

Guidelines relating to the Broadcasting Services (Anti-terrorism Requirements for Television Narrowcasting Services) Standard 2021

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Introduction

The Australian Communications and Media Authority (the ACMA) is an independent statutory authority established under section 6 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act). The ACMA's functions relating to broadcasting, content and datacasting are set out at section 10 of the ACMA Act. The statutory framework supporting these functions is found in the *Broadcasting Services Act 1992* (the BSA).

On 14 September 2021, the ACMA made the [Broadcasting Services \(Anti-terrorism Requirements for Television Narrowcasting Services\) Standard 2021](#) (the 2021 standard). The 2021 standard has been made under subsection 125(2) of the BSA.

The 2021 standard replaces the Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2011 and the Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2011 (together, the 2011 standards). The main variation from the 2011 standards is the consolidation of the 2 instruments into a single standard. The 2021 standard commenced on 15 September 2021.

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 relevant standards determined by the ACMA under section 125 of the BSA is a licence condition which applies to persons who provide subscription television narrowcasting services or open narrowcasting television services.

These guidelines are intended to inform licensees and the public about how the 2021 standard operates. In particular, they should assist licensees to:

- > determine whether any particular person or organisation is a listed terrorist at any particular time
- > understand the practical application of the concepts:
 - > 'recruiting for a listed terrorist', at section 9
 - > 'financing terrorism', at section 10
 - > 'advocating the doing of a terrorist act' at section 11 of the 2021 standard.

These guidelines also highlight the exceptions provided for in subsection 11(4), and sections 12 and 13 of the 2021 standard for the broadcast of programs of political opinion and bona fide reports or commentary on matters of public interest.

'Licensees', for the purposes of the 2021 standard, are persons who provide a subscription television narrowcasting service under a class licence determined under paragraph 117(c) of the BSA or an open narrowcasting television service under a class licence determined under paragraph 117(e) of the BSA.

Intended impact and effect of the 2021 standard

The intended impact of the 2021 standard is to prevent the broadcasting of programs that advocate the doing of a terrorist act, or that encourage people to join or finance listed terrorists. 'Listed terrorist' is a term defined in the 2021 standard to cover organisations listed as terrorists under the Criminal Code, 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*, for their association with the commission of terrorist acts. 'Terrorist act' has the meaning given by section 100.1 of the Criminal Code.

The effect of the 2021 standard is that licensees of subscription television narrowcasting services and open narrowcasting television services must not broadcast a program that (either/or):

- > would be reasonably understood as directly recruiting persons to join, or participate in the activities of, a listed terrorist
- > would be reasonably understood as soliciting funds, or assisting in the collection or provision of funds, for a listed terrorist
- > advocates the doing of a terrorist act.

The 2021 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 2021 standard.

This makes it clear to licensees that each licensee is responsible for the program content broadcast on the relevant service and that it is properly to be expected that they should preview programs that might potentially breach the 2021 standard, and make an assessment about their suitability for broadcast.

There is an exception to the prohibition to permit the broadcast of an excerpt from a program that would otherwise be prohibited, if it is included in a news report, current affairs program, documentary or other program, as part of a bona fide report or comment on a matter of public interest. Another provision makes clear that the 2021 standard would not be contravened by programs that merely gave information about the beliefs or opinions of a listed terrorist. These provisions help to ensure that freedom of expression is not unduly restricted.

Complying with the 2021 standard does not abrogate the need for licensees to comply with other relevant anti-terrorism laws such as those set out in the Criminal Code.

Practical application of the 2021 standard

Determining who is a 'listed terrorist'

The 2021 standard confines the term '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 for their association with the commission of terrorist acts. In determining whether any particular person or organisation is a listed terrorist at a particular time (usually at the time of assessing a program prior to its broadcast) a licensee should consult the various regulations made for the purpose of paragraph (b) of the definition of terrorist organisation in subsection 102.1(1) of the Criminal Code and the list of proscribed persons and entities designated by the Minister of Foreign Affairs in the *Gazette*.

The list of terrorist organisations specified under the Criminal Code and the current Statements of Reasons for each organisation are available on the [Australian Government National Security](#) website. The website also provides an up-to-date list of the relevant names and aliases of a listed terrorist organisation.

Information about proscribed persons and entities designated as such by the Minister for Foreign Affairs is available from the [Department of Foreign Affairs and Trade](#) website.

Licensees should be aware that, as well as being subject to the operation of the 2021 Standard, they may be affected by anti-terrorism provisions of broader application in other legislation, such as the *Charter of the United Nations Act 1945* and the Criminal Code.

Determining ‘Recruiting for a listed terrorist’

Section 9 of the 2021 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 2021 standard, the term ‘recruit’ is given a non-exhaustive meaning that includes: induce, incite and encourage.

Section 9 prohibits 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
- > 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.

Determining ‘Financing terrorism’

Section 10 of the 2021 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.

In assessing (prior to the broadcast of the program in Australia) whether program content promotes financing of a listed terrorist, a licensee should review whether the broadcast gives details of a bank account or address where funds may be sent, or gives details of any other means of providing financial assistance to, or for the benefit of, a listed terrorist.

Determining programs that ‘Advocate the doing of a terrorist act’

Section 11 of the 2021 standard prohibits a licensee from broadcasting a program that advocates the doing of a terrorist act. It replicates the wording of section 9A of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) which is consistent with paragraph 102.1(1A)(a) of the Criminal Code and should be interpreted in the same way.

