



Broadcasting Services (International Broadcasting) Guidelines 2016

made under subsection 121FP(1) of the
Broadcasting Services Act 1992

Compilation No. 1

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Includes amendments up to: F2016L01239

Prepared by the Australian Communications and Media Authority, Melbourne

Preliminary

1.1 Name of Guidelines

These Guidelines are the *Broadcasting Services (International Broadcasting) Guidelines 2016*.

1.2 Commencement

These Guidelines commence on 31 March 2016.

Note All legislative instruments are registered on the Federal Register of Legislation kept under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.

1.3 Revocation of the *Broadcasting Services (International Broadcasting) Guidelines 2005*

The *Broadcasting Services (International Broadcasting) Guidelines 2005* [F2005L03712] are revoked.

1.4 Object of Guidelines

The object of these Guidelines is to set out arrangements for:

- (a) both proposed and operational international broadcasting services; and
- (b) matter in programs; and
- (c) the conduct of international broadcasting licensees.

1.5 Definitions

In these Guidelines:

ACMA means the Australian Communications and Media Authority.

children's program means a program that is intended to be seen primarily by children.

classification system means the classification system that is set out in:

- (a) the *Classification (Publications, Films and Computer Games) Act 1995*; or
- (b) a similar law of a State or Territory.

Note The classification system is administered under complementary Commonwealth, State and Territory legislation. The *Classification (Publications, Films and Computer Games) Act 1995* applies to the Australian Capital Territory only.

current affairs program means a program that deals with social, economic or political matters that are of topical interest to the international audience of the service on which the program is broadcast.

film has the meaning given by section 5 of the *Classification (Publications, Films and Computer Games) Act 1995*.

intellectual property rights means rights associated with all copyrights, registered and unregistered trademarks, registered designs, trade secrets and know-how, and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967 concluded at Stockholm, to which Australia is a party.

Note In accordance with section 14 of the *Legislation Act 2003*, the definition in the Convention is incorporated as it was in force at the commencement of these Guidelines. The Convention is in Australian Treaty Series 1972 No. 15 ([1972] ATS 15) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

international audience, of a program that is broadcast as part of an international broadcasting service, means the audience outside Australia that receives, or is likely to receive, the international broadcasting service.

international broadcasting licensee means the holder of an international broadcasting licence.

matter means the content of a program that is broadcast as part of an international broadcasting service.

medicine has the meaning given by subsection 3 (1) of the *Therapeutic Goods Act 1989*.

narcotic substance has the meaning given by subsection 4 (1) of the *Customs Act 1901*.

schedule, in relation to matter, means to broadcast, or to intend to broadcast, the matter on a particular day and at a particular time.

Note 1 Under the *Broadcasting Services Act 1992*, a **program** is:

- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
- (b) advertising or sponsorship matter, whether or not of a commercial kind.

Programs may include:

- (a) a promotion for another program;
- (b) an advertisement;
- (c) the identification of a station, a licensee or a program provider;
- (d) a community service announcement.

Note 2 Under section 18A of the *Broadcasting Services Act 1992*, an **international broadcasting service** is a broadcasting service that is targeted, to a significant extent, to audiences outside Australia, where:

- (a) the means of delivering the services involves the use of a radiocommunications transmitter in Australia (whether alone or in combination with any other means); and
- (b) the services comply with any determinations or clarifications under section 19 in relation to international broadcasting services.

Section 18A of the *Broadcasting Services Act 1992* includes exceptions to and exemptions from the definition of an international broadcasting service.

1.6 Program that is not an advertisement

- (1) This section applies to a program that attempts to sell, to promote, or to recommend, a product or a service.
- (2) For the purposes of these Guidelines, the program is taken not to be an advertisement if:
 - (a) the program is broadcast, or intended to be broadcast, as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the international broadcasting licensee for the program does not receive payment or other valuable consideration for broadcasting the program.

Part 2 Guidelines on privacy, causing offence, and vilification

2.1 Privacy

- (1) A program should not include the broadcasting of matter that:
 - (a) relates to an individual's personal or private affairs; or
 - (b) intrudes on an individual's privacy.
- (2) However, subsection (1) does not apply if the matter is in the public interest.

