ASTRA CODES OF PRACTICE
Attachment C

BROADCASTING SERVICES ACT 1992
SCHEDULE 2 - STANDARD CONDITIONS

Part 1 — Interpretation

1 Definitions

In this Schedule:

"Classification Board" means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995* .

"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.

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

2 Interpretation—certain things do not amount to broadcasting of advertisements

(1) For the purposes 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 purposes 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 or of a program broadcast on the service provided under the licence, 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

3 Broadcasting of political or controversial material

(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.

3A Broadcasting of election advertisements

(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.

4 Identification of certain political matter

(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 ACMA.

(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 ACMA any particulars of the record that the ACMA, 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.

5 Records of matter broadcast

(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 ACMA.

(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 ACMA, 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 ACMA 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 ACMA 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 ACMA, 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 ACMA, 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).

6 Advertisements relating to medicines

(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 therapeutic goods that is required to be approved under the *Therapeutic Goods Act 1989* unless the text of the advertisement has been so approved.

Part 7 — Services provided under class licences

11 Conditions applicable to broadcasting services provided under class licences

(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;

(ab) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the person will comply with subsection 121E(2) (section 121E is about requiring the ACMA's permission to provide certain television services in regional areas);

(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.

(3) The provision by a person of an open narrowcasting television service under a class licence is also subject to the following conditions:

(a) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;

(b) the licensee will not broadcast films that are classified as "R 18+" unless the films have been modified as mentioned in paragraph 123(3C)(b).

(4) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board.