

Broadcasting complaints and investigations, January to March 2009

This summary is of ACMA investigations completed in the three months from 1 January to 31 March 2009. 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 the ACMA's investigations during this period (24 out of a total of 30) 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. The 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. The ACMA also investigated six complaints about possible breaches of licence conditions.

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 the ACMA for investigation. The 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 the ACMA. Complainants are not obliged to contact a licensee first in these instances.

The 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 the ACMA may make compliance with a code a condition of licence. Generally, the 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 13 investigations finding a breach or breaches, 11 related to commercial

television, one related to community television and one related to a temporary community radio station. There were no breach findings in relation to other broadcasting sectors. The breaches covered a number of issues:

- 1 inadequate display of classification symbols (five breaches for commercial television)
- 2 broadcast of material that was factually inaccurate in current affairs programs and/or promotions for such programs (three breaches for commercial television)
- 3 failure to observe restrictions on promotions classified MA or AV (two breaches for commercial television)
- 4 failure to advise a telephone complainant about formal complaints procedures (one breach for commercial television)
- 6 severe ridicule of a person on grounds of gender (one breach for commercial television)
- 7 failure to provide a substantive response to a code complaint (one breach for commercial television)
- 8 breach of licence condition, by failing to provide captioning in a news program (one breach for commercial television)
- 9 breach of licence condition, by broadcasting advertisements (three breaches for community television; one breach for temporary community radio)
- 10 breach of licence condition, by broadcasting advertisements for tobacco products (three breaches for community television).

ACMA investigations into unresolved broadcasting complaints completed between 1 January and 31 March 2009

Number of ACMA investigations finalised in the three months	30
Investigations resulting in a breach of only code/s of practice	10
Investigations resulting in a breach of only licence condition/s	3
Investigations resulting in no breach	17

ACMA investigations, January to March 2009

Breach findings: Commercial television

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition breached
BTQ 1909	<i>Today Tonight</i>	Segment about immigrant taxi drivers, and promotions for the segment, were factually inaccurate and vilified immigrants.	Accurate presentation of factual material in current affairs program; accurate presentation of factual material in promotion for current affairs program.
TCN 1995	<i>A Current Affair</i>	Segment about municipal parking rangers contained factually inaccurate information and misrepresented viewpoints.	Accurate presentation of factual material in current affairs program.
SAS 2002	<i>Today Tonight</i>	Invasion of privacy in segment about an orthodontist; complainant not advised of formal complaint procedures when rang to complain.	Requirement to advise telephone complainants of written complaints procedures.
GTV 2024	<i>The Footy Show</i>	Sports commentator denigrated women.	Severe ridicule of a person on grounds of gender; response to complaint not substantive.
NEW 2049	<i>Big Brother Big Mouth</i> promotion	Inappropriate sexual material for a PG classification zone.	Restrictions on promotions classified MA or AV.
ATV 2093	<i>Big Brother Big Mouth</i> promotion	Promotion displayed the incorrect classification symbol.	Restrictions on promotions classified MA or AV; display of classification symbols.
ATV 2094	<i>Don't Forget the Lyrics</i> promotion	Promotion displayed the incorrect classification symbol.	Display of classification symbols.
ATV 2095	<i>Don't Forget the Lyrics</i> promotion	Promotion displayed the incorrect classification symbol.	Display of classification symbols.
ATV 2097	<i>Animalia</i> promotion	Promotion displayed the incorrect classification symbol.	Display of classification symbols.
ATV 2098	<i>Friends</i> promotion	Promotion displayed the incorrect classification symbol.	Display of classification symbols.
TEN 2131	<i>The Inauguration of President Obama</i>	Lack of captioning.	Licence condition requiring captioning of news programs.*

Breaches were of a code of practice unless otherwise indicated; *breach of a licence condition or the *Broadcasting Services Act 1992*.

Breach findings: Community television

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition breached
QCTV 2077	<i>Dragnet</i>	Broadcast of advertisements promoting tobacco products.	Prohibition on tobacco advertising (3 breaches); prohibition on broadcast of advertisements (3 breaches).*

*Breach of a licence condition or the *Broadcasting Services Act 1992*.

Breach findings: Temporary community radio

On-air ID/ investigation number	Program	Substance of complaint	Code clause/ licence condition breached
Phoenix FM 2107	<i>Mornings With Geoff Morris</i>	Interview with health store owner turned into an advertisement.	Prohibition on broadcast of advertisements.*

*Breach of a licence condition or the *Broadcasting Services Act 1992*.

