Investigation report no. BI-484

| Summary |  |
| --- | --- |
| **Licensee** | Queensland Television Ltd.http://crm.internal.govt/_imgs/imagestrips/transparent_spacer.gif |
| **Station** | Nine |
| **Type of service** | Commercial—Television |
| **Name of program** | *A Current Affair* |
| **Dates of broadcasts** | 19 and 27 February 2019 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised in 2018) |
| **Date finalised**  | 1 October 2019 |
| **Finding** | Breach of clause 3.3.1 [present factual material accurately] Breach of clause 3.5.1 [privacy] No breach of clause 7.3.1 [responding to Code complaints]  |

Background

In April 2019, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into two segments of *A Current Affair* (the program).

A segment entitled ‘Uber Thief’ was broadcast on Nine by Queensland Television Ltd (the licensee) on 19 February 2019 (the First Report) and a second segment entitled ‘Uber Thief Twist’ was broadcast on 27 February 2019 (the Second Report) (together the Reports).

The ACMA received a complaint alleging that the Reports were inaccurate and breached the privacy of the person who was the subject of the Reports.

The ACMA has investigated the licensee’s compliance against clause 3.3.1 [present material facts accurately], clause 3.5.1 [privacy] and clause 7.3.1 [responding to Code complaints] of the Commercial Television Industry Code of Practice 2015 (revised in 2018) (the Code).[[1]](#footnote-2) Relevant Code extracts are at **Attachment A**.

The program

*A Current Affair* is a half hour current affairs program, broadcast weeknights at 7.00 pm on the Nine Network. According to the 9Now website:

*A Current Affair* covers the realms of politics, crime, human rights, science, technology, celebrities and entertainment - all investigated by a dedicated team.[[2]](#footnote-3)

The First Report was a segment about a woman who had left her wallet in a ride-sharing service car and who made an allegation that a bank card from that wallet had subsequently been used by the driver of that car. The Second Report was a segment about the driver’s subsequent complaint to the licensee about the First Report and included further information about the driver’s background, identity and professional history. A transcript of each of the Reports is at **Attachment A**.

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material, 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.[[3]](#footnote-4)

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

Issue 1: Accuracy

Finding

The ACMA’s finding is that the licensee breached 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?

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

1. **The First Report: was information about the identity of the driver’s customer accurate?**

The complainant stated:

They twisted the story and brought a client which has a different name from [Mr A’s] customer and both (them and [the ride-sharing company]) failed to disclose that to the public.

The licensee submitted:

10. The Reports indicate that [Ms R] was one of the passengers in [Mr A’s] vehicle on the relevant evening and her belongings were left inside [Mr A’s] vehicle. The First Report includes the statement, ‘[Ms R] had been at a friend's house party when **she and her girlfriends caught [a ride-share car] home**’ (our emphasis) and [Ms R] herself states in the First Report ‘**we put it through** twice as lost or stolen and he marked it both times as item not found’ (our emphasis).

11. While [Ms R] may not have booked [Mr A’s] vehicle through her personal Uber company account, the Reports accurately convey that she was a passenger in [Mr A’s] vehicle on the relevant occasion.

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

Both the First Report and the Second Report identified Ms R as the person who had misplaced her wallet in a ride-sharing company car.

The ACMA considers that as a result of the repeated use of the phrase ‘we’ in the Reports, the ordinary reasonable viewer would have understood from the Reports that Ms R was one of a number of passengers in the ride-sharing car on the night in question.

*Was the material factual in character?*

The statement about the passenger’s name 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 Reports?*

The First Report focussed on Ms R and her story about the loss of her wallet and bank card, the subsequent use of that card at a convenience store and the names and identity documents used by the driver of the ride-sharing company car she had left her wallet in. The Second Report focused on revisiting the alleged theft, the driver’s subsequent complaint to the licensee about the First Report and further information about the driver’s background, identity and professional history.

