Investigation report no. BI-456

| Summary |  |
| --- | --- |
| **Licensee** | Channel Seven Melbourne Pty Ltd |
| **Station** | Seven |
| **Type of service** | Commercial—Television |
| **Name of program** | *Seven News*  |
| **Dates of broadcasts** | 29 October 2018 and 2 November 2018  |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised in 2018) |
| **Date finalised** | 13 June 2019 |
| **Decision** | No breach of clause 3.3.1 [present material facts accurately] No breach of clause 3.4.1 [present news fairly and impartially]  |

Background

In January 2019, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into two related news segments, broadcast during the program *Seven News*.

The news segments were broadcast on Seven by Channel Seven Melbourne Pty Ltd (the licensee) on 29 October 2018 at 6:10pm (News Report 1) and 2 November 2018 at 6:04pm (News Report 2) (the News Reports). They reported on the guilty plea of Mr B, to a charge of recklessly causing injury to Mr A (the victim), and his subsequent sentencing in the Frankston Magistrates’ Court. The charge related to an incident that occurred in November 2017, which involved two groups of people fighting (the incident) and resulted in serious injury to the victim, Mr A.

The ACMA received a complaint alleging that the News Reports were inaccurate, misleading and biased.

The ACMA has investigated the licensee’s compliance against clause 3.3.1 [present material facts accurately] and clause 3.4.1 [present news fairly and impartially] of the Commercial Television Industry Code of Practice 2015 (revised in 2018) (the Code).

The program

*Seven News* is the Melbourne edition of a live news program broadcast from 6.00 pm to
7.00 pm on weeknights, and is described as presenting:

Breaking stories and news headlines from Melbourne and the rest of the state.[[1]](#footnote-2)

A description of the video and audio in the News Reports is at **Attachment A**.

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material that is the subject of the complaint, 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.[[2]](#footnote-3)

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 at **Attachment B**) and submissions from the broadcaster (extracts at **Attachment C**). Other sources are identified in this report where relevant.

Issue 1: Accuracy

Relevant Code provisions

**3.3 Accuracy and fairness**

3.3.1 In broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented.

3.3.2 Clause 3.3.1 applies to material facts and material misrepresentations of viewpoints only.

An interpretation clause is also applied:

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 reasonably 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 3.3.1 of the Code.

Reasons

To assess compliance, the ACMA has addressed the following questions:

* What did the material convey to the ordinary reasonable viewer?
* Was the material factual in character?
* If so, did it convey a material fact or facts in the context of the relevant news report?
* If so, was the factual material accurate?

The considerations the ACMA uses in assessing whether or not broadcast material is factual in character are set out at **Attachment D**.

Further, in considering the licensee’s compliance with clause 3.3 of the Code, the ACMA has taken into account those matters listed in clause 3.1.2 of the Code such as the circumstances at the time the News Reports were prepared.

The complainant provided a copy of a document titled ‘Preliminary Brief – Statement Made By Informant’ (the Brief). In particular, the complainant relied on the information in the Brief to support claims about alleged inaccuracies in the News Reports regarding:

1. the licensee’s description of the victim’s involvement in the fight
2. the licensee’s categorisation of the nature of the attack on the victim as a ‘single punch’
3. the licensee’s categorisation of Mr B’s level of intoxication.

The ACMA has also taken into account independent, publicly available media reports about the incidentthat were available at the time theNews Reports were prepared.

1. **The victim’s involvement in the fight**

The complainant stated:

Channel 7 […] repeatedly reported that the ‘victim’ father of three was not involved’ [..] what they actually reported was that the ‘victim was not involved’ deliberately implying that he was an innocent bystander.

[…]

Channel 7 neglected to report that Witnesses stated that the “victim’ …. threw a few punches, had previously fallen but got back up to continue to fight, while Mr B was trying to [free] his friend off the ground who was being hit by the ‘victim’s friend”.

The licensee submitted:

CCTV footage was not tendered as evidence and was not able to be viewed by reporters, however the Prosecutor submitted on multiple occasions that the victim was not involved in the physical fight, and merely approached the group with his hands up in a conciliatory way. The police confirmed this view by stating that the CCTV footage merely shows Mr A approach [Mr B] with his hands up as if he was trying to calm things down, while the Magistrate said in sentencing that the assault on Mr A was ‘unprovoked‘. In accordance with the Code, Seven reasonably relied on this information in asserting Mr A was not involved in the fight, meaning he was not an active participant.

The licensee further submitted that:

Insofar as [....] the news reports described the victim as being ‘not involved‘ in the fight, Seven is of the view that this is an accurate description of events.

[…]

while there is reference […] to an anonymous witness stating that the victim ‘threw a few punches‘, this is no more than an allegation. The allegation is not supported by the CCTV footage of the incident and was clearly rejected by the court given its ultimate finding that the attack on the victim was ‘unprovoked‘.

*What did the material convey to the ordinary reasonable viewer?*

In so far as the News Reports mention ‘the victim’s involvement’, it is considered that their focus is on the victim’s lack of involvement in the argument that caused the physical fight between two groups of people outside a hotel in Frankston, Victoria.

News Report 1 referred to the victim’s involvement in the following way:

**REPORTER:** [Mr B] was outside Frankston’s [the hotel] last November when a fight broke out about potato cakes. His victim wasn’t involved but copped a punch in the face…

News Report 2 referred to the victim’s involvement in the following way:

**REPORTER: …**when he and a mate got into an argument with a group outside [the hotel] in Frankston last year.

**REPORTER:** His victim, [Mr A], wasn’t involved but he copped a brutal punch to the face and fell back, head first. Doctors told [Mr A’s] family it was so dire they turned off his life support and planned his funeral. Incredibly [Mr A] woke up two days later.

The ACMA considers that the ordinary reasonable viewer would have understood from these statements that the victim did not have any role in the initial fight that broke out about potato cakes (News Report 1) or the argument that Mr B and his friend got into with a group (News Report 2) outside a hotel in Frankston.

*Was the material factual in character?*

The above statements are about the victim’s role in the fight. The statement from News Report 1 focused on the victim’s lack of involvement in the fight about potatoes cakes. The statement from News Report 2 focused on the victim’s lack of involvement in the argument
Mr B and his friend got into with a group outside a hotel that caused the physical fight. The statements were specific, unequivocal and capable of independent verification. They were factual in character.

