



Executive Council of Australian Jewry Inc.

Al-Manar Television Transmissions into Australia

Background

Under the *Broadcasting Services Act 1992* (Cth) (BSA), a television operator that provides open narrowcasting television services in Australia is required to hold a class licence as determined by the Australian Communications and Media Authority (ACMA) by notice published in the *Government Gazette* (ss 12(2), 117(e)). Class licences are not individually issued but provide operators of the relevant class of service with ongoing authority to enter the market and provide the service, subject in each case to the operator maintaining the capacity to deliver the service and adhering to the conditions of the relevant class licence.

Open narrowcasting television services are defined in subsection 18(1)(a) of the BSA as including broadcasting services "whose reception is limited (i) by being targeted to special interest groups; or ... (iv) because they provide programs of limited appeal". Al Manar television transmits television programs into Australia in the Arabic language. According to the Australian Census in 2006, Arabic is the language spoken at home by only 1.2% of Australians.¹ One can safely conclude therefore that the television service that Al-Manar provides is targeted to a special interest group and is of limited appeal in Australia and thus falls within the BSA definition of "open narrowcasting television services".

Under subsection 118(3) of the BSA each class licence is subject to the conditions set out in Part 7 of Schedule 2. Clause 11 in Part 7 of Schedule 2 provides that the conditions which apply to the provision by a person of a broadcasting service under a class licence include the following:

- (1) the person will comply with program standards applicable to the licence under Part 9 of [the BSA];²
- (2) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;³
- (3) the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6 [of BSA Schedule 2];⁴

¹ <http://www.abs.gov.au/ausstats/abs@.nsf/0/636F496B2B943F12CA2573D200109DA9?opendocument> (accessed on 7 September 2009).

² Paragraph 11(1)(b) of BSA Schedule 2.

³ Paragraph 11(1)(c) of BSA Schedule 2

⁴ Paragraph 11(1)(d) of BSA Schedule 2

- (4) **the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board [being the Classification Board established under section 45 of the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)*].⁵**

Al Manar television transmissions into Australia have given rise to concern because the program content makes little if any attempt to disguise the television station's sympathies and association with the Lebanese "Hezbollah" movement, whose "External Security Organisation", which also operates under several aliases, is a specified "terrorist organisation" under Regulation 4Q of the *Criminal Code Regulations 2002*. In light of those concerns, and exercising its powers under section 170 of the BSA, the ACMA conducted an investigation into whether or not Al Manar Television complies with Condition (1) (as above) of its class licence. **The ACMA investigation did not consider whether Al Manar Television complies with Conditions (2), (3) or (4) (as above) of its class licence. The question of compliance with those conditions by Al Manar Television is considered in this paper. This paper also considers the findings of the ACMA investigation as regards condition (1).**

Condition (1) - the person will comply with program standards applicable to the licence under Part 9 of [the BSA].

The ACMA has determined program standards under subsection 125(2) of the BSA to prevent the broadcasting of programs that encourage people to join or finance terrorist organisations. The standard is known as the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2006* (the Standard). Paragraphs 6 and 7 prohibit a licensee from broadcasting a program that can reasonably be construed as directly recruiting a person to join, or participate in the activities of, a terrorist organisation, or as soliciting funds for a terrorist organisation, or assisting in the collection or provision of funds for a terrorist organisation.

On 24 July 2009, the ACMA issued Investigation Report 2158 concluding that content broadcast into Australia on the Al-Manar TV channel between 28 August and 5 September 2008 (AEDST) could not be reasonably construed as:

- directly recruiting a person to join, or participate in the activities of, a terrorist organisation; or
- soliciting funds for a terrorist organisation, or assisting in the collection or provision of funds for a terrorist organisation.

Accordingly, the ACMA found that there was no breach of section 6 of the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2006* and therefore no breach of the licence condition at paragraph 11(1)(b) in Part 7 of Schedule 2 of the BSA.

The ACMA's conclusions were based upon an analysis of Al Manar Television transmissions recorded between 28 August 2008 and 5 September 2008. Content that was recorded on 29 August 2008 included a program called *The Pulse of Life – People of the Frontiers*⁶ which featured *inter alia*:

⁵ Paragraph 11(3)(a) of BSA Schedule 2

⁶ See pages 9 to 15 of ACMA Report 2158.

