Investigation report no. BI-461

| Summary |  |
| --- | --- |
| **Licensee** | Channel Seven Sydney Pty Limited |
| **Station** | Seven |
| **Type of service** | Commercial—television |
| **Name of program** | *Sunrise* |
| **Date of broadcast** | 16 November 2018 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised 2018) |
| **Date finalised** | 29 February 2019 |
| **Decision** | No breach of clause 2.6.2 [material not suitable for broadcast]No breach of clause 3.3.1 [accuracy and fairness] |

Background

In February 2019, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into a segmenton *Sunrise* (the program).

The program was broadcast on Seven by Channel Seven Sydney Pty Limited (the licensee) on 16 November 2018, from 5.30 am to 9.00 am. It included a segment which discussed proposed cuts to immigration levels.

The ACMA received a complaint alleging that the images accompanying the discussion vilified the Muslim community by ‘connecting them with negative stereotypes’ and misrepresented immigration to Australia by suggesting that ‘all new immigrants were mainly of Islamic descent’.

The ACMA has investigated the licensee’s compliance with clauses 2.6.2 [material suitable for broadcast] and 3.3.1 [accuracy and fairness] of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the Code). While the complainant referred to clause 3.3.3 [corrections] of the Code, the ACMA has not considered this clause as part of this investigation.

The program

*Sunrise* is a breakfast television program, containing a mix of news, current affairs, entertainment and lifestyle programming. For the purposes of the Code, it is considered to be a current affairs program, which is defined as a program ‘focusing on social, economic or political issues of current relevance to the community’.

On 16 November 2018, at approximately 7.18 am, the program included a discussion between hosts Samantha Armytage and David Koch, and their guests, Jeff Kennett and Mark Latham. The discussion arose out of an announcement by the federal government that it intended to reduce the immigration quota for the first time in six years and place a greater focus on skilled migrants. The subject was discussed in the context of topics such as unemployment, infrastructure, economic efficiency, housing affordability and welfare payments.

As Mr Koch introduced the segment, text was visible on screen in the form of a newspaper heading that read ‘Migrant cuts are coming’. Until approximately one minute and five seconds, the segment consisted of the audio of a discussion between Mr Koch and Mr Latham while the visuals consisted of file footage depicting people in public locations within Australia. For the remainder of the discussion, the vision was solely of the hosts and guests. The discussion was approximately three minutes and 50 seconds long.

A transcript of the segment 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.

Issue 1: Material not suitable for broadcast

Relevant Code provision

**2.6 Material not suitable for broadcast**

[…]

2.6.2 A Licensee must not broadcast any Program, Program Promotion, Community Service Announcement or Station ID which is likely, in all the circumstances, to provoke or perpetuate in, or by a reasonable person, intense dislike, serious contempt or severe ridicule against a person or group of people because of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference.

Finding

The licensee did not breach clause 2.6.2 of the Code.

Reasons

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

* Did the program identify a person or group of persons on a relevant basis?
* Was the program likely to provoke or perpetuate in a reasonable person intense dislike, serious contempt or severe ridicule against the relevant person or group on that basis?

The complaint to the licensee stated:

While the discussion was taking place Channel 7, was showing video of a variety of Islamic communities probably shot around the Lakemba and Bankstown etc.  There was not a single shot of any other community such as the Greeks, Italians, Vietnamese and Chinese etc.  Almost like they're trying to say that Australia only has 2 cultures, Australians and Muslims.

[…]

Unfortunately, this seems to a pattern […] in vilifying the Muslim community & connecting them with negative stereotypes.

The licensee responded:

At the beginning of the segment, by way of depicting the breadth of immigration in the Australian community, footage was shown of people from a variety of backgrounds walking on the street.

The licensee submitted to the ACMA:

[I]t is not correct that the footage depicted Muslims only; rather it depicted a cross section of contemporary multi-cultural Australia, including Asian persons and persons of Caucasian appearance. Secondly, the approach taken by the majority of speakers in the segment was that immigration was overwhelmingly positive for Australian society, and on this basis it cannot be reasonably asserted that the cross section of persons depicted in the footage were presented a negative light. Further, none of the negative commentary in relation to immigration made reference to the age, colour, gender, national or ethnic origin, disability, race, religion, or sexual preference of any likely future immigrants, or the existing immigrant population.

