

Broadcasting investigations, April to June 2009

This summary is of ACMA broadcasting investigations completed in the three months from 1 April to 30 June 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.

The broadcasting complaints process

Primary responsibility for the resolution of broadcasting code-related complaints rests with the licensees. The *Broadcasting Services Act 1992* (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 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.

Most investigation reports (with the exception of community non-breach investigation reports) are published on the ACMA website at www.acma.gov.au (go to About ACMA: Publications & research > Publications > Broadcasting publications > Broadcasting investigations reports). ☞

Broadcasting investigations completed, 1 April to 30 June 2009

Type of service	Breaches				Non-breaches				Concluded	Total
	Code of practice	Licence condition or standard	BSA	Total	Code of practice	Licence condition or standard	BSA	Total		
Commercial television	12	–	–	12	13	–	3	16	1	29
ABC television	–	–	–	–	1	–	–	1	–	1
SBS television	–	–	–	–	2	–	–	2	–	2
Community television	–	–	–	–	–	–	–	–	–	–
Subscription	3	–	–	3	2	–	–	2	–	5
Narrowcast television	–	–	–	–	–	–	–	–	–	–
Commercial radio	–	–	1	1	8	–	–	8	1	10
ABC radio	–	–	–	–	1	–	–	1	–	1
SBS radio	–	–	–	–	–	–	–	–	–	–
Community radio	1	–	3	4	–	–	3	3	–	7
Narrowcast radio	–	–	2	2	–	–	–	–	–	2
Total	16	–	6	22	27	–	6	33	2	57

Broadcasting investigations, April to June 2009

Investigations were against provisions of a code of practice unless otherwise indicated. Listing does not include investigations concluded—for example, where the complaint was withdrawn.

Commercial television

Breach findings: 12

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
New South Wales				
ATN Sydney	2085	<i>Today Tonight</i>	Accuracy/representation of viewpoints during segment reporting on a well-known athlete.	Factual accuracy.
TCN Sydney	2111	<i>A Current Affair</i>	Segment designed to induce a hypnotic state in viewers. No response to complaint within 30 days.	Broadcast of material that could be seen as inducing a hypnotic state in viewers; complaints-handling.
WIN Southern NSW	2153	<i>WIN News</i>	Offensive remark in relation to ethnicity. Licensee did not inform complainant that they could bring their complaint to the ACMA.	Complaints-handling.
South Australia				
ADS Adelaide	2146	<i>Californication</i> —series 2—episode 8	Program broadcast with incorrect consumer advice.	Consumer advice for certain programs.
ADS Adelaide	2148	<i>Californication</i> —series 2—episode 10	Program broadcast with incorrect consumer advice.	Consumer advice for certain programs.

Victoria				
Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
ATV Melbourne	2130	<i>Channel Ten News</i>	Broadcast of victim's name before the family was notified by police. Complainant not correctly informed of formal complaints procedure when rang to complain.	Identification of accident victims before immediate family has been notified; complaints-handling.
GTV Melbourne	2123	Rugby League —NRL	Language and images of people smoking in the NRL broadcast were inappropriate for timeslot. No response by licensee to complainant within 30 days.	Complaints-handling.
HSV Melbourne	2202	Advertisement	Advertisements for adult services aired during a sports broadcast.	Classification and placement of commercials relating to products of a particularly intimate nature.
VTV Regional Victoria	2129	<i>WIN News</i>	Inaccurate statement made in relation to a legal case.	Factual accuracy.
Western Australia				
NEW Perth	2027	<i>Channel Ten News</i>	News segment involved invasion of privacy and poor taste in broadcast of an accident.	Exercise sensitivity in broadcasting images in relation to a traumatic incident.
NEW Perth	2139	<i>The Truth About Binge Drinking</i>	Inappropriate coarse language. No response by licensee to complainant within 30 days.	Classification of other material and television classification guidelines; complaints-handling.
NEW Perth	2140	<i>Black Hawk Down</i>	Inappropriate violence for M classification; no response by licensee to complainant within 30 days.	Classification of films—may be modified; classification provisions; complaints-handling.
Non-breach findings: 16				
Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
New South Wales				
ATN Sydney	2103	<i>Today Tonight</i>	Inaccurate statements during the segment reporting on two medical businesses.	Factual accuracy; complaints-handling.
TCN Sydney	2164	<i>Spider-Man 2</i>	Inappropriate violence and themes for PG classification.	Classification of films—may be modified; classification provisions.
TCN Sydney	2175	<i>Today</i>	Promotion of smoking through the broadcast of images of celebrities smoking.	Prohibition on tobacco advertisements.*
TCN Sydney	2204	<i>Today Show</i>	Song lyric promoting cigarettes.	Prohibition on tobacco advertisements.*
Queensland				
TVQ Brisbane	2166	<i>Californication</i> —series 2—episode 4	Inappropriate sex, coarse language, drug use for the MA15+ classification.	Classification of other material and television classification guidelines.