*Did it convey a material fact or facts in the context of the relevant news report?*

In reporting on the Court proceedings relating to Mr B’s plea and sentencing, the News Reports contained strong opening statements describing Mr B as a ‘thug’. They also focused on Mr B’s prior criminal history and statements about the nature of the attack on the victim, particularly the statements in News Report 2 that the attack was a ‘single punch’ attack. In the context of these elements of the News Reports, the statements about the victim’s level of involvement in the fight conveyed a material fact.

*Was the factual material accurate?*

According to the licensee, when preparing News Report 1, the facts that were available to the licensee about the victim’s involvement (or lack thereof) in the fight about potato cakes, were based on the evidence adduced during the court proceedings in relation to which the journalist had taken notes. There may have been an allegation made during the hearing that the victim had approached the group that started the fight, with his hands up to calm the fight down. However, there appears to be no suggestion that the victim was directly involved in the argument about the potato cakes that started the fight, which is the focus of News Report 1.

Arguably, News Report 1 could have included additional details about the broader incident to provide further context to the fight as a whole. However, News Report 1 does not purport to provide a comprehensive analysis of the full details of the incident as a whole, but rather provides a brief survey of key aspects of what happened.

News Report 2 was prepared after Mr B’s sentencing hearing, at which point the Magistrate, as the relevant arbiter of the evidence, had made a decision about the facts, including characterising the injuries sustained by Mr A as ‘unprovoked’. Therefore, the licensee, at that time, reported on the facts as decided by the court, which were that the victim was not involved in the argument that started the fight.

On this basis, the statements in News Report 2 that the victim ‘wasn’t involved’ in an ‘argument with a group outside a hotel in Frankston were consistent with the facts known to the licensee at the time of preparing the segment which indicated that the victim was injured during an ‘unprovoked’ attack.

Accordingly, in broadcasting statements in the News Reports about the victim not being involved in the fight about potato cakes or the arguments that lead to the physical fight, the licensee did not breach clause 3.3.1 of the Code.

1. **The categorisation of the attack as a ‘single punch’**

The complainant stated:

Channel 7 [….] sold the story as a one punch stating that [Mr B], a thug, in a drunken [state] and high on drugs, punched the ‘victim‘ with [one] punch that put him in a coma. [...] Channel [7] continue to sell the story as a 'coward ‘once punch‘ which it was not.

In relation to News Report 1, the licensee submitted:

The complainant claimed that Broadcast 1 makes an inaccurate reference to a ‘single punch’ or coward punch attack. The complainant is in error in making this assertion, as the report clearly states that the single punch to Mr [A] occurred within the context of a broader melee.

In relation to News Report 2, the licensee submitted:

The issues in fact described in Broadcast 1, such as the supposed description of a single punch attack [...] equally apply in regards to Broadcast 2.

*What did the material convey to the ordinary reasonable viewer?*

News Report 1 referred generically to the attack on the victim as involving ‘a punch in the face’ but did not use specific terms to categorise that punch. Therefore, the complainant’s allegations about the licensee’s inaccurate categorisation of the attack on the victim are limited to News Report 2, which included the following statements:

A thug who almost killed a father of three with a single punch outside a Frankston hotel has been jailed for just three months.

[…]

But it took a single punch to almost end a life.

[…]

His victim, [Mr A], wasn’t involved but he copped a brutal punch to the face and fell back head first.

In some circumstances, the terms ‘coward’s punch’ and ‘single punch’ (or ‘one punch’) may be used interchangeably to refer to an unprovoked attack resulting in injury or death where only one punch is made by an offender on a victim.[[3]](#footnote-4) However, increasingly, these terms are viewed differently.

‘Coward’s punch’ attacks usually describe attacks where a punch is made without warning or while the recipient is distracted, allowing no time for preparation or defence on the part of the recipient.[[4]](#footnote-5)

There were no statements in either News Report categorising the attack as a ‘coward’s punch’ attack. The term used in News Report 2 was ‘single punch’.

The licensee’s submission indicates that it understood the statement referring to ‘a single punch’, was not indicating a ‘coward’s punch’ attack or a ‘single punch’ attack. Rather, by using the term ‘single punch’ it was indicating that a:

… single punch to Mr [A] occurred within the context of a broader melee.

The specific term ‘single punch’ is widely used in the media as attacks of this nature have attracted significant attention and have had specific legislation enacted to deal with them.[[5]](#footnote-6) The terms ‘single punch’ or ‘one punch’ appear to be used broadly to describe all attacks where one punch is made by an offender on a victim, resulting in injury or death, even if that one punch occurred as part of a broader incident including where the victim is attempting to ‘break-up’ a fight.[[6]](#footnote-7) The ACMA considers that the ordinary reasonable viewer would have understood from News Report 2 that the incident was a ‘single punch’ attack, in that the victim was subject to a single unprovoked punch.

*Was the material factual in character?*

The statement about the nature of the attack was specific, unequivocal and capable of independent verification. It was factual in character.

*Did it convey a material fact or facts in the context of the relevant news report?*

In the context of the strong opening statements of News Report 2 describing Mr B as a ‘thug’ and the statements in News Report 2 about Mr B’s prior criminal history, facts about the nature of the attack were material.

*Was the factual material accurate?*

The licensee has submitted that in preparing the News Reports, including News Report 2, it relied on ‘the findings of the court, meaning the decision the court reached after applying the law to the proven facts, which included CCTV footage’, which indicated that the attack was an ‘unprovoked’ attack*.* The ACMA also notes that, at the time of preparing the News Reports, there were widespread media reports, through outlets independent of the licensee, about the nature of Mr A’s injuries at the time of his recovery. These reports described the nature of the injury as a ‘single-punch’ attack.[[7]](#footnote-8)

On this basis, the statements included in News Report 2, describing the specific interaction between Mr B and the victim involving a ‘single punch’ was not inconsistent with the facts known to the licensee at the time of preparing the report. From these facts, the licensee understood the attack to be ‘unprovoked’ involving one, single punch.

Therefore, in this respect, the ACMA considers the licensee presented factual material accurately.

Accordingly, in broadcasting statements characterising the incident as a ‘single punch’, the licensee did not breach clause 3.3.1 of the Code.

