



3MP

Untagged election matter

The complaint

On 15 October 1999, the ABA received a complaint from the Australian Labor Party (ALP) Victorian Branch regarding a 13 October broadcast on commercial radio service 3MP Melbourne. The broadcast, from a shopping centre in the Frankston East electorate, featured live interviews with Liberal Party politicians. The broadcast occurred prior to a supplementary state election in the Frankston East electorate, held on the following Saturday. The complainant's concern was that the broadcast did not carry the required particulars in relation to political matter and that the ALP was given no opportunity to respond to the broadcast.

Relevant licence condition

Section 42(2)(a) of the Act provides that each commercial radio broadcasting licence is subject to the conditions set out in Part 4 of Schedule 2 to the Act.

The conditions set out in Part 4 of Schedule 2 to the Act include a condition that the licensee will comply with Clauses 3 and 4 of Schedule 2 to the Act.

The relevant clauses of Part 4 of Schedule 2 to the Act state:

3 Broadcasting of political or controversial material

...

- (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.

...

4 Identification of certain political matter

...

- (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 ABA.

The decision

The ABA's investigation established that the interviews with Liberal Party politicians Jeff Kennett, Cherie McLean, Cameron Boardman, Ian Cover, Denis Napthine, Louise Asher, Robert Doyle and Robin Cooper were conducted as part of a media package negotiated with 3MP by, or on behalf of, the Liberal Party. The Liberal Party arranged the interviews, determined their order and provided 3MP with discussion points for the interviews.

The ABA is of the view, therefore, that 3MP can be said to have broadcast the political matter at the request of the Liberal Party.

During an election period, a significant proportion of what is broadcast on radio can be described as 'political matter'. When a licensee broadcasts political matter at the request of another person, subclause 4(2) of Schedule 2 requires the licensee to cause the required particulars, commonly known as the 'tag', to be announced immediately afterwards. Compliance with clause 4 is required by the licence condition set out at paragraph (i) of subclause 8(1) of Schedule 2.

In investigating this complaint, the ABA has found radio station 3MP did not comply with subclause 4(2) of Schedule 2 to the Act, as it failed to tag as political matter, the interviews with a number of Liberal Party politicians broadcast at the request of the Liberal Party.

The ABA considers that there is a significant difference between arranging for a live interview with a politician or representative of a political party, in the course of news and current affairs programs, and determining the arrangements for a program to be broadcast by reason of a party's request.

The ABA also considered whether 3MP complied with subclause 3(2) of Schedule 2 to the Act. This subclause requires that if, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of such matter to all political parties contesting the election. The ABA found that 3MP had provided reasonable opportunities to all political parties for the broadcast of election

#



matter and had complied with this requirement.

Evidence provided to the ABA indicated that discussion occurred between the Liberal Party and 3MP regarding the fact that the outside broadcast on 13 October 1999 would not be exclusive to the Liberal Party. Further, the copy of the broadcast provided to ABA includes a number of advertisements for both the ALP and

Independent candidates in the Frankston East supplementary election.

Action Taken

In responding to the ABA's breach finding, 3MP submitted that training programs implemented in accordance with the *Broadcasting Services (Commercial Radio Compliance*

Program) Standard 2000 substantially reduces the possibility of breaches of this type in the future. This standard requires licensees to formulate, implement and maintain a program to ensure compliance with the requirements of the Act, commercial radio standards and codes of practice. The ABA will take no further action at this stage but intends to monitor 3MP's compliance with the Act and codes.



2000 FM

Advertisements, untagged sponsorship announcements

The complaint

The ABA received a complaint that community radio service 2000 FM Sydney had broadcast advertisements, sponsorship announcements without the required tag and more than five minutes of sponsorship announcements per hour. The breaches were alleged to have occurred during the Arabic language program between November 2000 and February 2001.

Relevant licence conditions

Paragraph (1)(a) and subclauses (3) and (5) of clause 9 of Schedule 2 to the Act regulate advertisements and sponsorship announcements on community broadcasting services.

Part 5—Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences.

(1) Each community broadcasting licence is subject to the following conditions:

...

(b) the licensee will not broadcast advertisements and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in subclause (3).

...

(3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than five minutes in any hour of broadcasting;

...

(5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:

(a) material that publicises programs to be broadcast by the licensee;

(b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(c) community information or community promotional material

for the broadcast of which the licensee does not receive any consideration in cash or in kind; and

(d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

The Act does not provide definition of the words 'advertisements' or 'sponsorship announcements' used in Schedule 2. It should be noted, however, that these words are referred to in clause 2 of Schedule 2, which identifies some material that is *not* to be treated as an advertisement for the purposes of some clauses. If matter broadcast can be brought within clause 2, then it is not taken to be the broadcast of an advertisement.

Clause 2 relevantly provides:

2.(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 #