* Investigation against a licence condition.

South Australia				
Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
ADS Adelaide	2147	<i>Californication</i> – series 2 – episode 9	Inadequate consumer advice.	Consumer advice mandatory for all MA15+ programs.
ADS Adelaide	2149	<i>Californication</i> – series 2 – episode 11	Inadequate consumer advice.	Consumer advice mandatory for all MA15+ programs.
ADS Adelaide	2206	<i>The Contender</i>	Inappropriate sexual references and coarse language for an M classified film.	Classification of films; M classification provisions.
SAS Adelaide	2209	<i>Desperate Housewives</i> marathon – season 5 – episodes 1–6	Inappropriate sexual references, adult themes and coarse language for PG classification.	Classification of other material and television classification guidelines.
Victoria				
Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
HSV Melbourne	2137	<i>Bones</i> – series 3 – episode 14	Inappropriate violence for the M classification.	Classification of other material and television classification guidelines.
HSV Melbourne	2138	<i>Bones</i> – series 4 – episode 4	Inappropriate violence for the M classification.	Classification of other material and television classification guidelines.
HSV Melbourne	2172	AFL program promotion	Program contained subliminal advertising of logos.	Transmitting message below or near threshold of normal awareness.
HSV Melbourne (& TVW Perth)	2117	<i>Today Tonight</i>	Use of optical surveillance device against Surveillance Devices Acts.	Not use service in commission of offence against another Act.*
Western Australia				
Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
NEW Perth	2134	<i>Californication</i> – series 2 – episode 5	Program exceeded the provisions of the MA15+ classification in regard to violence, sex and nudity. No response by licensee to complainant within 30 days.	Classification of other material and television classification guidelines; complaints-handling.
TVW Perth	2174	<i>Today Tonight</i>	Inaccurate references to the complainant. No response by licensee to complainant within 30 days.	Factual accuracy; complaints-handling.
TVW Perth	2181	<i>News</i> (Channel Seven)	Incorrect information related to a band member of AC/DC. No advice about formal complaints procedure when rang to complain.	Factual accuracy; complaints-handling.

* Investigation against a licence condition.

ABC television

Non-breach findings: 1

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
Victoria				
ABV Melbourne	2163	<i>The 7:30 Report</i>	Broadcast a statement made by an interviewee that was out of context and deliberately misled the audience as to the interviewee's views.	Factual content in news and current affairs to be accurate, in context and impartial.

SBS television

Non-breach findings: 2

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
Victoria				
SBS TV Melbourne	2122	<i>SBS World News</i>	Story broadcast about Dr Radovan Karadzic's arrest was one-sided and conveyed a negative impression of the Serbian people.	Accuracy, impartiality and balance.
SBS TV Melbourne	2201	<i>The Female Orgasm Explained</i>	Inappropriate sex and sexual references for MA15+ classification.	Television Classification Code; classification categories; general programming—introduction.

Subscription broadcasting television

Breach findings: 3

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
FOXTEL	2141	<i>Cathouse—Hot to Trot</i>	Inappropriate sex and nudity for the MA15+ classification.	Program Classification Code; MA15+ classification provisions.
FOXTEL	2144	<i>The Wonderful World of Sex—episode 2006</i>	Inappropriate sex and nudity for the MA15+ classification.	Program Classification Code; MA15+ classification provisions.
FOXTEL	2145	<i>The Wonderful World of Sex—episode 2026</i>	Inappropriate sex and nudity for the MA15+ classification.	Program Classification Code; MA15+ classification provisions.

Non-breach findings: 2

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
FOXTEL	2119	NSW Government anti-smoking commercial	Inappropriate surgical scenes for time zone.	Classification of Advertisements; Program Classification. PG classification provisions.
FOXTEL	2143	<i>Naked Wild On 2</i>	Inappropriate sex and nudity for an MA15+ classification.	Program Classification. MA15+ classification provisions; material rated R18+ will be restricted to access by those with appropriate disabling devices.

Commercial radio

Breach findings: 1

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
New South Wales				
2KM Sydney	2171	Political advertisement	Broadcast of political advertisement with incomplete authorisation tag.	Identification of political matter.*

* Investigation against a licence condition.

