

JULY TO SEPTEMBER 2008

Investigations and complaints about broadcasters

Under the *Broadcasting Services Act 1992* (the BSA), 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 BSA or licence conditions, completed in the three months from 1 July to 30 September 2008.

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.

THE BROADCASTING COMPLAINTS PROCESS

Primary responsibility for the resolution of broadcasting code-related complaints rests with the licensees themselves. The BSA lays down a general procedure for complaints-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 them unless satisfied that they are frivolous or vexatious or not made in good faith.

Complaints about possible breaches of program standards (children's television, Australian content, captioning and disclosure), provisions of the BSA and licence conditions may be made directly to ACMA. Complainants

are not obliged to contact a licensee first in these instances.

ACMA may find 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 BSA, 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.

Of the nineteen investigations finding a breach, ten related to commercial television, six related to community radio and three related to open narrowcast television. The breaches covered a number of issues:

1. broadcast of material which was factually inaccurate (two breaches for commercial television)
2. broadcast of a program promotion that was factually inaccurate (one breach for commercial television)
3. broadcast using a technique which transmits messages below or near the threshold of normal awareness (four breaches for commercial television)
4. failing to correct significant error of fact (two breaches for commercial television)
5. broadcast of material relating to a person's personal or private affairs or which invaded an individual's privacy (one breach for commercial television)
6. breach of licence condition, by failing

to provide captioning (one breach for commercial television)

7. failure to respond to complaints appropriate to each code (one breach for commercial television, three breaches for open narrowcast television)
8. breach of licence condition by broadcasting more than five minutes of sponsorship announcements per hour (four breaches for community radio)
9. breach of licence condition by broadcasting advertisements (two breaches for community radio)
10. breach of licence condition by not encouraging community participation (two breaches for community radio)
11. making a profit off a community broadcasting service (one breach for community radio).

COMPLAINTS-HANDLING BY COMMERCIAL RADIO STATIONS

The Commercial Radio Codes of Practice 2004 requires each member station of CRA to provide CRA with an extract of the record of complaints received. CRA provides a consolidated report to ACMA.

Member stations recorded 62 written complaints alleging breaches of the Code during the third quarter of 2008.

COMPLAINTS-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 Australia provides a consolidated report to ACMA.

Commercial television stations reported 376 written complaints about matters covered by the code in the third quarter of 2008.

ACMA investigations into unresolved broadcasting complaints completed between 1 July and 30 September 2008

Number of ACMA investigations finalised in the three months: 48

Investigations resulting in a breach of only code/s of practice	12
Investigations resulting in a breach of only licence condition/s	7
Investigations resulting in no breach	27
Concluded	2

Written complaints to commercial radio broadcasters, July 2008 to September 2008

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters in	21	0	2	9	3	35
Prohibited matter in	3	6	4	0	2	15
Other complaints	2	3	2	1	4	12
Total	26	9	8	10	9	62

Source: CRA Commercial Radio Codes of Practice: Complaints summary July to September 2008.

Complaints to commercial television stations about programs, July 2008 to September 2008

Type of program	Bias/ Inaccuracy	Classification	Closed caption	Commercial— general	Commercial placement	Commercial time	Consumer advice	Discrimination	Privacy	Program— general	Upsetting material	Total
Comedy	0	13	0	0	0	0	0	2	0	0	0	15
Commercial		18	0	1	67	3	0	0	0	3	0	92
Current affairs	39	7	1	0	0	0	0	8	0	0	0	55
Documentary	0	0	0	0	0	0	0	0	0	0	0	0
Drama	0	9	3	0	0	1	0	2	0	0	0	15
Light entertainment	0	55	0	0	0	0	0	24	0	1	0	80
Movie	0	3	0	0	0	0	0	0	0	0	0	3
Music video	0	0	0	0	0	0	0	0	0	0	0	0
News	5	2	1	0	0	0	0	2	3	0	3	16
Program promos	0	40	0	0	1	0	0	0	0	0	0	41
Quiz	0	0	0	0	0	0	0	0	0	0	0	0
Reality	0	15	1	0	0	1	0	2	0	0	0	19
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Sport	0	2	0	0	1	27	0	7	0	0	0	37
Unspecified	0	1	1	0	1	0	0	0	0	0	0	3
Total	44	165	7	1	70	32	0	47	3	4	3	376

Source: Free TV Australia Commercial Television Industry Code of Practice 2004: Complaints summary July to September 2008.

