Investigation report no. BI-346

| Summary |  |
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| **Licensee** | WIN Television NSW Pty Limited |
| **Station** | WIN |
| **Type of service** | Commercial—television |
| **Name of program** | *Ten Eyewitness News* |
| **Date of broadcast** | 2 November 2017 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 |
| **Date Finalised** | 9 February 2018 |
| **Decision** | No breach of subclause 3.4.1 [impartiality] |

Background

In December 2017, the Australian Communications and Media Authority (the ACMA) commenced an investigation under section 170 of the *Broadcasting Services Act 1992* (the BSA) into a *Ten Eyewitness News* (the program) item concerning the National Australia Bank (the NAB).

The program was broadcast on WIN by WIN Television NSW Pty Limited (the licensee) on 2 November 2017.

The ACMA received a complaint alleging that the report was not presented impartially.

The ACMA has investigated the licensee’s compliance with clause 3.4.1 of the Commercial Television Industry Code of Practice 2015 (the Code).

The program

*Ten Eyewitness News* is an hour-long national news program broadcast at 5.00 pm each day.

The complaint concerned the first part of a two minute news item, presented as two segments. Before introducing the reporter, the presenter made the following opening statement:

The National Australia Bank announced a breathtaking $6.5 billion dollar profit today and then celebrated by axing 6000 jobs. And that has upset its entire workforce because the bank won’t tell them who is on the hit list.

The first segment focused on the NAB’s full year profit announcement and proposed job cuts. This segment contained the material that was the subject of the complaint and is referred to in this investigation as ‘the report’.

The second segment concerned government efforts to persuade banks to share customers’ financial histories in order to help customers secure a ‘better deal’. Immediately following the NAB report, it was introduced by the reporter as a separate report on government policy with the phrase ‘and in another shakeup’. Although the same reporter presented both segments about banks, the second segment did not refer to the NAB, its annual profit or the announced job cuts. Accordingly, the second segment does not form part of this investigation.

A transcript of the report is at **Attachment A**.

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ viewer.

Australian courts have considered an ‘ordinary reasonable’ viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.[[1]](#footnote-1)

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Code.

This investigation has taken into account the complaint (extracts of which are at **Attachment B**) and submissions from the broadcaster (extracts of which are at **Attachment C**). Other sources are identified in this report where relevant.

Relevant Code provisions

**3.4 Impartiality**

3.4.1 In broadcasting a news Program, a Licensee must:

a) present news fairly and impartially;

b) clearly distinguish the reporting of factual material from commentary and analysis.

3.4.2 Nothing in this Section 3 requires a Licensee to allocate equal time to different points of view, or to include every aspect of a person’s viewpoint, nor does it preclude a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest.

The Code also applies an interpretation provision:

3.1.2 Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:

a) the facts known, or readily ascertainable, at that time;

b) the context of the segment (or Program Promotion) in its entirety; and

c) the time pressures associated with the preparation and broadcast of such programming.

Finding

The licensee did not breach clause 3.4.1 of the Code.

Reasons

Subclause 3.4.1(a) requires news to be presented fairly and impartially. The impartiality requirement means that news must be presented in such a way that one side of an issue is not unduly favoured over another and that the program does not show prejudice or bias against a particular side. Further, to the extent that a news program does include commentary and analysis, subclause 3.4.1(b) requires a licensee to clearly distinguish the commentary and analysis from the reporting of factual material.

Achieving fairness and impartiality requires a broadcaster of a news program to present content in a way which avoids conveying a prejudgment, or giving effect to the affections or enmities of the presenter or reporter, who play key roles in setting the tone of the program, through their style and choice of language.[[2]](#footnote-2)

A news program that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether a breach of the Code has occurred will depend on the theme of the news report, the range of perspectives that were presented or sought to be presented in relation to that theme, the overall presentation of the story and the circumstances in which the program was prepared and broadcast.

When a news program investigates and reports on matters of public interest and concern, care in framing is important, particularly where a program makes strong claims in relation to potentially sensitive matters. A news report that is not presented fairly or impartially may include:

* an unfair selection of material from the range of material available
* an undue emphasis on certain material
* the unfair juxtaposition of material out of context.[[3]](#footnote-3)

The complaint to the licensee stated:

[The presenter], in reading the news about the NAB staff reduction, asserted that the NAB announced that reduction then "celebrated" by announcing the six billion dollar profit, or perhaps the other way round, but either way it was an astonishing case of personal or channel editorial attitude that does not sit well with any kind of claim of objectivity. If it was only a case of flippancy, I'm not sure that has any place in a TV news program either.

The licensee responded to the complainant:

You refer to the very brief introductory comment by the news presenter to the report on the NAB profit announcement and planned job cuts.

[U]pon review we consider the news story complied with the Code. The brief comment by the news presenter was clearly commentary and distinguishable from factual material in the news report, in accordance with Clause 3.4.1(b) of the Code.