- (a) an interview with Umm Emad, the mother of the recently killed senior Hezbollah military commander, Emad Moghniyyeh;
- (b) an interview with a person purporting to be a camouflaged Hezbollah fighter (as part of a video montage of Hezbollah military operations); and
- (c) an interview with a Lebanese villager who claims to have assisted Hezbollah operatives during the 2006 war with Israel.

The description of the program and translations of the interviews in the ACMA report include statements by the interviewees and television images which together depict or describe violent acts by Hezbollah in a manner that directly praises the doing of those acts and could not reasonably be considered to be done merely as part of public discussion or debate. At one point in her interview, Umm Emad refers to assistance given to Hezbollah operatives in the past by the Lebanese villager and says *"We are brought up to uphold jihad... every person among us has a role to play... every person has a duty to perform"*.⁷

However, the ACMA concludes that direct praise of the terrorist organisation and general statements asserting a moral or religious duty to assist it do not constitute direct recruitment,⁸ although a reasonable person might interpret the statements and images in that way. The conclusions of the ACMA Report thus rely heavily on the word *"directly"* in paragraph 6 of the Standard.

In this respect, there appears to be an anomaly in the formulation of paragraph 6(1) of the Standard which reads:

6 Recruiting for a terrorist organisation

(1) A licensee must not broadcast a program that can reasonably be construed as directly recruiting a person to join, or participate in the activities of, a terrorist organisation.

In contrast, section 9A of the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act) provides:

9A Refused Classification for publications, films or computer games that advocate terrorist acts

- (1) A publication, film or computer game that advocates the doing of a terrorist act must be classified RC.*
- (2) Subject to subsection (3), for the purposes of this section, a publication, film or computer game **advocates** the doing of a terrorist act if:*
 - (a) it directly or indirectly counsels or urges the doing of a terrorist act; or*
 - (b) it directly or indirectly provides instruction on the doing of a terrorist act; or*
 - (c) it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3 of the Criminal Code) that the person might suffer) to engage in a terrorist act.*

⁷ At page 12

⁸ At page 13.

- (3) *A publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.*
- (4) *In this section **terrorist act** has the meaning given by section 100.1 of the Criminal Code*

For the purposes of section 9A, television transmissions constitute “film”.⁹ The terms of subsection (2) of section 9A stand in stark contrast to the terms of paragraph 6(1) of the Standard. Program content can “advocate the doing of a terrorist act” within the meaning of subsection 9A(2) of the Classification Act by “*indirectly*” counselling or urging the doing of a terrorist act or by directly praising the doing of a terrorist act, without breaching paragraph 6 of the Standard. Such content must be classified as “RC” (Refused Classification) pursuant to subsection 9A(2) of the Classification Act and, if provided through online and other content services, constitutes “prohibited content” for the purposes of the BSA.¹⁰ The ACMA has powers to issue notices to require online and other content providers to remove prohibited content from public access.¹¹ It is anomalous that paragraph 6 of the Standard does not necessarily prohibit material from being broadcast that would constitute prohibited content if provided on-line. The standard should, at a minimum, be brought into conformity with the terms of subsection 9A(2) of the Classification Act.

Condition (2) - the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory

An “offence against another Act or a law of a State or Territory” includes, but is not limited to, a criminal or quasi-criminal offence attracting penalties. For example, under section 18C in Part IIA of the *Racial Discrimination Act 1975* (RDA) it is “unlawful for a person to do an act, otherwise than in private, if: the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of the race, colour or national or ethnic origin of the other person, or of some or all of the people in the group.” In our submission, the commission of an act that is “unlawful” under that section is “an offence against” the RDA.

Al-Manar’s programs have reportedly included viciously antisemitic material, interlacing anti Israel and anti US rhetoric with medieval antisemitic stereotypes and themes, including the infamous “blood libel” (the false and slanderous accusation that Jews kill non-Jewish children and use their blood for cooking).