Under clause 3.3.2 of the Code, the accuracy requirements in clause 3.3.1 of the Code apply only to material facts. The focus of the reports was on Ms R and the loss of her wallet. In this context, whether Ms R was the person who had booked the ride-sharing company car in which her wallet was lost, was not a material fact.

Accordingly, the ACMA’s view is that in broadcasting statements in the Reports about the identity of the customer being Ms R, the licensee was not in breach of clause 3.3.1 of the Code.

* 1. **The First Report: was information about the driver’s use of ‘fake’ identity documentation accurate?**

The complainant stated:

They published a fake report about [the driver’s] fake identity though [he] informed them that [he] changed [his] name legally...

The licensee submitted:

14. The First Report suggested that Mr [A] was not using his ‘real’ name and had inauthentic identity documentation, specifically a passport and an lndustry Authority card […]

15. With respect to the passport, Nine notes that it contains two different printed names... Furthermore, the signature on the passport also shows the name ‘[Mr J]’. ln light of this naming inconsistency, the document therefore appears to be inauthentic.

16. With respect to the lndustry Authority card, Nine also notes that despite it having an expiry date of 18 September 2020, the [State] Government's Driver Authorisation Register indicates that the driver authorisation number is not current.

[…]

17. Ms R states in the First Report that ‘It’s pretty clear that he's not using his real name and when I spoke to the police about it as well, they told me that's not his legal name, he's changed his name.’

[…]

Nine maintains that the representations contained in the First Report regarding Mr [A’s] identity and name were accurate based on the material known by and ascertainable by Nine at the time of broadcast.

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

The First Report referred to the driver’s passport and industry authority card as ‘fake’:

… a closer look at the passport shows it’s a fake.

His industry authority is also a fake.

The First Report included a reference by the reporter to the driver’s ‘supposed name’. It included the statement from Ms R that:

It’s pretty clear that he’s not using his real name and when I spoke to the police about it as well, they told me that’s not his legal name.

The First Report also included a statement from the program host that the driver had used a ‘fake identity to sign-up’ as a driver with the ride-sharing company and an interview with ‘*A Current Affair* Retail Expert’, who stated:

It does clearly demonstrate that someone has created a false profile in order to drive [as a driver with the ride-sharing company].

The ACMA considers that as a result of these elements the ordinary reasonable viewer would have understood that the driver:

* was in possession of a ‘fake’ passport and a ‘fake’ industry authority card
* had used a name that was not his real name
* had used ‘fake’ identity documentation to use a ‘fake identity’ as a driver with the ride-sharing company.

*Was the material factual in character?*

The licensee submitted that its approach was to ‘speculate about the authenticity’ of the documentation:

… and on the basis of that material, Nine formed the view that … the complainant was using at least one fake identity. Nine submits that the description of the documentation as 'fake' was in this context an opinion.

However, the statements about the driver’s use of ‘fake’ identify documents and a ‘fake identity’ were not speculative. They were expressed with certainty and 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 segment?*

The licensee submitted:

Nine contends that it is not material in the context of the First Report as to whether that fake identification was used to create the [driver’s ride-sharing app] profile. The material fact is that this person (who did in fact use a credit card stolen from a customer) went by multiple identities and used identification documents (or at least one identification document) that was fake.

The First Report focussed on the identity of the driver and the allegation that he had used a ‘fake identity’ on the ride-sharing company app. It included several specific statements about the implications of the driver potentially having used ‘fake’ documentation to create his profile with the ride-sharing company, for example:

VOICEOVER: … A Current Affair retail expert [name] says it raises the question what identification [ride-sharing company] used to register [Mr A].

[RETAIL EXPERT]: The demand for the product means that companies like [ride-sharing company] are really encouraging people to join the service as drivers and potentially their checks and balances aren’t in place.

In this context, statements about the driver’s name and the authenticity of his identification documentation and whether he had used ‘fake’ identification documentation to create a ‘false’ ride-sharing app profile were material.

