

Broadcasting investigations and complaints, October to December 2009

This summary is of ACMA broadcasting investigations completed in the three months from 1 October to 31 December 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 October 2009 to 31 December 2009

Type of service	Breaches			Non-breaches		
	Code of practice	Licence condition or standard	BSA	Code of practice	Licence condition or standard	BSA
Commercial television	8	1		17	1	
ABC television				3		
SBS television				3		
Community television				1		
Subscription broadcasting television				1		
Open narrowcast television						
Commercial radio	4	1		4	1	
ABC radio	1					
SBS radio						
Community radio	3	5		1	2	
Temporary community radio		1			1	
Open narrowcast radio						
Total	16	8		30	5	

Broadcasting investigations, October to December 2009

Investigations were against provisions of a code of practice unless otherwise indicated.

Commercial television

Breach findings: 9

Station	Investigation number	Program or issue	Substance of complaint	Outcome
TCN-GO! Nine Network NSW	2271	Lack of captioning	Lack of captioning on Channel GO! (multi-channel) for various programs 9-11/08/2009.	Breach—captioning.*
TCN Nine Network NSW	2263	<i>A Current Affair</i> 02/02/2009	Factual inaccuracy and privacy.	Breach—factual accuracy. Breach—correct significant errors. No breach—factual accuracy in a promotion. No breach—gratuitous emphasis.
TNQ Macquarie Southern Cross-Ten Affiliate Qld	2265	<i>Californication</i> — series 2—episode 10 07/12/2008	Lack of consumer advice for MA classified program.	Breach—provide consumer advice for MA classified program.
ATV Network Ten Vic.	1953	<i>Channel Ten News</i> 03/10/2007	Portrayal of African migrants.	Breach—factual accuracy. Breach—present news fairly and impartially. No breach—proscribed material.
ATV Network Ten Vic.	2112	<i>Channel Ten News</i> 03/10/2007	Portrayal of African migrants.	Breach—factual accuracy. Breach—present news fairly and impartially. No breach—proscribed material.
GTV Nine Network Vic.	1952	<i>Channel Nine News</i> 03/10/2007	Portrayal of African migrants.	Breach—factual accuracy. Breach—present news fairly and impartially. No breach—proscribed material.
HSV Seven Network Vic.	1943	<i>Channel Seven News</i> 03/10/2007	Portrayal of African migrants.	Breach—factual accuracy. No breach—present news fairly and impartially. No breach—proscribed material.
HSV Seven Network Vic.	2219	<i>Channel Seven News</i> 08/02/2009	Privacy and handling of telephone complaint.	Breach—advise complaint procedure in relation to a telephone complaint. No breach—identification of an accident victim. No breach—invasion of privacy.
STW WIN-Nine Affiliate WA	2270	<i>A Current Affair</i> 02/02/2009	Factual accuracy and create public panic.	Breach—provide a substantive written response to a complaint. No breach—presents material in a manner that creates public panic. No breach—factual accuracy in a promotion.

*Investigation against a licence condition.

Non-breach findings: 18

Station	Investigation number	Program or issue	Substance of complaint	Outcome
CBN Prime Television-Seven Affiliate ACT	2247	<i>Home and Away</i> 31/03/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG Classification—violence. No breach—PG Classification—sex and nudity. No breach—PG Classification—themes.
CBN Prime Television-Seven Affiliate ACT	2325	<i>Home and Away</i> 16/04/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG Classification—sex and nudity. No breach—PG Classification—themes.
CBN Prime Television-Seven Affiliate ACT	2326	<i>Home and Away</i> 15/04/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG Classification—violence. No breach—PG Classification—sex and nudity. No breach—PG Classification—themes.
CTC Macquarie Southern Cross-Ten Affiliate ACT	2309	<i>The Simpsons—The Treehouse of Horror XVIII</i> 02/09/2009	Inappropriate violence and sexual references for PG timeslot.	No breach—classification of other material. No breach—PG Classification—violence. No breach—PG Classification—sex and nudity.
ATN Seven Network NSW	2319	<i>Flash Forward</i> promotion 26/09/2009	Continuous broadcast of 'watermark' promotion during a movie exceeded allowable advertising per hour; licensee's response inadequate.	No breach—non-program matter 6.00 pm-midnight. No breach—provide substantive response. No breach—respond within 30 working days.