**3. Mr B’s level of intoxication at the time of the incident**

The complainant stated:

CCTV footage only show [Mr B] and his friend ordered 1 drink and 2 Separate CCTV footage show [Mr B] shaking security guards hand, and the hand of the person that intervened in the first altercation with the ‘Victims’ friends who not only caused the incident but refused to back down. He was therefore not in a drunken state, and was calm.

The licensee submitted:

The complainant has also claimed that it is inaccurate to assert that Mr [B] was ‘drunk and high on cocaine’, on the basis that a police report refers to CCTV footage showing Mr [B] buying only one stubbie of beer at one of the hotels he had visited on the night in question.

The information tendered in court however refers to Mr [B’s] conduct in a significantly broader fashion than that which was simply caught in a single piece of CCTV footage. The Prosecutor stated during proceedings that Mr [B] had been drinking all night, while in Mr [B’s] expression of remorse to the court he remarked, ‘I gotta choose better mates to drink with’. Further the Prosecutor told the court that night in the police interview after the incident Mr [B] had admitted to taking cocaine during the night.

*What did the material convey to the ordinary reasonable viewer?*

The News Reports stated that Mr B was ‘drunk and high on cocaine’ at the time of the incident. The ACMA considers that the ordinary reasonable viewer would have understood that Mr B was under the influence of drugs and alcohol at the time of the incident.

*Was the material factual in character?*

The statement about Mr B’s state of intoxication was specific, unequivocal and capable of independent verification. It was factual in character.

*Did it convey a material fact or facts in the context of the relevant news report?*

The nature of the incident and Mr B’s behaviour were key aspects of the report. In this context, assertions about Mr B’s level of intoxication were material to these matters.

*Was the factual material accurate?*

The facts that were available to the licensee about the victim’s intoxication at the time of preparing the News Reports, based on the evidence adduced during the court proceedings, is an area where there appears to be a difference of opinion between the licensee and the complainant.

The licensee has submitted that in making the statements in the News Reports about Mr B’s level of intoxication at the time of the incident, it relied on statements, ‘[Mr B] had been drinking all night’ and had ‘admitted to taking cocaine during the night’, that were presented by the prosecution in the Magistrates’ Court.

On this basis, the statements made during the News Reports, that Mr B was ‘drunk and high on cocaine’, were consistent with the facts available to the licensee at the time of preparing the segment, including evidence adduced during the court proceedings. The ACMA also does not consider that these facts were necessarily inconsistent with facts that the complainant has indicated were available to the licensee, namely that Mr B had ordered one drink at one establishment during the evening or that during an earlier altercation he was calm and capable of shaking hands with a person who had broken up another altercation.

Therefore, the ACMA considers that, in respect of statements made in the News Reports about Mr B’s level of intoxication, the licensee presented factual material accurately.

Accordingly, in broadcasting statements about Mr B’s level of intoxication, the licensee did not breach clause 3.3.1 of the Code.

**Issue 2: Fairness and impartiality**

Relevant Code provisions

**3.4 Impartiality**

3.4.1 In broadcasting a news Program, a Licensee must:

1. present news fairly and impartially;
2. 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.

**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 to present material in a way which avoids conveying a prejudgement or giving effect to the preferences of the reporter or presenter, who play key roles in setting the tone of the report, through their style and choice of language.

A news report 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 report and the circumstances in which the report was prepared and broadcast.

When a news report 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.

The complainant submitted:

Only one side of the facts were presented […] Channel 7 were not fair or impartial.

In relation to News Report 1, the licensee submitted:

The complainant has taken issue with Mr [B] being described as a ‘thug’ in the news reader’s opening comments. The Code permits however that news programs may take a critical stance on an issue as part of a fair report on a matter of public interest.

[…]

… it is objectively reasonable to describe as a ‘thug‘ a person who commits a serious criminal offence which causes the near death of the victim, accordingly pleads guilty to recklessly causing injury, and incurs a custodial sentence of incarceration in prison.

[…]

Broadcast 1 provided extensive background on Mr [B’s] history in terms of his having been a victim of violent crime leading to him being more likely to act aggressively when threatened, as well as reporting on his empathy for his victim.

In relation to News Report 2, the licensee submitted:

In specific relation to the description of Mr [B] in the news presenter’s opening as a ‘thug’, Seven submits it is an objectively reasonable description for the reasons already given, and further on the basis that it is stated in Broadcast 2 that Mr [B] had faced the charge of recklessly causing serious injury on four occasions prior. Further, reference is made to Mr [B’s] expression of remorse, suitably contextualising the subjectivedescription.

The language and content used, and the framing, style and tone of the News Reports were different. Therefore, the ACMA has considered the elements of News Report 1 and News Report 2 separately.

**News Report 1**

The report focused on the circumstances around Mr B’s guilty plea to the charge of recklessly causing serious injury.

*Framing and theme*

The presenter framed the report by stating that a ‘thug’ who had a tendency to ‘lash out’ had ‘pleaded guilty to the attack’. The presenter then explained that the ‘man responsible [Mr B] was himself the victim of a bashing years earlier’.

The ACMA considers that News Report 1 was framed in such a way that the ordinary reasonable viewer would have understood that the focus of the report was that Mr B had pleaded guilty to a violent crime, but the circumstances that had led to the crime were, at least in part, related to his own history as a victim of crime.

*Range of perspectives*

The report presented the perspective of the victim and his family, which stressed the long-term impact of the attack. Images of the victim in hospital indicating his injuries, footage of the victim’s sister talking about the extent of the victim’s injuries, and a graphic showing a quote from the victim about the impact of the attack on him, also promoted this perspective. The report also included non-neutral language in the way that the reporter referred to the victim as either by his first name or as ‘Mr [A’s] but on all but one occasion referred to Mr B only by his surname.

However, the report also included Mr B’s perspective. In particular, the report included introductory statements by the presenter that referred to Mr B’s history as a victim of a violent attack. The reporter also stated that Mr B had ‘an acquired brain injury and post-traumatic stress disorder, which means he is more likely to fight, if he perceives danger.’ This information indicated that there were alternate ways of understanding the circumstances around Mr B’s guilty plea.

Further, an extensive quote from Mr B, including in the form of visual text, detailed his remorse for the attack on the victim.

*Conveying prejudgement and preferences*

The opening statements made by the presenter during the introduction to the report included some non-neutral language (such as ‘thug’). However, because the opening also included references to Mr B’s history as a victim of crime, the introduction contained balance and did not convey a prejudgement.