2.2 Matter causing offence or hatred

- (1) A program should not include matter that is likely:
 - (a) to seriously offend a cultural sensitivity of an ethnic or racial component of the international audience; or
 - (b) to incite or perpetuate hatred against, or vilify, a person or group of people on the grounds of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference.
- (2) However, subsection (1) does not apply if the matter is:
 - (a) presented reasonably, and in good faith; and
 - (b) any of the following:
 - (i) material of an artistic nature;
 - (ii) a statement that is made, or a discussion or debate that is held, for an academic, artistic or scientific purpose;
 - (iii) a statement that is made, or a discussion or debate that is held, for a public interest purpose that is not mentioned in subparagraph (ii).
- (3) Also, subsection (1) does not apply if the matter is:
 - (a) a fair report of an event or matter of public interest; or
 - (b) a comment on an event or matter of public interest.

Part 3 Simulation of events

3.1 Simulated events

- (1) A program should not include matter that simulates an event in a way that is likely to alarm or mislead the international audience.
- (2) However, subsection (1) does not apply if the matter is:
 - (a) presented reasonably, and in good faith; and
 - (b) any of the following:
 - (i) material of an artistic nature;
 - (ii) a statement that is made, or a discussion or debate that is held, for an academic, artistic or scientific purpose;
 - (iii) a statement that is made, or a discussion or debate that is held, for a public interest purpose that is not mentioned in subparagraph (ii).
- (3) Also, subsection (1) does not apply if the matter is:
 - (a) a fair report of an event or matter of public interest; or
 - (b) a comment on an event or matter of public interest.

Part 4 Broadcasting to children

4.1 General guideline

Matter in a children's program should deal with a topic in a manner that has sufficient regard to the healthy educational, emotional and physical development of children.

4.2 Advertisements produced for children

- (1) This section applies to an advertisement for a product or service for which a significant component of the international audience that will see or hear the advertisement is likely to be children.
- (2) The advertisement should, as far as practicable, represent accurately the product or service.
- (3) The advertisement should not have the effect of putting undue pressure on children in the international audience to purchase the product or service.
- (4) The advertisement should not state or imply that:
 - (a) the product or service will have the effect of making children who have it or use it superior to other children; or
 - (b) a person who purchases or provides the product or service is more generous than another person.
- (5) If the advertisement makes a representation about a food product, the advertisement should not contain any false or misleading information about the nutritional value of the product.
- (6) If the advertisement mentions the price of a product or a service:
 - (a) the advertisement should, as far as practicable, represent accurately the price; and
 - (b) the advertisement should not, as far as practicable, qualify the price by words such as 'only' or 'just'.
- (7) If the advertisement includes a representation about a product (including toys and games), or a service, the advertisement should not show a person using the product or service in a way that does not fairly indicate the performance that a person of the same age could reasonably obtain from those, or similar, products or services.
- (8) If the advertisement includes a representation about an accessory that is required to use an advertised product properly, the advertisement should:
 - (a) make it clear that the accessory is required; and
 - (b) differentiate clearly between the price of the product and the price of the accessory.

Some examples of accessories

- 1 A battery.
- 2 A transformer.
- 3 Doll's clothes.

- (9) If the advertisement is in the form of a live-action presentation of a product, the advertisement should make a representation about the size of the product by a reasonably clear reference to something that a child could readily recognise.
- (10) The requirements in this section are additional to the requirements in Part 6.

4.3 Promotions in children's programs

- (1) This section applies to a program:
 - (a) that is not an advertisement; and
 - (b) for which a significant component of the international audience that will see or hear the advertisement is likely to be children.

Note Advertisements are dealt with in section 4.2.

