

**OCTOBER TO DECEMBER 2008**

# Investigations and complaints about broadcasters

This summary is of ACMA investigations completed in the three months from 1 October to 31 December 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.

Most of ACMA's investigations during this period (39 out of a total of 43) were into unresolved complaints made under an industry code of practice. 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 when complaints are not resolved between the complainant and the licensee concerned. ACMA also investigated three complaints about possible breaches of the BSA or licence conditions. One investigation was initiated by ACMA itself, under section 170 of the BSA.

## 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 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 17 investigations finding a breach or breaches, 12 related to commercial television, three related to community radio and two related to commercial radio. There were no breach findings in other industry sectors or in the national broadcasters (ABC and SBS). The breaches covered a number of issues:

1. failure to make a disclosure announcement pursuant to the Disclosure Standard (one investigation finding 13 breaches—commercial radio)

2. broadcast inappropriate in M classification zone (seven breaches—commercial television)
3. breach of licensee complaints-handling process (one investigation finding three breaches; two other investigations finding one breach in each case—commercial television)
4. broadcast inappropriate in PG classification zone (one breach—commercial television)
5. broadcast unauthorised election advertisements (one breach—commercial television)
6. broadcast unauthorised statements by identifiable persons (one breach—commercial radio)
7. breach of licence condition by broadcasting more than five minutes of sponsorship announcements per hour (one breach—community radio)
8. breach of licence condition by broadcasting advertisements (one breach—community radio)
9. failure to have a written sponsorship policy in place (one breach—community radio).

## ACMA investigations into unresolved broadcasting complaints, 1 October to 31 December 2008

Number of ACMA investigations finalised in the three months: 43	
Investigations resulting in a breach of only code/s of practice	13
Investigations resulting in a breach of only licence condition/s	4
Investigations resulting in no breach	25
Concluded	1

**ACMA INVESTIGATIONS, OCTOBER TO DECEMBER 2008**

**BREACH FINDINGS: COMMERCIAL TELEVISION**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
QTQ 1829	A Current Affair	A telephone conversation with a <i>Current Affair</i> member was recorded and broadcast without the complainant's consent—false information; handling of complaint.	Advice to complainant that they may refer the matter to ACMA; effort made to resolve complaint; substantive reply to further letter of complaint.
NEN 2080	Political advertisement	Broadcast of election advertisement during the blackout period before the Lyne by-election.	Broadcasting of election advertisements.*
TCN 1992	<i>Channel Nine News</i>	Alleged use of term 'deadbeat' in reference to Aboriginal parents who receive the baby bonus. Complainant concerned this was 'racist'. Handling of complaint.	Portraying any person or group of persons in a negative light by placing gratuitous emphasis on ethnic origin, race, etc. Advice to complainant that they may refer matter to ACMA.
NWS 2018	<i>Underbelly—Episode 3:1 Still Pray</i>	Inappropriate violence, sex, language in M classification zone.	Classification of other material and television classification guidelines.
VTV 2022	<i>Ramsay's Kitchen Nightmares—Rococo</i>	Inappropriate coarse language in M classification zone.	Classification of other material and television classification guidelines.
NWS 2023	<i>Underbelly—Episode 7: Wise Monkeys</i>	Inappropriate coarse language in M classification zone.	Classification of other material and television classification guidelines.
SAS 2002	<i>Today Tonight</i>	Broadcast invaded privacy with no identifiable public interest. Licensee did not advise telephone complainant of formal complaint procedure.	Advice to telephone complainant that they may refer the matter to ACMA.
STW 2039	<i>Kitchen Nightmares—Sebastian's</i>	Inappropriate coarse language in M classification zone.	Classification of other material and television classification guidelines.
QTQ 2070	<i>Kitchen Nightmares—Dillon's</i>	Inappropriate coarse language in M classification zone.	Classification of other material and television classification guidelines.
QTQ 2071	<i>Kitchen Nightmares—Ruby Tate's</i>	Inappropriate coarse language in M classification zone.	Classification of other material and television classification guidelines.
NWS 2040	<i>Underbelly—Episode 8: Earning A Crust</i>	Inappropriate violence, sex, language in M classification zone.	Classification of other material and television classification guidelines.
NWS 2041	<i>Spiderman</i>	Inappropriate violence for PG classified film.	Modification of films to ensure suitability for broadcast.