**Did the program identify a person or group of persons on a relevant basis?**

When examining compliance with clause 2.6.2, it is necessary to consider whether a person or group is identified and, if so, the grounds on which they were identified.

The ACMA notes that an individual’s race or religion cannot necessarily be accurately defined based on appearance alone. However, while there was a mixture of personal attributes depicted in the footage, overall, it did appear that the sequence contained depictions of two broad categories of people, namely those who appeared to be of Asian descent and those who appeared to be of the Islamic faith (by virtue of the head coverings and religious practices that appear in the footage).

The subject of the discussion was proposed cuts to Australia’s immigration quota. The accompanying images appear to have been selected to complement the discussion as an illustrative reference to sections of Australia’s immigrant population and the mixture of races and religions within that population.

The ACMA is satisfied that the depictions were references to people of Asian descent on the relevant basis of race, and people of the Islamic faith on the relevant basis of religion.

**Was the program likely to provoke or perpetuate in a reasonable person intense dislike, serious contempt or severe ridicule against the relevant person or group on that basis?**

*'Provoke or perpetuate*'

To assess whether the program was likely to 'provoke or perpetuate', the ACMA asks if the segment was likely to have urged a reasonable person to share feelings of dislike, contempt or ridicule on the basis of race or religion. Material that merely conveys a person's own negative feelings towards a person or group will not be enough to incite or provoke those same feelings in an ordinary reasonable viewer. There must be something more than an expression of opinion; rather, there must be something that is positively stimulatory of that reaction in others.

This incitement or provocation can be achieved through comments made about a person or group; there is no requirement that those comments include a specific call to action. There is no need for proof of intention to incite or that any one was in fact incited.

‘*Intense dislike, serious contempt or severe ridicule*'

The inclusion of the adjectives 'intense', 'serious' and 'severe' contemplates the provocation of a very strong reaction in the viewer. It is not sufficient that the broadcast induces a mild or even strong response.

In this case, the ACMA must consider whether a reasonable person would have understood that they were being urged, stimulated or encouraged by the content to share or maintain feelings of intense dislike, serious contempt or severe ridicule against Asian or Caucasian people on the grounds of race or against Muslim people on the grounds of religion.

*Discussion*

The discussion provided a forum for Mr Kennett and Mr Latham to express their opinions on the proposed new immigration policy. With that, issues that are often peripheral to debates about the potential impact of immigration were also raised. For example, the potential impact on unemployment, infrastructure, economic efficiency, housing affordability and welfare payments.

Mr Kennett expressed a view that immigration is ‘terribly important’ for Australia’s growth but that it needs to be better managed by looking at the internal systems currently in place for such things as welfare. Conversely, Mr Latham took a more positive view of the immigration cuts and stated that they should be taken further and supported his argument by referring to pressures on infrastructure, the economy, housing affordability and general liveability.

The accompanying footage was stock footage and did not depict a particular event or scenario. The ACMA is of the view that an ordinary reasonable viewer would have understood that the footage contained depictions of people with racial and religious characteristics meant to denote migrants and that this was intended to serve merely as a visual complement to the discussion about immigration quotas. While a visual accompaniment may, in certain circumstances, be of sufficient strength to add meaning to a central theme, in this case the ACMA considers that the ordinary reasonable view would have been unlikely to have attributed any such meaning to the stock footage.

The ACMA acknowledges that some viewers may have been offended that the majority of people in the footage appeared to be of Asian descent or of the Islamic faith, to the exclusion of other people who immigrate to Australia. However, in order to breach this provision, it is necessary for the images to provoke or perpetuate feelings of ‘intense dislike, serious contempt or severe ridicule’.

The ACMA notes that the discussion did not contain commentary about the specific images depicted in the footage and the ACMA accepts the licensee’s submission that:

[N]one of the negative commentary in relation to immigration made reference to the age, colour, gender, national or ethnic origin, disability, race, religion, or sexual preference of any likely future immigrants, or the existing immigrant population.

Although some viewers might have associated negative commentary about immigration specifically with and only in connection to the communities depicted in the stock footage, the discussion did not contain explicit language from any participant urging the audience to share feelings of dislike or contempt towards any specific group of people.

The ACMA considers that the material would not have provoked or perpetuated, in or by a reasonable person, intense dislike or serious contempt against the people depicted in the stock footage.