The complainant submitted to the ACMA that:

I complained […] that the newsreader had made a gratuitous and hostile aside against the NAB. They responded […] that the announcer had not breached the code. I am not satisfied with their response. I find it exceedingly casuistic and tending to licence any […] newsreader to express their personal prejudices on air […].

The licensee submitted to the ACMA:

The story sought the view of ordinary Australians regarding the announcement of a full year $6.6 billion profit and within that announcement by the NAB the forward strategy to commence in 2018 of the loss of 6,000 jobs preparing their workforce for digital technology. […] The story did seek the view of the ordinary man/woman in the street.

**Compliance with subclause 3.4.1(a) [present news fairly and impartially]**

*The report*

The report focused on the NAB’s decision to announce a cut of 6000 jobs at the same time it announced a $6.5 billion profit.[[4]](#footnote-4) Large corporate profits and losses of a significant number of jobs are newsworthy matters of public interest.

The presenter framed the report by stating that the NAB ‘celebrated’ its ‘breathtaking’ profit by ‘axing’ 6000 jobs. The presenter then explained that the ‘entire workforce’ was ‘upset’ because the bank hadn’t identified who was on the ‘hit list’, using language that implied all NAB employees were feeling a level of threat or uncertainty as a result of the job cuts announcement.

The report included a comment from the NAB CEO that ‘we should be more positive than not about the outlook’. The meaning of this comment was unclear because the excerpt was very brief and there was no contextualising information. The reporter’s preceding comment—‘after raking in billions it seems like an understatement’—was a statement of opinion that emphasised the scale of the bank’s profit statement.

The reporter then described staff as ‘facing the axe’ and having a ‘dim future’ before broadcasting commentary from three members of the public who stated that the NAB’s actions were ‘utterly ridiculous’, ‘very poor’, ‘disgusting’ and ‘terrible’.

The reporter went on to explain that the NAB intends to assist staff who lose their job to ‘transition’ and that 2000 new jobs will be created. She also explained that the workforce changes are part of the NAB’s plans to simplify its business and invest in easier, digital technologies.

*Assessment*

A news report is not inherently partial if it presents a particular (including a critical) perspective. News reports that present a particular perspective may still be impartial if the report also provides an opposing or alternative perspective.

In this case, the characterisation of the NAB’s plans for job-cuts as a ‘celebration’ of its profit results, expressed through the use of colourful language such as ‘breathtaking’, ‘celebrated’, ‘axing’, ‘hit list’, ‘raking in billions’, presented a critical examination of the NAB and its planned job cuts. However, that was not the only perspective presented.

As the report progressed, the reporter, using predominantly neutral language, offered an alternate perspective on the jobs cuts—that the decision was part of a considered, longer-term restructure tied to technological enhancements, that 2000 extra jobs would be created and that affected staff will be helped by the NAB to transition.

Although the report was framed around the actions of a successful bank in cutting a large number of jobs, the framing reflected the NAB’s results announcement. Considered as a whole, the report was not partial and contained content which achieved fairness in spite of a negative style and choice of language.

Accordingly, the licensee did not breach subclause 3.4.1(a) of the Code.

**Compliance with subclause 3.4.1(b) [clearly distinguish the reporting of factual material from commentary and analysis]**

The complainant stated to the ACMA that:

[…] "comment" means official interpretation of news by an officially qualified and appointed commentator, which a mere newsreader is not. Even if the newsreader were on another show as an officially appointed commentator, the news program is not a context in which to make such comments.

This aspect of the complainant primarily concerns the presenter’s introduction to the story which was as follows:

‘The National Australia Bank announced a breathtaking $6.5 billion dollar profit today and then celebrated by axing 6000 jobs. And that has upset its entire workforce because the bank won’t tell them who’s on the hit list.’

In assessing whether the news report complied with subclause 3.4.1(b) of the Code, the ACMA notes that the Code does not prohibit commentary and analysis. In news programs, the Code requires only that commentary and analysis be distinguished from factual material.

The terms ‘breathtaking’, ‘celebrated’ and ‘hit list’ were used in a subjective, introductory way by the presenter and were designed to draw the audience into the story rather than to provide detailed commentary and analysis on the NAB’s announcement.

Accordingly, the ACMA finds that the licensee did not breach subclause 3.4.1(b) of the Commercial Television Industry Code of Practice 2015.

Attachment A

Transcript of report on *Ten Eyewitness News*, broadcast on WIN on 2 November 2017

SANDRA SULLY (Presenter): The National Australia Bank announced a breathtaking $6.5 billion dollar profit today and then celebrated by axing 6000 jobs. And that has upset its entire workforce because the bank won’t tell them who is on the hit list. Here’s Phoebe Bowden with the details.

PHOEBE BOWDEN (Reporter): After raking in billions, it seems like an understatement…

ANDREW THORBURN (CEO, NAB): And we should be more positive than not about the outlook.

