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Open narrowcasting radio services guide

The ABA has released a package of measures designed to give guidance to providers of open narrowcasting radio services. The measures are designed to help service providers to better understand the conditions under which they provide their services and to clarify the differences between narrowcasting and commercial broadcasting services.

The package of measures comprises an information booklet: *Narrowcasting for Radio: Guidelines and Information about Open and Subscription Narrowcasting Radio Services*; a clarification notice (the *Broadcasting Services Clarification Notice 2002*), that clarifies aspects of the statutory criteria for open narrowcasting services; and the inclusion of additional conditions in licences under which open narrowcasting radio services are provided. The additional conditions will require narrowcasters to notify the ABA of the reasons their service is a narrowcasting service. This information will then be published on the ABA's website. The additional conditions will be included in the class licence for open narrowcasting radio services under the *Broadcasting Services (Additional Conditions — Open Narrowcasting Radio Services) Notice 2002*.

'Narrowcasters offer a range of diverse broadcasting services which are not provided by the commercial broadcasting sector', said Professor David Flint, ABA Chairman. 'It is in the interests of everyone, both in the broader community and in the radio industry more specifically, to have as much information as possible about narrowcasting services and the conditions under which they operate. This package of measures will result in significantly more information about open narrowcasting services being generally available than has previously been the case.'

The ABA has prepared the package of measures following a public consultation process on each of the elements of the package. Submissions were received from key players in the broadcasting industry, including peak groups for the narrowcasting and commercial sectors, the racing radio industry, service providers and other interested persons.

Narrowcasting for radio: guidelines and information about open and subscription narrowcasting radio services

Part 1 of *Narrowcasting for Radio* discusses the open narrowcasting category of broadcasting services under the Broadcasting Services Act, with

particular reference to the differences between the commercial and narrowcasting categories.

Part 2 provides guidelines for narrowcasting services by way of a discussion of the matters the ABA must have regard to under section 22 of the Act when it is considering which of the categories of service a specific broadcasting service falls into. The discussion includes particular reference to music and news in broadcasting services, as these elements are often significant factors when considering the appropriate category of service.

Part 3 contains the two notices made by the ABA under section 19 of the Act which clarify the criteria for open narrowcasting services at section 18 of the Act: the *Broadcasting Services Clarification Notice 2001* and the *Broadcasting Services Clarification Notice 2002*.

Part 4 provides information about opinions by the ABA on categories of service provided for in section 21 of the Act, and lists the opinions given by the ABA since 1992 in relation to radio services.

Narrowcasting for Radio also contains a copy of the conditions applicable to broadcasting services under class licences under the Act and the ASTRA codes of practice for open and

subscription narrowcasting services.

Broadcasting Services Clarification Notice 2002

The clarification notice has been made under section 19 of the Act.

The notice firstly clarifies that a broadcasting service is not an open narrowcasting service by reason only of being targeted to persons of a particular age or a particular range of ages (e.g. 'generation x' or 'baby boomers'). However, if a broadcasting service is targeted to persons less than 10 years of age, the service is a narrowcasting service.

Secondly, the notice clarifies that a group is able to be a special interest group for subparagraph 18(1)(a)(i) of the Act whether or not the group is organised on a formal basis.

Copies of the booklet: *Narrowcasting for Radio, the Broadcasting Services Clarification Notice 2002 and the Broadcasting Services (Additional Conditions — Open Narrowcasting Radio Services) Notice 2002* may be obtained from the ABA's website, www.aba.gov.au/radio/narrowcasting/index.htm, or by contacting the ABA on (02) 9334 7700.



The notice applies to all non-subscription AM or FM radio services using the broadcasting services bands.

If a broadcasting service does not comply with either of the clarifications in the notice, the service may still be an open narrowcasting service under section 18 of the Act because of its individual characteristics.

Broadcasting Services (Additional Conditions-Open Narrowcasting Radio Services) Notice 2002

The additional conditions have been included in the class licence for open narrowcasting radio services under section 120 of the Act.