*Conclusion*

News Report 1 contained some non-neutral language and an emphasis on material from the victim’s perspective. However, overall, the report was balanced by contextualising content from Mr B’s perspective, in particular the extensive visual graphic showing Mr B’s statement of remorse and two statements, including one in the introduction, about Mr B’s history as a victim of a violent attack which all showed Mr B through empathetic lenses.

Accordingly, the ACMA considers that in broadcasting News Report 1, the licensee did not breach subclause 3.4.1(a) of the Code.

**News Report 2**

News Report 2 discussed the circumstances around Mr B’s sentencing hearing and the victim’s family’s reaction to it.

*Framing and theme*

The presenter framed the report by stating that Mr B was a ‘thug’ who had ‘almost killed’ a ‘father of three’. The presenter then explained that the victim’s family felt that the sentence ‘wasn’t enough’ and that they ‘feared’ that Mr B would ‘strike again’.

The ACMA considers that News Report 2 was framed in such a way that the ordinary reasonable viewer would have understood that the focus of the report was on Mr B’s conviction for a violent crime and conveying the reaction and opinions of Mr A’s family to the length of that sentence.

*Range of perspectives*

News Report 2 focussed on the perspective of the victim and his family. It stressed the long-term impact of the attack on the victim and his sister’s view that the sentence received by
Mr B was not proportionate to the injuries inflicted. As with News Report 1 this perspective was also promoted by the reporter’s humanising of the victim by referring to him throughout the report by either his first name or as ‘Mr [A]. As with News Report 1, this was in contrast to the reporter generally referring to Mr B simply by his surname. Mr A’s perspective was also promoted by images of the injured victim in hospital and several excerpts of interview footage of the victim’s sister talking about the extent of those injuries and her views about Mr B’s ‘next victim’. Each of those pieces of footage made it clear that the views put forward by Mr A’s sister were her own, with the footage containing statements such as ‘I really feel…’ and ‘I think…’ which made it clear that the commentary was from her particular perspective, as the victim’s sister.

Although it was more fleeting than in News Report 1, the reporter in News Report 2 provided material indicating Mr B’s perspective, specifically through a reference to Mr B’s ‘deep and profound remorse’ for the attack on Mr A. Furthermore, the licensee submitted that:

[Mr B] and his family were given the opportunity to comment as part of the report, but they declined.

This indicates the licensee had sought to include further material from Mr B’s perspective in News Report 2, but that Mr B’s family had declined that opportunity.

*Conveying prejudgement and preferences*

Like News Report 1, the opening statements made by the presenter during the introduction to the report included some non-neutral language. However, it was made clear that the views on the length of the sentence were the views of the victim’s family. In this context, it did not convey a prejudgement, because it was clearly presented as a view formed from a particular perspective only, and not a general stance on the issue.

*Conclusion*

As with News Report 1, News Report 2 contained some non-neutral language and an emphasis on material from the victim’s perspective. However, licensees are not required, as part of a fair report on a matter of public interest, to allocate equal time to different points of view. Although News Report 2 contained far less contextualising context than News Report 1, the ACMA acknowledges that at the time of preparing and broadcasting News Report 2, Mr B had been convicted and sentenced for the charge of recklessly causing serious injury, and that it was open to the licensee to provide a critical examination of, or comment on, that issue, and Mr A’s family’s reaction to that sentence.

Therefore, the ACMA considers that News Report 2 was broadcast fairly and impartially,

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

Attachment A

Description of news report on *Seven News*, broadcast by Channel Seven Melbourne Pty Ltd on 29 October 2018 (News Report 1):

|  |  |  |
| --- | --- | --- |
| Video  | Video titles  | Audio |
| Studio host |  | **HOST:** A thug who punched a stranger so hard in the face the victim’s family thought he would die has pleaded guilty to the attack. The man responsible was himself the victim of a bashing years earlier and claims it made him more likely to lash out.  |
| Footage of Mr B walking  | FRANKSTONPAUL DOWSLEY REPORTING | **REPORTER:** Drunk and high on cocaine [Mr B] swung a punch…  |
| Image of the victim and his children.  |  | **REPORTER: …**that took father of three [Mr A] to the brink of death.  |
| Footage of Mr B walking |  | **REPORTER:** Why have you never apologised? **MR [B]**: I’ve got nothing further to say.  |
| Footage outside [the hotel] including a police investigation area and a close up of a watch  |  | **REPORTER:** [Mr B] was outside Frankston’s [the hotel] last November when a fight broke out about potato cakes. His victim wasn’t involved but copped a punch in the face… |
| Still images of the victim in hospital  |  | **REPORTER: ….**which left him apparently brain dead in a coma. His family turned off life support and planned [Mr A]’s funeral. Incredibly two days later he woke up. |
| Footage of Mr A’s sister  | [MR A’S SISTER’s NAME], VICTIM’S SISTER | **[MR A’S SISTER]:** He’s lost all sense of smell, he has an permanent eye damage, he still has short term memory loss,  |
| Graphic of victim with superimposed text | I FEEL VERY ANXIOUS ALL THE TIME BUT ESPECIALLY IN PUBLIC. I AM CONSTANTLY LOOKING OVER MY SHOULDER.[MR A], VICTIM  | **REPORTER:** In his victim impact statement [Mr A] said ‘I feel very anxious all the time but especially in public. I am constantly looking over my shoulder.’  |
| Footage of reporter.  |  | **REPORTER:** In 2011 the offender, [Mr B], was himself the victim of a serious assault. The court heard that left him with an acquired brain injury and post-traumatic stress disorder, which means he is more likely to fight, if he perceives danger.  |
| Footage of Mr B walking |  | **REPORTER:** But he has a history of violent assaults with weapons.  |
| Graphic of Mr B with superimposed text | I FEEL AWFUL FOR HIS FAMILY. I’VE BEEN THROUGH IT. IT’S DISGUSTING. NO ONE WANTS TO GO THROUGH THAT. MY HEART GOES OUT TO HIM. BUT HE WOULDN’T WANT TO HEAR THAT FROM ME. [MR B], OFFENDER  | **REPORTER:** He told the phycologist: I feel awful for his family. I’ve been through it. It’s disgusting. no one wants to go through that. My heart goes out to him. But he wouldn’t want to hear that from me. |
| Footage of Mr B and a woman walking |  | **REPORTER:** [Mr B] has pleaded guilty to recklessly causing serious injury and will be sentenced on Friday. |
| Footage of Mr A’s sister talking |  | **MR A’S SISTER:** It’s frustrating to know if he had been dealt with a bit harsher in the past, that my brother might not have gone through this.  |
| Footage of the victim laughing with his arms around two women |  | **REPORTER:** Paul Dowsley, Seven News.  |