PHOEBE BOWDEN: But the future isn’t so bright for NAB’s employees, as the bank announced, 6000 are facing the axe, but it won’t say exactly where or when it will fall.

UNIDENTIFIED FEMALE 1: It’s utterly ridiculous. They should absolutely be investing in more people, better staff, um that’s how they will make more money.

UNIDENTIFIED MALE 1: That’s pretty poor. Yeah I think that’s a very poor thing to do.

UNIDENTIFIED FEMALE 2: That’s disgusting. That’s terrible. I don’t bank with NAB myself but um, that’s terrible. There should be a Royal Commission…

PHOEBE BOWDEN: NAB says it will help those sacked transition, and 2000 new roles will be created over the next few years. It’s all part of plans to simplify the business and invest in cheaper, easier digital technology. Experts believe the other big banks are likely to follow.

ANDREW HUGHES (Australian National University): […] and we no longer have the time to process anything too complex or too hard. So anyone who gives us simplicity, we’ll go towards.

Attachment B

Complaint

***Extracts of the complaint to the licensee dated 2 November 2017:***

Sandra Sully, in reading the news about the NAB staff reduction, asserted that the NAB announced that reduction then "celebrated" by announcing the six billion dollar profit, or perhaps the other way round, but either way it was an astonishing case of personal or channel editorial attitude that does not sit well with any kind of claim of objectivity. If it was only a case of flippancy, I'm not sure that has any place in a TV news program either.

***Extracts of the complaint to the ACMA dated 28 November 2017:***

I complained to Channel 10 that the newsreader had made a gratuitous and hostile aside against the NAB. They responded with the attached letter that the announcer had not breached the code. I am not satisfied with their response. I find it exceedingly casuistic and tending to licence any Tom Dick or Harry newsreader to express their personal prejudices on air, to be endured apparently by people who hold opposite views to theirs. I don't hold a brief for the NAB, but I hold a brief against bad taste.

I maintain that "comment" means official interpretation of news by an officially qualified and appointed commentator, which a mere newsreader is not. Even if the newsreader were on another show as an officially appointed commentator, the news program is not a context in which to make such comments.

Attachment C

Licensee’s response and submissions

***Extracts of the Licensee response to the complainant dated 20 November 2017:***

[…]

The Code includes specific requirements for news and currents affairs programs covering, amongst other things, that factual material must be presented accurately and viewpoints included in the program are not misrepresented. News programs must present news fairly and impartially.

You refer to the very brief introductory comment by the news presenter to the report on the NAB profit announcement and planned job cuts.

While acknowledging your comments, upon review we consider the news story complied with the Code. The brief comment by the news presenter was clearly commentary and distinguishable from factual material in the news report, in accordance with Clause 3.4.1(b) of the Code.

We do appreciate your concerns. To the extent that your complaint falls within the scope of the Code, if you are not satisfied with this response, you may refer the matter to the Australian Communications and Media Authority.

[…]

***Extracts of the Licensee submission to the ACMA dated 18 December 2017:***

[…]

We respond to your email dated 5 December 2017 in which you advise your intention to investigate a complaint from [complainant] regarding comments in a news story regarding the National Bank Australia announcement of its half-year profit and its strategy to cut 6,000 positions commencing 2018 under clause 3.4.1 of the Commercial Television Industry Code of Practice 2015 and under section 170 of the Broadcasting Services Act 1992.

We have provided a copy of the broadcast.

Having responded to the complainant and his subsequent complaint to the ACMA, the broadcast newsreader has not made a gratuitous and hostile aside against the NAB. The story sought the view of ordinary Australians regarding the announcement of a full year $6.6billion profit and within that announcement by the NAB the forward strategy to commence in 2018 of the loss of 6,000 jobs preparing their workforce for digital technology. In the licensee view the story complied with 3.4.1 of the Code, it presented the news the NAB had announced that day fairly and impartially and the story clearly distinguished the reporting of the factual material from commentary and analysis. The story did seek the view of the ordinary man/woman in the street.

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)
2. This is consistent with the approach taken in other ACMA investigations, for example, see Investigation Report 3313 (*Seven News* broadcast on Sevenon 23 October 2014). [↑](#footnote-ref-2)
3. See Investigation Reports 1922 &1953 (*Ten News at Five* broadcast on Ten on 3 October 2007), Investigation Report 1943 (*Channel Seven News* broadcast on Seven on 3 October 2007), Investigation Report 1952 (*National Nine News* broadcast on Nine on 3 October 2007) and Investigation Report BI-227 (*Nine News Sunday* broadcast on Nine on 17 July 2016). [↑](#footnote-ref-3)
4. See ‘Full Year Results’ announcement, [https://www.nab.com.au/about-us/shareholder-centre/asx-announcement#](https://www.nab.com.au/about-us/shareholder-centre/asx-announcement) accessed on 6 February 2018. [↑](#footnote-ref-4)