*Was the material accurate?*

The licensee submitted that in preparing the First Report, information regarding Mr [A’s] identity and name were accurate based on the material known by and ascertainable by Nine at the time of broadcast. The licensee submitted that it relied on:

* a copy of the driver’s passport that was internally inconsistent because it included two different names ([Mr A] appeared in the NAME field, and [Mr J] in the embedded coding at the bottom)
* the fact that an industry authority card in the driver’s name was listed on the [State] Driver Authorisation Public Register as ‘not current’
* a statement from Ms R that the police had told her ‘that’s not his real name’
* a statement from [State] Police that they were ‘not quite sure it’s his real name’.

The licensee further submitted:

* The Department of Foreign Affairs and Trade confirmed to the licensee that the name recorded next to the passport holder's picture and the name embedded at the bottom of the identification page usually match, but in some cases, the embedded name can be truncated due to character limits. The Department also advised that if the two names were completely different, this could indicate fraud or a production error.
* Accordingly, the passport was ‘illegitimate’, either due to fraudulent activity or a production error. In either case, the passport contained ‘false’ and therefore “fake” information’.

The First Report referred to the driver’s passport, industry authority card and use of different names. The ACMA considered the information submitted by the licensee about these elements of the program:

* The inconsistent information in the passport may have been due to a production error. This, of itself, would not indicate that a person had created a fake identity.
* The fact that an ‘industry authority card’ is not current does not necessarily indicate the card is ‘inauthentic’. The [State] Government Department of Transport and Main Roads’ publishes an ‘Information Bulletin’ about the [State] Driver Authorisation Public Register (the Register).[[4]](#footnote-5) The bulletin published in April 2018 was reasonably accessible by the licensee at the time of preparing the First Report. It provides a number of reasons why an industry authority card on the Register might be listed as ‘not current’. For example, if a holder has their driver licence suspended, cancelled, or disqualified, then their driver authorisation is also automatically suspended, cancelled or disqualified before it expires.
* The statement from [State] Police that they were ‘not quite sure’ the driver was using his ‘real name’ was not definitive.

The licensee further submitted that it had obtained information about a driver’s licence belonging to the driver. This document was not referred to in the First Report, however the ACMA has considered the licensee’s submission that indicated:

* The complainant’s passport included the complainant’s date of birth as 26 [and month] 1977 while a copy of the driver's licence had 27 [and month] 1973. It is logically impossible to have been born on two separate dates and therefore it was impossible for both the passport and the driver’s licence to be ‘authentic’. It was therefore accurate to state that one or both of the documents was a 'fake'.

The ACMA acknowledges that it is not possible for a person to have two different dates of birth and accepts there may have been information that indicated that either the passport or the driver’s licence was ‘fake’. However, the ACMA does not accept that, if this information was available at the time of the First Report, it demonstrated that both documents were ‘fake’.

None of the facts submitted by the licensee, as being known to it at the time of preparing the First Report, indicated that both the passport and the industry authority card were fake or that the driver had used a ‘fake identity’ in applying to become a driver with the ride-sharing company.

According to the ride sharing company’s website, as noted in the licensee’s submissions, the ride sharing company requires prospective drivers to provide it with certain identification documents including a valid driver's licence, a passport or birth certificate and full background check. As was stated in the First Report, the ride-sharing company had not responded to the licensee’s questions about the documentation the driver had used to create his profile on their app at the time of the First Report. Therefore, the licensee could not have known what documentation the driver had used and whether he had used the documentation the licensee had copies of or whether the driver had used other documentation.

On this basis, it was open to the licensee to speculate about the authenticity of the driver’s documents in the First Report. However, it was not accurate to make definitive statements that both the passport and industry authority card were ‘fake’ or that the driver used a ‘fake’ identity’ to ‘sign-up’ to the ride-sharing app.

Accordingly, the ACMA considers that in broadcasting statements in the First Report that the driver’s documents were fake and that he had used a ‘fake identity to sign-up’ to a ride-sharing company, the licensee did not present factual material accurately.

Accordingly, the ACMA’s finding is that the licensee breached clause 3.3.1 of the Code.

