Human Rights Commission

REPORT NO. 16

FREEDOM OF EXPRESSION AND SECTION 116 OF THE BROADCASTING AND TELEVISION ACT 1942

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HUMAN
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Our Ref

11 November 1985

The Hon. Lionel Bowen, M.P.,
Deputy.Prime Minister and Attorney-General,
Parliament House,
CANBERRA. A.C.T. 2600

Dear Attorney-General,

Pursuant to paragraph 9(1)(a) of the Human Rights Commission Act 1981, the Commission has examined section 116 of the Broadcasting and Television Act 1942 (Cwlth) and found certain inconsistencies between the provisions of this section of the Act and the right to freedom of expression as contained in Article 19 of the International Covenant on Civil and Political Rights.

In accordance with the requirements of the Act, I now present this report to you.

Yours sincerely,

Acting Chairman,
for and on behalf of the
Human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

Mr P. H. Bailey, O.B.E.

Members

Associate Professor M. J. Aroney, O.B.E.
Professor P. J. Boyce
Mrs N. C. Ford
Mrs E. Geia
Ms E. Hastings

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Functions of Commission

9.(1) The functions of the 'Commission are to-

(a) examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of: ascertaining whether the enactments or proposed enactments are, or would be, inconsistentwith :or :contrary to human rights, and to report to the Minister. the.results of any such examination;

(b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and -

(i) where the Commission considers it appropriate to do so - endeavour to effect a settlement of the matters that (gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary, to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters - to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;

(c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by, the Commonwealth, on matters relating to human rights;

(d) when tequested.by the Minister, to report to the :Minister as to the action (if any) that, in the opinion of the 'Commission needs to be taken by Australia in order to comply with the -provisions of the Covenant, of the Declarations or of any relevant international instrument;

(e) on its own initiative or when requested by the Minister, examine any relevant international instrument for .the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;

(f) o promote an understanding and acceptance., and the public discussion, of human rights in Australia and the external Territories;

(g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose ofpromoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;

(h) to perform -

(1) any functions conferred on the Commission by any other -enactment;

(ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and

(iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions - that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and

(j) to 'do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not -

(a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or

(b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

(3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organizations.

I. INTRODUCTION

In March 1982, the Human Rights Commission instituted a public inquiry into the right to freedom of expression as set out in paragraphs 2 and 3 of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 states -

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

2. Submissions received touched on a wide range of matters. Two major areas of concern identified in them related to -

(a) the extent to which laws governing freedom of assembly restrict the right to freedom of expression, and

(b) the question as to whether certain aspects of section 116 of the Broadcasting and Television Act 1942 (Cwlth) (the Act) are inconsistent with the rights guaranteed under Article 19 of the ICCPR.

3. The Commission decided to conduct separate inquiries into both these matters, but to leave aside other matters for possible later consideration.

17. The prohibition on dramatisation of political matters in sub-section 116(2). of the Act raises two issues - one, theeeope of the provision, the othet, the lack.. of clear definition of the term "political matter". •

The Scope of the Provision

18. Paragraph 3 of Article 19 of the ICCPR permits certain· restrictions to be placed on the right to freedom of expression. It states -

> The exercise of the rights provided for in paragraph, .2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary :
>
> (a) For respect of the rights and reputations of others;
>
> (b) For the protection of national security, or of public order ("ordre public"), or of public health or morals.

19. In a number Of cases dealing with the type of restrictions embodied in paragraph 3 of Article 19 of the ICCPR, the European Court of Human Rights has developed what has come to be the "doctrine of proportionality". It stated in the Handyside case, that this means ".... that every 'formality', 'condition', 'restriction' or 'penalty' imposed must be proportionate to the legitimate aim pursued."[1]

20. Tested against this doctrine of proportionality, the existing prohibition appears to be out of proportion to the legitimate aim or object which led to its introduction.

