

Broadcasting complaints investigations October–December 2005

Under the Broadcasting Services Act, 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 between 1 October and 31 December 2005. 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 themselves. 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 in relation to possible breaches of program standards (children's television, Australian content 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 between 1 October and 31 December 2005. 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 that was terminated.

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

- broadcast of material exceeding the classification level of a rated program or a pre-classified viewing time (two breaches)
- breach of a licence condition by broadcasting more than the permissible 5 minutes of sponsorship announcements per hour (two breaches)
- breach of a licence condition by broadcasting advertisements (two breaches)
- breach of a licence condition by not retaining record of broadcast (one breach) and
- failure to have a conflict resolution policy in place (one breach).

ACMA INVESTIGATIONS OCTOBER–DECEMBER 2005

Callsign	Program/issue	Substance of complaint	Code/licence condition applicable to breach finding
BREACH FINDINGS			
COMMERCIAL TELEVISION			
Western Australia			
TVW Perth	<i>Family Guy</i>	The program contained inappropriate sexual references.	PG Television Classification Guidelines
NEW Perth	<i>The OC</i> (promotion)	Objectionable language featured in program promotion broadcast during G time zone	Program promotions in G viewing periods - socially offensive or discriminatory language
COMMUNITY RADIO			
New South Wales			
2BCR Sydney	(Management Practice)	Licensee did not have in place a written policy and procedure for dispute resolution	Written internal conflict resolution policy
2WAY Port Macquarie	(Management Practice)	Licensee did not retain recordings of news bulletins	Retention of records*
2PAR Ballina	<i>Radio On Toast</i>	Sponsorship announcements in excess of 5 minutes per hour and broadcast of advertisements	Broadcasting advertisements and sponsorship announcements in excess of five minutes*
2GLA Forster	<i>John Laws Morning Show</i>	Sponsorship announcements in excess of 5 minutes per hour and broadcast of advertisements	Broadcasting advertisements*
2000 Sydney	<i>Darpan</i>	Sponsorship announcements in excess of 5 minutes per hour and broadcast of advertisements	Broadcasting advertisements*
2GLF Sydney	<i>Lehren</i>	Broadcast of advertisements	Broadcasting advertisements*
NO BREACH FINDINGS			
COMMERCIAL TELEVISION			
Australian Capital Territory			
CTC 10 Southern NSW /ACT	<i>The Ronnie Johns Half Hour</i> (promotion)	Offensive content in a comedy skit about the crucifixion of Jesus Christ	Discrimination
New South Wales			
ATN 7 Sydney	<i>Today Tonight</i>	Editing of answers to different questions – manipulating the truth	Accuracy
TCN 9 Sydney	<i>Comedy Inc – The Late Shift</i>	Vilification of Muslims in comedy skit	Discrimination
CBN 7 Southern NSW	<i>Lost</i>	Number of advertisements during the program	Hourly limits - average and hourly limits in election periods
TEN 10 Sydney	<i>Sex and the City</i>	Tobacco advertising. Main character reaches to handbag for a 'morning Marlborough Light'. Complaints Handling	Tobacco advertising*
TEN 10 Sydney	<i>The Ronnie Johns Half Hour</i> (promotion)	A comedy skit about the crucifixion of Jesus Christ alleged to be offensive	Discrimination
Queensland			
TNQ 10 Regional	<i>Australian Idol</i>	A contestant wore a German Iron Cross badge - offensive to survivors of The Holocaust	Cultural sensitivities
TVQ 10 Brisbane	<i>News</i>	Licensee accused of sensationalising an issue	Appropriate regard for relatives and provide warnings
RTQ 9 Regional	<i>Comedy Inc – The Late Shift</i>	Offensive content in a comedy skit in which Jesus Christ is interviewed after crucifixion	Discrimination
BTQ 7 Brisbane	<i>Today Tonight</i>	Invasion of complainant's privacy	Privacy