INVESTIGATIONS

breaches by **broadcasters**

ACMA INVESTIGATIONS, JULY TO SEPTEMBER 2008

Breach findings: Commercial television

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
ADS 1961	ARIA Awards	Rapid cut transition graphics—subliminal content.	Transmitting message below or near threshold of normal awareness
ATN 1820	<i>Today Tonight</i>	Promotions and a segment contained inaccurate material and unfair viewpoints. A person's privacy was invaded and a person was unfairly identified. Licensee did not correct error of fact.	Presentation of factual material, correcting errors of fact and accuracy of promotion
ATN 1988	Australian Open	A commentator made inappropriate comments during the Australian Open. Licensee did not respond to complaint.	Complaints-handling
ATV 1960	ARIA Awards	Rapid cut transition graphics—subliminal content.	Transmitting message below or near threshold of normal awareness
GTV 1912	<i>A Current Affair</i>	A segment misrepresented facts and unfairly identified a person.	Accurate presentation of factual material and correcting significant errors of fact
NBN 1945	<i>NBN News</i>	News stories lacked captioning during various broadcasts.	Captioning*
QTQ 1919	<i>A Current Affair</i>	A segment contained inaccurate data, information and depictions. Licensee did not respond to complaint.	Complaints-handling
TCN 1882	<i>A Current Affair</i>	A story featured personal and private information about a child.	Privacy
TEN 1959	ARIA Awards	Rapid cut transition graphics—subliminal content.	Transmitting message below or near threshold of normal awareness
TVQ 1958	ARIA Awards	Rapid cut transition graphics—subliminal content.	Transmitting message below or near threshold of normal awareness
NWS 2021	<i>Kitchen Nightmares</i>	Inappropriate coarse language for M timeslot.	Classification of other material and television classification guidelines—language

Investigation against a code of practice unless otherwise indicated; *investigation against a licence condition or the *Broadcasting Services Act 1992*

ACMA INVESTIGATIONS, JULY TO SEPTEMBER 2008

Breach findings: Subscription broadcasting television

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
FOXTEL 1985	<i>Family Guy</i>	The program contained sexual content, themes and a depiction of violence that exceeded the program's classification. Licensee did not refer complainant to ACMA.	Classification of film and drama programs; and complaints-handling—advising complainant they can refer matter to ACMA

Breach findings: Open narrowcast television

Call sign/investigation number	Program	Substance of complaint	Code clause
GlobeCast Australia 1990	—	Broadcasting inaccurate information about Islam, inciting hatred against Muslims.	Complaints-handling: advising complainant they can refer matter to ACMA
SCTV 2061	—	Broadcasting inaccurate information about Islam, inciting hatred against Muslims.	Complaints-handling: advising complainant they can refer matter to ACMA
UBI 2062	—	Broadcasting inaccurate information about Islam, inciting hatred against Muslims.	Complaints-handling: advising complainant they can refer matter to ACMA

Breach findings: Community radio

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
96.3FM Bundaberg (TCBL) 1973	<i>Frank's Country Mix</i>	Broadcast of offensive racist remarks and negative remarks about women. Broadcast of untagged sponsorship announcements, and licensee not encouraging participation and not responding to complaint.	Encourage participation*
2PSR 2043	—	Broadcast more than five minutes of sponsorship announcements.	Time limits on sponsorship announcements*
2TEN 1968	—	Licensee not encouraging participation and not representing the community's interest.	Encourage participation*
3BBB 2030	—	The five-minute sponsorship limit exceeded on various occasions and untagged sponsorship announcements aired.	Broadcast of advertisements and time limit on sponsorship announcements*
4DDB 1993	—	Licensee broadcast advertisements, is failing to represent the community interest, and exceeded the five-minute sponsorship limit on various occasions. The service is being operated as part of a profit-making enterprise.	Broadcasting advertisements, time limit on sponsorship announcements, and profit-making*
6NR 2009	—	Licensee is providing a commercial radio service without the appropriate licence, broadcast advertisements and exceeded the five-minute sponsorship limit, and is not representing the community's interest.	Broadcasting advertisements and time limit on sponsorship announcements*