Description of news report on Seven News, broadcast by Channel Seven Melbourne Pty Ltd on 2 November 2018 (News Report 2):

|  |  |  |
| --- | --- | --- |
| Video  | Video titles  | Audio |
| Studio host |  | **HOST:** A thug who almost killed a father of three with a single punch outside a Frankston hotel has been jailed for just three months. The victim’s family says it isn’t enough and fears that he’ll strike again once he’s released.  |
| Footage of Mr B leaving a car and walking with a woman | FRANKSTONPAUL DOWSLEY REPORTING  | **REPORTER:** [Mr B] has a history of violent assaults. But it took a single punch to almost end a life. He was drunk and high on cocaine….  |
| Footage outside [the hotel] including a police investigation area and a close up of a watch  |  | **REPORTER: …**when he and a mate got into an argument with a group outside [the hotel] in Frankston last year.  |
| Still images of the victim in hospital and footage of the victim hugging a woman  |  | **REPORTER:** His victim, [Mr A], wasn’t involved but he copped a brutal punch to the face and fell back head first. Doctors told [Mr A]’s family it was so dire they turned off his life support and planned his funeral. Incredibly [Mr A] woke up two days later.  |
| Footage of Mr B outside Frankston Magistrate’s Court  |  | **REPORTER**: [Mr B] pleaded guilty to recklessly causing serious injury. A charge he’d faced four times before the attack. The court had heard [Mr B] has profound and deep remorse, but today he tried to intimidate media and his victim’s sister in the court building.  |
| Footage of Mr A’s sister |  | **MR A’S SISTER:** He verbally attacked me. It just shows the real character and the ‘so called’ remorse.  |
| Footage of Mr B walking |  | **REPORTER:** He was convicted. Jailed for three months and given a 12-month community corrections order.  |
| Footage of Mr A’s sister |  | **MR A’S SISTER:** I really feel sorry for his next victim because I think it’s going to be worse.  |
| Footage of reporter  | FRANKSTONPAUL DOWSLEY REPORTING | **REPORTER:** At a court appearance on Monday and again today [Mr B] aggravated the Magistrate by being late. His excuse? That he slept in because of pain medication, after falling from a ladder last week. |
| Montage of footage of Mr B and footage of the victim  |  | **REPORTER:** The injuries he inflicted on his victim will be longer lasting. [Mr A] has short term memory loss, a badly damaged eye and no sense of taste. |
| Footage of Mr A’s sister |  | **MR A’S SISTER:** He’ll never recover, so three months jail sentence is not a lot considering my brother’s going to be in this position for the rest of his life.  |
| Footage of Mr [B] and a woman walking |  | **REPORTER:** Paul Dowsley, Seven News. |

Attachment B

Complaint

***Extracts of complaint to the Licensee dated 15 November 2018:***

[…]

On behalf of … our community, I am disgusted at Channel Seven’s reporting of an alleged ‘Coward‘ one punch in Frankston and continuing to portray ‘the victim‘ and his family as decent law abiding members of the community. I am appalled and deeply saddened at the inaccuracy of the reporting of facts, unfairness and, lack of impartiality in Channel 7’s reporting of this matter.

Channel 7, despite subsequently becoming aware of all the facts, neglected to disclose the truth, and instead chose to harass and discredit the ‘accused‘ ([Mr B]), and his family and, failed to report the facts, as outlined in court briefing.

[…]

The facts were presented to the court, as recorded in the Victorian Police Statement […]. Channel 7 neglected to report all the facts, opting to continue to, incorrectly portray [the victim], as an innocent Bystander, which he was not.

[…]

Channel 7 misrepresented the facts and, misled the public to believe that [Mr B] was the thug, who without cause of justification attacked an innocent stranger, father of 3, delivering a killer punch, when in- fact, as per Police report and witnesses, [Mr B] was minding his own business, when he and his friend were confronted by a very intoxicated group looking for trouble, after leaving an engagement. The ‘victim’ was drunk and an active participant until he was hit and fell.

[…]

Channel 7 did not report that CCTV footage shows the ‘victim’ and his friends leave the engagement intoxicated earlier in the night and engage in a scuffle that was broken up by two policemen, in an unmarked car.

[…]

Channel 7 in reporting, that the ‘victim’s friends had been involved in earlier dispute, with [Mr B] over potatoe [sic] cakes, failed to report that the argument was started by two of the ‘victim’s friends [names redacted].

[…]

Channel 7 did not report, that other CCTV footage showed the ‘victim’ failed to diffuse the earlier situation, by pushing [name redacted] backward, but the altercation was broken up by a taller man, moving [Mr B] and his friend away from [name redacted] who continued to follow and abuse them as they walked off. [Name redacted] was out of control and would not back away.

[…]

Channel 7 did not report that the taller man walked with [Mr B] and his friend until Davey Street, shook hands with him before he walked off. This is testament that [Mr B] was not in an out of control drug and alcohol infused state, as reported.

[…]

Channel 7 neglected to report that the ‘Victim’s‘ friends, [names redacted] later spotted the [Mr B] and his friend, and the ‘victim’s friends started yelling and challenged them to the fight, and approached them, followed by the ‘victim’ who appeared reluctant first, before the fight broke out.

[…]

Channel 7 did not report that the ‘Victim’s’ friends started the argument that turned into a fight. This is despite the ‘Victim’s family’s omissions of responsibility, on 7’s own Facebook Page, back in January 2018.

Channel 7 did not report, that CCTV footage of the incident was not clear and that witnessed did provide an accurate account of events. Channel 7 continued to sell the one punch story, which it clearly was not.

Importantly, Channel 7 failed to report that a witness did see the ‘Victim‘ throw a few punches, before he was punched or pushed back and fell but got to his feet, re-approached [Mr B] just as [Mr B] helped his friend up off the ground. Therefore, any claims of one punch is wrong.