Accordingly, the licensee did not breach clause 2.6.2 of the Code.

Issue 2: Accuracy and fairness

Relevant Code provision

**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 representations only.

3.3.3 Licensees must make reasonable efforts to correct or clarify significant and material errors of fact that are readily apparent or have been demonstrated to the Licensee’s reasonable satisfaction in a timely manner.

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 report?
* If so, was the factual material accurate?
* Were viewpoints presented in a way that would materially (that is, in a significant respect) misrepresent them?

In relation to the footage accompanying the first part of the discussion, the complainant stated:

This was a misrepresentation of the various communities in Sydney and indeed Australia at large. It projected the impression that all new immigrants were mainly of Islamic descent.

The ACMA notes that there is no suggestion by the complainant that the verbal discussion contained inaccuracies or that the viewpoints of those party to the discussion were misrepresented.

The licensee submitted:

It is clear to the audience that the footage in question is of a generic nature only, merely depicting ordinary people in multi-cultural Australia going about their business on the street. The footage is not used to depict a specific event or specific scenario where there is a very particular relationship between the footage and the accompanying narration. Rather the footage is simply used as a backdrop to a live discussion about the relative merits of maintaining the current levels of immigration into Australia. Audiences of current affairs programs commonly understand overlay footage used in this way to be of an entirely generic nature.

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

The segment contained a discussion between former Victorian Premier Jeff Kennett and One Nation candidate Mark Latham, about government policy concerning immigration quotas. As described above, the first minute of the discussion was accompanied by footage of people, primarily who appeared to be of Asian descent or Islamic faith, in public spaces including shopping precincts and a mosque.

In the context of the segment in its entirety, the ordinary reasonable viewer would have understood that:

* the government had proposed a new policy regarding immigration quotas
* Mr Latham and Mr Kennett held particular views about immigration
* the accompanying footage was a montage of stock images intended to complement the discussion by visually representing immigration using depictions of people of Asian descent and of Islamic faith.

**Was the material factual in character?**

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

There were no explicit verbal assertions made during the discussion about the content of the visual montage. However, given the discussion centred around immigration quotas, there was an implicit assertion that the depictions illustrated a section of Australia’s immigrant population.

To the extent that the footage depicted general categories of immigrants, mainly people of Asian descent and people of Islamic faith, those depictions were specific, and capable of independent verification and therefore considered to be factual in character.

**If so, did it convey a material fact or facts in the context of the relevant report?**

The complainant has stated that the footage used was a ‘misrepresentation of the various communities in Sydney’ as it did not portray ‘Chinese, Greek or Italian communities’ and it ‘projected an impression that all new immigrants were mainly of Islamic descent’.

The footage consisted of a montage of stock images used to illustrate a discussion about immigration quotas. The discussion did not contain any references to the images. Neither did the discussion contain any references to groups of people from any particular national, ethnic origin or race, or religion.

The ACMA therefore considers that the footage did not convey a material fact in the context of the report, and as such, it is not necessary to consider whether the factual material was accurate.

Accordingly, the licensee did not breach clause 3.3.1 of the Code.

Attachment A

Transcript of segment on *Sunrise* which discussed proposed cuts to immigration levels, broadcast on Seven on 16 November 2018

[montage of stock images of people in public places including shopping precincts and inside mosques]

DAVID KOCH: …migration quota for the first time in six years. NewsCorp says there's also likely to be greater focus on accepting skilled migrants who can provide a positive contribution to the economy. Mark, we had massive jobs growth announced yesterday, unemployment falling again. Current cap of immigration is 190,000. Should it be decreased, and if so, to what level?

MARK LATHAM: Well it should come down to the 20th century average that worked so well for Australia which is seventy thousand, so bring it down by two thirds because quite frankly Sydney, Melbourne, major cities are becoming dysfunctional under these population pressures. The whole promise of better planning and infrastructure is a myth. Sydney's growing by 100,000 people a year and it's losing its reputation as a liveable, functional city so we can't go on like this and Kochie, in terms of economic efficiency, there are major gains to be had from a city becoming functional. Imagine the cost to a courier company, small businesses, trying to move around Sydney.