NTD Nine Network NT	2213	<i>A Current Affair</i> 02/02/2009	Factual accuracy.	No breach—factual accuracy.
BTQ Seven Network Qld	2246	<i>Desperate Housewives</i> promotion 11/05/2009	Inappropriate sexual references in program promotion for G timeslot.	No breach—restriction in G viewing periods and in certain other G programs. No breach—classification of other material.
QTQ Nine Network Qld	2288	<i>A Current Affair</i> 03/03/2008	Factual accuracy and representation of viewpoints.	No breach—accuracy and representation of viewpoints.
STQ Seven Network Qld	2311	<i>Home and Away</i> 15/04/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG classification—violence. No breach—PG classification—sex and nudity. No breach—PG classification—themes.
STQ Seven Network Qld	2312	<i>Home and Away</i> 16/04/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG classification—sex and nudity. No breach—PG classification—themes.
STQ Seven Network Qld	2248	<i>Home and Away</i> 31/03/2009	Homosexual storyline not appropriate for PG classified program.	No breach—classification of other material. No breach—PG classification—violence. No breach—PG classification—sex and nudity. No breach—PG classification—themes.
TNT Macquarie Southern Cross–Seven Affiliate Tas.	2253	<i>Going Bush</i> 08/02/2009, 15/02/2009 and 22/02/2009	Required particulars for broadcasts involving a political matter not included.	No breach—broadcasting political matter at the request of another person without causing the required particulars to be announced immediately after the broadcast of the matter.*
GTV Nine Network Vic.	2250	Amount of non program matter 02/03/2009	Amount of time allocated to advertising between 8:30 pm and 9:30 pm; no response to complaint.	No breach—prescribed average hourly limit of non-program matter. No breach—prescribed hourly limits of non-program matter. No breach—time limits on response to code complaints.
GTV Nine Network Vic.	2278	<i>AFL Footy Show</i> 04/06/2009	Proscribed material, classification of other material.	No breach—proscribed material. No breach—classification of other material.
PTV Prime Television – Seven Affiliate Vic.	2244	<i>Channel Seven News</i> 08/04/2009	Sexual content in story concerning AFL footballers.	No breach—exception for news, current affairs and broadcasts of sporting events.
NEW Network Ten WA	2330	<i>Rove Live</i> 20/09/2009	Sexual references.	No breach—classification of other material. No breach—M classification—sex and nudity.
NEW Network Ten WA	2262	<i>Supernatural promotion</i> 04/05/2009	Inappropriate sexual depictions for PG timeslot.	No breach—restrictions in PG programs in certain time periods. No breach—classification of other material. No breach—PG classification—sex and nudity.
TWW Seven Network WA	2285	<i>Channel Seven News</i> 23/06/2009	Presentation of broadcast material.	No breach—presentation of broadcast material.

*Investigation against a licence condition.

ABC television

Breach findings: 0

Non-breach findings: 3

Station	Investigation number	Program	Substance of complaint	Outcome
ABN ABC ACT	2307	<i>Sesame Street</i> 02/06/2009	Depictions of witchcraft not suitable for G classified program.	No breach—classification of television programs—G general (suitable for all ages).
ABS ABC SA	2237	<i>Stateline</i> 21/11/2008	Misleading information about hearing device and complainant. Interview with complainant edited out of context.	No breach—accuracy of factual content.
ABV ABC Vic.	2231	<i>The New Inventors</i> 13/08/2008	Product represented as new invention when it was not.	No breach—accuracy of factual content.

SBS television

Breach findings: 0

Non-breach findings: 3

Station	Investigation number	Program	Substance of complaint	Outcome
SBS TV NSW	2239	<i>Dateline</i> 15/03/2009	A report about Sri Lanka and Tamil Tigers broadcast words without consent and was unfair, inaccurate and prejudiced; no response to complaint within 60 days.	No breach—transmission of words of an identifiable person. No breach—accuracy and impartiality. No breach—prejudice, racism and discrimination. No breach—reply to complaint within 60 days.
SBS TV NSW	2216	<i>Dateline</i> 08/02/2009	Reasonable effort was not made to ensure factual accuracy in a story about a Palestinian woman and her family in a report about Gaza.	No breach—factual accuracy.
SBS TV Vic.	2308	<i>American Swing</i> 28/08/2009	Inappropriate sex scenes that exceed the MA 15+ classification, unsuitable for broadcast.	No breach—sex and nudity. No breach—classification categories. No breach—guidelines for the classification for films and computer games.

Community television

Breach findings: 0

Non-breach findings: 1

Station	Investigation number	Program	Substance of complaint	Outcome
C31 Melbourne Vic.	2290	<i>Blokesworld</i> 7/07/2009 and 14/07/2009	Broadcast of material that was not suitable for the MA15+ classification and contained inappropriate nudity and was demeaning to women. Complaints-handling.	No breach—appropriate classification of material broadcast. No breach—broadcast material not to stereotype. No finding—complaints-handling.

Subscription broadcasting television

Breach findings: 0

Non-breach findings: 1

Station	Investigation number	Program	Substance of complaint	Outcome
MAX Foxtel cable television	2225	Music clip 17/02/2009	Broadcast of MA15+ music clip videos contained inappropriate depictions of sex and violence.	No breach—classification and placement of programming. No breach—protection of children from harmful or distressing material.

