be found in [case study 1](#) and [case study 3](#).

What is 'at the request of another person'?

Only political matter that is broadcast at the request of another person is subject to the requirement about broadcasting the required particulars.

A person can include a political party, a corporation and any other association (incorporated or unincorporated).

Licensees are not prevented from advocating on social issues and from time to time may support policy initiatives.

The required particulars do not need to be broadcast if political matter is broadcast on the licensee's own initiative (see [case study 2](#)).

What are the 'required particulars'?

The required particulars are the authorisation details that must be broadcast following political matter. These are also called 'tags'.

The provision about broadcasting the required particulars of the person who authorised the broadcast applies at all times. It is not restricted to material broadcast during elections, or in times of significant public debate on certain issues. When advertisements are broadcast outside an election period or are not on behalf of a political party or other 'disclosure entity' (defined below), they may still be political matter and be required to be 'tagged' with the required particulars.

On both radio and television, the required particulars must be announced at the end of the communication in the same language used in the communication. On television

there is an additional requirement that the particulars must also be shown (see Commonwealth Electoral Determination).

The BSA defines ‘required particulars’ as the particulars set out in the following table:²

Broadcast is authorised by:	Required particulars:
a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act 1918</i> , if a return has been given in relation to the entity under that Part) (b) the relevant town or city of the entity (c) the name of the natural person responsible for giving effect to the authorisation.
a disclosure entity that is a natural person	(a) the name of the person (b) the town or city in which the person lives.
any other entity (that is not a disclosure entity or a natural person)	(a) the name of the entity (b) the relevant town or city of the entity.
a natural person (who is not a disclosure entity)	(a) the name of the person (b) the town or city in which the person lives.

The required particulars refer to specific terms:

- > disclosure entity
- > authorises
- > relevant town or city.

These terms are each discussed below.

What is a ‘disclosure entity’?

A ‘disclosure entity’ is defined in the BSA with reference to section 321B of the *Commonwealth Electoral Act 1918* and section 110 of the *Referendum (Machinery Provisions) Act 1984* and includes:

- > a registered political party (as registered under the *Commonwealth Electoral Act 1918*)
- > a political campaigner, which is a person or entity that is registered under section 287L of the *Commonwealth Electoral Act 1918*
- > a third party, which is a person or entity that incurs electoral expenditure during the financial year that is more than the indexed disclosure threshold³

² See subclause 1(2) of Schedule 2. The definition of ‘required particulars’ also refers to any particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of paragraph 1(2)(b) of Schedule 2. No such particulars have been determined to date.

³ Section 287 of the *Commonwealth Electoral Act 1918* defines the disclosure threshold as \$13,800, an amount which is indexed under section 321A. For the 2018–19 financial year, the threshold is \$13,800.

- > an associated entity (which is defined in section 287H of the *Commonwealth Electoral Act 1918*) as an entity that is registered as an associated entity under section 287L of that Act and includes entities that are controlled by one or more registered political parties operationally, financially or through voting rights. Examples of associated entities include ‘think tanks’, registered clubs, service companies, trade unions and corporate party members
- > current members of the Parliament of the Commonwealth
- > candidates for an election to the Parliament of the Commonwealth
- > other persons and entities who have to lodge returns with the AEC in relation to gifts.⁴

Annual financial disclosure returns—available for public inspection—can be accessed on the [AEC website](#).

Who ‘authorises’ the broadcast of political matter?

A person authorises the broadcasting of political matter only if the person is responsible for approval of the content and the decision to present it for broadcasting (subclause 4(4) of Schedule 2 to the BSA).

What is the ‘relevant town or city’?

The ‘relevant town or city’ of an entity that authorised the broadcast of political matter is:

- > if the entity has a principal office or premises, the town or city where it has its principal office or premises
- > the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

Where the office of the relevant entity is in a particular suburb, an authorisation that refers only to the greater metropolitan area (e.g. Brisbane) would generally be sufficient information.