[End of stock images. Remainder of visual footage is of the hosts and guests]

DAVID KOCH: Yeah, that’s why we have got an infrastructure boom at the moment which is being spent and the Economist magazine just two weeks ago lauded immigration policy saying it's reducing the average age of Australians, which is a problem in first world, around the world and adding one per cent to economic growth every year till 2050.

MARK LATHAM: Well there's a huge cost in economic efficiency in our cities and unfortunately, we're going to bear that cost well into the future. What immigration is doing it's adding to housing affordability pressures; it's flooded the labour market (so the suppression of wages growth); it's very, very small comfort that our average age is coming down who cares about that if you can't get a wages increase?

DAVID KOCH: Yeah, yeah, but property prices are coming down. Jobs growth is there.

SAMANTHA ARMYTAGE: Jeff, what do you… Gladys Berejiklian has said that she's going to explore this in New South Wales as well, which is under pressure. What do you think?

JEFF KENNETT: I worry about this sort of discussion that Mark's just put forward. I understand the challenges in the cities, but for goodness sake. This issue of immigration - it's about how you handle growth. You're quite right David, if we reduce immigration substantially, we are firstly not going to have the people to meet the demand for jobs that currently exist, we're importing more people from overseas the whole time to do a lot of the work that needs to be done. What we've got to do is actually recognise that immigration has been very important to Australia since the GFC. It will be terribly important to our growth. We are only 25 million people for goodness sake. We have this massive land mass. So rather than just argue the point for political outcomes, argue it more sensibly as to how we can better manage immigration and how we can grow production here in this country so that we can grow as a nation. I don't like, I want to manage growth, I don't want the simplistic argument that we've got to cut immigration so that we win a vote. Surely the intellectual discussions has got to be higher than that.

MARK LATHAM: Well Jeff, you've also got to take a practical account. Walk down main street in any part of Australia, you’ll meet business people that say, ‘I can't get a young person to fill this traineeship. I can't get a young person to fill this apprenticeship’ and yet we know youth unemployment in some of these areas is very high. We've got to change the welfare and the training system and put our young people to work instead of the lazy, indulgent policy of these temporary work visas…

JEFF KENNETT: Do that Mark! Do all of that Mark. Do all of that.

MARK LATHAM: … imported workers from overseas. That’s not good policy. Let's do something for our young people, rather than relying on overseas immigration to fill these jobs you're talking about.

JEFF KENNETT: Do that! Change the system internally here and have a look at the impact of overly being generous with some of our welfare payments. Look at the system, don't just argue the whole time for popularity reasons that we've got to stop or reduce immigration Mark, that’s not going to work.

DAVID KOCH: Absolutely right. All right Gents, thank you for that. You have a good weekend.

Attachment B

Complaint

***Extracts of the complaint to the licensee dated 20 November 2018:***

I am writing this letter to express my concern regarding a segment on the Channel 7 Sunrise program on Friday November 16 2018. During this segment there was a discussion about Scott Morrison's proposal to cut immigration numbers. The discussion was between the Sunrise hosts Samantha Armitage & David Koch with former Victorian premier Jeff Kennett and former labour leader Mark Latham.

While the discussion was taking place Channel 7, was showing video of a variety of Islamic communities probably shot around the Lakemba and Bankstown etc. There was not a single shot of any other community such as the Greeks, Italians, Vietnamese and Chinese etc. Almost like they're trying to say that Australia only has 2 cultures, Australians and Muslims. If they had bothered taking their cameras to places like Cabramatta, Hurstville, Leichhardt or Marrickville etc, they would have seen that Sydney has many immigrants, not just Muslims. Unfortunately, this seems to a pattern with regards to Channel 7 in vilifying the Muslim community & connecting them with negative stereotypes & I have previously sent a written complaint with regards to some specific coverage in 2014 following the Martin Place siege.

Clause 2.6.2 of the Commercial Television Industry Code of Practice states - A Licensee must not broadcast any Program, Program Promotion, Community Service Announcement or Station ID which is likely, in all the circumstances, to provoke or perpetuate in, or by a reasonable person, intense dislike, serious contempt or severe ridicule against a person or group of people because of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference. This falls directly in clause 2.6.3(b) as it occurred during a discussion broadcast.

This also contravenes the Commercial Television Industry Code of Practice clause 3.3.1 which states ‘*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*’. Clearly a misrepresentation, as Australia’s immigrants do not consist of Muslims alone, as indicated in the previous paragraphs.