The additional conditions will apply to a person who provides an open narrowcasting radio service using a transmitter authorised under a high power open narrowcasting (HPON) radio licence, or who provides an open narrowcasting radio service as a networked service (under both HPON and low power open narrowcasting (LPON) radio licences). The terms 'HPON radio licence', 'LPON radio licence' and 'networked service' are defined in the Notice.

The conditions will require persons to whom the Notice applies to give the ABA a statement in an approved form explaining how reception of their service is limited in a way described in paragraph 18(1)(a) of the Act (which sets out the criteria for open narrowcasting services).

If, after having given the ABA such a statement, there is a significant change to a fact or circumstance by which reception of the service is limited, the

person must give the ABA a further statement in an approved form describing the change, and explaining how reception of the service is limited in a way described in paragraph 18(1)(a) of the Act.

An initial statement must be given to the ABA not later than 30 days after the later of the commencement of the Notice and the day on which the service is first provided. The Notice commences on 1 January 2003.

A statement informing the ABA of a significant change to a fact or circumstance by which reception of the service is limited must be given to the ABA not later than 30 days after the significant change.

Open narrowcasting services

Open narrowcasting is one of three categories of free-to-air broadcasting services established by the Broadcasting Services Act; the other two are commercial broadcasting and community broadcasting. Open narrowcasting services are defined in section 18 of the Act as services whose reception is limited:

- (i) by being targeted to a special interest group or
- (ii) by being intended only for limited locations, for example, arenas or business premises or
- (iii) by being provided during a limited period or to cover a special event or
- (iv) because it provides programs of limited appeal or
- (v) for some other reason.

Only one of these criteria needs to be satisfied for a service to be an open narrowcasting service. However, it is not always clear to service providers

where the line is to be drawn between the different categories of broadcasting services provided for under the Act, in particular, between an open narrowcasting radio service and a commercial radio service. The result is considerable uncertainty in the market place about what is or is not allowed to be broadcast as part of an open narrowcasting radio service.

Open narrowcasting services and commercial broadcasting services

The open narrowcasting category is intended to encourage the development of niche broadcasting services that might otherwise not be available in a market, thereby increasing the overall diversity of free-to-air broadcasting services.

In contrast to commercial broadcasting services, open narrowcasting services are subject to relatively low levels of regulatory control. This reflects the regulatory policy in section 4 of the Act which provides that different levels of regulatory control should be applied across the range of broadcasting services according to the degree of influence that they are able to exert in shaping community views in Australia.

Commercial radio broadcasting services, on the other hand, which are intended to appeal to the general public, are presumed to exert more influence in shaping community views than open narrowcasting services and are consequently subject to higher levels of regulation.

Key differences between the regulatory regimes applying to open narrowcasting and commercial broadcasting services

are as follows. It is not necessary to obtain a broadcasting service licence to provide an open narrowcasting service (a class licence provides standing authorisation) and there are no ownership restrictions on open narrowcasting services. Commercial services, on the other hand, require an individual broadcasting service licence from the ABA and are subject to ownership and control limitations, such as the rule that one person may control a maximum of two services in a market.

Commercial radio broadcasting services that operate in the broadcasting services bands are also subject to a licence fee tax calculated as a percentage of the gross earnings of the service. The licence fee tax does not apply to open narrowcasting services.

Commercial radio broadcasting services enjoy a freedom of choice about format that is denied to open narrowcasting services with comparable audience reach. Commercial radio broadcasting services that use the broadcasting services bands also enjoy greater long-term security of access to their channels. These advantages are reflected in the relative prices bid for commercial and open narrowcasting services in price-based allocation exercises since 1992. Providers of open narrowcasting radio generally pay a far lower entry cost to markets, generally reflecting format (and perhaps also tenure) restrictions.

Under section 133 of the Act, it is a serious offence to provide a commercial radio broadcasting service without a licence.