If the insidious influence of Al-Manar’s programs and their ability to foment hatred of Jews in Australia were in doubt, the statements attributed to the Chairman of the Australian Arabic Council, Mr Roland Jabbour, are conclusive

Mr Jabbour was quoted in *the Age* newspaper on 22 August 2008, as saying:

⁹ Under section 5 of the Classification Act, “*film*” includes . . . any other form of recording from which a visual image, including a computer generated image, can be produced (together with its sound track)”

¹⁰ Clause 20(1)(a) of BSA Schedule 7.

¹¹ Clause 47, 56 and 62 of BSA Schedule 7

"... that anti-Semitism was wrong and that Judaism should be respected, but that Hezbollah was not anti-Semitic.

"We need to make a clear distinction between anti-Israel and anti-Semitic, and between a terrorist organisation and a resistance group," he said.

He said he would not call Jews the offspring of apes and pigs, but that in the context of "the crimes of the state of Israel" it was reasonable for al-Manar to do so and to portray Israeli rabbis as killing Christian children to use their blood in Passover meals."

The statements attributed to Mr Jabbour in the final paragraph are unquestionably racist and deeply offensive in any context and are only made worse by attempts to rationalise or excuse them. Derogatory generalisations about entire ethnic or ethno-religious groups cannot under any circumstances be passed off as legitimate political commentary. Public statements in this vein are clearly an offence against the provisions of Part IIA of the RDA and the anti racial-vilification legislation of the States

Mr Jabbour is also quoted as saying that the al-Manar programs are widely watched in the Arab community in Australia. This highlights the seriousness of the breaches of Part IIA of the RDA by Al Manar program content and of the threat that it constitutes to the sense of safety and well-being of Jewish Australians and its potential to foment social conflict within Australia. It follows that the transmission of such material into Australia is a grave breach of Condition (2) of Al Manar's class licence.

Condition (3) - the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6 [of BSA Schedule 2].

The relevant clause is clause 4 of BSA Schedule 2 which provides:

4 Identification of certain political matter

(1) *In this clause, **broadcaster** means:*

- (a) a commercial television broadcasting licensee; or*
- (b) a commercial radio broadcasting licensee; or*
- (c) a community broadcasting license; or*
- (d) a subscription television broadcasting license; or*
- (e) a person providing broadcasting services under a class licence.*

(2) *If a broadcaster broadcasts political matter at the request of another person, the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the ACMA.*

- (3) *A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period and must give to the ACMA any particulars of the record that the ACMA, by written notice, requires.*
- (4) *For the purposes of this clause, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.*

“Political matter” is defined in clause 1 of BSA Schedule 2 and means “any political matter, including the policy launch of a political party”.

Given the breadth of the definition of “political matter”, and the prevalence of content in Al Manar transmissions that are openly supportive of Hezbollah, one part of which is a political party in Lebanon, Al Manar’s compliance with the terms of clause 4 of BSA Schedule 2 is required by Condition (3). The transcripts and other material referred to in the ACMA’s Investigation Report indicate that during the period in which Al Manar broadcasts were monitored and recorded by the ACMA no attempt was made by it to comply with the terms of clause 4 of BSA Schedule 2 and Condition (3) of its Class Licence has thus repeatedly been breached.

Condition (4) - the licensee will not broadcast a program that has been classified RC ... by the Classification Board.

The section (above) dealing with the question of whether Al Manar has complied with Condition (1) of its licence demonstrates that much of the content of Al Manar transmissions, as described in the Investigation Report of the ACMA, “advocates the doing of a terrorist act” within the meaning of subsection 9A(2) of the Classification Act. This is because the test prescribed by that section is much broader than that prescribed by clause 6 of the Standard.

Whether or not the Classification Board has in fact classified as RC (Refused Classification) content transmitted by Al Manar television that “advocates the doing of a terrorist act” within the meaning of subsection 9A(2) of the Classification Act, subsection 9A(1) of that Act provides that such content “**must**” be so classified.

The transmission of RC-classified content into Australia by Al Manar television therefore constitutes a breach of Condition (4) of its class licence.

Conclusion

Al Manar television has repeatedly breached various conditions of its class licence as described in this paper. The breaches are serious and should be acted upon by the ACMA. This paper is intended also to constitute a formal complaint to the ACMA against Al Manar television and the content of its television transmissions into Australia.

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