Although the existence of such a prohibition during war-time may be justified on "national security" or "public order" grounds as was the case when the original provision was introduced in 1942 - its continued retention beyond such a situation would,: in the Commission's view, be inconsistent with Article 19 of the ICCPR. The present provision differs from the war-time-

1. Handyside v. The United Kingdom, 1 EHRR 737 at 754.

provision in two important respects. It is more restrictive in that it applies continually for five years and not only during election periods. It is less restrictive in that the - dramatisations of political matter to which it relates only date back for five years. Overall, it appears to be substantially more restrictive than the 1942 provision and, as such, unacceptably to limit freedom of expression. The Commission is of the view that its effect should be restricted in the manner outlined in paragraph 26 below.

21. It notes that the Australian Broadcasting Tribunal has recommended that sub-section 116(2) of the Act be repealed .[1] The Commission is also aware that the Joint Select Committee on Electoral Reform has made a similar recommendation and that the Government is currently considering an appropriate amendment to the Act to implement this recommendation.[2]

22. Some submissions received by the Commission have pointed out, however, that the prohibition might have a purpose during an election period. This is because although other remedies, e.g. resort to the law of defamation, might normally be available to protect the "rights and reputations of others" (see paragraph 3 of Article 19 of the ICCPR) this remedy cannot be readily put into effect just before an election. Factors existing during an election period would also have greater significance and potential for unfairness or undue influence than might otherwise be the case, bearing in mind that dramatisation of political events is unlikely to be totally based on fact.

23. The Commission concedes this point and would accept that the doctrine of proportionality would allow for the prohibition of dramatisation of political matter during an "election period" (as currently defined in the Act). The Commission further notes that this was the effect of the original provision introduced in 1942 -(see paragraph 15). In the circumstances the commission

1. Australian Broadcasting Tribunal, Self-Regulation for Broadcasters?, AGPS, Canberra, 1977, p.131.

2. Joint Select Committee on Electoral Reform: Second Report, AGPS, Canberra, August 1984, para. 3.2.4.

notes its view that Australia's international obligations as contained in the ICCPR do not require total repeal of sub-section 116(2) of the Act, which is the course recommended by the Joint Select Committee.

24. It was put to the Commission that there may be situations involving national security, public order etc. - very much like what happened during the 1942 broadcast using simulated German voices - when it would be necessary for the relevant Minister to impose such a ban for a prolonged period (outside of an election period). In this connection the Commission notes that, under section 131 of the Act, the Governor-General may authorise the Minister, in emergency situations and where the public interest so requires, to exercise control over the matter to be broadcast/televised from radio and television stations.[1] The existence of this power would cover the situation where, for purposes of national security, it is necessary to exercise complete control over broadcasting and it would allow the ban of dramatisations of certain political matter. However, it is an extreme and ex post facto control. If it were thought necessary, the Government could, through an appropriate amendment, also be given power to authorise specific bans on dramatisation on the grounds of national security or public order (ordre public) - or indeed on any other of the grounds listed in paragraph 3 of Article 19 of the ICCPR.

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1. Section 131 of the Act states:

> "The Governor-General may, whenever in his opinion, any emergency has arisen, which renders it desirable in the public interest so to do, authorize the Minister to exercise, during the emergency, complete control over the matter to be broadcast from broadcasting stations or televised from television stations (including television translator stations and television repeater stations), and, thereupon and so long as the emergency continues, such persons as are thereto authorized in writing by the Minister shall have access at all times to any premises controlled by the Corporation or any licensee and may exercise full authority over all rights and privileges possessed by the Corporation or the licensee.

Definition of "Political Matter"

25. There are also problems with the interpretation of the phrase "dramatization of any political matter" in sub-section 116(2) of the Act. It has been recognised as being open to both a broad and a narrow interpretation. This question of interpretation was considered in Attorney-General (N.S.W.,) ex rel. Clark v. Publishing and Broadcasting Ltd.[1] where one view put was that "political matter" extends to cover political issues, e.g. the pros and cons of uranium mining - the broad view. The other view put was that the term should be restricted in its meaning to cover only the dramatic representation of past or present political events exemplified in speech or action, or of pretended political events. Waddell J. stated that this section was an extremely difficult one to understand and that "my general view is that the section should be given a narrow view rather than a broad view".[2] This interpretation is in accord with the doctrine of proportionality as described in paragraphs 19 and 20 above, and is supported by the Commission.