- (2) The program should not include an attempt by:
 - (a) the host of the program; or
 - (b) another regular presenter of the program; or
 - (c) a guest or character in the program;to sell, to promote, or to recommend, products or services.
- (3) The program should not include matter that is an attempt to sell, to promote, or to recommend, a product that:
 - (a) depicts:
 - (i) the host of the program; or
 - (ii) another regular presenter of the program; or
 - (iii) a guest or character in the program; or
 - (b) includes the name of any of those people; or
 - (c) is displayed in packaging that includes the name of, or depicts, any of those people.
- (4) The program should not include matter that is an attempt to sell, to promote, or to recommend, a service that includes the name of:
 - (a) the host of the program; or
 - (b) another regular presenter of the program; or
 - (c) a character in the program.
- (5) The program should not include matter that is an attempt to sell, to promote, or to recommend:
 - (a) an alcoholic beverage; or
 - (b) medicine; or
 - (c) a narcotic substance.
- (6) If the program includes matter that is an attempt to sell, to promote, or to recommend, a product or a service that is permitted under this section:
 - (a) the matter should be presented as a discrete part of the program; and
 - (b) the audience should be informed:
 - (i) during the program, and immediately before the presentation of the matter; and
 - (ii) in a way that it would be reasonable to expect children to understand;

- that the matter has a sponsor; and
- (c) the matter should not have the effect of putting undue pressure on children in the international audience to purchase the product or service; and
 - (d) the matter should not state or imply that:
 - (i) the product or service will have the effect of making children who have it or use it superior to other children; or
 - (ii) a person who purchases or provides the product or service is more generous than another person.
- (7) The requirements in this section are additional to the requirements in Part 6.

4.4 Competitions

- (1) This section applies to the broadcast of matter that deals with a competition in which children may participate.
- (2) The matter should:
 - (a) state clearly a summary of the principal rules of the competition; and
 - (b) state accurately, clearly and fairly the chance of winning a prize.
- (3) If a significant component of the international audience for the program is likely to be children, the matter should refer to a prize in the competition briefly and without unreasonable repetition.

Part 5 News and current affairs

5.1 Application of Part 5

This Part applies to the following programs:

- (a) a news bulletin;
- (b) a news flash;
- (c) a news update;
- (d) a current affairs program.

5.2 General guideline

A program should consist of matter that:

- (a) is presented accurately, having regard to the circumstances existing when the program is broadcast; and
- (b) represents opinions fairly, having regard to the circumstances existing when the program is broadcast; and
- (c) clearly distinguishes between factual material, simulation, and commentary and analysis; and
- (d) treats with sensitivity images of, or interviews with, bereaved people and survivors and witnesses of traumatic incidents.

5.3 Impartiality

- (1) A program should be impartial.
- (2) As part of the assessment of impartiality in a program:
 - (a) it is not necessary for the presenter or editorial staff involved in the program to be uncritical or unquestioning of an event or opinion; and
 - (b) it is not necessary for the program to give equal time to the treatment of differing opinions about a matter.

5.4 Balance

- (1) A program should be balanced.
- (2) As part of the assessment of balance in a program:
 - (a) it is not necessary for the program to present all of the significant opinions about a matter; but
 - (b) it is appropriate to consider whether all of the significant opinions will be presented in one or more similar programs within a reasonable period.

Note A program may be the first or last in a series of similar programs. The reasonable period in which all of the significant opinions should be presented may have started before the date of an individual program.

5.5 Presentation of matter

- (1) The matter in a program should not be presented in a manner that is likely to cause a substantial component of the international audience to panic.

- (2) If a program includes matter about the behaviour of a group of people or businesses, the matter should not identify unfairly an individual member of the group.
- (3) A program should not include matter that identifies or depicts an individual or a group of people in a negative way, based on the gratuitous emphasis of any of the following attributes:
 - (a) age;
 - (b) colour;
 - (c) gender;
 - (d) national or ethnic origin;
 - (e) physical or mental disability;
 - (f) race;
 - (g) religion;
 - (h) sexual preference.
- (4) However, subsection (3) does not apply if the broadcast of the matter is in the public interest.