Exceptions to this approach may include circumstances where a locality or suburb is relevant to the audience’s understanding of the political matter. Therefore, where a campaign is about a local issue it may be relevant for the audience to know whether the entity seeking to influence their view is from the local area or from outside. In such a situation, merely citing the general metropolitan area may not suffice.

If the entity is a natural person, the required particulars include the town or city in which the person lives.

Ensuring compliance

Licensees are responsible for compliance with the provision about broadcasting the required particulars.

This means taking steps to determine whether the person who authorises the broadcast of the political matter is a ‘disclosure entity’.

For matter authorised by persons or entities who are not disclosure entities, a licensee is taken to have ensured that required particulars are announced if, as a result of

⁴ See sections 305A and 305B of the *Commonwealth Electoral Act 1918*.

steps taken by the licensee, it was reasonable for the licensee to rely on the particulars that were provided to it.⁵

Steps that may be taken by the licensee include:

- > notifying a person wanting to broadcast political matter that the name of the person required to be announced as having authorised the broadcast depends on whether the person is a disclosure entity
- > seeking a verification whether the person is a disclosure entity.

More information about disclosure entities—including current listings of entities that have lodged returns—is available on the Transparency Register on the [AEC website](#).

Keeping records

A licensee must keep, for the 'required period', a record of the:

- > name
- > address
- > occupation

of the person (or the name and address of the principal office, if the person is a company) that requests the broadcast of political matter (subclause 4(3) of Schedule 2 to the BSA).

The 'required period' is the longer of six weeks from the date of the broadcast or until the day on which the election ends (if the matter relates to an election or referendum and was broadcast during the relevant election period). The ACMA can direct a licensee (in writing) to keep records for a longer period.

These records must be given to the ACMA if requested by written notice.⁶

⁵ See subclause 4(5) of Schedule 2 to the BSA

⁶ See subclause 4(3) of Schedule 2 to the BSA

Election matter

What is ‘election matter’?

‘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.

What is an ‘election period’?

‘Election period’ means:

- a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly for 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
- 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
 - (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).
- 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
- 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
- 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.

Reasonable opportunities to participants in elections

Licensees are not obliged to broadcast election matter at all. However, if they do, certain obligations arise.

If, during an election period a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for broadcasting 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.

There is no obligation for licensees to broadcast any election matter free of charge.

Whether opportunities were considered to be 'reasonable' would be established during an investigation if the ACMA were to investigate a matter that required this issue to be considered.

Election 'blackouts'

Election blackouts are actually called the 'relevant period'. This period commences at midnight on the Thursday morning before polling day and concludes at the close of the poll (i.e. voting) on polling day.

Election blackouts only apply to parliamentary elections—that is, federal and state or territory elections. There is no blackout period for local government elections.

For federal elections, the ACMA updates its website information about current election blackouts shortly after election dates have been publicised by the AEC. The website is not updated for state and territory by-elections.

Appendix

Case study 1

Breach—licensee did not announce the required particulars immediately after the broadcast of political matter.

The broadcast material

The advertisement featured a man wearing 'hi-vis' work attire. He was sitting in his utility vehicle and speaking directly to the camera as he recalled the circumstances of his wife's first pregnancy and said, 'I can remember thinking, how are we going to cope?' He exited the vehicle and entered his family home.

The advertisement continued with the man and his seven children in the family kitchen/living room. As he held a newborn baby, the man said, 'I reckon, I've coped just fine'. At the same time, the words, 'I coped ... you can too' appeared as on-screen text.

The advertisement concluded with the man standing in a kitchen, surrounded by his family as they each held up what appeared to be ultrasound images of human fetuses. The man then told viewers to 'visit notbornyet.com'. The Emily's Voice logo and the text 'notbornyet.com' were then superimposed in the lower half of the screen.

