Investigation report no. BI-667

| Summary |  |
| --- | --- |
| **Licensee [service]** | Farren Hotham [One Central West FM88] |
| **Finding** | Breach of subclause 4(2) in Schedule 2 to the *Broadcasting Services Act 1992* (the BSA) [identification of certain political matter]Breach of paragraph 11(1)(d) in Schedule 2 to the BSA [comply with subclause 4(2)] |
| **Relevant legislation** | Schedule 2 to the BSA |
| **Date finalised** | 23 July 2023 |
| **Broadcasting matter** | *Call for Federal assistance to fix roads*  |
| **Dates of broadcast** | 19 October 2022 to 31 December 2022 (inclusive) |
| **Type of service** | Open narrowcasting – radio |
| **Attachments** | **A** - extracts ofrelevant legislation**B** – transcript of the message |

Background

In May 2023, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the broadcast of a message - *Call for Federal assistance to fix roads,* by One Central West FM88 (the **message**).

The message was read by the Federal Member for Calare, and called for an urgent increase to Federal and State road funding following extensive damage to local and regional roads caused by floods.

The message was 2 minutes and 9 seconds in duration and was broadcast on multiple occasions on each day from 19 October 2022 to 31 December 2022.

The ACMA investigated compliance by Farren Hotham (the **Licensee**) with subclause 4(2) and paragraph 11(1)(d) of Schedule 2 to the BSA.

Subclause 4(2) requires a licensee, who broadcasts political matter at the request of another person, to include an announcement of ‘required particulars’ in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* (the **Electoral Act**).

One Central West FM88 is an open narrowcast radio station that operates under a class licence. Paragraph 11(1)(d) of Schedule 2 to the BSA makes it a condition of such a class licence that the person providing a service under the licence must comply with subclause 4(2).

Issue: Identification of political matter

Finding

The ACMA finds that the Licensee breached subclause 4(2) of Schedule 2 to the BSA and as a consequence, also breached paragraph 11(1)(d) of Schedule 2 to the BSA with respect to the broadcast of the message.

Reasons

In assessing compliance with subclause 4(2) of Schedule 2 to the BSA, the ACMA asks:

* Was the message ‘political matter’?
* If so, was the political matter broadcast at the request of another person?
* If so, did the licensee ensure that the required particulars were announced in accordance with the requirements specified in subclause 4(2) of Schedule 2 to the BSA?

Extracts of relevant legislation are set out in **Attachment A**.

***Was the broadcast ‘political matter’?***

As outlined above, the message called for an urgent increase to Federal road funding and referred to the upcoming Federal Budget as ‘the place to do it’. A transcript of the message is at **Attachment B.**

The ACMA considers that the message was ‘political matter’.

***If so, was the political matter broadcast at the request of another person?***

The Licensee advised the ACMA that the advertisement was broadcast at the request of the Federal Member for Calare.

Therefore, the political matter was broadcast at the request of another person.

***If so, did the broadcaster ensure that the required particulars were announced in accordance with the requirements specified in subclause 4(2) of Schedule 2 to the BSA?***

If political matter is broadcast at the request of another person, the licensee must announce the ‘required particulars’ of the person or entity who has authorised the broadcast. The announcement must be made at the end of the communication in the language used for the rest of the communication.[[1]](#footnote-1)

As noted above, the Licensee advised the ACMA that the broadcasts were requested by the Federal Member for Calare.

Members of the House of Representatives are a ‘disclosure entity’ under the Electoral Act. [[2]](#footnote-2) The BSA includes a table at subclause 1(2) of Schedule 2that specifies the ‘required particulars’ applicable to each ‘disclosure entity’. The required particulars for a broadcast authorised by a disclosure entity who is a natural person are specified in ‘Item 2’ of the table and consist of:

1. the name of the person
2. the town or city in which the person lives.

The ACMA reviewed a recording of the message broadcast by the Licensee and found that it did not include an announcement of the required particulars, as specified in subclause 1(2)of Schedule 2 to the BSA, at the end of the political matter.

Accordingly, the ACMA finds that the Licensee breached subclause 4(2) of Schedule 2 to the BSA and, as a consequence, also breached paragraph 11(1)(d) of Schedule 2 to the BSA with respect to the broadcast of the message.

Attachment A

Relevant legislation and the ACMA’s assessment process

***Broadcasting Services Act 1992***

**Schedule 2—Standard conditions**

**Part 1—Interpretation**

**1 Definitions**

1. In this Schedule

[…]

**disclosure entity** has the meaning given by:

(a) section 321B of the Commonwealth Electoral Act 1918; or

(b) paragraph (e) of the definition of disclosure entity in section 110A of the Referendum (Machinery Provisions) Act 1984.

[…]

***person*** includes a political party, a corporation and any other association (whether incorporated or unincorporated).

