

# Broadcasting complaints investigations

## JULY TO SEPTEMBER 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.

This summary is of ACMA investigations into unresolved broadcasting complaints, as well as complaints about possible breaches of the *Broadcasting Services Act* or licence conditions, completed in the three months from July 1 to September 30 2006. There is also, 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.

### BROADCASTING COMPLAINTS PROCESS

Primary responsibility for the resolution of broadcasting 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, 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 broadcasting 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 licensees take action to remedy breaches or put in place procedures to ensure they do not recur.

Of the 18 investigations finding a breach, five related to commercial television, two to commercial radio, three to ABC television, six to community radio and two to

community television. The breaches covered 19 issues as follows:

#### Commercial television

- broadcast of material which was factually inaccurate (two breaches)
- broadcast of material which failed to represent viewpoints fairly (one breach)
- did not remedy failure to comply with the *Commercial Television Industry Code of Practice 2004* (one breach)

- broadcast of material which was incorrectly classified and did not comply with requirements for G classification (one breach)

- complaints handling (two breaches)

#### Commercial radio

- racial vilification (one breach)
- coarse language (one breach) ABC television
- broadcast of material which was factually inaccurate (two breaches)
- broadcast of material which was biased (two breaches)
- broadcast of material which was incorrectly classified and did not comply with requirements for M classification (one breach)

#### Community radio

- breach of a licence condition by broadcasting advertisements (three breaches)
- breach of a licence condition by broadcasting sponsorship announcements in excess of five minutes per hour (two breaches)
- broadcast of material which was factually inaccurate (one breach)
- principles & rights of volunteers (two breaches)
- make guidelines easily available (one breach)

- internal conflict resolution policy and procedures (one breach) Community television
- breach of a licence condition by broadcasting advertisements (two breaches)
- breach of a licence condition by broadcasting sponsorship announcements in excess of seven minutes per hour (one breach)

### 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 third quarter of 2006 (see table on page 17).

### 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 221 written complaints about matters covered by the code in the third quarter of 2006. This is 10.2 per cent less than the 246 complaints reported in the previous quarter. There was a fall in the

#### ACMA investigations into unresolved broadcasting complaints completed, July–September 2006

Number of ACMA investigations finalised in the three months	41
Investigations resulting in a breach of a code of practice	12
Investigations resulting in a breach of a licence condition	6
Investigations resulting in no breach	23
Investigations terminated when complaint withdrawn	1

**Written complaints to commercial radio broadcasters, July to September 2006**

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive Matters in	22	0	7	24	2	55
Prohibited Matter in	2	1	0	3	0	6
Other Complaints	3	1	0	0	5	9
Total	27	2	7	27	7	70

Source: CRA Commercial Radio Codes of Practice: Complaints summary July to September 2006

number of complaints in the categories bias/inaccuracy, classification (including the classification elements sex/nudity, language and themes), commercial general, commercial time, discrimination and program general. There was a small increase in the number of complaints concerning commercial placement, disclosure and privacy. Numbers of complaints in other categories were similar to the previous quarter.

**COMPLAINTS UPHELD**

There were four complaints upheld in relation to two program items that stations agreed breached the *Commercial Television Industry Code of Practice 2004* for this quarter, compared with no complaints upheld in the previous quarter.

1. There were three upheld complaints in relation to a program promotion for *The Ronnie Johns Half Hour* (Network Ten). The network agreed that the promotion, which was incomplete and not intended for broadcast, was placed in the broadcast system due to an administrative error. The network identified the error the instant the promotion was broadcast and removed the promotion from the broadcast schedule immediately. The promotion was only broadcast on the east coast as the network was able to prevent it from going to air in Adelaide and Perth due to the time difference. The network has taken measures to ensure against a similar future occurrence.
2. There was one upheld complaint in relation to an advertisement for the

Advanced Medical Institute (erectile problems). Southern Cross Network agreed that, due to human error in the scheduling department, this advertisement was incorrectly shown during a live broadcast of the Australia versus South Africa rugby union match. The network has taken steps to avoid a similar future occurrence.