The ACMA's findings

While the advertisement had a social dimension regarding individual health choices, the ACMA considered that it went beyond providing information about the man's personal story and the message of support for continuing with an unwanted pregnancy even in difficult circumstances. It was attempting to influence the viewpoints of viewers. The text onscreen 'I coped ... you can too' and the call from the man to 'visit notbornyet.com' encouraged viewers to get more information about the issue of abortion, which was raised indirectly in the advertisement. Together with the use of ultrasound images, these elements signalled to the ordinary reasonable viewer that the advertisement intended to influence viewers to accept a particular view on abortion.

The ACMA believed a key purpose of the advertisement was to promote the aims and objectives of Emily's Voice and to change people's views about abortion and build a broader constituency that opposed abortion in a contemporary context in which the laws about abortion continued to be actively debated in Australia. For this reason, there were strong political dimensions to the advertisement.

The ACMA deemed that as the broadcast was likely to affect a person's opinion on a matter of political controversy, it was political matter and fell within subclause 4(2) of Schedule 2 to the BSA.

The complete analysis in this investigation can be accessed in Investigation Report No. BI-231 at acma.gov.au.

Case study 2

No breach—political matter was not broadcast at the request of another person

The broadcast material

The content contained a sequence of 16 images of different people, representing all walks of life, holding up handwritten signs stating what love means to them. For example: 'I love my dog (& fiancé)', 'Love makes the world go round!' and 'Love is my baby daughter'.

The signs presented a range of personal reflections on love and the ways that people experience it. One of the signs explicitly commented on marriage equality by stating, 'Love is for everyone. I don't want to get married but I want the choice!'

At the end of the promotion, a rainbow-coloured heart appeared on-screen and transformed into the Lifestyle channels' logo in rainbow colours. The logo was accompanied by the tagline 'Love is Love' which transformed into the word 'Lifestyle'. The use of the Lifestyle channels' logo in rainbow colours and the text 'Love is Love' at the end of the promotion, 'branded' it as part of the 'Love is Love' campaign.

The licensee stated:

- > the 'Love is Love' campaign was an independent initiative of the Lifestyle channels, planned to coincide with Valentine's Day, 'to promote love in all forms, between all different people, regardless of their sexual orientation'
- > 'Love is Love' had become synonymous with the global push for equality of the LGBTI community in all areas of life, including marriage equality in Australia
- > the campaign used the rainbow colours of the LGBTI pride flag to symbolise the acceptance of all expressions of love
- > the 'Love is Love' campaign was conceived and developed by the Lifestyle channels, which also had creative and editorial control over the content used.

Taking this content as a whole, the promotion would have prompted viewers towards pursuing a particular point of view about marriage laws.

The ACMA's findings

The licensee's description of the initiative as a 'campaign' suggested that the intention was to influence audience views about marriage equality as a political issue beyond merely communicating about equality and inclusiveness in society more generally.

Frequent and repetitive broadcasts of the 'Love is Love' campaign in a defined period leading up to Valentine's Day would have been understood by the audience as a direct appeal to garner support for marriage equality, even if the substance of some of the individual promotions might not have been characterised as political in nature.

The ACMA had previously stated that material need not contain an explicit call to action to be political matter. As a package, the 'Love is Love' campaign included elements that amounted to a call to action and more subtle attempts that would have been understood as intended to persuade viewers to support marriage equality.

For these reasons, the ACMA considered that the 'Love is Love' campaign constituted political matter within the meaning of the BSA.

The ACMA accepted the licensee's submissions that neither the advertisement nor the 'Love is Love' campaign was broadcast at the request of another person—as evidenced in submissions made to the ACMA, where the licensee confirmed that no consideration was received for the broadcast of this material.

For these reasons, the ACMA found that the political matter was not broadcast at the request of another person and the requirements in clause 4 of Schedule 2 to the BSA did not apply to the broadcast.

The complete analysis in this investigation can be accessed in Investigation Report No. BI-302 at [acma.gov.au](https://www.acma.gov.au).