The Commission's Conclusions

26. The Commission concludes in relation to sub-section 116(2) of the Act that in terms of consistency with human rights -

(a) the scope of the section is too broad and should be amended so that the prohibition applies only during an "election period";

(b) section 131 of the Act allows the Minister complete control, which would include a discretion to ban dramatisation of political matter (outside of an election period) in a situation of national emergency. However, this is an extreme and ex post facto control.

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1. Attorney-General (N.S.W.) ex rel. Clark v. Publishing and Broadcasting Ltd. [1977] 2 NSWLR, 813.

2. Ibid at p.816.

If thought necessary, the government could, through an appropriate amendment, also be given power to authorise specific bans on dramatisation on any of the various grounds listed in paragraph 3 of Article 19 of the ICCPR.

IV. ACCESS 20 RADIO AND TELEVISION: FOR - POLITICAL PARTIES DURING AN ELECTION PERIOD, -

27. Sub-section 116(3) of the Act states -

> If, during an election period, a licensee broadcasts or televises election matter, he shall afford reasonable opportunities for the broadcasting or televising of election matter to all political parties contesting the election being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.

28. Sub-section 116(5) of the Act states -

> Nothing in this section requires a licensee to broadcast or televise any matter free of charge.

29. The question arises whether the framework for access to broadcasting stations provided by these two sub-sections of section 116 of the Act is inconsistent with the right to freedom of expression as guaranteed under Article 19 of the ICCPR. The following is the effect of the sub-sections -

(a) Broadcasting stations have the power to decide whether any political party is to be given air-time. Only when they agree to do so will they be required to give reasonable opportunities to other political parties.

(b) The reasonable opportunities rule does not mean equal opportunities. This may result in some political parties being given less than equal time, as compared to others.[1]

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1. The Gibson Committee in its 2nd Report to Parliament in 1943 had recommended that equal opportunity be given to political parties for political broadcasts. This recommendation was not implemented. See paragraphs 23.4 to 23.6 of ABT Report, Self-Regulation for Broadcasters?. AGPS, 1977.

.(c) 'Because fees are allowed to be charged for political' broadcasts, smaller, poorly-funded parties may be unable to avail themselves of air-time, particularly as there appears to be no check, insofar as the legislation is concerned, on the amount that can be charged by broadcasting stations.

(d) Political parties without previous representations in Parliament are not required to be given reasonable opportunities for air-time, a _situation which could seriously deter them in their efforts to "sell" their party platform to the public.

30. Some submissions have argued that these constraints in effect result in sub-sections 116(3) and (5) of the Act being not in conformity with Article 19 of the ICCPR. Television and broadcasting stations, having been granted licences, have protected access to a vital but scarce resource. While recognising that such stations are not themselves parties to the ICCPR, the Commission takes the view that because of their privileged position in controlling a very important means of communications, there is a consequential responsibility on them to ensure that their actions are in conformity with the right to freedom of expression guaranteed under this Article, in line with the international principle that treaties entail a degree of flow-on. This has been described as the "Drittwirkung" principle, i.e. the third party effect of fundamental rights.[1]

31. The Commission has examined these submissions. It concludes that, with one exception, the constraints on access to be found in sub-sections 116(3) and (5) of the Act do not amount to a breach of Article 19 of the ICCPR.

32. International case law on the right to freedom of expression indicates that some restrictions on access to broadcasting facilities are, in certain circumstances,

1. See P. Sieghart, The International Law of Human Rights, Clarendon Press, 1983, p.43 et seq.

acceptable. In the Hertzberg case, which was considered by the United Nations Human Rights Committee a member, Mr T. Opsahl, adverted to this issue. He said -

> Access to the media operated by others is always and necessarily more limited than the general freedom of expression. Not even media controlled by the State can under the Covenant be under an obligation to publish all that may be published.[1]

33. In X and the Associatitn of Z against the U.K., the European Commission of Human Rights, in considering the application of Article 10 of the European Convention on Human Rights (which similarly guarantees the tight to freedom of expression) stated -

> It is evident that the freedom to 'impart information and ideas' included in the right to freedom of expression under Article 10 of the Convention, cannot be taken to include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio or television in order to forward its opinion.[2]

34. In view of the authorities quoted above', it is clear that it is permissible to apply the "margin of appreciation" concept to the manner in which States regulate broadcasting. This concept has been developed, generally in conjunction with the "doctrine of proportionality", in a number of cases in the European human rights sphere, dealing with rights to whidh certain specific limitations are allowed.