**COMPLAINTS NOT UPHELD**

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

- *Today Tonight* (Seven Network)—there were 35 complaints, mostly concerning footage of Big Brother considered to be inappropriate and perceived bias and/or inaccuracy in reporting.
- *The Ronnie Johns Half Hour*

(Network Ten)—there were 24 complaints, mostly concerning coarse language and adult themes considered to be inappropriate for the time zone.

- *Australian Idol* (Network Ten)—there were 12 complaints, mostly concerning coarse language, nudity and sexual references considered to be inappropriate.
- *Sunrise* (Seven Network)—there were nine complaints, mostly concerning perceived bias and inaccuracy in reporting and sexual references and nudity considered unsuitable for the time zone.
- *The Wedge* (Network Ten)—there were six complaints concerning coarse language, sexual references, racism or discrimination considered to be inappropriate.

**Complaints to commercial television stations about programs, July to September 2006**

	Bias/inaccuracy	Classification	Commercial general	Commercial placement	Commercial time	Complaint handling	Discrimination	Privacy	Program general	Upsetting material	Total	%
Children	0	2	0	0	0	1	0	0	0	0	3	14
Comedy	0	30	0	1	0	10	0	0	0	0	41	18.6
Commercial	0	21	12	0	0	0	0	0	0	0	33	14.9
Current affairs	15	20	0	0	0	7	2	0	15	2	46	20.8
Drama	0	7	0	0	0	0	0	1	0	0	8	3.6
Information	0	1	0	0	0	1	0	0	0	0	2	0.9
Light entertainment	0	5	0	0	1	1	0	0	0	0	7	3.2
Movie	0	8	0	1	0	0	0	0	0	0	9	4.1
Music Video	0	1	0	0	0	0	0	0	0	0	1	0.5
News	7	1	0	0	0	2	1	1	7	2	14	6.3
Program promotions	0	17	0	0	0	2	0	1	0	0	20	9.0
Reality	0	22	0	0	0	6	0	0	0	0	28	12.7
Sport	0	2	0	0	0	2	0	0	0	0	4	1.8
Unspecified	0	0	0	1	0	0	0	0	0	0	1	0.5
Variety	0	3	0	0	0	1	0	0	0	0	4	1.8
Total	22	140	12	3	1	33	3	3	22	4	221	100.0
%	10.0	63.3	5.4	1.4	0.5	14.9	1.4	1.4	10.0	1.8	100.0	

Source: Free TV Commercial Television Industry Code of Practice 2004: Complaints Summary July to September 2006

## INVESTIGATIONS BREACHES BY BROADCASTERS

The full reports on these investigations into potential breaches by licensees are on the ACMA website, [www.acma.gov.au](http://www.acma.gov.au). The reports are arranged in order of licensee.