* 1. **The Second Report: was information about the driver’s use of ‘multiple names’ and ‘fake documents’ accurate?**

The licensee submitted that the driver used multiple names. It also submitted that the driver’s documentation was:

… inauthentic, not current or valid, and contained inconsistent details.

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

The Second Report opened with a statement from the presenter that the driver ‘calls himself’ [Mr A] and ‘tonight he stands accused of using multiple names’. The report also referred to a passport and industry authority card as ‘fake documents’.

The ACMA considers that the ordinary reasonable viewer would have understood that the driver was using at least two names concurrently to identify himself and was also using ‘fake’ documentation to identify himself.

*Was the material factual in character?*

Statements in the Second Report, such as:

* ‘calls himself’ [Mr A]
* Mr A uses ‘multiple’ names to identify himself
* ‘the driver uses the names’ [Mr A] and [Mr J]
* these ‘fake documents’ (referring to visuals of the driver’s passport and industry authority card)

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 segment?*

The focus of the Second Report was to revisit the alleged theft, the driver’s complaint to the licensee about the First Report and further information about the driver’s background, identity and professional history. In this context, factual statements about the driver’s name and the authenticity of his identification documentation were material.

*Was the factual material accurate?*

The licensee submitted that in preparing the Second Report:

… information was verified at the time by the documents referred to in the Second Report detailing the names that Mr [A] had used since 2016.

The licensee also submitted that:

… Mr [A] himself has confirmed that he has gone by multiple identities – for example, when Mr [A] contacted the offices of *A Current Affair*, he stated ‘[Mr A] and [Mr J] are both legal names’.

It is apparent from the driver’s statement and the identity documentation, that the driver had used more than one name. Therefore, based on the facts available to the licensee at the time of preparing the Second Report, it was accurate to state that the driver had used ‘multiple names’.

Accordingly, the ACMA’s finding is that, with respect to statements in the Second Report that the driver used ‘multiple names’, the licensee did not breach clause 3.3.1 of the Code.

The Second Report also included a statement that:

[Ms R] also obtained these scanned fake documents …

This was accompanied by visuals of a passport and industry authority card.

The licensee submitted that the driver’s documentation was:

… inauthentic, not current or valid, and contained inconsistent details

The licensee further submitted that it was appropriate to consider that ‘at least some or all of the relevant identity documents were “fake”’, because the driver was not a credible source of information:

… Nine had persuasive evidence (including CCTV footage, bank statements, and witnesses) that [Mr A] had taken a passenger's credit card and used it to buy things for himself, had lied about the card being not found, had multiple identity documents that differed in key particulars for which there could be no legitimate explanation (such as year of birth), had a prior conviction for a criminal offence whilst working as a medical general practitioner, …., and had admitted to use of his customer's bankcard.

The licensee submitted that it had relied on the same information that was relied on in the First Report. The licensee also referred to other evidence in support of its position (two driver’s licences obtained by the licensee after the Second Report and information relating to a Magistrate’s Court proceeding that occurred after the Second Report). These were not assessed, because the ACMA’s consideration of the accuracy of information is limited to the information known, or reasonably ascertainable, to the licensee at the time of preparation and presentation of the program, not facts that became known to the licensee after the broadcast.

The Second Report referred to a passport, industry authority card and driver’s licence. The ACMA considers, as it did with the First Report, that it was open to the licensee to note:

* the apparent inconsistencies in the driver’s identity documentation
* that as a result of the inconsistencies in the names and birth dates, either the driver’s passport or driver’s licence were inauthentic.

However, it was not accurate, based solely on those inconsistencies or on the statements made by Ms R and police, to definitively state that the passport and industry authority card were ‘fake documents’. Nor did the evidence that the licensee had gathered about the driver’s alleged criminal activity, prior criminal history and inconsistent details between his identification documentation create circumstances or a context that allowed it to definitively state that each and all of the documents were fake. As the licensee has noted in its submissions, evidence in its possession allowed it to state that ‘at least some’ of the driver’s documents were fake; but not that all of those documents were fake.

