LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 –Explanatory Statement

Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2008 made under the Broadcasting Services Act 1992

On 16 March 2006, the Australian Communications and Media Authority (ACMA) determined the Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2006. The standard commenced on 15 April 2006. ACMA revoked the standard on 1 December 2008 and replaced it with the Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2008. The determination was made under subsection 125(2) of the Broadcasting Services Act 1992 (the BSA), and is referred to in this explanatory paper as ‘the Standard’.

The Standard

Subsection 125(2) of the BSA provides that:

(2) If:
(a) no code of practice has been registered under section 123 for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and
(b) the ACMA is satisfied that it should determine a standard in relation to that matter;
the ACMA must, by notice in writing, determine a standard in relation to that matter.

Compliance with standards determined by ACMA under section 125 of the BSA is a licence condition which applies to those who operate subscription television narrowcasting services under a class licence determined by ACMA under section 117(c) of the BSA.

Intended Impact and Effect of the Standard

The intended impact of the Standard is to prevent the broadcasting of programs that encourage people to join or finance a listed terrorist. “Listed terrorist” is a term defined in the Standard to cover persons or organisations listed as terrorists under the Criminal Code, as set out in the Criminal Code Act 1995, or a proscribed person or entity listed in the Gazette by the Minister for Foreign Affairs pursuant to section 15 of the Charter of the United Nations Act 1945.

The effect of the Standard is that licensees of subscription television narrowcasting services must not broadcast programs, the content of which would be reasonably understood as:

• directly recruiting persons to join or participate in the activities of a listed terrorist; or
• soliciting funds, or assisting in the collection or provision of funds, for a listed terrorist.

The Standard provides that a licensee will be in breach of the above provisions whether or not the licensee is aware that the program breaches the prohibitions in the Standard. This encourages licensees to implement arrangements for vetting programs before they are broadcast, especially those programs from sources likely to involve a greater risk of breaching the Standard, to ensure their broadcast will not contravene the Standard.

Complying with the Standard does not abrogate the need for licensees to comply with other relevant anti-terrorism laws such as those contained in the Criminal Code Act 1995.

Consultation

Before deciding to determine the Standard ACMA took the following steps by way of consultation:

On 18 November 2005, ACMA posted on its website a draft instrument inviting public comment by 9 December 2005.

ACMA wrote to the industry bodies, the Australian Subscription Television and Radio Association, the Australian Narrowcast Radio Association, the Community Broadcasting Association, the Commercial Radio Association and Free TV Australia with information about the proposals, providing details of how to obtain the draft instrument, and inviting comment.

ACMA received one submission as a result of the consultation.

Before deciding to amend the 2006 standard by revoking it and replacing it with the current Standard ACMA took the following steps by way of consultation:

ACMA held discussions with representatives from the Australian Subscription Television and Radio Association, AUSTAR and Pan TV on 16 April 2008. ACMA informed the industry representatives of the proposed amendments and were invited to provide feedback on the draft amendments and guidelines.

On 14 August 2008, ACMA posted on its website draft amendments to the 2006 standard, and proposed guidelines to accompany the 2006 standard, and invited public comment by 12 September 2008. Public comment was also invited via a media release published on 14 August 2008.

ACMA also wrote separately to the Australian Subscription Television and Radio Association on 14 August 2008 informing the peak industry body of the release of the draft amendments and guidelines for public comment.

ACMA received one submission from industry as a result of the consultation. ACMA also received a submission from the Department of Foreign Affairs and Trade (DFAT) on the proposed amendments.
Description of the provisions of the Standard

**Section 1: Name of Standard**
This section names the Standard.

**Section 2: Commencement**
Section 2 provides for the Standard to commence on 1 December 2008.

**Section 3: Revocation**
Section 3 revokes the *Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2006.*

**Section 4: Object**
This section sets out the object of the Standard, namely, to prevent the broadcasting of programs that encourage people to join or finance a listed terrorist.

**Section 5: Application**
Section 4 specifies that the Standard will apply to persons who provide subscription television narrowcasting services under a class licence determined under section 117(c) of the BSA.

**Section 6: Definitions**
This section defines terms used throughout the Standard.

The 2008 Standard contains a variation from the 2006 standard by removing and replacing the term ‘terrorist organisation’ with the term ‘listed terrorist’ in section 7, section 8 and section 9. Replacing ‘terrorist organisation’ with ‘listed terrorist’ aims to provide greater certainty for service providers by directing them to two specific lists of terrorist entities as determined by the Australian government.

The Standard confines ‘listed terrorist’ to those organisations listed in the Criminal Code, as amended from time to time, or to those persons and entities listed in the Gazette by the Minister for Foreign Affairs pursuant to section 15 of the *Charter of the United Nations Act 1945* for their association with the commission of terrorist acts. The list of terrorist organisations in the *Criminal Code Regulations 2002* is available online at [www.nationalsecurity.gov.au](http://www.nationalsecurity.gov.au). Information about proscribed persons and entities designated as such by the Minister for Foreign Affairs is available from the DFAT website ([www.dfat.gov.au](http://www.dfat.gov.au)).

**Section 7: Recruiting for a listed terrorist**
Section 7 of the Standard prohibits a licensee from broadcasting a program which would be reasonably understood as directly recruiting a person to join, or participate in the activities of, a listed terrorist. For the purposes of the Standard, the term ‘recruit’ is given a non-exhaustive meaning that includes: induce, incite and encourage.

The emphasis in section 7 is on *directly recruiting*, i.e. whether broadcast material *directly* encourages people to join, or become involved in the activities of, a listed terrorist. In assessing programs prior to their broadcast in Australia, a licensee should have regard to such matters as whether the program:
• provides contact details of a listed terrorist, for example;
• informs viewers of meeting times and places;
• refers viewers to training material and other information that could be used to prepare for participation in the activities of a listed terrorist.

A licensee will be in breach of this section regardless of whether it knew the program could be reasonably understood as recruiting for membership or participation in a listed terrorist entity.

Section 8: Financing terrorism
Section 8 of the Standard prohibits a licensee from broadcasting a program the content of which would be reasonably understood as soliciting funds, or assisting with fundraising, for a listed terrorist, for example by giving details of a bank account or address where funds may be sent, or giving details of any other means of providing financial assistance to, or for the benefit of, a listed terrorist.

A licensee will be in breach of this section regardless of whether it knew the program could be reasonably understood as soliciting funds for a listed terrorist.

Section 9: Programs of political opinion not affected and Section 10: Bona fide reports and comments not affected
To ensure freedom of expression is not unduly restricted, sections 9 and 10 provide that the Standard does not prohibit broadcasts of informative program content (news, current affairs, documentary programs) that inform viewers about the activities, beliefs or opinions of a listed terrorist, and that do not solicit funds or directly recruit for a listed terrorist.

Section 10 enables a licensee to broadcast an excerpt of a program which would otherwise be prohibited by section 7 or 8 of the Standards if:

• the excerpt is part of a news report, current affairs program, documentary or other program, and

• the excerpt is included as part of a bona fide report or comment on a matter of public interest.