Channel 7 inaccurately reported that the ‘victim‘ was not part of the fight, but an innocent bystander father of three. Witness statements, outlined in Police brief, clearly supports that the ‘victim’ was not an innocent Bystander, but an active participant in the fight.

[…]

Channel 7 wrongfully ommited [sic] that the ‘victim’s right hand arm was not visible in the CCTV footage of the incident, therefore it is unclear if he is attacking or, defending as alleged by Channel 7.

[…]

Channel 7, failed to report that it was the victim’s friends that were very intoxicated, and neglectfully failed to report that [Mr B] and his friend were out numbered 5 to 2 and, fought to defend themselves.

[…]

Channel 7 did not report that the CCTV footage of the incident was grainy, but the footage from the CCTV footage of JD’s clearly showed that [Mr B] and his friend only ordered one stubbie each while at the venue playing pool. [Mr B] admitted, as per his statement, to having had a couple before leaving home, much earlier in the night. Channel 7 wrongfully reported that [Mr B] was in a drunken state, yet witness’s accounts only refer to the ‘victim‘ and his friends as being vey intoxicated.

[…]

Channel 7 continued to sell the ‘one punch’ coward charade despite, ommissions [sic] made by the ‘victim’s family in January 2018, on Channel 7s Facebook Page, that the ‘victim’s friends started the fight and evidence showed that [Mr B] and his friend had previously walked away from an eariler [sic] dispute with the victim’s friend, but were later spotted and confronted by the’ victim’ and his friends.

[…]

Channel 7 dismissed the seriousness, of the prior assault on [Mr B] a few years ago, when he was attacked by a group of men, punched with a glass bottle, and stabbed in his skull with a knife, and the seriousness of his injuries he sustained, and affects, only stating that he claimed to suffer post traumatic stress and anxiety, and that since then he is more inclined to lash out. However, Channel 7 neglected to mention, that he is only, inclined to react, if confronted, particularly in the similar circumstances. This reaction is brought on by fear of events years ago, which resulted in brain surgery to relieve pressure.

[…]

Channel 7 also reported that [Mr B] had abused the victim’s family when, in fact, as recorded on court cameras, it was the ‘Victim’s sister and family that started trying to provoke and intimate [Mr B] and his family, when he responded in frustration, and it was the ‘Victim’s sister who is recorded screaming at [Mr B].

[…]

***Extracts of complaint to the ACMA dated 20 December 2018:***

[…]

Accuracy and fairness

Channel 7 were aware of the victims' participation and yet repeatedly reported that ‘victim‘ father of three that was not involved , and sold the story as a one punch stating that [Mr B], A thug , in a drunken and high on drugs, punched the ‘victim‘ with once punch that put him in a coma, yet all the witnesses only refer to the ‘victim‘ and his friends being ‘very intoxicated‘ .
CCTV footage only show [Mr B] and his friend ordered 1 drink and 2 Separate CCTV footage show [Mr B] shaking security guards hand, and the hand of the person that intervened in the first altercation with the ‘Victims’ friends who not only caused the incident but refused to back down. He was therefore not in a drunken state, and was calm.

Channel continue to sell the story as a 'coward ‘once punch‘ which it was not.
In Channel 7’s response they state that the information was correct, which it was not. Only one side of the fact were presented and even, that was not accurate.
In their response they claim they stated the ‘victim was not [Mr B] or target of the fight‘ but what they actually reported was that ‘the victim was not involved’ deliberately implying that he was an innocent bystander.

Channel 7 neglected to report that Witnesses stated that the ‘victim’ was very intoxicated, threw a few punches, had previously fallen but got back up to continue to fight, while [Mr B] was trying to fee his friend off the ground who was being hit by the ‘victims friend’.

Channel 7 did not mention that witnesses and footage support, that it was the other party, which the victim was with, that went looking for trouble, had previously been in another fight that was broken up by Police, that they had refused to walk away from the initial argument, and later spotted the 2 young men, and started the fight.

[…]

Channel 7 were not fair or impartial

[…]

Channel 7 knowing all the facts did not refute the comments made by the ‘victim’ and his family, which were not true or accurate, that implied ‘victim‘ was not involved but was attacked for no reason, when the truth is [Mr B] was defending himself, in a fight.

Channel 7 neglected to say that [Mr B] and his fiend were outnumbered, by at least 5-2, however there is some word that there was a 6th person who ran off.

[…]

Attachment C

Licensee’s response and submissions

***Extract of Licensee’s response to the complainant dated 10 December 2018***

Thank you for taking the time to contact the Seven Network to express your views on two 7News stories, broadcast on 29 October 2018 at 6.10 pm, and at 2 November 2018 at 6.04 pm.

You have raised concerns that in your view the broadcasts was inaccurate and biased.

The two stories in question reported on the guilty plea and subsequent sentencing of Mr B. The first story focused on [Mr B’s] guilty plea with it being accurately reported that he pled guilty to recklessly causing serious injury. This report accurately included the material details of the incident, including that a fight had broken out over a potato cake, and that the victim was not the subject or target of the fight.

The second story, which reported on Mr [B’s] sentencing, again accurately reported the material facts of the matter, stating that the victim was not involved in the fight prior to the incident. This story again accurately reported that he pled guilty to recklessly causing serious injury. This report also detailed the nature of the sentence handed down.

In both stories, significant time was devoted to Mr [B’s] history as a victim of an assault himself. This included a segment which detailed a statement from Mr [B] expressing his compassion for the victim and his family, as he has been a victim of an assault himself.

The viewpoints put in the two stories are supported by direct quotes from the sister of the victim, demonstrating that they were not misrepresented. In both stories, the material facts were presented accurately and the viewpoints put by the subjects interviewed were not misrepresented.

Given this accurate representation of the material facts and viewpoints put in the two stories, the reportage was impartial and reported on the news at hand, which was, in the first story, Mr [B’s] guilty plea, and in the second story, his sentencing. The stories delivered the material facts and viewpoints in an impartial and accurate manner.

For these reasons, we are satisfied these two broadcasts of 7News in question were accurate and impartial, in accordance with the Code.

[…]

***Extract of Licensee’s submission to the ACMA dated 5 February 2019***

[…]

1. Accuracy and fairness — clause 3.3.1

Clause 3.3.1 of the Code provides that in broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented.

