



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





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(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, 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 to be taken to be the broadcasting of an advertisement.

## The decision

The Act states that 'the broadcasting by a community broadcasting licensee of ... a sponsorship announcement that acknowledges financial support by a person of the licensee... is *not* to be taken to be the broadcasting of an advertisement' (emphasis added). The corollary of this is that any matter

broadcast that is claimed to be a sponsorship announcement *must* acknowledge 'financial support by a person of the licensee'.

In the ABA's view, an untagged promotional announcement (that is not otherwise exempted under clause 2(2) of Schedule 2 to the Act) cannot be regarded as a sponsorship announcement and must be an advertisement.

The ABA was of the view that 2000 FM broadcast 18 advertisements on 29 November 2000, 26 advertisements on 7 December 2000, 21 advertisements on 8 December 2000, and 22 advertisements on 11 December 2000.

## Action taken

In its response to the ABA's preliminary investigation report, 2000 FM did not dispute the breaches. Rather, 2000 FM advised the ABA that it had put processes in place to prevent future breaches. The ABA was not satisfied, however, with 2000 FM's response:

- Licence conditions are serious matters and are treated as such by the ABA. Moreover, the licence condition breached is fundamental to community broadcasting, and is one important means of differentiating community broadcasting from narrowcasting.
- The ABA has received similar reassurances in the past that management at 2000 FM has stepped in to make changes to prevent breaches, yet breaches occurred in February 1999, June 1999 and May 2000.

- Had the announcements been properly tagged, they would have met the criteria for sponsorship announcements. In that case, however, the majority of programming investigated would have contained sponsorship announcements that well exceeded the maximum five minutes per hour permitted by the Act, and would have been in breach of the licence condition.

Section 139(4) of the Act provides that the breach of a licence condition by a community broadcasting licensee is an offence (50 penalty units). The Act also provides the ABA with a number of remedies to deal with breaches of licence conditions:

- the issue of a notice (s. 141) to stop the breach (it should be noted that a breach of a s. 141 notice is an offence under s. 142 of the Act – 50 penalty units); or
- suspension of the licence for a period of up to three months (s. 143); or
- cancellation of the licence (s. 143).

On 2 August 2001, the ABA considered the breaches by 2000 FM. The ABA subsequently issued a notice under s. 141 of the Act to 2000 FM to cease broadcasting advertisements, to ensure that all sponsorship announcements are tagged in a manner that accords with subclause 2(2)(b) of Schedule 2 to the Act, to cease broadcasting more than five minutes of sponsorship announcements in any one clock hour and to take this action by 9 August 2001.

