

# Broadcasting complaints investigations

## January-March 2006

Under the *Broadcasting Services Act 1992*, each broadcasting industry sector is required to develop codes of practice applicable to the broadcasting operations of its section of the industry. ACMA monitors the operation of these codes and performs an independent adjudicator role where complaints are not resolved between the complainant and the licensee concerned.

The following summary is of ACMA investigations into unresolved complaints, as well as complaints about possible breaches of the *Broadcasting Services Act* or licence conditions, completed in the three months from January 1 to March 31 2006. With the cooperation of Free TV Australia and Commercial Radio Australia (CRA), a three-month report of the number and substance of complaints made directly to the commercial

broadcasters themselves is also provided.

### COMPLAINTS PROCESS

Primary responsibility for the resolution of code-related complaints rests with the licensees. The *Broadcasting Services Act* lays down a general procedure for complaint handling, whereby a complainant is required to approach a licensee first, who in turn is obliged to respond. However, if a complainant does not receive a response within 60 days, or considers the response received to be inadequate, the matter may then be referred to ACMA for investigation.

ACMA refers to these as unresolved complaints and must investigate such complaints unless satisfied that a complaint is frivolous or vexatious or not made in good faith.

Complaints about possible breaches of program standards (children's television, Australian content, captioning and

commercial radio), about the *Broadcasting Services Act* itself and about licence conditions may be made directly to ACMA. Complainants are not obliged to contact a licensee first in these instances.

ACMA may make a finding that a licensee has breached a code of practice or a licensee may admit a breach of a code. Breaches of the codes are not breaches of the *Broadcasting Services Act*, although ACMA may make compliance with a code a condition of licence. Generally, ACMA seeks to ensure that licensees take action to remedy breaches or to put in place procedures to ensure they do not recur.

### ACMA INVESTIGATIONS INTO UNRESOLVED COMPLAINTS

There were 34 ACMA investigations finalised in the three months from January to March 2006. Of these, eight resulted in a breach, including

three breaches of a code of practice, five breaches of a licence condition and nil breaches of the *Broadcasting Services Act*. There were 25 investigations that resulted in no breach and one was terminated when the complaint was withdrawn.

Of the eight investigations finding a breach, two related to commercial television, five to community radio and one to commercial radio. The breaches covered three broad issues as follows:

- broadcast of material exceeding the classification level of a rated program or a pre-classified viewing time (three breaches)
- breach of a licence condition by broadcasting advertisements (five breaches)
- broadcast of material which does not meet contemporary standards of decency (one breach).

Callsign	Program/issue	Substance of complaint	Code/licence condition applicable to breach finding
<b>BREACH FINDINGS</b>			
<b>COMMERCIAL TELEVISION</b>			
<b>Australian Capital Territory</b>			
CTC NSW/ACT	<i>Monk</i>	Complainant alleged that violence contained in episode exceeded the PG classification requirements	Classification of Violence in PG
<b>Queensland and Western Australia</b>			
TVQ Brisbane & NEW Perth	<i>Big Brother Uncut</i>	Strong adult themes not justified by story line or program context	Classification of Adult Themes in MA
<b>COMMERCIAL RADIO</b>			
<b>New South Wales</b>			
2DAY Sydney	<i>Lowie's Hot30</i>	Children likely to be listening to offensive content broadcast	Failure to meet contemporary standards of decency and broadcast of program with explicit sexual theme as core component