Broadcast 1

Broadcast 1 reported on Mr B pleading guilty to recklessly causing serious injury in relation to an incident where he punched the victim [Mr A] and knocked him unconscious. Mr [A] was placed in a coma and expected to die before he made a remarkable recovery.

The report briefly describes the fight involving Mr [B] and the impact of the incident on Mr [A’s] health and wellbeing. The reporter then proffers information in relation to Mr [B’s] history of having been the victim of serious violence, leading to him suffering an acquired brain injury which motivates him to fight if he perceives danger. The report then recounts Mr [B’s] statement to his psychologist, where he indicates genuine compassion for his victim's plight, having suffered a violent attack himself.

In her correspondence, the complainant has claimed that Broadcast 1 makes an inaccurate reference to a 'single punch' or 'coward punch' attack. The complainant is in error in making this assertion, as the report clearly states that the single punch to Mr [A] occurred within the context of a broader melee.

The complainant has also claimed that it is inaccurate to assert that Mr [B] was 'drunk and high on cocaine', on the basis that a police report refers to CCTV footage showing Mr [B] buying only one stubbie of beer at one of the hotels he had visited on the night in question.

Information tendered in court however refers to [Mr B's] conduct in a significantly broader fashion than that which was simply caught on a single piece of CCTV footage. The Prosecutor stated during proceedings that Mr [B] had been drinking all night, while in Mr [B]' expression of remorse to the court he remarked, 'I gotta choose better mates to drink with'. Further, the Prosecutor told the court that in the police interview after the incident Mr [B] had admitted to taking cocaine during the night. In accordance with the Code, Seven reasonably relied on this information in making the relevant assertions.

The complainant has also taken issue with the description of Mr [A] as not being involved with the fight, on the basis that a police statement refers to a person witnessing Mr [A] attempting to punch Mr [B] who was already engaged in the fight, before Mr [A] approached Mr [B] a second time and he was punched to the ground unconscious.

CCTV footage was not tendered as evidence and was not able to be viewed by reporters, however the Prosecutor submitted on multiple occasions that the victim was not involved in the physical fight, and merely approached the group with his hands up in a conciliatory way. The police confirmed this view by stating that the CCTV footage merely shows Mr [A] approach Mr [B] with his hands up as if he was trying to calm things down, while the Magistrate said in sentencing that the assault on Mr [A] was ‘unprovoked’. In accordance with the Code, Seven reasonably relied on this information in asserting Mr [A] was not involved in the fight, meaning he was not an active participant.

The complainant has further raised issue that facts were omitted in relation to the conduct of Mr [A's] friends allegedly contributing to the start of the fight, prior to Mr [A] being knocked unconscious. The omission of any material of this nature did not however lead to a misrepresentation of the factual material that was disclosed in the report; that being that Mr [A] was knocked unconscious as a result of a fight in which he was not a direct participant.

Broadcast 2

Broadcast 2 reported on Mr [B’s] sentence of three months imprisonment with a twelve month community corrections order. The report briefly recounts the fight in question, before describing Mr [A’s] recovery from his coma. The report then refers to Mr [B] being remorseful, before describing his anti-social conduct in the court room, and his having arrived late due to late sleeping caused by medication. The report concludes with a recounting of Mr [A]' sister view that Mr [B’s] jail term is of limited consequence, compared with the ongoing negative health effects that will be suffered by her brother.

The issues in fact described in Broadcast 1, such as the supposed description of a single punch attack, Mr [B’s] alcohol and drug use on the night in question, and the non-involvement of the victim in the fight, equally apply in regards to Broadcast 2.

In regards to the assertion made in the report that Mr [B] attempted to intimidate the victim's sister in the court building, the journalist reasonably relied on information provided by Mr [A]' sister [name redacted]. The journalist engaged with [the victim’s sister] several times over several months during the course of the matter and had no reason to disbelieve her recollection of events in relation to Mr [B’s] conduct in the court building.

Supporting the reliance on [the victim’s sister’s] assertions, the journalist Paul Dowsley has advised that [Mr B] intentionally kicked his ankles while walking past him on two occasions in the court room, with the kick on the second occasion being so hard that Mr Dowsley instinctively stood up and told [Mr B] that if he did it again he would report it to the police. The police prosecutor was a witness to Mr Dowsley's remarks. In any event, Mr [B] and his family were given the opportunity to comment as part of the report, but they declined.

2. Impartiality — clause 3.4.1

Clause 3.4.1 of the Code provides that licensees must ‘present news fairly and impartially‘.

We also note that clause 3.4.2 specifies that a Licensee is not required ‘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.‘

Broadcast 1

The complainant has taken issue with Mr [B] being described as a 'thug‘ in the news reader's opening comments. The Code permits however that news programs may take a critical stance on an issue as part of a fair report on a matter of public interest.

In ACMA Investigation Report 2198, the ACMA determined that SBS was not in breach of the impartiality provisions of the SBS Codes of Practice 2006, when a presenter described the events depicted in a video as ‘disgraceful and shameful’. The ACMA determined that describing the events in such a way was not unwarranted given their repugnance. Similarly, it is objectively reasonable to describe as a ‘thug’ a person who commits a serious criminal offence which causes the near death of the victim, accordingly pleads guilty to recklessly causing serious injury, and incurs a custodial sentence of incarceration in prison.

Further, in ACMA Investigation Report 2573, the ACMA determined that Channel Seven was not in breach of the Commercial Television Industry Code of Practice 2010, on the basis that a potentially judgmental tone in a news report was countered by the weight of the contextualising material. To this end, Broadcast 1 provided extensive background on Mr [B’s] history in terms of his having been a victim of violent crime leading to him being more likely to act aggressively when threatened, as well as reporting on his empathy with his victim. The provision of this insight into Mr [B’s] history and personality provided for a balanced and fair description of his character.

In relation to the omission of information about Mr [A’s] friends conduct leading up to the fight, the Code does not require equal time to be allocated to different points of view, with the omission of any information only relevant if it impacts the impartiality of the report. As the report was not concerned in any way with the conduct of Mr [A]' friends, with the salient issue being that Mr [B] knocked Mr [A] unconscious although Mr [A] did not present a threat, any omissions in relation to the conduct of Mr [A’s] friends are not relevant to the question of impartiality.