35. In effect this concept allows States Parties to human rights treaties a degree of discretion in determining how far they can go, in the light of prevailing circumstances, in the exercise of permissible limitations attached to certain rights.

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1. The Bertzberg case (R14/61) Report of the Human Rights Committee (1982) GAOR: 37th Session Suppl.No. 40, U.N. Doc. 1A/37/40 p.166. These views of Mr Opsahl were supported by two other members. The other members did not take this point up, as the case was decided on the basis that on public morals grounds, the Finland Government could censor programs on homosexuality.

2. X and the Association of Z against the U.K., (Apph.No. 4515/70), Yearbook of Human Rights, 14, p.538.

In the Rassemblement Jurassien case, for instance - a case which dealt with the right of peaceful assembly under Article 11 of the European Convention, which is also subject to certain permissible limitations - the European Court of Human Rights stated -

> ... it is primarily up to the national authorities to judge whether there is really an imperative social requirement, as implied by the concept of 'necessity' ... In this connection the Convention allows the contracting states a margin of appreciation in applying the measures restricting the exercise Of guaranteed right such as the right of peaceful assembly.'

36. However the exercise of this leeway is not entirely left to the States Parties but is subject to international supervision. In Ireland v. United Kingdom, the European Court of Human Rights said -

> Nevertheless the States do not enjoy an unlimited power in this respect. The Court, which, with the Commission, is responsible for ensuring the observance of the States' (sic) (Article 19), is empowered to rule whether the States have gone beyond the 'extent strictly required by the exigencies' Of the case,. The domestic margin of appreciation is thus accompanied by a European supervision.

37. The supervision mentioned above means that the discretion allowed States Parties will not prevent the European Court where necessary from applying the :[1]"doctrine of proportionality" to specific measures taken by States Parties to see Whether the margin of appreciation has been exceeded.

38. Thus in the RassembleMent case referred to in paragraph 35 above, the Court, having conceded that the Swiss Government had a certain margin of appreciation in determining measures

1. Rassemblement Jurassien and Unite Jurassiene v. Switzerland, D.R. 17, 120. There have been a series of cases where this concept has been discussed. *See* e.g. Lawless v. Ireland, 1 EHRR 15, Handyside v. U.K., 1 EHRR 754, Engel et al v. Netherlands, 1 EHRR 647, Sund-,y Times v. U.K., 2 EHRR 245.

2. Ireland v. U.K., 2 EHRR 25.

restricting the right of peaceful assembly, went on to examine these measures against the doctrine of proportionality. It concluded as follows -

> The Commission accordingly considers that the principle of proportionality was not infringed in this case. It is furthermore not convinced that less stringent measures than those, taken would have been suited to the situation,
>
> Bearing in mind the margin of appreciation allowed to the authorities in this case and having regard to all the circumstances of the case, the Commission considers that the measures complained of were compatible with the requirements of Article 11.2.[1]

39. Although Australia's obligations under the ICCPR are not subject, in the same way, to international supervision, nevertheless the decisions of the European authorities are of , assistance in determining whether Australia's obligations are . met. The Human Rights Committee of the U.N., in dealing with complaints of human rights violations, has also given tacit approval to the doctrine of "margin of appreciation" .[2]

40. In'the light of the discussion in the foregoing pararaphs, the Commission is of the view that the constraints imposed by section 116 of the Act (apart from the lack of a provision allowing political parties without previous representation in Parliament reasOnable access to air-time) come within the "margin of appreciation" concept. One of the permissible restrictions in paragraph 3 of Article 19 of the ICCPR relates to limitations necessary for the "respect of the rights ... of others". Due to the competing demands for limited air-time and the wide range of interests which broadcasting stations must serve, to give equal time to all political parties would not be practicable. It could also result in justifiable complaints from segments of the public who may not be particularly interested in political broadcasts that their rights as listeners and viewers to the widest possible range of programs