### ACMA INVESTIGATIONS FINDINGS, JULY-SEPTEMBER 2006

Call sign	Program/issue	Substance of complaint	Code/licence condition applicable to breach finding
<b>BREACH FINDINGS</b>			
<b>COMMERCIAL TELEVISION</b>			
<b>New South Wales</b>			
TCN 9 Sydney	<i>Today</i>	Graphic detail of an execution—inappropriate broadcast for time of day and lack of warning before material that may distress	Complaints handling
ATN 7 Sydney	<i>Today Tonight</i>	Coverage of Telstra's billing system and Lindeman Island staff event contained inaccuracies and misrepresented Telstra's viewpoint. Licensee did not correct significant errors of fact at earliest possible opportunity	Accuracy, misrepresentation of viewpoints and failure to correct errors in reporting
<b>Queensland</b>			
STQ 7 Regional Qld	<i>Blue Heelers</i> promotion	Promotion contained offensive content and was unsuitable for broadcast during family viewing times	Portrayal of any form of violence or cruelty to children in G classified program
BTQ 7 Brisbane	<i>Today Tonight</i>	Assertion that complainant had stolen \$2 million was factually inaccurate	Accuracy
<b>Victoria</b>			
HSV 7 Melbourne	<i>Today Tonight</i>	Loudness of advertisement	Complaints handling
<b>COMMERCIAL RADIO</b>			
<b>New South Wales</b>			
2GB Sydney	<i>Malcolm T Elliot</i>	Racist comments about Indonesian people and judges amounted to vilification	Vilification
<b>Victoria</b>			
3MMM Melbourne	<i>Saturday Football</i>	Presenter used coarse language to describe a caller	Inappropriate language
<b>COMMUNITY RADIO</b>			
<b>New South Wales</b>			
2CCR Sydney	<i>Radio Mirchi</i>	Broadcasting advertisements	Broadcasting advertisements*
2GLF Sydney	<i>Radio Lehren</i>	Broadcasting sponsorship announcements in excess of five minutes per hour	Sponsorship announcements in excess of five minutes*
2RBR Corakai	<i>Breakfast</i>	Vilification of individuals, misrepresenting factual material relating to public meeting	Accuracy
2NUR Newcastle	Management practice	Broadcast of advertisements and sponsorship announcements, operating for profit	More than five minutes of sponsorship announcements per hour, broadcasting advertisements*
2CBD Sydney	Management practice	Announcements not tagged and therefore advertisements	Broadcasting advertisements*
<b>Queensland</b>			
4RIM Regional Qld	Management practice	Licensee does not have volunteer guidelines or policy regarding conflict resolution	Principles and rights of volunteers, make guidelines easily available and internal conflict resolution policy and procedures
<b>COMMUNITY TELEVISION</b>			
<b>New South Wales</b>			
TSN31 Sydney	<i>India TV</i>	Broadcast advertisements	Broadcasting advertisements*
<b>Western Australia</b>			
ATW31 Regional WA	<i>The British Soccer Show</i>	Broadcast of advertisements and sponsorship announcements in excess of the seven minutes per hour	Broadcasting advertisements, sponsorship announcements in excess of seven minutes*

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**ABC TELEVISION****New South Wales**

ABC Sydney	<i>The Lost Secret of Catherine the Great</i>	Program featured pornographic images	M classification requirements for 'adult themes' and 'sex'
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**Tasmania**

ABT Hobart	<i>Four Corners: Lords of the Forests</i>	Program was inaccurate and biased	Accuracy and impartiality
ABT Hobart	<i>Four Corners: Lords of the Forests</i>	Program contained inaccuracies, was biased and did not present balanced viewpoints	Accuracy and impartiality

**NO BREACH FINDINGS****COMMERCIAL TELEVISION****New South Wales**

ATN 7 Sydney	Australia Day 2006 lamb commercial with Sam Kekovitch	Inappropriate language for time zone and lack of substantive response to written complaint	Appropriate PG classification (language) and placement of commercial, complaints handling
NBN Northern NSW	<i>News</i>	Evening news program not captioned	Captioning
TEN Sydney	<i>Big Brother Live Nominations</i> (3/7/06 broadcast)	Inappropriate language	PG classification (language)

**Queensland**

STQ 7 Regional Qld	<i>Comic Relief</i>	Illegible display of classification symbol	Display of classification symbols
STQ 7 Regional Qld	<i>All Saints</i> promotion	Unsuitable content broadcast during family viewing time	G Classification
STQ 7 Regional Qld	<i>Stupid Behaviour: Caught on Tape</i> promotion	Unsuitable content broadcast during family viewing time	G Classification
STQ 7 Regional Qld	<i>Headland</i> promotion	Unsuitable content broadcast during family viewing time	G Classification
TNQ 10 Regional Qld	<i>Big Brother</i> (31/5/2006 broadcast)	Inappropriate	PG classification (language)