Non-breach findings: Commercial television

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition investigated
TCN 1942	<i>A Current Affair</i>	Segments about an alternative healer's methods were factually inaccurate, misrepresented the healer and invaded privacy with no identifiable public interest.	Factual accuracy; fair representation of viewpoints; invasion of privacy; telephone advice to complainant; obligation to respond to complaints.
ATN 2136	<i>How I Met Your Mother</i> promotion	Promotion depicted antisocial behaviour.	Classification of Other Material; PG classification provisions of the Television Classification Guidelines.
BCV 2072	<i>Friends</i>	Inappropriate sexual material for a G-classified program.	Classification of Other Material; G classification provisions of the Television Classification Guidelines.
TVW 2115	<i>Today Tonight</i>	Negative impression of Yugoslavs by referencing the Yugoslavian national origin/ethnicity of alleged miscreants.	Provocation or perpetuation of intense dislike against group of persons on grounds of national origin; portrayal of persons in negative light by placing gratuitous emphasis on national origin.
GTV 2084	<i>Harry Potter and the Goblet of Fire</i>	Film depicted inappropriate violence and themes.	Classification of Films; PG classification provisions of the Guidelines for the Classification of Films and Computer Games.
ATN 2079	<i>Today Tonight</i>	Segment and promotion about illegal dumping of rubbish did not represent viewpoints fairly.	Fair representation of viewpoints in program and program promotions.
TEN 2127	<i>Friday Night Download</i>	Use of term 'Pommy tourist' constituted a racial slur.	Provocation or perpetuation of intense dislike against group of persons on grounds of national origin.
ATN 2104	—	Excess advertisements between 9 pm and 10 pm.	Time occupied by non-program matter.
TVQ 2110	<i>House</i>	Commercials broadcast during the program were louder than adjacent programming.	Commercials not to sound louder than adjacent programming.
TCN 2118	<i>Australia's Funniest Home Videos</i>	Inappropriate nudity and depictions of child abuse in G-classified program.	Classification of Other Material; G classification provisions of the Television Classification Guidelines.
ATV 2120	<i>Jamie's Ministry of Food</i> promotion	Inappropriate language in PG-classified program.	Proscribed material; restrictions in G viewing periods and certain other G programs; G classification provisions of the Television Classification Guidelines.

Investigations were against a code of practice unless otherwise indicated.

Non-breach findings: Commercial radio

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition investigated
4BBB 2114	<i>Hot 30</i>	Remark about the use of the drug ecstasy.	Presenting the use of illegal drugs as desirable.

Breaches were of a code of practice unless otherwise indicated.

Non-breach findings: Community radio

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition investigated
5GSFM 2159	—	Alleged breach of Code 6: Conflict resolution, and alleged breach of internal procedures.	No breach of Code 6.2: Conflict resolution. Licensee had in place written policy and procedures for conflict resolution. Licensee followed policy and procedures adequately when dealing with the conflict.

Investigations were against a code of practice unless otherwise indicated.

Non-breach findings: Temporary community radio

On-air ID/ investigation number	Program	Substance of complaint	Code clause/ licence condition investigated
Fresh FM 2124	—	Sponsorship announcements were untagged and therefore constituted advertisements.	Prohibition on broadcast of advertisements.*
Phoenix FM 2125	various	Presenter promoted a station sponsor without tagging.	Prohibition on broadcast of advertisements.*
Flame FM 2091	—	Complainant's offer to provide programming was rejected by licensee without explanation. Service is not representing community interest, specifically Vietnamese language programming, and has not encouraged participation in selection and provision of programming.	Representation of community interest; encouragement of community to participate.*

*Breach of a licence condition or the *Broadcasting Services Act 1992*.

Non-breach findings: ABC radio

Call sign/ investigation number	Program	Substance of complaint	Code clause/ licence condition investigated
3LO	<i>Summer Breakfast</i>	Comments about Jewish people amounted to religious vilification; ABC's response inadequate.	Language; discrimination and stereotypes; efforts to provide adequate response.

Complaints-handling by commercial radio stations

The Commercial Radio Australia 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 the ACMA.

Member stations recorded 86 written complaints alleging breaches of the codes during the first quarter of 2009.

Written complaints to commercial radio broadcasters, January to March 2009

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters	21	1	17	23	8	70
Prohibited matter	4	0	2	2	0	8
Other complaints	2	1	0	0	5	8
Total	27	2	19	25	13	86

Source: CRA, *Commercial Radio Codes of Practice: Complaints Summary January to March 2009*.

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 the ACMA.

Commercial television stations reported 151 written complaints about matters covered by the code in the first quarter of 2009.

Complaints to commercial television stations about programs, January to March 2009

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	2	1	0	0	0	1	3	0	0	0	7
Commercial	0	52	0	0	11	1	0	0	0	1	0	65
Current affairs	16	3	0	0	0	0	0	3	0	0	0	22
Documentary	0	0	0	0	0	0	0	1	0	0	0	1
Drama	0	6	0	0	0	2	3	1	0	0	0	12
Information	0	1	0	0	0	0	0	0	0	0	0	1
Movie	0	10	0	0	0	0	0	0	0	0	0	10
News	5	0	0	0	0	0	0	4	1	0	1	11
Program promos	0	9	0	0	0	0	0	1	0	0	1	11
Reality	0	6	0	0	0	0	0	0	0	1	0	7
Shopping guide	0	0	0	0	0	1	0	0	0	0	0	1
Sport	0	0	0	1	0	2	0	0	0	0	0	3
Total	21	89	1	1	11	6	4	13	1	2	2	151

Source: Free TV Australia, Commercial Television Industry Code of Practice 2004; Complaints Summary January to March 2009.