1. Rassemblement Jutassien and Unite Jurassiene v. Switzerland, D.R. 17, 121.

2. See, e.g., Maroufidou v. Sweden (R13/50) HRC 36,160.

are being curtailed by the inordinate amount of air-time being devoted to such broadcasts. A balance needs to be struck. The reasonable opportunities rule (provided it is sensibly applied) would, in the Commission's view, achieve this. The Commission also notes that the Australian Broadcasting Tribunal has declared that it "will regard the performance of broadcasters in providing reasonable opportunity in relation to political broadcasts as one of the more significant criteria to be evaluated in relation to licence renewals"[1] as a safeguard that this provision will be sensibly applied.

41. Similarly, the requirement that political parties Pay for their broadcasts is not considered an impediment to their right to freedom of expression, provided that these charges are not unreasonable. The Commission notes that section 100 of the Broadcasting and Television Act contains an anti7diScrimination, provision (sub-section (3).) and requires Publication Of advertising charges (sub-section PI). As commercial broadcasters have a right to charge for the use of their facilities, sub-section 116(5) of the Act is consistent with the permissible restrictions to the right to freedom of expression: where it is .necessary for the protection of the rights of others. The Australian Broadcasting Tribunal would no doubt, take into account any such charges which are unreasonable or discriminatory in relation to any political party as a factor that might affect renewal of the licence of an offending. broadcaster.

42. However, insofar as political parties not previously represented in Parliament are concerned, applying the concept of the "margin Of appreciation" and the "doctrine of proportionality" together, the denial of the reasonable opportunities rule to them is inconsistent,with.Article 19 of the ICCPR. In the case. of X and the Association of Z against the U.K., mentioned previously in paragraph 33, although the ;

1. Australian Broadcasting Tribunal: "Self-Regulation" for Broadcasters?, AGPS 1977, p.131.

European Commission of Human Rights agreed that there was no "general and unfettered right" to have access to broadcasting time, the Commission also noted that -

> On the other hand, the Commission considers that the denial of broadcasting time to one or more specific groups or persons may in particular circumstances, raise an issue under Article 10 .... Such an issue would, in principle, arise, for instance if one political party was excluded from broadcasting facilities at election time while other parties were given broadcasting time.[1]

43. It is possible that there may be concern that allowing all political parties the benefit of the reasonable opportunities' rule might lead to undue demands from fringe parties or parties unlikely to have any public support whatsoever. Nevertheless the right to freedom of expression "constitutes One of the eaSential'foundations"[2] of a democratic society. It is in fact all the more important'¯that non-established political parties have an opportunity to make their political platform as Widely' known as possible.

44.There are safeguards in any case against 'broadcasting stations being overwhelmed with requests for broadcasting time from such parties. It has been mentioned. in paragraph40 of this report that the Commission has accepted that the reasonable opportunities rule need not be changed to an equal opportunities rule. This means that, subject to the overall supervision of the Australian Broadcasting Tribunal, broadcasting stations have a degree of discretion in determining what may be reasonable access to air-time for such parties.

45. Although the Commission has also accepted that the charging of fees is permissible (see paragraph 41)i parties whichdo not have a modicum of public support'are:unlikely to have the funds with which to pay for such broadcasts.' Fears have been expressed, on the other hand, that parties whose ideas are -

1. X and the Association of Z against the U.K., op.cit. p.538.

2. Handyside v. U.K., 1 EHRR 737, at 754.

repugnant, or even harmful to society, might be able to disseminate these ideas because they Might have secret sources of funds. Nevertheless it is the Commission's View 'that, unless in doing so they infringe Other- legislation, e.g·. the Commonwealth Electoral Act or the Crimes Act, they are to be permitted to express their views. In Handyside, the European Court of Human Rights stated that the right to fredaim of expression is "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that Offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."[1]

The Commission's Conclusions

46. The Commission is of the view therefore that subsection 116(3) of the Act should be amended so that all registered political parties (as defined by sub—section 4(1) of the Commonwealth Electoral Act 1918) putting forward candidates validly nominated for a particular election are covered by the reasonable opportunity rule.