As already stated, the report is careful to present a complete picture of Mr [B’s] history in relation to his status as being a victim of violent crime, the impact of that crime on his welfare, and his empathy with his victim. Further, Mr [B] and his family were given the opportunity to provide comment but declined.

Broadcast 2

The impartiality issues described in Broadcast 1, such as the omission of irrelevant material about the conduct of Mr [A’s] friends, Mr [B] and his family being given the opportunity to respond, and the reference to Mr [B’s] remorse, equally apply in regards to Broadcast 2.

In specific relation to the description of Mr [B] in the news presenter's opening as a ‘thug', Seven submits it is an objectively reasonable description for the reasons already given, and further on the basis that it is stated in Broadcast 2 that Mr [B] has faced the charge of recklessly causing serious injury on four occasions prior. Further, reference is made to Mr [B’s] expression of remorse, suitably contextualising the subjective description. The Code does not require equal time to be allotted to different points of view, so to the extent that Mr [B’s] history as a victim of crime can be deemed a point of view, there is no requirement to include it, particularly given the overall tone is fair and balanced.

3. Conclusion

In summary, the news report was factually accurate and presented fairly and impartially.

Seven reasonably relied on factual assertions made through the course of the legal proceedings, and Mr [B] was depicted in an impartial and balanced way. The omission of material in relation to the alleged conduct of the victim's friends leading up to the fight itself did not impact the accuracy or the impartiality of the material as reported.

***Extract of Licensee’s submission to the ACMA dated 20 March 2019***

You have inquired whether the Channel Seven journalist who attended court proceedings was aware of the specific details of a document entitled `Preliminary Brief of Alleged Facts'.

The journalist has advised that his notes from the proceeding do not reflect the high level of detail as described in the document in question. He has further advised that he is of the view that the document in question was not read out in court, and may have been edited into a Prosecution Summary which was then read out to the court.

Insofar as your query relates to the news reports describing the victim as not being ‘involved’ in the fight, Seven is of the view that this is an accurate description of events.

The document referred to represents merely a record of alleged facts, not proven ones. While there is reference in the document to an anonymous witness stating that the victim ‘threw a few punches‘, this is no more than an allegation. This allegation is not supported by the CCTV footage of the incident and was clearly rejected by the court given its ultimate finding that the attack on the victim was ‘unprovoked‘.

In accordance with the Code, Seven reported accurately on the events in such a way that aligned with the findings of the court, meaning the decision the court reached after applying he law to the proven facts, which included CCTV footage.

Attachment D

ACMA considerations for determining factual content:

* In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
* The ACMA will have regard to all contextual indications (including subject, language, tenor and tone and inferences that may be drawn) in making its assessment.
* The ACMA will first look to the natural and ordinary meaning of the language used.
* Factual material will usually be specific, unequivocal and capable of independent verification.
* The use of language such as ‘it seems to me’ or ‘we consider/think/believe’ will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common sense judgement is required and the form of words introducing the relevant content is not conclusive.
* Statements in the nature of predictions as to future events will rarely be characterised as factual material.
* Statements containing argumentative and exaggerated language or hyperbole will usually indicate a subjective opinion and will rarely be characterised as factual material.
* The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
* Where it is clear in the broadcast that an interviewee’s account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
* Where an interviewee’s stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.[[8]](#footnote-9)
* Sources with expertise may be relied on more heavily than those without, in determining whether material is factual, but this will depend on:
	+ whether the statements are merely corroborative of ‘lay’ accounts given by other interviewees
	+ the qualifications of the expert
	+ whether their statements are described as opinion
	+ whether their statements concern past or future events[[9]](#footnote-10)
	+ whether they are simply comments made on another person’s account of events or a separate assertion about matters within their expertise.
1. https://7plus.com.au/seven-news-melbourne, accessed on 22 January 2019. [↑](#footnote-ref-2)
2. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-3)
3. See for example, The Senate, Legal and Constitutional Affairs References Committee, *Need for a nationally-consistent approach to alcohol-fuelled violence Interim report*, May 2016, p. 4. [↑](#footnote-ref-4)
4. See the ‘Stop the Coward’s Punch Campaign’ available at http://cowardspunchcampaign.com/about-cpc/. [↑](#footnote-ref-5)
5. See for example section 4A of the *Crimes Act 1958* (Vic). [↑](#footnote-ref-6)
6. See for example *'Single punch' fractured brave tradie's skull as he tried to break up bar brawl and may not be able to return to work for several months* available at <https://www.msn.com/en-au/news/australia/single-punch-fractured-brave-tradies-skull-as-he-tried-to-break-up-bar-brawl-and-may-not-be-able-to-return-to-work-for-several-months/ar-BBPhl7x> accessed 5 April 2019; *Family of UTAS academic who died after alleged one-punch attack remembers him as 'forward thinker'* available <https://www.abc.net.au/news/2019-03-07/son-pays-tribute-to-father-killed-after-alleged-one-punch-attack/10879972> accessed 5 April 2019; *Patrick Cronin's killer Andrew Lee sentenced for one-punch manslaughter at Diamond Creek's Windy Mile hotel* available at <https://www.abc.net.au/news/2017-11-10/patrick-cronin-killer-andrew-lee-sentenced-for-manslaughter/9136674> accessed 5 April 2019. [↑](#footnote-ref-7)
7. See for example: *Father, 35, miraculously WAKES UP two days after his family said goodbye to him when his life* support *was switched off following a one-punch attack outside a fish and chip* shop, published 20 March 2018,<https://www.dailymail.co.uk/news/article-5521503/Father-wakes-coma-coward-punched-Melbourne.html> accessed on 2 May 2019; *One punch victim recovers* <https://twitter.com/7NewsSydney/status/975974264208699392>, published 19 March 2018 accessed on 2 May 2019; *Father makes miracle recovery after coward punch attack* <https://tenplay.com.au/news/national/march-2018/father-makes-miracle-recovery-after-coward-punch-attack>, published 20 March 2018, accessed 2 May 2019. [↑](#footnote-ref-8)
8. See Investigation 2712 (*Today Tonight* broadcast on Seven on 25 July 2011); Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority [2014] *FCA* 667. [↑](#footnote-ref-9)
9. See Investigation 3066 (*Four Corners* broadcast on ABC on 23 July 2012) and Investigation 2961 (*The Alan Jones Breakfast Show* broadcast on 2GB on 19 October 2012). [↑](#footnote-ref-10)