***political matter*** means any political matter, including the policy launch of a political party.

[…]

1. The **required particulars** are:

(a) the particulars set out in the following table; and

(b) any other particulars determined under subsection 321D(7) of the Commonwealth Electoral Act 1918 for the purposes of this paragraph.

| **Required particulars**  |
| --- |
| **Item**  | **If ...**  | **the required particulars are the following ...**  |
| 1  | the broadcast is authorised by a disclosure entity that is not a natural person  | (a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the Commonwealth Electoral Act 1918, if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation  |
| **2**  | the broadcast is authorised by a disclosure entity who is a natural person  | (a) the name of the person; (b) the town or city in which the person lives  |
| **3**  | the broadcast is authorised by an entity that is not a disclosure entity or a natural person  | (a) the name of the entity; (b) the relevant town or city of the entity  |
| **4**  | the broadcast is authorised by a natural person who is not a disclosure entity  | (a) the name of the person; (b) the town or city in which the person lives  |

**Part 2—Special conditions**

**4 Identification of certain political matter**

[…]

*Announcing required particulars*

(2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must ensure that the required particulars in relation to the matter are announced in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subclause.

[…]

11**Conditions applicable to broadcasting services provided under class licences**

  (1)  The following conditions apply to the provision by a person of a broadcasting service under a class licence:

[…]

(d)  the person will comply with the requirements of clauses 3, 3A, 3B, 4 and 5;

***Commonwealth Electoral Act 1918***

**Part XXA—Authorisation of electoral matter**

**Division 1—Preliminary**

**321B Definitions**

[…]

***disclosure entity***: a person or entity is a ***disclosure entity*** at a particular time if the person or entity is any of the following at that time:

[…]

1. a senator or member of the House of Representatives;

[…]

**Division 2—Authorisation of certain electoral matter**

**321D Authorisation of certain electoral matter**

[…]

Legislative instrument

(7)  The [Electoral Commissioner](http://classic.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s4.html#electoral_commissioner) may, by legislative instrument, determine:

[…]

              (b)  requirements or [particulars](http://classic.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s4.html#part) for the purposes of any one or more of the following:

[…]

(iv)  [paragraph](http://classic.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s302f.html#paragraph) 1(2)(b) and subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992;

***Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018***

**Part 1—Preliminary**

**3 Authority**

This instrument is made under subsection 321D(7) of the *Commonwealth Electoral Act 1918*.

[…]

**Part 3—Requirements and particulars**

[…]

**10 Broadcasting Acts**

The following table sets out requirements for notifying particulars for the purposes of the following provisions:

     [...]

             (b)  subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992;

             [...]

|  **Requirements for notifying particulars—broadcasting Acts** |
| --- |
| **Item** | **If the communication is...**  | **the particulars must …** |
| 1 | a broadcast by radio | be announced at the end of the communication in the language used for the rest of the communication. |
| **2** | a broadcast by television | be announced and shown at the end of the communication in the language used for the rest of the communication. |

Attachment B

**Transcript of the *Call for road funding* message**

Unidentified announcer: Our Member for Calare [name of MP].mp

Federal Member for Calare: I am calling for Federal assistance to help local governments fix rain bombed roads. After months of wild wet weather road systems across entire regions of Australia are pockmarked with potholes. Drivers on roads across the country have been left thinking they are part of a new Mario Cart simulation following the recent severe wet weather and it is only going to get worse. Smooth and safe stretches of road clear of pothole chaos are rarer than hen’s teeth. The current condition of our roads is an incredibly dangerous issue that needs to be tackled immediately. Not only are potholes hitting our back pockets by puncturing tyres and bending wheel rims they are costing our local councils big time. The severe wet weather is creating a roads funding crisis for many local council areas which are being forced to pour significant money into road maintenance. The impact of the relentless rainfall is particularly being felt in country areas where local councils often manage extremely large road networks. As is the case with many country communities there is simply no way they can afford to meet the cost of these repairs nor do they have the capacity in their workforce to do so. Far too many councils across the country are facing the same road woes. The scale of the task facing many councils is gobsmacking. They need urgent help and it should be provided at both State and Federal level. The upcoming Federal Budget is the place to do it. There is no better time for the Government to step up with more funding and it is not just a question of costs and economics. Damaged roads put lives at risk which makes the issue urgent. We have got a wet summer forecast so the issue is only going to get more acute. State governments across Australia also have a vital role to play in assisting local governments to deal with this issue, their help is needed too. The road crews of many of our local councils are stretched and exhausted. Patching is the best many councils can do right now but this is not sustainable. Funding is urgently needed to make these roads safe again. This needs to be a national priority that crosses party lines. I call on the Federal Government to lead the way and commit to greater roads funding for the safety of road users around Australia. Our local councils need immediate assistance.

1. Section 10 of the *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018* [↑](#footnote-ref-1)
2. Section 321B of the *Commonwealth Electoral Act 1918* [↑](#footnote-ref-2)