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

**BREACH FINDINGS: COMMERCIAL RADIO**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
2UE 2100	<i>John Laws</i>	N/A (s. 170 investigation initiated by ACMA)	Failure to make a disclosure announcement pursuant to Disclosure Standard (13 breaches).*
3FOX 2059	<i>The Matt &amp; Jo Breakfast Show</i>	Conversation off-air between complainant and her boyfriend was broadcast without consent.	Unauthorised broadcast of statements by identifiable persons.

**BREACH FINDINGS: COMMUNITY RADIO**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
2GLF 2003	N/A	Allegations that 2GLF was breaching code 4.1 of the Community Broadcasting Code of Practice 2002.	Failure to have a written sponsorship policy in place.
Phoenix FM	N/A	Broadcast advertisements.	Licensee cannot broadcast advertisements.*
2YYY 2090	N/A	Allegations of exceeding the five-minute sponsorship limit in one hour.	Time limit on sponsorship announcements.*

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

# INVESTIGATIONS AND COMPLAINTS

## ABOUT BROADCASTERS

### ACMA INVESTIGATIONS, OCTOBER TO DECEMBER 2008

#### NO BREACH FINDINGS: COMMERCIAL TELEVISION

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
ADS 2081	<i>Big Brother Big Mouth</i> (Promotion)	Inappropriate sexual material for a PG classification zone.	Restrictions in PG programs in certain time periods and television classification guidelines.
ATV 2102	<i>Rove Live</i>	Use of subliminal satanic images.	Transmitting messages below or near the threshold of normal awareness.
CTC 2099	<i>Dialogue Communications/ Phone Works</i>	Commercial contained sexual content within PG classification timeslot.	Classification of other material, television classification guidelines and classification and placement of commercials—community service announcements and products of a particularly intimate nature.
SAS 1957	<i>Today Tonight</i>	Identification of complainant as part of a company accused of misconduct; factually inaccurate information.	Factual accuracy; privacy; unfairly identifying a single person or business when commenting on the behaviour of a group of persons or businesses.
NWS 2017	<i>Underbelly—Episode 1 &amp; 2: The Black Prince/The Sorcerer's Apprentice</i>	Inappropriate violence, sex, language in M classification zone.	Classification of other material and television classification guidelines—violence, sex, nudity and language.
NWS 2019	<i>Underbelly—Episode 5: The Good The Bad The Ugly</i>	Inappropriate violence, sex, language in M classification zone.	Classification of other material and television classification guidelines—violence, sex, nudity and language.
NWS 2020	<i>Underbelly—Episode 6: Luv U 4 Eva</i>	Inappropriate violence, sex, language in M classification zone.	Classification of other material and television classification guidelines.
ATN 2025	<i>Today Tonight</i>	Misrepresentation and vilification of beliefs of the Church of Scientology.	Accuracy and fair representation of viewpoints; correction of errors; provocation of intense dislike, serious contempt or severe ridicule on grounds of religion.
NRN 2044	<i>The Big Brother Live Eviction Show</i>	The word 'Evicted' was broadcast in several flashes below or near the threshold of normal awareness.	Transmitting messages below or near the threshold of normal awareness.
HSV 2045	<i>Today Tonight</i>	Segment about early payment bank fees contained factual inaccuracies.	Factual accuracy; correction of errors; accuracy in promotions.
GTV 2054	<i>Channel Nine News</i>	Use of the term 'child sex' factually inaccurate as the term 'sex' implies consent between parties.	Factual accuracy.
ATN 2075	<i>Sunrise</i>	Sports commentators' racially discriminatory comments about English people.	Provocation of intense dislike, serious contempt or severe ridicule on grounds of national origin.
CTC 2086	<i>Australian Idol</i>	Inappropriate nudity in PG classification zone.	Classification of other material and television classification guidelines.
TEN 2108	<i>House</i> (Promotion)	Inappropriate sexual references in PG classification zone.	Restrictions in PG programs in certain time periods and television classification guidelines.