1. Ibid. at p.754.

V. RECOMMENDATIONS

47. The Commission recommends that, in order to make the provisions of section 116 of the Broadcasting and Television Act 1942 consistent with the right to freedom of expression as defined in Article 19 of the International Covenant on Civil and Political Rights -

(a) Sub-section 116(2) be amended so that the prohibition on dramatisation of political matter be imposed only during an "election period" (as currently defined in the Act);

(b) Sub-section 116(3) of the Act be amended so that all registered political parties (at defined in sub-section 4(1) of the Commonwealth Electoral Act 1918), with validly nominated candidates standing for election, - should have the benefit of the reasonable opportunities

APPENDIX I

Sec [redacted] [redacted] and

Television Act 1942

116. (1) Subject only to this section, the Australian Broadcasting Corporation Board may determine to what extent and in what manner political matter or controversial matter will be broadcast or televised by the Corporation.

(2) The Corporation or a licensee shall not broadcast or televise a dramatization of any poiitical matter which is then current or was current at any time during the last 5 preceding years.

(3) If, during an election period, a licensee broadcasts or televises election matter, he shall afford reasonable opportunities for the broadcasting or televising of election matter to all political parties contesting the election, being parties which were represented in either House of the 'Parliament for which the election is to be held at the time of its last meeting before the election period.

(4) Where -

(a) the writ for an election has been issued; and

(b) the Tribunal is of the opinion that programs broadcast from a particular broadcasting station or televised from a particular television station are ordinarily received in the whole or in a part of the area of Australia to which the election relates,

the Tribunal shall, by notice in writing served on the licensee that operates the broadcasting station or television station, as the case may be, not later than 14 days before the commencement of the period that is the relevant period in relation to that election, require the licensee to refrain from broadcasting or televising from that broadcasting station or television station election advertisements in relation to that election during that relevant period.

(4A) A licensee upon which a notice has been served pursuant to sub-section (4) in relation to an election shall not broadcast or televise an election advertisement in relation to that election in contravention of the notice.

(5) Nothing in this section requires a licensee to broadcast or televise any matter free of charge.

(6) In this section -

"broadcasting station." includes a broadcasting translator station but does not include a station operated under the Australian Broadcasting Corporation Act 1983 or Part'IIIA of this Act;

"election" means an election of members, or of a member, of -

(a) the Senate or the House of Representatives; or

(b) a House of the Parliament of a State;.

"election advertisement", in relation to an election, means -

(a) an advertisement -

(i) that contains election matter that relates to that election; and

(ii) in respect of the broadcasting or televising of which the licensee that operates the -relevant broadcasting or television station has received or is to receive, directly or indirectly, any money or other consideration;

(b) an announcement containing a statement to the effect that a program that is to be or has been broadcast or televised is or was sponsored by a particular person or persons and indicating that the person is a candidater or one or more of the persons is or are candidates, at the election; or

(c) an announcement containing a statement to the effect that a program that is to be or has been broadcast or televised is or was sponsored by a particular political party, where a candidate at the election belongs to that political party;

"election matter", in relation to an election, means matter of any of the following kinds:

(a) matter commenting on, or soliciting votes for, a candidate at the election;

(b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;

(c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs; or

(d) matter referring to a meeting held or to be held in connection with the election;

"election period", in relation to an election, means the period that commences on the day on which the writ for the election is issued and ends at the close of the poll on the polling day for the election;

"licensee" means the holder of a licence within the meaning of Part IIIB;

"relevant period", in relation to an election, means the period that commences at the expiration of the Wednesday next preceding the polling day for the election and ends at the close of the poll on that polling day;

"television station" includes a television repeated station and a television translator station but does not include a station operated under the Australian Broadcasting Corporation Act 1983 or Part IIIA of this Act.