Case study 3

No breach—broadcast did not constitute political matter

The broadcast material

The ACMA received a complaint about an advertisement for Godfreys Vacuum Cleaners broadcast on commercial television station TCN Sydney. The complainant was concerned that Godfreys were paid by the Labor Party to refer to Mr Tony Abbott, the then Leader of the Opposition, in a negative manner during the advertisement without announcing the required particulars at the end of the commercial.

The advertisement promoted Godfreys Vacuum Cleaners. The spokesman appeared to be wearing a blond wig and glasses to impersonate the then Prime Minister, Mr Kevin Rudd:

Spokesman: Someone's been a little negative lately, Mr Abbott. Why don't you be a little more positive, Mr Abbott?

Narrator: It's positively amazing.

Spokesman: Godfrey's amazing \$99 week-end.

Narrator: Hoover bagless, half price \$99, Philips bagless half price \$99, Bissell Cordless \$99, Shampoos \$99.

Spokesman: Godfreys!

Narrator: And with every \$99 cleaner, get this steam mop free. Yeah, with every \$99 cleaner get this steam mop free.

Spokesman: Godfrey's amazing \$99 week-end. This week-end, Mr Abbott.

The ACMA's findings

Any matter broadcast advocating a point of view on a government and its policies, or political parties and their policies, can fall within the definition of political matter. However, matter that simply promotes a product or service does not fall within the definition of 'political matter' merely because it refers to something that is political.

The ACMA noted that the primary purpose of the advertisement was to promote vacuum cleaners. While the spokesman referred to the negativity of Mr Abbott, it was presented in a humorous style by impersonating the then Prime Minister, Mr Rudd. The ACMA did not consider that the advertisement participated in the political process as it did not engage with, or allude to, any specific issue of a political nature or discuss any political process or political matter. The light-hearted presentation of the advertisement indicated that it was not intended to be a serious comment on politics or the political process.

For these reasons, the ACMA found that the material broadcast did not constitute 'political matter'.

The complete analysis in this investigation can be accessed in Investigation Report No. 3086 at acma.gov.au.

Case study 4

No breach—political matter was not broadcast at the request of another person

The broadcast material

The material was broadcast immediately before commencement of the second half in a live rugby league program, as the teams were running onto the field.

The audio was as follows:

Commentator 1:

Back at the football stadium, finals football continues. The first preliminary final, with Manly leading 16 to 4. Forty minutes of football, perhaps, left. The Eagles are rocking. Not only has the Manly Football Club been doing great work on the field this season, they've also been very busy working with the community off the field. With significant funding from the Manly Leagues Club and Harbord Diggers, for whom a lot of these kids played, the Sea Eagles established The Eagle's Nest, in conjunction with the Royal Far West Health Service. Eagle's Nest is a multi-purpose room where staff run adolescent mentoring programs with the assistance of the Manly players. The ongoing financial assistance of registered clubs across Australia ensure [sic] this, and many other worthwhile programs, continue, but they are under threat from the new untested technology the Federal Government plans to introduce. Funding from clubs is the lifeblood of many community programs and initiatives that we all enjoy. So for more information go to wontworkwillhurt.com.au. As Manly come back in front of 31,894 the crowd figure.

At 16–4. Well, you're very much a part of the club industry these days ... and it is true, they do a lot for the community. And if they keep hitting the clubs, the ones who are going to suffer are the ones at the bottom of the ladder.

Commentator 2:

Yes, the proposed mandatory pre-commitment that they've put forward is a rubbish policy. It won't work, it won't solve the problem they say they're going to target, and it will do irreparable damage to the hospitality industry. It won't work, and it will hurt. You're 100 per cent right. I've never seen a more stupid policy in all my life.

[Whistle blows and play in second half begins.]

Commentator 1:

Well, that's an endorsement.

There was also a visual on screen 'wontworkwillhurt.com.au' while part of the above was being broadcast, over vision of the teams running out onto the field for the second half of the match.