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

**ACMA INVESTIGATIONS, OCTOBER TO DECEMBER 2008**

**NO BREACH FINDINGS: ABC TELEVISION**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
ABV 2076	<i>Offsiders</i>	Media commentator made biased and unbalanced remarks in relation to a Sydney Swans player.	Impartiality; factual accuracy; discrimination.
ABC 2092	<i>Australian Story</i>	Inappropriate language that was not justified by context.	Language.
ABS 2053	<i>ABC News</i>	Use of the term 'child sex charges' is factually inaccurate as the term 'sex' implies there was consent between parties.	Factual accuracy.

**NO BREACH FINDINGS: SBS TELEVISION**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
SBS 1994	<i>SBS World News</i>	Comments made about territorial claims between Israel and Palestine were inaccurate and arbitrated on the validity of territorial claims.	Accuracy; impartiality and balance.

**NO BREACH FINDINGS: COMMERCIAL RADIO**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
4EL 1917	<i>John MacKenzie's Mornings</i>	Complainant felt announcer's comments relating to an attack on two French tourists were racist and vilified.	Vilification; accuracy.
5AA 2068	<i>The Sunday Roast</i>	Inappropriate use of language by radio presenter. Complainant concerned by timeslot.	Gratuitous use of offensive language.
3AW 2037	<i>Drive with Derryn Hinch</i>	The presenter of talkback topic of voluntary euthanasia supported suicide.	Favourable depiction of suicide.
3MMM 2047	<i>Triple M's Man United</i>	Men's Netball League president offended by presenter asking audience if they would 'leave male netballers alone with furry animals'.	Vilification on basis of gender.
2DAY 2067	<i>Sorry 'Ranga' Day</i>	The word 'Ranga' incites violence and vilifies.	Incitement of violence; contemporary standards of decency.

**NO BREACH FINDINGS: ABC RADIO**

Call sign/ investigation number	Program	Substance of complaint	Code clause/licence condition breached
3RN	<i>The Red Symons Show</i>	Radio host made anti-Christian and anti-American slurs.	Discrimination and stereotypes.
4RR 2064	<i>Nightlife</i>	Inappropriate word used in broadcast.	Language, discrimination and stereotypes.

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

**COMPLAINTS-HANDLING BY COMMERCIAL RADIO STATIONS**

The Commercial Radio Codes of Practice 2004 requires 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 56 written complaints alleging breaches of the codes during the fourth quarter of 2008.

**Written complaints to commercial radio broadcasters, October to December 2008**

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters in	17	4	8	10	1	<b>40</b>
Prohibited matter in	3	0	2	1	1	<b>7</b>
Other complaints	4	0	1	2	2	<b>9</b>
<b>Total</b>	<b>24</b>	<b>4</b>	<b>11</b>	<b>13</b>	<b>4</b>	<b>56</b>

Source: CRA, Commercial Radio Codes of Practice: Complaints summary October to December 2008.

# INVESTIGATIONS AND COMPLAINTS

## ABOUT BROADCASTERS

### 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 153 written complaints about matters covered by the code in the fourth quarter of 2008.

#### COMPLAINTS TO COMMERCIAL TELEVISION STATIONS ABOUT PROGRAMS, OCTOBER TO DECEMBER 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	4	0	0	0	0	0	1	0	0	0	5
Commercial	0	29	0	0	4	0	0	0	0	0	0	33
Current affairs	9	4	0	0	0	0	0	6	0	1	1	21
Documentary	0	0	0	0	0	0	0	0	0	0	0	0
Drama	0	11	0	1	0	3	0	0	0	0	0	15
Information	0	0	0	0	1	0	0	0	0	0	0	1
Light entertainment	0	11	0	0	0	0	0	8	0	1	0	20
Movie	0	0	0	0	1	2	0	0	0	0	0	3
Music video	0	2	0	0	0	0	0	0	0	0	0	2
News	0	0	0	0	0	0	0	1	1	0	2	4
Program promos	1	13	0	0	0	0	0	6	0	0	0	20
Quiz	0	0	0	0	0	0	0	0	0	0	0	0
Reality	0	7	0	0	0	1	0	11	0	0	0	19
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Shopping guide	0	0	0	0	0	1	0	0	0	0	0	1
Sport	0	0	0	1	0	5	0	0	0	1	0	7
Unspecified	0	0	0	0	0	1	0	1	0	0	0	2
<b>Total</b>	<b>10</b>	<b>81</b>	<b>0</b>	<b>2</b>	<b>6</b>	<b>13</b>	<b>0</b>	<b>34</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>153</b>

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