Callsign	Program/issue	Substance of complaint	Code/licence condition applicable to breach finding
<b>COMMUNITY RADIO</b>			
<b>New South Wales</b>			
2SWR Sydney	<i>Talash</i>	Broadcast of advertisements	Broadcasting advertisements*
<b>Queensland</b>			
4FRB Brisbane	Sponsorship and Management Practice	Broadcast of sponsorship announcements over five minutes per hour, broadcasting advertisements and not continuing to meet its community interest	Broadcasting advertisements*
<b>Victoria</b>			
3SFM Swan Hill	Sponsorship and Management Practice	More than five minutes of sponsorship announcements were broadcast in one hour and broadcast of advertisements	Broadcasting advertisements*
3BBB Ballarat	<i>Community Voices</i>	Broadcast advertising content in an interview	Broadcasting advertisements*
<b>Western Australia</b>			
6KCR Regional	Sponsorship	Broadcast of advertisements	Broadcasting advertisements*
<b>NO BREACH FINDINGS</b>			
<b>COMMERCIAL TELEVISION</b>			
<b>New South Wales</b>			
ATN Sydney	<i>Today Tonight</i>	Unfair representation of Muslim youth	Represent viewpoints fairly and portray in a negative light in current affairs
NBN Northern NSW	<i>60 Minutes</i>	Objection to description of Serbian paramilitary brigade in Srebrenica as 'Christians'	Intense dislike on grounds of religion
<b>Queensland</b>			
TVQ Brisbane	<i>Big Brother Up Late</i>	Several references and adult themes during MA.	Classification of Sex and Nudity in MA
TVQ Brisbane	<i>Smallville</i>	Excessive violence, including depictions of a dead body, blood spatter, and use of guns	Classification of violence in PG
BTQ Brisbane	<i>Today Tonight</i>	Concealed camera to obtain footage from a business for a segment on 'bad service'	Represent viewpoints fairly and business unfairly identified in current affairs
<b>Tasmania</b>			
TVT Tasmania	<i>Analyse That</i> (promotion)	Program promotion contained inappropriate sexual references	Classification of sexual behaviour and sex and nudity in PG
<b>Victoria</b>			
ATV Melbourne	<i>Channel Ten News</i>	News item showed a child with a knife lodged in its forehead	Appropriate regard for audience and provide warnings in news and current affairs
ATV Melbourne	<i>Big Brother Uncut</i>	Adult-themed content inappropriate for children to view	Classification of sex and nudity in MA
<b>Western Australia</b>			
TVW Perth	<i>Sunrise</i>	Amount of advertising in hour of program. No response to complaint	Hourly limits, non-program matter and complaints handling
<b>COMMUNITY RADIO</b>			
<b>Victoria</b>			
3EON Bendigo	Management Practice	Failure to encourage participation/failure to represent community interest, broadcast of more than five mins per hour sponsorship, and treatment of volunteers	Investigation terminated – complaint withdrawn

All potential breaches were of a code of practice unless otherwise indicated: \*potential breach of a licence condition or the *Broadcasting Services Act 1992*

Callsign	Program/issue	Substance of complaint	Code/licence condition applicable to breach finding
<b>COMMERCIAL RADIO</b>			
<b>New South Wales</b>			
2CC Sydney	Programming Issue	Community service announcement contained negative content which degraded young children	Contemporary standards of decency
<b>South Australia</b>			
5AA Adelaide	<i>Next Generation Adelaide International Tennis Tournament</i>	Racist content in comments made by presenter Stephen Rowe, in particular, about the French	Vilification
<b>Victoria</b>			
3TTT Melbourne	<i>News</i>	Disturbing content in broadcast in which a person stated he would enjoy 'cutting throats of enemies'	Create unnecessary distress in news
3FOX Melbourne	<i>The Kyle and Jackie O Show</i>	Inappropriate and offensive language in an interview about gay marriage	Language
<b>Western Australia</b>			
6PR Perth	<i>Howard Sattler</i>	Complaint that on-air apology was insufficient – the apology relates to a comment made at the end of a discussion about a crime involving an Aboriginal person	Vilification
<b>COMMUNITY RADIO</b>			
<b>New South Wales</b>			
2PAR Sydney	Sponsorship	Broadcasting advertisements and sponsorship announcements in excess of five minutes per hour	Broadcasting advertisements and sponsorship announcements in excess of five minutes per hour*
2SER	Management Practice	Station making profits from broadcasts	Not for profit business*
<b>Tasmania</b>			
7EDG Hobart	Programming Practices	12 complaints including inappropriate song lyrics and announcers' comments, one complaint that station did not broadcast mandatory number of on-air announcements	Incite violence and/or hatred, consideration of audience, consent/privacy, CBAA announcements and complaints handling
<b>Victoria</b>			
3EON Bendigo	Retention of records	A comment broadcast that Castlemaine people are idiots – believes station destroyed the records of matter	Retention of records
3JOY Melbourne	Political matter	Lack of political tagging broadcast over two months	Broadcast political matter
<b>ABC TELEVISION</b>			
ABW Regional Western Australia	<i>The Glass House</i>	Attack on Catholic religion	Discrimination in general programs
ABN Sydney NSW	<i>Enough Rope</i>	Bias in interview based on Middle East conflict	Discrimination in general programs
<b>SBS TELEVISION</b>			
SBS Regional NSW	<i>Speedweek</i>	Use of the term 'lunatics' was discriminatory against people with mental illness	Discrimination on the basis of mental disability
SBS Brisbane QLD	<i>Pizza Does Nimbin</i>	Portrayal of marijuana smoking as desirable	M Classification category – drug use
SBS Melbourne VIC	<i>The World Game</i>	Sexist comment about women	Portrayal of women
SBS Regional NSW	<i>The Real Family of Jesus</i>	Program was disrespectful of the Christian faith	Portrayal of religions
<b>INVESTIGATION TERMINATED</b>			
<b>COMMUNITY RADIO</b>			
<b>Victoria</b>			
3EON Bendigo	Management Practice	Failure to encourage participation/failure to represent community interest, broadcast of more than five mins per hour sponsorship, and treatment of volunteers	Investigation terminated – complaint withdrawn