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INVESTIGATIONS

breaches by **broadcasters**

ACMA INVESTIGATIONS, JULY TO SEPTEMBER 2008

No breach findings: Commercial television

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
ADS 1956	<i>Ten News at Five</i>	News story contained inaccuracies and defamatory allegations about a business.	Accuracy, creating public panic, appropriate regard to the feelings of relatives and viewers, privacy, unfairly identifying a single person or business, presenting news fairly and impartially.
ADS 2050	AFL telecast	Inappropriate language for PG timeslot.	Regard for audience, and public interest of program.
HSV 2031	<i>Pepper Dennis</i>	Inappropriate sexual references for a PG classification timeslot.	Classification of other material and television classification guidelines—sex and nudity.
NWS 1954	<i>National Nine News</i>	News story contained inaccuracies and defamatory allegations about a business.	Accuracy, creating public panic, appropriate regard to the feelings of relatives and viewers, privacy, unfairly identifying a single person or business, presenting news fairly and impartially.
NWS 2017	<i>Underbelly—Episodes 1 and 2: The Black Prince/The Sorcerer's Apprentice</i>	Inappropriate violence, sex, language in M classification timeslot.	Classification of other material and television classification guidelines—violence, sex and nudity, language.
QTQ 1918	<i>National Nine News</i>	News story inappropriately identified a particular school, as well as an individual.	Privacy, unfairly identifying an individual when reporting on the conduct of a group, and impartiality.
SAS 1955	<i>Channel Seven News</i>	News story contained inaccuracies and defamatory allegations about a business.	Accuracy, creating public panic, appropriate regard to the feelings of relatives and viewers, privacy, unfairly identifying a single person or business, presenting news fairly and impartially.
NWS 2019	<i>Underbelly—Episode 5: The Good, The Bad, The Ugly</i>	Inappropriate violence, sex, language in M classification timeslot.	Classification of other material— all material and television classification guidelines.
NWQ 2020	<i>Underbelly—Episode 6: Luv U 4 Eva</i>	Inappropriate violence, sex, language in M classification timeslot.	Classification of other material— all material and television classification guidelines.
TCN 2042	<i>The Footy Show</i>	Inappropriate drug use.	Classification of other material and television classification guidelines—drug use.
TEN 2006	<i>Big Brother</i> promotion	Program promotion perpetuated intense dislike, serious contempt and ridicule.	Offending cultural sensitivities, and provoking or perpetuating intense dislike or serious contempt on the grounds of ethnic origin and race.
TNQ 2032	<i>Alien Racers</i>	Inappropriate levels of violence for G timeslot.	Classification of other material and television classification guidelines—violence.
TVW 1970	<i>Kath and Kim</i>	Inappropriate images of smoking.	Prohibition on tobacco advertisements*
TVW 2011	<i>Channel Seven News</i>	Use of term 'Pom'.	Provoking or perpetuating intense dislike, serious contempt or severe ridicule on the grounds of national origin.

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ACMA INVESTIGATIONS, JULY TO SEPTEMBER 2008

No breach findings: ABC Television

Call sign/investigation number	Program	Substance of complaint	Code clause/s
ABC 1920	<i>The Chaser's War on Everything</i>	Broadcasting material that discriminated and stereotyped Orthodox Jews.	Discrimination and stereotypes
ABC 1978	<i>The Chaser's War on Everything</i>	Broadcasting material that mocked the Christian faith and its beliefs.	Discrimination and stereotypes, context and acceptability
ABC 1980	<i>The Chaser's War on Everything</i>	Broadcasting material across three separate episodes that was offensive and deliberately demeaning, and attacked individuals and groups.	Discrimination and stereotypes, context and acceptability
ABN 1913	<i>The 7.30 Report</i>	Interviewer treating Kevin Rudd and John Howard differently.	Impartiality and balance
ABS 1977	<i>The Line of Beauty</i>	Inappropriate sexual content, with inadequate consumer advice and warnings for M timeslot.	Classification of television programs, consumer advice and warnings
ABW 2056	<i>Ten Pound Poms</i>	Title of program containing a racial slur ('Poms').	Discrimination and stereotypes

No breach findings: SBS Television

Call sign/investigation number	Program	Substance of complaint	Code clause/s
SBS 1982	<i>Indie Sex: Censored</i>	Inappropriate sexual content in MA timeslot.	Television classification—sex and nudity; classification categories and general programming—introduction
SBS 1983	<i>Phileine Says Sorry</i>	Inappropriate sexual content for MA timeslot.	Television classification—sex and nudity
SBS 2035	<i>SBS World News</i>	The use of the word 'racist' wrongly applied in the context of opposition to religion. Inappropriate sources cited in response.	Accuracy and complaints-handling

No breach findings: Commercial radio

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
6MIX 2055	—	Use of the term 'Pom'.	Vilification and complaints-handling
6PR 2012	<i>Afternoons</i>	Use of the term 'Pom'.	Vilification
6PR 2034	<i>Midnight to Dawn</i>	Remarks made about complainant in a talkback discussion about the controversial Henson exhibition.	Accuracy

No breach findings: ABC Radio

Call sign/ investigation number	Program	Substance of complaint	Code clause/s
2ABCFM 2029	—	Inappropriate language in various broadcasts.	Language

No breach findings: Community radio

Call sign/investigation number	Program	Substance of complaint	Code clause/licence condition
2MAX 1979	—	Licensee not representing the community interest and not encouraging participation.	Encouraging participation and representing the community's interests*
2PSR 2010	—	Licensee not encouraging financial membership of the service, not representing community interest, and not providing volunteering and internal conflict-resolution policies.	Conflict resolution for internal disputes, complaints-handling
2WKT 2004	—	Licensee not encouraging community participation and the service not meeting the needs of the community.	Encouraging participation and representing the community's interests*

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