South Australia			
ADS 10 Adelaide	<i>Channel Ten News</i>	Broadcast of discriminatory language in the description of a person being described in a court case – 'He had a wog hairstyle'	Discrimination
Tasmania			
TNT 7 &10 Tasmania	<i>Southern Cross Nightly News</i>	Inaccuracy and political bias in news report	Accuracy and fair and impartial presentation
Victoria			
HSV 7 Melbourne	<i>Today Tonight</i>	Violation of child's rights through the ambushing of a single mother by reporter. Privacy matter in relation to the child	Privacy of children
GTV 9 Melbourne	<i>A Current Affair</i>	Segment giving large exposure to a website. No response to complaint.	Distinguish paid material and complaints handling.
GTV 9 Melbourne	<i>Comedy Inc – The Late Shift</i>	Skit of 'The Last Supper' ridiculed Christians. Response from production house explained the skit was a parody of the Da Vinci painting of 'The Last Supper'. Complaints Handling	Discrimination, provide substantive response, time limit in responding and advise complainant of referral of complaint
COMMERCIAL RADIO			
New South Wales			
2PTV Sydney	<i>Breakfast Program</i>	Offensive derogatory term used in broadcast	Material unsuitable for broadcast and gratuitous language
2UE Sydney	<i>John Laws</i>	Broadcast contained material that was below common decency levels	Material unsuitable for broadcast
Queensland			
4EL Cairns	<i>Mornings with John McKenzie</i>	Broadcast of racist comments	Vilification
South Australia			
5AA Adelaide	<i>Bob Francis</i>	Comments expressing the desire to smash a judge's face in led complainant to believe the licensee was advocating violence in the community	Vilification and material unsuitable for broadcast
Tasmania			
7TTT Hobart	<i>Benchwarmers</i>	Offensive, sexist and degrading comments broadcast	Vilification and material unsuitable for broadcast proscribed matter
Western Australia			
6PR Perth	<i>Saturday Sports Openline</i>	Comments about a convicted murderer were unreasonable.	Standards of decency
COMMUNITY RADIO			
New South Wales			
2RES Sydney	<i>Voice of India</i>	Broadcasting advertisements and sponsorship announcements in excess of five minutes	Broadcasting advertisements and sponsorship announcements in excess of five minutes**
ABC TELEVISION			
ABW Perth, WA	<i>Roller Coaster</i>	The depiction of females in a sexually suggestive way was excessive for a G rated program	Classification of all programs.
SBS RADIO			
6SBSF Perth, WA	<i>Lo Scandaglio</i>	Political bias in discussion on SBS Radio.	Bias in news and current affairs
SBS TELEVISION			
SBS Sydney, NSW	<i>World News</i>	Impartiality and bias in a report about the Middle East	Balance and accuracy in news and current affairs
INVESTIGATIONS TERMINATED			
COMMERCIAL TELEVISION			
New South Wales			
ATN Sydney	<i>Today Tonight</i>	Misrepresentation of a neighbourhood dispute	Investigation terminated – invalid complaint

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

Complaint handling by commercial radio stations

The Commercial Radio Codes of Practice require each commercial radio broadcaster to provide CRA with an extract of the record of complaints received. CRA provides a consolidated report to ACMA. Member stations recorded 99 written complaints alleging breaches of the Commercial Radio Codes of Practice during the October–December 2005 quarter.

Written complaints October–December 2005

	Talkback & discussion	News & current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters in	16	4	5	11	6	42
Prohibited matter in	32	0	0	0	0	32
Other complaints	8	2	0	0	15	25
Total	56	6	5	11	21	99

Source: CRA Commercial Radio Codes of Practice: Complaints summary October to December 2005

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 214 written complaints about matters covered by the Code of Practice in the October–December 2005 quarter, 43 per cent fewer than the 376 complaints reported in the previous quarter.

COMPLAINTS UPHELD

In the October–December 2005 quarter, there were 15 instances (related to four broadcast items) where a station agreed that a complaint identified a breach of the code, compared with 10 instances of a complaint being upheld in the previous quarter.

1. There were three upheld complaints about an advertisement shown during *The*

Sound of Music (Seven Queensland). The network agreed that the advertisement, which was classified M, was inappropriately placed as a result of human error.

2. There was one upheld complaint in relation to an incorrect statement made in an introduction to a segment on Seven News (Seven Network). The network said the lead-in statement for a story on a cervical cancer vaccine, which incorrectly stated that the vaccine was a cure, resulted from an error in scripting. The network did not intend to mislead viewers. The actual story on the vaccine contained the correct information. The network will work to ensure that such errors do not occur again.

3. There was one upheld complaint concerning a news bulletin shown during *Rove Live*, (Network Ten). The news bulletin includes footage of a deceased person in New Orleans. There was no warning to viewers during the news bulletin of the potentially

distressing image. The full news report did include a warning for viewers. The network has brought this to the attention of the bulletin producer to emphasise the need for care with footage in news updates.