Open narrowcast television

Breach findings: 0

Non-breach findings: 0

Commercial radio

Breach findings: 5

Station	Investigation number	Program	Substance of complaint	Outcome
2DAY Austereo Network NSW	2266	<i>The Kyle and Jackie O Breakfast Show</i> 29/07/2009	Lie detector segment involving a minor; unsatisfied with station response regarding exploitation and content.	Breach—contemporary standards of decency. Breach—provide substantive written response.
2ST Grant Broadcasters NSW	2240	<i>Morning News</i> 01/04/2009	Simulation of news so as to mislead viewers. No response within 30 days and no advice regarding right of referral to the ACMA.	Breach—inform complainant they have a right to complain to the ACMA. No breach—simulate news as to mislead viewers. No breach—respond to a complaint within 30 days.
4EL Prime Radio (Cairns-AM) Qld	2180	<i>The John MacKenzie Show</i> 17/04/2008 and 18/04/2008	Broadcast of 'cash for comment' material during an interview.	Breach—Advertising Standard—18 April 2008.* No breach—Disclosure Standard.* No breach—Advertising Standard—17 April 2008.*
3BAY Geelong Broadcasters Vic.	2274	<i>Morning News</i> 19/06/2009	Presenter gave his personal opinion about anti-fluoridation campaigners under guise of news report. When she rang the station, complainant not informed she should put complaint in writing. Licensee's response did not advise right to refer to the ACMA.	Breach—inform complainant they have right to complain to the ACMA. No breach—distinguish news from comments. No breach—handling of telephone complaint.
6MIX Austereo Network WA	2226	AMI advertisement 26/03/2009	AMI advertisement inappropriate and obscene. Response to complaint advised complainant to refer complaint to AMI.	Breach—inform complainant they have right to complain to the ACMA. No breach—contemporary standards of decency. No breach—broadcast of audio of actual sexual acts.

*Investigation against standard.

Non-breach findings: 5

Station	Investigation number	Program or issue	Substance of complaint	Outcome
2WFM Australian Radio Network NSW	2218	<i>Sonia & Todd Remixed</i> 01/03/2009	Presenter's comments containing child/adult sexual connotations were inappropriate and offensive.	No breach—contemporary standards of decency.
2ONE (DIGITAL RADIO) Blue Mountains Broadcasters NSW	2280	Broadcasting area	Katoomba RA1 station broadcasting in Sydney RA1.	No breach—not broadcast outside licence area.*
4BC Fairfax Media Qld	2196	<i>4BC Drive with Michael Smith</i> and <i>4BC Morning Show with Greg Cary</i> 14/01/2009 and 15/01/2009	Discussion about inappropriate wearing of Muslim burqa incites hatred and discriminates on basis of religion.	No breach—likely to incite or perpetuate hatred against or vilify person or group on basis of religion.
3MMM Austereo Network Vic.	2194	<i>Triple M</i> porn star competition 20/02/2009	Competition to win a role on pornographic film was explicit sexual theme and inappropriate for radio accessible by children.	No breach—contemporary standards of decency.
6PR Fairfax Media WA	2251	<i>Mornings with Simon Beaumont</i> 11/02/2009	Present news accurately, create public panic and factual accuracy.	No breach—present news accurately. No breach—create public panic. No breach—factual accuracy.

*Investigation against a licence condition.

ABC radio

Breach findings: 1

Station	Investigation number	Program	Substance of complaint	Outcome
2RN ABC NSW	2252	<i>Sunday Story</i> 17/05/2009	Foul language used on Radio National at 8.30 am on a Sunday; dissatisfied with acknowledgement by broadcaster of breach regarding content warning provision.	Breach—warnings. No breach—use of language.