Section 5 of the 2021 standard provides that ‘terrorist act’ has the same meaning as the term is given in section 100.1 of the Criminal Code, namely:

terrorist act means an action or threat of action where:

- a) the action falls within subsection (2) and does not fall within subsection (3); and
- b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- c) the action is done or the threat is made with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.

The types of actions covered by the definition of 'terrorist act' are set out in subsection 100.1(2) and include action that:

- > causes serious harm that is physical harm to a person
- > causes serious damage to property
- > causes a person's death
- > endangers a person's life (other than the life of the person taking the action)
- > creates a serious risk to the health or safety of the public or a section of the public
- > seriously interferes with, disrupts or destroys essential electronic systems.

Subsection 100.1(3) provides that lawful advocacy, protest, dissent, and industrial action are expressly excluded from the ambit of the definition provided these are not intended to:

- > cause serious harm that is physical harm to a person
- > cause a person's death
- > endanger the life of a person (other than the person taking the action)
- > create a serious risk to the health or safety of the public or a section of the public.

In assessing (prior to the broadcast of the program in Australia) whether program content advocates the doing of a terrorist act, a licensee should consider whether the broadcast:

- > merely informs the audience of the activities, beliefs or opinions of a listed terrorist (see information on section 11 of the 2021 standard below) (a non-breach); or
- > goes beyond merely providing information in connection with a listed terrorist and any terrorist act by advocating that act, as covered under subsection 11(3) of the 2021 standard (a breach).

Simply reporting on the activities of a listed terrorist will, generally, not amount to directly or indirectly counselling or urging the doing of a terrorist act. However, the ACMA will consider the content, tone and circumstances of each impugned broadcast in order to distinguish between mere presentation of the beliefs or objectives of a listed terrorist [non breach] and the presentation of terrorist acts as a valid means to advance those beliefs or objectives (a breach).

As the wording of section 11 of the 2021 standard is taken verbatim from section 9A of the Classification Act, the ACMA also intends to have regard to explanatory material and guidance which explains the meaning of that corresponding section.

For example, according to the Explanatory Memorandum to the Classification (Publications, Films and Computer Games) Amendment Bill 2007:

material, which does *no more than* contribute to public discussion or debate or provide entertainment or satirical comment, is *not* material which should be classified as RC under this provision. Examples could include investigative journalists' work, historical analyses, material that might appear to glorify war or battle (including 'factional' or fictional accounts of war, insurgency or resistance), satirical pieces, and popular culture movies.

Material not prohibited by the standard

To ensure freedom of expression is not unduly restricted, section 12 of the 2021 standard does not prohibit broadcasts of informative program content (news, current affairs, documentary programs) that merely informs viewers about the activities, beliefs or opinions of listed terrorists, and that does not solicit funds, directly recruit for a listed terrorist or advocate the doing of a terrorist act.

Further, section 13 of the 2021 standard, shown below, enables a licensee to broadcast an excerpt of a program which would otherwise be prohibited by section 9, 10 or 11 of the 2021 standard if:

- (a) the excerpt is included in a news report, current affairs program, documentary or other program; and
- (b) the excerpt is included as part of a bona fide report or comment on a matter of public interest.

Subsection 11(4), and sections 12 and 13 of the 2021 standard are effectively unchanged from the defences which have applied to corresponding earlier standards since 2006. The ACMA intends that these defences should continue to provide broad protection for material that is broadcast in the interests of public information and not in the interests of promoting terrorism or terrorist activity.

Liability for breaches

A licensee will be in breach of the 2021 standard if it broadcasts a program that breaches section 9, 10 or 11, regardless of whether or not the licensee is aware that the program is in breach. A licensee may also be subject to prosecution or civil penalty proceedings under the BSA.

To minimise their potential exposure under the 2021 standard, licensees should formulate and implement measures that address the risk of broadcasting programs that do not comply with the 2021 standard. Such measures would assist licensees to make an informed assessment about programs before they are broadcast. Appropriate measures may include reviewing and vetting programs before broadcast.

The licensee bears responsibility for the content of its narrowcasting service and it is appropriate that the licensee is obliged to be aware of the content of programs before they are broadcast.

Enforcing compliance with the 2021 standard

Where the ACMA determines that the 2021 standard has been breached and the program advocates the doing of a terrorist act, or can be reasonably understood to encourage people to join or finance listed terrorists, the ACMA may use its enforcement powers under the BSA to address the breach. Find out more about our [enforcement guidelines](#).

Subsection 5(2) of the BSA requires the ACMA to use its powers in a manner that is, in the ACMA's opinion, commensurate with the seriousness of the breach concerned. The ACMA's current enforcement options in the event of a breach of the 2021 Standard include:

- > accepting an enforceable undertaking by the licensee to ensure future compliance with the BSA
- > issuing a written notice directing the broadcaster to take action to ensure that the service is provided in such a way as to comply with the requirements of the licence. It is an offence not to comply with such a notice
- > applying to the Federal Court for an order requiring the person providing the service to pay a civil penalty
- > applying to the Federal Court for an order requiring the person providing the service to cease providing that service
- > if an offence has been committed under the BSA, referral of the matter to the Commonwealth Director of Public Prosecutions.

Procedural fairness

Before making a finding that a licensee has breached the 2021 standard, and before publishing any report that would, or would be likely to, adversely affect the interests of a person, the ACMA will provide the licensee or that person with an opportunity to make submissions in relation to these matters.

Further information

You can access the standard from the [ACMA website](#) and the [Federal Register of Legislation](#).

Licensees wishing to discuss the application of the 2021 standard can mail:

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Australian Communications and Media Authority
PO Box Q500, Queen Victoria Building, NSW 1230

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Or call: 1300 850 115