The ACMA's findings

The ACMA found that mandatory pre-commitment (MPC) for poker machine play had been a controversial topic for several months at the time of the broadcast and was the subject of proposed Federal Government legislation. Accordingly, the ACMA considered that MPC was a political issue at that time. While the material broadcast contained information, such as details of the Eagle's Nest project, it also sought to influence viewers to oppose MPC. The ACMA therefore considered that the material in the broadcast relating to MPC constituted political matter.

Having carefully examined the sequence of events concerning communications between the licensee (Nine), Clubs Australia/Clubs NSW, the National Rugby League

(NRL) and Manly-Warringah Sea Eagles Limited, the ACMA concluded that it was Nine, not any other person, which took the initiative that led to the broadcast of the impugned material, and that the contribution of others (Manly-Warringah Sea Eagles Limited, Clubs NSW/Clubs Australia and the NRL) was at the request of Nine, not the other way round.

The ACMA also noted that whilst there was no prohibition on a licensee running its own political campaign, the licensee did not make clear in the broadcast that the script had been prepared by Nine management and was broadcast at the initiative of Nine management. Nor did the licensee make clear that the website to which it directed viewers for 'more information' was a website of a campaign funded by Clubs Australia and other industry associations which considered that their revenue would be negatively affected by the introduction of MPC.

The complete analysis in this investigation can be accessed in Investigation Report No. 2686 at acma.gov.au.

Case study 5

No breach—political matter was not an election advertisement broadcast during the ‘blackout period’ and was not broadcast at the request of another person

The broadcast material

The content which received a complaint was two short recordings of what were presented to be election advertisements for the then Prime Minister of Australia, Mr Malcolm Turnbull MP. The recordings, which were comedic in nature, were voiced by a comedian who sounded similar to Mr Turnbull.

The recordings were broadcast the day before and on the day of the 2016 federal election.

The ACMA’s findings

- a) Election advertisement broadcast during the election ‘blackout’.

As the ‘relevant period’ (also known as the election blackout period) commences at midnight on the Wednesday before the election, the content was broadcast within the ‘relevant period’ for the purposes of the BSA.

The licensee submitted that the recordings were not advertisements but were ‘sweepers’, which were ‘pre-recorded samples aired between songs’ commonly used on radio. It advised that the comedian voiced them and that listeners were used to hearing these impersonations.

The licensee also submitted that the content was not ‘election matter’ as it did not genuinely advocate the support of any political party and did not comment on any matters being submitted to the electors at the election or any candidate’s policies.

The ACMA considered that some listeners, including the complainant, may not have realised that the recordings were not genuine political advertisements. The impersonation closely resembled Mr Turnbull’s speaking voice. Further, although the recordings were mostly broadcast between songs, several times they were played immediately following advertising blocks, which would have suggested to some listeners that they were bona fide political advertisements.

In the ACMA’s view, the content fell within the definition of ‘election matter’ because, although intended to be comedic, the recordings were, on the face of it, a direct appeal to voters to vote for Mr Turnbull, who was a candidate at the election and the leader of a political party contesting the election.

The content was not excluded from the definition of ‘election matter’ by the fact that it was not Mr Turnbull or the Liberal Party who made the appeal, or that the content did not genuinely advocate support for Mr Turnbull because it was intended to be comedic.

However, as the ACMA accepted the licensee’s submission that it did not receive ‘any funding or other consideration, directly or indirectly’ in relation to the broadcasts, the ‘election matter’ was not an ‘election advertisement’, and so was not subject to the restrictions in the ‘blackout’ period.

- b) Political matter without the required particulars.

The ACMA found that even though the recordings were comedic, they referenced the federal election and appealed to listeners to vote for Mr Turnbull, a candidate in that election. In the ACMA’s view, that was sufficient to meet the definition of ‘political matter’.

However, the ACMA accepted the licensee's submission that the content was not broadcast at the request of a political party or any other person. Therefore, there was no requirement for the required particulars to be announced immediately afterwards.

The complete analysis in this investigation can be accessed in Investigation Report No. BI-214 at acma.gov.au.