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## Complaint handling by commercial radio stations

The Commercial Radio Codes of Practice require each commercial radio broadcaster to provide Commercial Radio Australia (CRA) with an extract of the record of complaints received. CRA provides a consolidated report to ACMA. Member stations recorded 70 written complaints alleging breaches of the Commercial Radio Codes of Practice during the first quarter of 2006.

### Written complaints to commercial radio broadcasters, January to March 2006

	Talkback & discussion	News & current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters in	23	4	3	10	5	45
Prohibited matter in	2	1	0	0	0	3
Other complaints	4	10	0	2	6	22
Total	29	15	3	12	11	70

Source: CRA Commercial Radio Codes of Practice: Complaints summary January to March 2006

## Complaint handling by commercial television stations

The Commercial Television Industry Code of Practice 2004 requires each commercial television broadcaster to report to Free TV Australia, within 15 working days of the end of each quarter, the number and substance of written complaints alleging specific breaches of the code. Free TV provides a consolidated report to ACMA.

Commercial television stations reported 268 written complaints about matters covered by the Code of Practice in the January to March 2006 quarter, 25.2 per cent more than the 214 complaints reported in the previous quarter.

### COMPLAINTS UPHELD

There were four broadcast items, identified by 13 complainants, which stations agreed breached the Code of Practice, compared with 15 complaints (relating to four broadcast items) of a complaint being upheld in the previous quarter.

1. There were 10 upheld complaints about a Queensland Transport advertisement (Southern Cross Ten, Queensland and Network

Ten, Brisbane). The stations agreed that the advertisement, which was classified 'M', was inappropriately placed as a result of human error. The stations have reviewed their operational procedures to guard against a similar future occurrence.

2. There was one upheld complaint about an Angus Smith Marine Evinrude boat advertisement shown during *Rugrats* (Southern Cross Ten, Queensland). The station agreed that the advertisement, which was classified M, was inappropriately placed as a result of human error. The error was corrected to ensure that the advertisement will be broadcast in the correct time in future, and the station agreed to take precautions to guard against a similar error in the future.

3. There was one upheld complaint in relation to a Fun Box advertisement shown during *The Grinch* (Southern Cross Ten, Northern NSW). The station agreed that the advertisement, which was classified G with placement code A, was inappropriately placed as a result of human error. The program, *The*

*Grinch*, was classified incorrectly and this error resulted in the advertisement being broadcast in an inappropriate time zone. The station has reviewed its scheduling operational procedures to guard against a similar recurrence.

4. There was one upheld complaint in relation to *Ten News* story on a Choice survey of diet pills (Network Ten). The story included footage of a product which was not included in the Choice survey being reported. The network agreed that the footage was used incorrectly, apologised for the error and took steps to ensure that the footage would not be used in subsequent stories.

### COMPLAINTS NOT UPHELD

Programs receiving the highest number of complaints (not upheld) were:

- *Ten News at Five* (Network Ten)—14 complaints, mostly concerning material perceived as biased or distressing.
- *The Ronnie Johns Half Hour* (Network Ten)—11 complaints, mostly concerning perceived

religious discrimination, and coarse language considered unsuitable for the time zone.

- *Seven Nightly News* (Seven Network)—eight complaints, mostly concerning perceived discrimination in reporting and graphic images considered inappropriate for the time zone.
- *Sunrise* (Seven Network)—eight complaints, mostly concerning language considered to be inappropriate and comments considered to be biased or inappropriate.
- *Today Tonight* (Seven Network)—eight complaints, mostly concerning perceived inaccuracy and racism in reporting, and footage of an abattoir considered to be inappropriate.
- *60 Minutes* (Nine Network)—six complaints, mostly concerning perceived inaccuracy in reporting, language considered to be inappropriate and footage in story on cattle trade to Egypt considered to be upsetting material.