5.6 Presentation of death or injury

- (1) This section applies to a program if the matter in the program is likely to include any of the following:
 - (a) images of one or more dead people;
 - (b) images of one or more seriously wounded or injured people;
 - (c) images of one or more bereaved people;
 - (d) an interview with one or more bereaved people.
- (2) The matter should be presented, as far as practicable, in a way that is appropriate having regard to:
 - (a) the likely feelings of the international audience; and
 - (b) the importance of avoiding serious offence or distress.
- (3) If it is practicable before the matter is broadcast:
 - (a) the audience should be warned about the nature of the matter; and
 - (b) the warning should give a member of the audience a reasonable opportunity to avoid seeing or hearing the matter before it is broadcast; and
 - (c) the warning should not include anything that is likely to seriously offend or distress a substantial component of the international audience; and
 - (d) the warning should be broadcast in an audio or visual format that is presented at a time, and in a manner, that is likely to be understood by that audience.
- (4) The matter should not identify directly or indirectly a victim of a violent accident or crime before the members of the victim's immediate family are notified of the accident or crime by the relevant authority.

5.7 Presentation of suicide

- (1) This section applies to a program if the matter in the program is likely to refer (by images or a report) to:

- (a) suicide; or
 - (b) attempted suicide.
- (2) The matter may be broadcast only if it is in the public interest.
- (3) If the matter is broadcast, the matter:
- (a) should be presented in a straightforward manner; and
 - (b) should not describe or portray in detail the method in which the suicide was committed or attempted; and
 - (c) should not include a description or portrayal of an event, or an opinion, that is intended to make suicide appear glamorous or attractive.

Part 6 Advertising

6.1 Application of Part 6

- (1) This Part applies to an advertisement.
- (2) The requirements in this Part are additional to the requirements in Part 4.

Note Part 4 deals with advertising that is directed at children, or that appears in a children's program.

6.2 Compliance with relevant Australian advertising codes

An advertisement should comply with the requirements of each Australian advertising code of practice:

- (a) as if the advertisement were to be broadcast in Australia; and
- (b) whether or not the code is expressed to be binding on the advertisers and advertisements to which it relates.

6.3 Tobacco products

An advertisement should not attempt to sell, to promote, or to recommend, cigarettes, cigars, tobacco or a tobacco product.

6.4 Content of advertising

An advertisement should be appropriate having regard to:

- (a) current Australian community attitudes; and
- (b) the need, in accordance with those standards, to limit the exposure of children to matter that is only appropriate to an adult audience.

Part 7 Persuasive techniques

7.1 **Hypnosis**

A program should not include matter that:

- (a) depicts or describes the actual process of hypnotising a person; or
- (b) induces a hypnotic state in the international audience or some members of the audience.

7.2 **Subliminal perception**

A program should not depict:

- (a) the technique known as subliminal perception; or
- (b) another technique that is designed to convey information to the audience by messages below or near the threshold of normal awareness.

Part 8 **Assessing and scheduling matter for radio and television**

8.1 **General guideline**

- (1) An international broadcasting licensee should schedule matter only after taking into account the likely cultural sensitivities of the international audience.
- (2) In particular, the licensee should take the following into account:
 - (a) the major component of the audience;
 - (b) if the matter is broadcast when the audience would reasonably be expected to include a significant number of children, whether the matter would be distressing or harmful to children;
 - (c) if the matter is primarily directed at children, whether the matter deals with a topic in a manner that has sufficient regard to the healthy educational, emotional and physical development of children;
 - (d) if the audience is located in more than one time zone, the composition of the audience in each zone.
- (3) If the matter is a program promotion, news update or news flash that is to be broadcast during the broadcast of a film to which section 8.2 applies, the licensee should also take into account whether the matter is consistent with the assessment of the film under that section.

8.2 **Assessment of classification of television films**

- (1) If an international broadcasting licensee proposes to broadcast a film or a drama program on television, the licensee should deal with the film or program in accordance with the classification given to it under the classification system.
- (2) The film or drama program should not be broadcast if it would be classified R, X or RC.

8.3 **Assessment of suitability of television films**

- (1) If a film may be broadcast in accordance with section 8.2, the international broadcasting licensee that proposes to broadcast it should also assess whether the film is suitable for the major component of the international audience.
- (2) The assessment should be completed before the film is broadcast.
- (3) If the film would be classified M or MA under the classification system, the film is not suitable for the major component of the international audience if that audience is likely to include a significant number of children.
- (4) If the film is not suitable for the major component of the international audience, the licensee should make every reasonable effort to modify the film to make it suitable.