Non-breach findings: 8

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
New South Wales				
2DAY Sydney	2105	<i>The Kyle and Jackie O Show</i>	Inappropriate language and innuendo for timeslot.	Broadcasting a program that is likely to incite or perpetuate hatred against or vilify any person or group on the grounds of sexual preference; regard to contemporary standards of decency.
2DAY Sydney	2132	New Year's Eve 2008 Radio	Sexual content not suitable for timeslot; licensee's response inadequate.	Regard to contemporary standards of decency and gratuitous use of language, explicit sexual themes; complaints-handling.
2SYD Sydney	2156	<i>Everyone's At It</i>	Representation of drug use in the song <i>Everyone's At It</i> ; no response by licensee to complainant within 30 days.	Broadcasting a program which presents as desirable the use of illegal drugs, narcotics or tobacco; complaints-handling.
2SYD Sydney	2187	Advertisement –AMI	Broadcast offensive and distasteful.	Regard to contemporary standards of decency.
2SYD Sydney	2215	<i>Merrick & Rosso & Kate Ritchie Breakfast Show</i>	Racist comments made within a discussion by presenters about a celebrity adoption.	Broadcasting a program which is likely to incite or perpetuate hatred against or vilify any person or group on the basis of ethnicity, nationality or race.
Victoria				
3FOX Melbourne	2192	<i>The Matt and Jo Breakfast Show</i>	Use of the term 'woggy' was offensive.	Broadcasting a program which is likely to incite or perpetuate hatred against or vilify any person or group on the basis of ethnicity, nationality or race.
3MEL Melbourne	2160	Nova Promotional Sweeper	Offensive material which vilified short-statured community.	Incite or perpetuate hatred against or vilify any person or group on the grounds of physical disability; regard to contemporary standards of decency.
Western Australia				
6PR Perth	2189	<i>Afternoons</i>	Joke recited which racially vilified the Irish.	Incite or perpetuate hatred against or vilify any person or group on the grounds of nationality.

ABC radio**Non-breach findings: 1**

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
New South Wales				
2RN Sydney	2128	<i>Health Report</i>	Inaccurate statements about a doctor.	Accuracy of factual content.

Community radio**Breach findings: 4**

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
New South Wales				
2CHY Coffs Harbour	1887	—	Not encouraging community participation.	Encourage community participation.*
2MCR Campbelltown	2197	—	No internal conflict policy, programming policy and sponsorship policy and complaints handling.	No internal conflict policy, programming policy, sponsorship policy and complaints handling.
Queensland				
4DDB Toowoomba	2089	—	Broadcasting advertisements and broadcasting excessive sponsorship announcements.	Prohibition on broadcast of advertisements and five-minute sponsorship limit.*
4OUR Caboolture	2116	—	Broadcasting advertisements.	Prohibition on broadcast of advertisements.*

* Investigation against a licence condition.

Non-breach findings: 3

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to non breach finding
Queensland				
4JAZ Gold Coast	2184	—	Not representing community interest and not encouraging community participation.	Represent the community interest and encourage community participation.*
Victoria				
Central Victorian Community Broadcasters Inc+	2176	—	Broadcast advertisements.	Prohibition on broadcast of advertisements.*
Western Australia				
6NR Perth	2179	—	Broadcasting advertisements and broadcasting excessive sponsorship announcements.	Prohibition on broadcast of advertisements and five-minute sponsorship limit.*

* Investigation against a licence condition.

+ Temporary Community Broadcasting Licensee.

Narrowcast radio**Breach findings: 2**

Station	Investigation number	Program	Substance of complaint	Code clause/licence condition/standard/BSA provision applicable to breach finding
New South Wales				
Kick FM Penrith	1946	Whole of programming	Commercial format.	Providing a commercial broadcasting service without the appropriate licence.*
Queensland				
KIX Country Inglewood & Alpha	1926	Whole of programming	Broadcasting programming with a broad-appeal format.	Providing a commercial radio broadcasting service without a licence.*

* Investigation against a provision of the *Broadcasting Services Act 1992*.

Complaints-handling by commercial radio stations

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

Member stations recorded 96 written complaints alleging breaches of the codes during the fourth quarter of 2009 (financial year).

Written complaints to commercial radio broadcasters, April to June 2009

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters	32	2	13	15	2	64
Prohibited matter	—	—	—	1	—	1
Other complaints	4	3	6	10	8	31
Total	36	5	19	26	10	96

Source: CRA, Commercial Radio Codes of Practice 2004: Complaints summary April to June 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 125 written complaints about matters covered by the code in the fourth quarter of 2009 (financial year).

Complaints to commercial television stations about programs, April to June 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	3	0	0	0	0	0	5	0	0	0	8
Commercial	0	14	0	1	10	0	0	0	0	0	0	25
Current affairs	11	7	2	0	0	0	0	0	1	0	1	22
Drama	0	25	0	0	0	0	0	0	0	0	0	25
Light entertainment	0	3	0	0	0	0	0	2	0	0	0	5
Movie	0	2	0	0	0	0	0	0	0	0	0	2
News	6	4	1	0	0	0	0	1	2	0	5	19
Program promos	0	12	0	0	1	0	0	2	1	0	0	16
Reality	0	2	0	0	0	0	0	0	0	0	0	2
Unspecified	0	0	0	0	0	1	0	0	0	0	0	1
Total	17	72	3	1	11	1	0	10	4	0	6	125

Source: Free TV Australia, Commercial Television Industry Code of Practice 2004: Complaints summary April to June 2009.