In conclusion, I therefore respectfully request that Channel 7 publicly retract these comments with an apology in the same timeslot in which they were made. This should be made as per the Commercial Television Industry Code of Practice clauses 3.3.3, 3.3.4 and 3.3.5. That is, during the same time slot mainly being at around 7.15 on a Friday morning during the Sunrise show.

***Complaint to the ACMA dated 18 January 2019***

[…]

As indicated in my original letter to channel 7, my complaint is about the fact that whilst Mark Latham and Jeff Kennett were discussing Scott Morrison’s proposed immigration policy, channel 7 showed a variety of Islamic communities probably filmed in certain parts of Sydney. No other community such as the Chinese, Greek, or Italian communities etc. was shown during the discussion. This was a misrepresentation of the various communities in Sydney and indeed Australia at large. It projected the impression that all new immigrants were mainly of Islamic descent. This is clearly not the case. I therefore asked channel 7 to correct that by issuing an on-air apology in the show’s regular discussion timeslot.

Channel 7 responded by stating that the views expressed during the discussion were purely those of Mark Latham and Jeff Kennett. […]

My original letter did not mention the actual discussion between Mark Latham and Jeff Kennett. My objection was purely about the images they broadcast during the discussion, as indicated in my original letter.

Channel 7 also went on to say that during the discussion they showed the breadth of immigration in Australian community by showing footage of a variety of backgrounds walking on the streets, […]. This is the main point of my objection. Upon examining the actual footage put to air that morning, it can be seen that no other background was depicted, only the Islamic one.

[…]

Attachment C

Licensee’s response and submissions

***Extracts of the licensee response to the complainant dated 10 December 2018:***

[…]

You have raised concerns that in your view the broadcast was racist and inaccurate.

[…]

We can assure you that the Seven Network takes its broadcasting responsibilities under the Code very seriously and is mindful that the Code prohibits the broadcasting of a program that ‘is likely, in all the circumstances, to provoke or perpetuate ... intense dislike, serious contempt or severe ridicule against a person or group of persons because of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference’.

The segment in question was a brief discussion of the news headlines of the day, featuring Sunrise hosts David Koch and Samantha Armitage, along with Jeff Kennett and Mark Latham. One of the stories discussed was a report that the Commonwealth Government was considering reducing the amount of permanent migration to Australia. During the discussion, viewpoints were put forth by Mr Koch, Mr Kennett and Mr Latham. Mr Koch and Mr Kennett spoke extensively to the far ranging economic benefits of maintaining high levels of immigration, with Mr Kennett drawing specific attention to the way in which some elements of the community attempt to score cheap political points by denigrating immigration with simplistic arguments. Mr Latham was broadly supportive of immigration but suggested a distinct reduction in intake until there was a corresponding increasing in built infrastructure to support increased population.

At the beginning of the segment, by way of depicting the breadth of immigration in the Australian community, footage was shown of people from a variety of backgrounds walking on the street.

Given the segment was to a very large extent in support of keeping immigration at its current level, and in any event no particularly cultural group was singled out, we are not of the view that intense dislike, serious contempt, or severe ridicule was provoked against any person or persons on the basis of national or ethnic origin or religion.

Clause 3.3.1 of the Code states that a Current Affairs Program "must present factual material accurately and ensure viewpoints included in the Program are not misrepresented."

The segment accurately reported that the Commonwealth Government was considering reducing the amount of permanent migration to Australia. In regards to the introductory footage of persons walking on the street, this footage was used in a generic way to broadly depict Australian immigrants as part of the broader segment topic on immigration. There was no suggestion whatsoever in the commentary that immigrants are predominantly Muslim and in any event the footage showed persons from a variety of national and religious backgrounds, including Asians and Muslims. Further, the viewpoints of all the speakers put during the discussion were live, without any editing, and therefore were not misrepresented. We are satisfied that the segment was in full compliance with clause 3.3.1 of the Code.

[…]

***Extracts of the licensee submission to the ACMA dated 6 March 2019:***

[…]

The Broadcast featured participants commenting on recent newspaper reportage on the federal government's proposed reduction of Australia's immigration intake, and increased focus on accepting skilled migrants.

By way of visually representing immigrants, the first portion of the segment used generic overlay footage of multi-cultural Australia. The footage depicted persons from largely non-Caucasian backgrounds walking down streets and doing their shopping and various other activities.