Non-breach findings: 0

SBS radio

Breach findings: 0

Non-breach findings: 0

Community radio

Breach findings: 8

Station	Investigation number	Program or issue	Substance of complaint	Outcome
2MIA Griffith NSW	2268	Encouraging participation; conflict resolution policy; policy documents will be freely available.	Encouraging participation; conflict resolution. Making documents freely available.	Breach—encouraging participation.* Breach—conflict resolution. No breach—policy documents will be freely available.
2NVR Nambucca Heads NSW	2269	<i>My After School Show</i> 16/07/2009	Allegation that licensee broadcast inappropriate material during a youth program and that it did not have appropriate programming policies in place.	Breach—no programming practices which protect children from harmful material. No breach—consider audience, context, degree of explicitness.
2000 Sydney NSW	2267	<i>Nawaa-E-Sarosh</i> 15/08/2009	Broadcast of advertisements—10–15/08/2009.	Breach—advertising.* Breach—records of matter broadcast.*
2RES Waverley NSW	2295	<i>Monika Geetmala</i> 20/09/2009	Allegation that the broadcaster conducted an interview with a promoter of an event and that this interview was an advertisement.	Breach—records of matter broadcast.* No finding—advertising.*
4CCR Cairns Qld	2261	Complying with code.	Policies and procedures not in place as required under codes of practice.	Breach—corporate governance policies and procedures. Breach—membership policies. Breach—conflict resolution. Breach—complaints-handling. Breach—policies and procedures to encourage participation. Breach—volunteering policies. Breach—policy documents will be freely available.
4DDB Toowoomba Qld	2296	Advertisements	Advertisements and sponsorship announcements in excess of the five minute limit.	Breach—sponsorship.* No breach—advertising.*
3CH Kyneton Vic.	2276	Advertisements	Advertisements broadcast during football matches on 29–30/08/2009.	Breach—advertising.* No breach—advertising.*
3TSC Melbourne Vic.	2277	News 16/07/2009	Broadcasting news report was allegedly not appropriate for children and at odds with the values of the service.	Breach—complaints-handling. No breach—general programming.

*Investigation against a licence condition.

Non-breach findings: 3

Station	Investigation number	Issue	Substance of complaint	Outcome
2AIR Coffs Harbour NSW	2235	Encouraging participation.	Licensee not encouraging community to participate in the service.	No breach—encouraging participation.*
4FCR Hervey Bay Qld	2313	Complying with codes.	Internal conflict policies, rights and responsibilities of volunteers and complaints-handling.	No finding—studio fire had destroyed station documentation.
6RPH Perth WA	2160	Operating as a profit-making enterprise.	Allegation that the service was being operated for profit or as part of a profit-making enterprise.	No finding—insufficient evidence.*

*Investigation against a licence condition.

Temporary community radio

Breach findings: 1

Station	Investigation number	Program	Substance of complaint	Outcome
9603 Bundaberg Qld	2212	<i>Easy Beat, Monday Easy Listening, LBS and Kross Kuts Country Breakfast</i>	Conflict resolution, volunteer policies and procedures and advertisements and broadcasting sponsorship announcements.	Breach—broadcast advertisements.* Breach—sponsorship time limits.* No breach—conflict resolution. No breach—volunteer policies and procedures.

*Investigation against a licence condition.

Non-breach findings: 1

Station	Investigation number	Issue	Substance of complaint	Outcome
Flame FM Bankstown NSW	2291	Represent community interest; encourage participation.	Licensee not representing community interest and encouraging the community to participate in the service.	No breach—represent community interest.* No finding—encourage participation.*

*Investigation against a licence condition.

Open narrowcast radio

Breach findings: 0

Non-breach findings: 0

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 61 written complaints alleging breaches of the codes during the second quarter of 2009/2010 financial year.


Written complaints to commercial radio broadcasters, October to December 2009

	Talkback and discussion	News and current affairs	Music programs	Advertising	Miscellaneous	Total
Offensive matters in	17	4	8	12	1	42
Prohibited matter in	7	0	1	0	0	8
Other complaints	2	1	0	1	7	11
Total	26	5	9	13	8	61

Source: CRA Commercial Radio Codes of Practice: complaints summary October to December 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 161 written complaints about matters covered by the code in the second quarter of 2009/2010 financial year. 

Complaints to commercial television stations about programs, October to December 2009.

Type of program	Bias/inaccuracy	Classification	Closed caption	Commercial general	Commercial placement	Commercial time	Commercial Handling	Consumer advice	Disclosure	Discrimination	Privacy	Program – general	Upsetting material	Total
Comedy	0	13	0	0	0	0	0	0	0	10	0	0	0	23
Commercial	0	25	0	0	2	0	0	0	4	0	0	0	0	31
Current affairs	8	2	0	0	0	0	0	0	0	2	0	0	0	12
Documentary	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Drama	0	19	5	0	0	2	0	0	0	0	0	0	0	26
Light entertainment	0	11	0	0	0	0	0	0	0	8	0	0	0	19
Movie	0	4	1	0	0	0	0	0	0	0	0	0	0	5
Music video	0	0	0	0	0	0	0	0	0	0	0	0	0	0
News	5	0	1	0	0	0	0	0	0	0	0	4	0	10
Program promos	1	10	0	0	0	1	1	0	0	1	0	0	0	14
Quiz	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Reality	0	5	1	0	0	0	0	0	0	0	0	0	0	6
Sport	0	1	0	1	0	3	1	0	0	1	0	0	0	7
Unspecified	0	0	6	0	0	0	0	0	0	0	0	0	0	6
Variety	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Total	14	90	15	2	2	6	2	0	4	22	0	4	0	161

Source: Free TV Australia Commercial Television Industry Code of Practice 2004: complaints summary October to December 2009.