

The full reports on these investigations into potential breaches by licensees are on the ACMA website, www.acma.gov.au (go to About ACMA: Publications & research > Broadcasting publications > Investigations, then Radio operations or Television operations). The reports are arranged in order of licensee.

Nine Network licensees did not comply with commercial television code

ACMA has found that Nine Network licensees in Sydney and Brisbane have not complied with the complaints-handling provisions of the *Commercial Television Industry Code of Practice 2004*. TCN Channel Nine Pty Ltd, the licensee of TCN Sydney, breached clause 79 of the code by not providing a substantive response to a written complaint, and Queensland Television Ltd, the licensee of QTQ Brisbane, breached clause 7.12 of the code by not advising a complainant that she could refer the matter to ACMA if she was not satisfied with the response.

This is TCN's third breach of clause 79 and QTQ's first breach of clause 7.12 since 1 January 2005. Since that date, there have been five instances where Nine Network licensees have not provided substantive responses to written complaints and three instances where they have not advised complainants that they could refer the matters to ACMA if not satisfied. Eight breaches since 1 January 2005 indicate to ACMA that the Nine Network has not demonstrated sufficient vigilance in its handling of complaints.

In response to ACMA's findings, the Chief Executive of the Nine Network advised that he has personally directed that the new procedures be implemented as a matter of urgency to meet its complaints-handling obligations. These include a new system of designated code complaint officers, specific attribution of responsibility for compliance by code complaint officers, executive producers and station managers, and an updated complaints-handling manual for network stations. He considers the actions will enable

complainants to receive the timely, substantive responses that they are entitled to under the industry's own code.

While the Nine Network has taken immediate steps to address the breach findings, ACMA expects to see a total overhaul of Nine Network complaints-handling processes and a dramatic improvement in the network's compliance with the code's complaints-handling provisions. ACMA will monitor progress, seeking a follow-up report on implementation at 30 June 2007 and a further assessment at 30 June 2008.

2GB presented material in a misleading manner on *Mornings with Ray Hadley*

ACMA has found that Harbour Radio Pty Ltd, the licensee of commercial radio service 2GB Sydney, breached the *Commercial Radio Codes of Practice 2004*, by presenting material in a misleading manner by giving improper emphasis to the material and by editing that material out of context.

ACMA received two complaints from the Baulkham Hills Shire Council relating to the *Mornings with Ray Hadley* program. The complaints concerned the presenter's repeated broadcast of an excerpt of a council 'question time recording', in which the Mayor of Baulkham Hills Shire Council is heard addressing a fellow councillor.

Under clause 2.2(d) of the code, material must not be presented in a misleading manner by giving wrong or improper emphasis or by editing out of context.

In response to the breach finding, the licensee indicated that it would bring the findings of the investigation report to the attention of all 2GB

presenters and producers. The licensee also indicated that it would cease to use the question time recording during any broadcast of any program on its station.

ACMA notes the actions taken by the licensee in response to the breach finding and will closely monitor its ongoing performance against this provision of the code.

Internet complaints February 2007

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. 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, February 2007

| Classification and description of internet content ⁴ | 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 | 48 | 48 |
| RC – Bestiality – depiction | 0 | 1 | 1 |
| RC – Sexual fetish – depiction | 0 | 1 | 1 |
| Totals | 0 | 52 | 52 |

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 2007

| | |
|--|----|
| Complaints received | 52 |
| Invalid complaints ¹ | 9 |
| Investigations terminated ² | 3 |
| Investigations completed | 47 |
| Items actioned ³ | 52 |

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