## Complaints to commercial TV stations, 1 January-31 March 2006

	Bias/ inaccuracy	Classification	Closed caption	Commercial general	Commercial placement	Commercial time	Consumer advice	Discrimination	Privacy	Program general	Upsetting material	Total	%
Children	0	1	0	0	0	0	0	0	0	0	0	1	0.4
Comedy	0	12	1	0	0	0	0	9	0	1	0	23	8.6
Commercial	0	28	0	5	13	2	0	0	0	5	0	53	19.8
Current affairs	7	5	0	0	0	0	0	5	1	0	4	22	8.2
Drama	0	26	1	0	0	9	1	3	0	0	0	40	14.9
Information	0	1	0	0	0	1	0	0	0	0	0	2	0.7
Light entertainment	0	10	0	0	0	0	0	2	0	0	0	12	4.5
Movie	0	22	0	0	0	2	0	2	0	0	0	26	9.7
Music video	0	3	0	0	0	0	0	0	0	1	0	4	1.5
News	9	4	0	0	0	0	0	6	1	1	12	33	12.3
Program promos	0	28	0	0	0	0	0	1	0	0	2	31	11.6
Quiz	0	0	0	0	0	0	0	1	0	0	0	1	0.4
Reality	0	3	0	0	0	0	0	0	0	0	0	3	1.1
Shopping guide	0	0	0	0	0	1	0	0	0	0	0	1	0.4
Sport	0	2	0	0	0	0	0	3	0	0	0	5	1.9
Unspecified	1	3	0	0	0	1	0	0	0	0	0	5	1.9
Variety	0	3	0	0	0	0	0	3	0	0	0	6	2.2
Total	17	151	2	5	13	16	1	35	2	8	18	268	100
%	6.3	56.3	0.7	1.9	4.9	6.0	0.4	13.1	0.7	3.0	6.7	100	

Source: Free TV Commercial Television Industry Code of Practice 2004: Complaints Summary January to March 2006

## Internet complaints in May 2006

ACMA's internet complaints hotline enables Australian residents to complain to ACMA about prohibited or potentially prohibited internet content. Complaints can be registered on the ACMA website at [www.acma.gov.au/hotline](http://www.acma.gov.au/hotline). Internet content is assessed in accordance with the National Classification Code and Guidelines. The prohibited categories for Australian-hosted content are RC (Refused Classification), X 18+ (consensual sexually explicit material), and material rated R 18+ (Restricted) that is not protected by adult verification procedures. For overseas-hosted content, the prohibited categories are RC and X 18+. For Australian-hosted prohibited items, ACMA issues a take-down notice to the relevant internet content host, directing it not to host the content. Failure to comply may result in a maximum penalty per day of \$5,500 for an individual and \$27,500 for a corporation. For overseas-hosted prohibited or potentially prohibited items, ACMA notifies the content to the suppliers of approved filter software in accordance with procedures outlined in the internet industry codes of practice. Under the codes, internet service providers are required to provide one or more approved filters for the use of their subscribers. In addition, if ACMA finds internet content is of a 'sufficiently serious' nature (such as child pornography), it will notify the relevant police force and/or the relevant accredited hotline overseas.

### Items actioned, May 2006

Classification and description of internet content <sup>4</sup>	Australian-hosted items (take-down notice issued)	Overseas-hosted items (referred to makers of filters)	Total
X – Actual sexual activity	0	23	23
RC – Child – depiction	0	24	24
RC – Bestiality – depiction	0	3	3
RC – Sexual fetish – depiction	0	3	3
RC – Sexual violence – depiction	0	0	0
RC – Sexual fantasy – depiction	0	2	2
Totals	0	55	55

4. Descriptions of internet content in this table are based on the National Classification Board's Guidelines for the Classification of Films and Computer Games 2005, available at <http://www.oflc.gov.au/resource.html?resource=62&filename=62.pdf>

### Internet complaints, May 2006

Complaints received	52
Invalid complaints <sup>1</sup>	5
Investigations terminated <sup>2</sup>	5
Investigations completed	61
Items actioned <sup>3</sup>	55

1. A complaint is not investigated by ACMA if:  
• the complaint does not meet the statutory requirements under subclause 22(3) and clause 25 of Schedule 5 (eg no internet address provided; complainant not an Australian resident); or  
• the complaint falls within the meaning of subclause 26(2) of Schedule 5 (frivolous, vexatious, not made in good faith, or made for the purpose of frustrating or undermining the effective administration of the scheme); or  
• the complaint concerns matters not within the scope of Schedule 5 (eg the complaint relates to an electronic 'virus').

2. A complaint is terminated under subclause 26(4) of Schedule 5 if ACMA has insufficient information to conclude the investigation.

3. ACMA assesses each piece of internet content, such as a single web page or newsgroup posting, separately (these are referred to as 'items' of internet content). Action is taken in relation to items of internet content found to be prohibited or potentially prohibited.