8.4 Markings and warnings for television films

- (1) If a film or a drama program may be broadcast in accordance with section 8.2, the international broadcasting licensee should, as part of the broadcast:
 - (a) display each marking that is required under the classification system; and
 - (b) make each warning or statement that is required under the system.

Note See section 8 of the *Classification (Publications, Films and Computer Games) Act 1995*.

- (2) The marking, warning or statement should be shown or made in the way that is required under the classification system.

8.5 Advice on unclassified matter on television

- (1) This section applies to matter (other than a film that may be broadcast in accordance with section 8.2) if:
 - (a) the matter is likely to seriously offend or distress a substantial component of the international audience; and
 - (b) the broadcast of the matter is in the public interest; and
 - (c) sections 5.6 and 5.7 do not apply.

Note Sections 5.6 and 5.7 deal with certain matters in news and current affairs.

- (2) Before the matter is broadcast:
 - (a) the audience should be warned about the nature of the matter; and
 - (b) the warning should give a member of the audience a reasonable opportunity to avoid seeing or hearing the matter before it is broadcast; and
 - (c) the warning should not include anything that is likely to seriously offend or distress a substantial component of the international audience; and
 - (d) the warning should be broadcast in an audio or visual format that is presented at a time, and in a manner, that is likely to be understood by that audience.

8.6 Scheduling television advertising

- (1) This section applies if an advertisement:
 - (a) is to be broadcast on television; and
 - (b) contains matter that is likely to be of particular concern or sensitivity to a component of the international audience.
- (2) The advertisement should be scheduled in a way that reduces the concern or sensitivity as much as practicable.

Part 9 Additional guidelines for radio

9.1 Application of Part 9

- (1) This Part applies to matter that is to be broadcast by radio.
- (2) The requirements in this Part are additional to the requirements in other Parts of these Guidelines.

9.2 Offensive language on radio

The matter should not include language that is:

- (a) gratuitous to the matter, or the theme of the matter; and
- (b) likely to offend the international audience.

9.3 Sexual acts on radio

The matter should not include sound that relates to a sexual act.

9.4 Sexual themes on radio

- (1) This section applies to matter that:
 - (a) is the content of a feature program, or a promotion for a feature program; and
 - (b) has an explicit sexual theme as its core component.
- (2) The matter may be broadcast if:
 - (a) the broadcast is in the public interest; or
 - (b) the matter is included in a discussion or debate about current events.
- (3) In any other case, the international broadcasting licensee that proposes to broadcast the matter should not decide whether to broadcast the matter until the licensee has had regard to the composition of the major component of the international audience.
- (4) If the licensee decides to broadcast the matter, in accordance with subsection (2) or (3):
 - (a) the licensee should broadcast a warning that gives a reasonable indication of the nature of the matter:
 - (i) before any broadcast of the matter; and
 - (ii) at hourly intervals during any broadcast of the matter; and
 - (b) each warning should be broadcast in the principal language used in the broadcast.
- (5) A warning should not include anything that is likely to seriously offend or distress a substantial component of the international audience.

Part 10 Complaints

10.1 Complaints procedures

- (1) An international broadcasting licensee should establish and maintain a procedure to handle a complaint made to the licensee about the international broadcasting service operated by the licensee.
- (2) The procedure should ensure that the licensee:
 - (a) makes every reasonable effort to respond to a complaint unless it is clearly frivolous, vexatious or not made in good faith; and
 - (b) makes every reasonable effort to correct, at the earliest practicable opportunity, a significant error of fact in matter broadcast by the licensee, whether or not the error is the subject of a complaint; and
 - (c) gives a suitable remedy in relation to a justified complaint.

Some examples of remedies

- 1 Broadcasting a reply.
 - 2 Broadcasting an apology.
 - 3 Removing offensive material from matter.
- (3) The procedure should also provide for complaints that are made by telephone by ensuring that the licensee:
 - (a) makes every reasonable effort to satisfy the complaint during a telephone call; but
 - (b) is able to ask the complainant to make the complaint in writing if it is not practicable to satisfy the complaint during the telephone call.
 - (4) The procedure should also provide for complaints that are made by ensuring that the licensee acknowledges a complaint, and answers it in writing, within 30 days after receiving the complaint.
 - (5) The procedure should use the language of the major component of the international audience.
 - (6) The procedure is not limited to the matters set out in subsections (2), (3), (4) and (5).