4. There were 10 upheld complaints in relation to language used during the broadcast of the NRL Grand Final (Nine Network/WIN Television). The network agreed that language used during interviews with players was inappropriate. Live programming does not allow an opportunity for the broadcaster to delay vision and audio and there is no opportunity to warn viewers of potentially offensive language. However, the response to the viewer acknowledged that the network made an immediate on-air apology and the Nine Network, the Tigers Club and the NRL had issued official apologies the following day.

COMPLAINTS NOT UPHELD

Programs receiving the highest number of complaints

(not upheld) were:

- *The Ronnie Johns Half Hour* (Network Ten)—29 complaints, mostly concerning perceived discrimination and language considered unsuitable.
- *Seven Nightly News* (Seven Network)—19 complaints, mostly concerning perceived inaccuracy in reporting and graphic images considered inappropriate for the time zone.
- *Today Tonight* (Seven Network)—12 complaints, mostly concerning perceived inaccuracy in reporting.
- *Sunrise* (Seven Network)—nine complaints, mostly concerning content considered offensive and perceived discrimination.
- *Brainiac* (Network Ten)—eight complaints, mostly concerning sexual references considered unsuitable and perceived discrimination.
- *Comedy Inc* (Nine Network)—eight complaints, mostly concerning perceived discrimination.

COMPLAINTS TO COMMERCIAL TV STATIONS ABOUT PROGRAMS, OCTOBER-DECEMBER 2005

	Bias/inaccuracy	Classification	Closed caption	Commercial content	Commercial general	Commercial placement	Discrimination	Drug use	Language	Privacy	Sex/nuity	Upsetting material	Violence	Total	% all
Comedy	-	5	-	-	-	1	19	-	4	-	1	-	1	31	14.5%
Current affairs	11	11	-	-	-	-	6	-	1	3	-	-	-	32	15%
Documentary	-	1	-	-	-	-	-	-	-	-	-	-	-	1	0.5%
Drama	-	7	-	1	-	4	1	2	1	-	1	-	5	22	10.3%
Information	-	1	-	-	-	-	-	-	1	-	-	-	-	2	.9%
Movies	-	1	-	1	-	3	-	-	2	-	1	-	1	9	4.2%
Music video	-	1	-	-	-	-	-	-	1	-	1	-	-	3	1.4%
News	10	11	-	-	-	-	4	-	-	6	-	2	-	33	15.4%
Program promo	-	2	-	-	-	-	24	-	6	-	4	-	2	38	17.8%
Sport	-	10	-	-	-	1	-	-	1	-	-	-	-	12	5.6%
Unspecified	-	3	1	5	1	1	1	-	4	-	4	-	-	20	9.3%
Variety	-	1	-	2	-	1	3	-	3	-	1	-	-	11	5.1%
Total	21	54	1	9	1	11	58	2	24	9	13	2	9	214	-
% all	9.8%	25.2%	.5%	4.2%	.5%	5.1%	27.1%	.9%	11.2%	4.2%	6.1%	.9%	4.2%	-	100.0%

Issues including 'Complaints handling', 'Consumer advice' and 'Suicide' had 0 complaints about any program. Categories including 'Children', 'Quiz' and 'Religious' had 0 complaints about any category. Source: Free TV Commercial Television Industry Code of Practice 2004: Complaints Summary October to December 2005

Internet complaints in February 2006

ACMA's internet complaints hotline enables Australian residents to complain to ACMA about prohibited or potentially prohibited internet content. The hotline was established under Schedule 5 to the *Broadcasting Services Act 1992*. Complaints can be registered on the ACMA website at 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 with such a notice 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, February 2006

Classification and description of internet content ⁴	Australian-hosted items (take-down notice issued)	Overseas-hosted items (referred to makers of filters)	Total
X – Actual sexual activity	0	21	21
RC – Child – depiction	0	43	43
RC – Bestiality – depiction	1	0	1
RC – Sexual fetish	0	1	1
RC – Sexual fantasy – depiction	0	10	10
Totals	1	75	76

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, February 2006

Complaints received	82
Invalid complaints ¹	11
Investigations terminated ²	6
Investigations completed ³	70
Items actioned ³	76

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.