Political commentator and former Labor leader Mark Latham expressed his view that immigration should be reduced as the increased population in cities was not served by sufficient infrastructure. Host David Koch spoke in favour of maintaining current immigration levels on the basis that it reduced the overall age of the population, and also added to annual economic growth. Former Premier of Victoria Jeff Kennett also spoke very strongly in favour of maintaining current immigration levels, on the basis that it is essential to Australia's growth. Mr Kennett also strongly expressed his view that focus should be placed on effectively managing growth, rather than scoring political points by peddling simplistic anti-immigration arguments.

1. **Material not suitable for broadcast - clause 2.6.2**

[…]

The complainant has taken issue with the use of file footage on the basis that in [the complainant’s] view it creates the impression that all immigrants into Australia are of the Islamic faith, and accordingly the complainant considers that this casts a negative aspersion across the Australian Muslim community.

[…]

The complainant's argument fails in several ways. First, it is not correct to assert that the footage depicted Muslims only; rather it depicted a cross section of contemporary multi-cultural Australia, including Asian persons and persons of Caucasian appearance. Secondly, the approach taken by the majority of speakers in the segment was that immigration was overwhelmingly positive for Australian society, and on this basis it can not be reasonably asserted that the cross section of persons depicted in the footage were presented in a negative light. Further, none of the negative commentary in relation to immigration made any reference to the age, colour, gender, national or ethnic origin, disability, race, religion, or sexual preference of any likely future immigrants, or the existing immigrant population.

For all these reasons, the use of the overlay footage could not have had the likely effect on a reasonable person of provoking intense dislike, serious contempt or severe ridicule against a person or person on the basis of religion or any other relevant basis.

1. **Accuracy and fairness - clause 3.3.1**

[…] In Seven's view it is clear that no relevant factual assertion was made in relation to religious or cultural background of immigrants.

The complainant has referred specifically to overlay footage used in the first minute of a segment that runs four minutes in total. The footage is file footage used in a generic way to depict multi-cultural Australia, which is a reflection of current and historical immigration.

[…]

It is clear to the audience that the footage in question is of a generic nature only, merely depicting ordinary people in multi-cultural Australia going about their business on the street. The footage is not used to depict a specific event or specific scenario where there is a very particular relationship between the footage and the accompanying narration. Rather, the footage is simply used as a backdrop to a live discussion about the relative merits of maintaining the current levels of immigration into Australia. Audiences of current affairs programs commonly understand overlay footage used in this way to be of an entirely generic nature.

Further to this, there is no reasonable basis upon which the audience would form the view that the footage was making any factual assertions in relation to the cultural backgrounds of immigrants. The relative religious faiths or cultural backgrounds for immigrants was not part of the discussion and was not referred to whatsoever, and therefore the ordinary, reasonable viewer would not have viewed the footage as purporting to reflect statistics on the most common cultural or religious backgrounds of immigrants.

In Seven's view, for these reasons, the background footage contained no relevant factual representation, and therefore clause 3.3.1 of the Code does not apply.

1. **Corrections - clause 3.3.3**

[…]

In the complainant's original correspondence to Seven, a retraction of 'comments', and an apology was requested. Clearly no comments were made in relation to the religious or ethnic origin of immigrants to which a correction could be applied.

In regards to the use of generic footage in the opening part of the segment, for the reasons already stated, the use of the footage was not a factual representation and therefore no correction or clarification was required. That said, Seven did respond in a comprehensive fashion within the allowable 30 Working Days in full compliance with the Code.

1. **Conclusion**

The segment was a broad discussion on a matter of public interest and in the largest part was very supportive of maintaining current immigration levels. In any event, no reference was made to the religion, or national or ethnic origin of any person or persons. For this reason, the use of generic overlay footage of multi-cultural Australia could not be reasonably viewed as provoking dislike, contempt or ridicule on the basis of religion or national or ethnic origin.

The footage in question was recognised by viewers as a generic depiction of multi-cultural Australia and did not contain relevant factual representations. Accordingly, no correction was required in regards to the use of the 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.[[2]](#footnote-2)
* 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[[3]](#footnote-3)
	+ whether they are simply comments made on another person’s account of events or a separate assertion about matters within their expertise.
1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)
2. 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-2)
3. 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-3)