10.2 Publicity for complaints procedures

- (1) An international broadcasting licensee should regularly give the following information to the international audience:
 - (a) the existence of the complaints procedures mentioned in section 10.1; and
 - (b) information that would enable a complaint to be made to the licensee, including the licensee's:
 - (i) street address; and
 - (ii) e-mail address; and
 - (iii) telephone number; and
 - (iv) fax number.

- (2) The licensee:
 - (a) should give the information during broadcasts that are under the licensee's control; and
 - (b) should give the information using the language of the major component of the international audience; and
 - (c) may also give the information in other ways.

10.3 Records of complaints

- (1) An international broadcasting licensee should keep a record of each complaint that the licensee receives about:
 - (a) an international broadcasting service that is operated by the licensee; or
 - (b) matter that is broadcast on the service.
- (2) The record of a complaint should include at least the following information:
 - (a) the name or nature of the broadcast to which the complaint relates, and the date on which the broadcast happened;
 - (b) the day, and the time at which, the complaint was received by the licensee;
 - (c) the name, and address or telephone number, of the complainant (if he or she has given that information to the licensee);
 - (d) a brief statement of the substance of the complaint;
 - (e) a brief statement of the substance of the response by the licensee to the complaint and the date on which the licensee responded to the complaint.

10.4 Retention of and access to records of complaints

- (1) An international broadcasting licensee must retain records required under section 10.3 for a period of two years after the date on which the complaint was received.
- (2) If the ACMA asks an international broadcasting licensee, in writing, to inspect a record mentioned in section 10.3 that is kept by the licensee, the licensee should, within a reasonable time after the request is made, produce the record (or a copy of the record) to the ACMA.

Part 11 **Conduct of an international broadcasting licensee**

11.1 **Control of matter**

An international broadcasting licensee should make every reasonable effort to ensure that:

- (a) matter that the licensee broadcasts complies with each requirement of these Guidelines that applies to the matter; and
- (b) each broadcast that is made under the licensee's control complies with each requirement of these Guidelines that applies to broadcasting.

11.2 **Offences against laws**

An international broadcasting licensee should not use an international broadcasting service in the commission of an offence against the law of the Commonwealth or of a State or Territory.

Part 12 Intellectual property rights

12.1 Conduct of licensee

- (1) An international broadcasting licensee should respect the intellectual property rights that exist in matter.

12.2 Program matter

- (1) A program should not include matter that infringes the intellectual property rights of any person.
- (2) A program should not be an infringement of the intellectual property rights of any person.

Part 13 Applicants for an international broadcasting licence

13.1 Commitment to guidelines

- (1) If an applicant for an international broadcasting licence commits in their application to abide by these Guidelines, this will be taken as compliance with the Guidelines for the purposes of preparing a report to the Minister for Foreign Affairs regarding the allocation of a licence.
- (2) If an applicant for an international broadcasting licence does not commit in their application to abide by these Guidelines, this will be taken as non-compliance with the Guidelines for the purposes of preparing a report to the Minister for Foreign Affairs regarding the allocation of a licence.

Notes to the *Broadcasting Services (International Broadcasting) Guidelines 2016*

Note 1

The *Broadcasting Services (International Broadcasting) Guidelines 2016* (in force under subsection 121FP(1) of the *Broadcasting Services Act 1992*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of notification in Gazette or FRL registration	Date of commencement	Application, saving or transitional provisions
<i>Broadcasting Services (International Broadcasting) Guidelines 2016</i>	29 March 2016 (see F2016L00393)	31 March 2016	
<i>Broadcasting Services (International Broadcasting) Guidelines Amendment 2016 (No.1)</i>	27 July 2016 (see F2016L01239)	28 July 2016	

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
s.1.5	am. 2016 (No. 1).