**South Australia**

ADS 10 Adelaide	<i>Big Brother – The Interview</i> (3/7/06 broadcast)	Program contained inappropriate references to an incident of alleged sexual harassment	PG classification (sexual references and themes)
ADS 10 Adelaide	<i>Big Brother Daily Show</i> (2/7/06 broadcast)	Program contained inappropriate references to an incident of alleged sexual harassment	PG classification (sexual references and themes)
ADS 10 Adelaide	<i>The Supernatural</i> promotion	Promotion contained material with more than a low sense of threat or menace	Program promotions in PG—sense of threat or menace—supernatural and mild horror themes
NWS 9 Adelaide	<i>20 to 1</i>	Depiction of violence was higher than 'mild' and not suitable for children to watch without supervision	PG classification (violence)

**Victoria**

ATV 10 Melbourne	<i>The Supernatural</i> promotion	Promotion contained material with more than a mild sense of threat or menace	Program promotions in PG – (sense of threat or menace, supernatural and mild horror themes)
ATV 10 Melbourne	<i>Futurama</i> promotion	Promotion featured sexual references that were inappropriate for child viewers	Restrictions in PG programs in certain time periods (sex and nudity)
GTV9 Melbourne	<i>Magda's Funny Bits</i>	Cigarette smoking	Tobacco advertising*

**COMMERCIAL RADIO****New South Wales**

2KM Sydney	Advertisement	Tobacco advertisements (for use of hookah) broadcast on Arabic-language radio station	Tobacco advertising*
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**Western Australia**

6BAY Regional WA	Nasal spray treating premature ejaculation advertisement	Advertisement unsuitable for broadcast	Contemporary standards of decency
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<b>COMMUNITY RADIO</b>			
<b>New South Wales</b>			
2RBR Sydney	<i>Breakfast</i>	Broadcasting advertisements and sponsorship announcements in excess of five minutes per hour	Broadcasting advertisements and sponsorship announcements in excess of five minutes*
<b>ABC TELEVISION</b>			
ABN Regional NSW	<i>ABC News Update</i>	News updates following <i>Playschool</i> at 10.00 am	Inappropriate times for news updates
ABN Sydney	<i>Degrassi: The Next Generation</i>	Program contained adult themes that were inappropriate for the child audience	G classification (sex and sexuality)
ABQ Regional Qld	<i>Four Corners</i>	Alleged bias in the broadcast	Accuracy, balance and impartiality
<b>ABC RADIO</b>			
4RN Regional Qld	<i>AM</i>	Bias and balance in current affairs	Bias and balance
<b>OPEN NARROWCASTING RADIO</b>			
<b>South Australia</b>			
Wiseguy Pty Ltd	Broadcasting community service without licence	Licensee not providing a service for community purposes and operating a for-profit business which carried commercials	Operate a community radio service without a licence
<b>INVESTIGATIONS TERMINATED</b>			
<b>SUBSCRIPTION TELEVISION</b>			
<b>Victoria</b>			
MYTV Plus Sydney		Commission of offence against another Act	
<b>COMMERCIAL TELEVISION</b>			
<b>Queensland</b>			
BTQ Brisbane	<i>Today Tonight</i>	Privacy was invaded	
<b>Victoria</b>			
WIN Regional Vic	<i>WIN News</i>	Factually inaccurate	
<b>COMMERCIAL RADIO</b>			
<b>New South Wales</b>			
2GB Sydney	<i>Breakfast with Alan Jones</i>	The broadcast incited or perpetuated hatred on the basis of religion	

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

## Internet complaints December 2006

ACMA's internet complaints hotline, established under Schedule 5 to the *Broadcasting Services Act 1992*, enables Australian residents to complain to ACMA about prohibited or potentially prohibited internet content. Complaints can be registered 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 (ICH), directing the ICH 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 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, December 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 18+ – Actual sexual activity	0	2	2
RC – Child – depiction	0	13	13
RC – Sexual violence – depiction	0	1	1
RC – Sexual fetish – depiction	0	1	1
Totals	0	17	17

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, December 2006

Complaints received	36
Invalid complaints <sup>1</sup>	3
Investigations terminated <sup>2</sup>	9
Investigations completed	29
Items actioned <sup>3</sup>	17

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.