The ACMA considers that in broadcasting statements that the driver’s passport and industry authority card were ‘fake documents’ the licensee did not present factual material accurately.

Accordingly, the ACMA’s finding is that, with respect to the statement in the Second Report that the driver’s passport and industry authority card were ‘fake documents’, the licensee breached clause 3.3.1 of the Code.

* 1. **The First Report: was information about the driver’s country of birth accurate?**

The complainant stated:

They had to lie about [Mr A’s] background and paint [Mr A] [as being born in Country 1] in the public eye though that's not true....

The licensee submitted:

* The passport recorded the place of birth as ‘[name of place]’
* At the time of preparing the report, Nine understood [name of place] was a town in [Country 1], but it understands [name of place] is, in fact, a town in [Country 1] and also a town in [Country 2].

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

The First Report contained a statement that Mr A ‘was born in a town in [Country 1]. The ACMA considers that from the material in the First Report, the ordinary reasonable viewer would have understood that Mr A was born in ‘Country 1’ and was therefore of ‘Country 1’ background.

*Was the material factual in character?*

The statement about Mr A’s place of birth 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 segment?*

The First Report focussed on Ms R and her story about the loss of her wallet and bank card, the subsequent use of that card at a convenience store and the names and identity documents used by the driver of the ride-sharing company car she had left her wallet in. In this context, the driver’s place of birth was not a material fact.

Under clause 3.3.2 of the Code, the accuracy requirements in clause 3.3.1 of the Code only apply to material facts.

Accordingly, as the driver’s birthplace was not a material fact, the ACMA’s finding is that in broadcasting statements in the First Report about the ride-sharing company driver being born in ‘Country 1’, the licensee was not in breach of clause 3.3.1 of the Code.

* 1. **The Second Report: was information that allegedly implied the driver was ‘avoiding authorities’ accurate?**

The Second Report included the following statement by the reporter:

It’s believed that [Mr D], [Mr J], now [Mr A], was evicted from his rental over the weekend, so where he is now is anyone’s guess.

The complainant stated that this aspect of the Second Report indicated:

[Mr A has] been avoiding authorities and [his] place is ‘unknown’.

The licensee submitted that the report did not state the driver was ‘avoiding authorities’.

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

The ACMA considers that the ordinary reasonable viewer would have understood from the material in the Second Report that Mr A was no longer living at his previous address and his current residence was unknown.

*Was the material factual in character?*

The statement about Mr A’s current place of residence was speculative, it was not specific, unequivocal and capable of independent verification. It was therefore not factual in character.

Under clause 3.3.2 of the Code, the accuracy requirements in clause 3.3.1 of the Code only apply to factual material.

Accordingly, the ACMA’s finding is that in broadcasting statements in the Second Report about Mr A’s location, the licensee was not in breach of clause 3.3.1 of the Code.

Issue 2: Privacy

Finding

The ACMA’s finding is that the licensee breached clause 3.5.1 of the Code.

Reasons

In assessing compliance with clause 3.5.1, the ACMA is assisted by its *Privacy Guidelines for Broadcasters 2016*.

The ACMA has considered the following questions:

* Was a person identifiable from the broadcast material?
* Did the broadcast material disclose personal information or intrude upon the person’s seclusion in more than a fleeting way?

If the answer to both of these questions is yes, then there is a potential breach of the Code’s privacy provisions. The ACMA will then consider where relevant:

* Was the person's consent obtained—or that of a parent or guardian?
* Was the broadcast material available in the public domain?
* Was the invasion of privacy in, and proportionate to, the public interest?

If the answer to any of these three questions is yes, then there may be no breach.

**Was a person identifiable from the broadcast material?**

For the ACMA to make a finding that clause 3.5.1 of the Code has been breached, a particular person must be identifiable from the broadcast.

A person will be identifiable if, from the broadcast, their identity is apparent or can reasonably be ascertained. This is considered, having regard to the context and content of the particular broadcast.

As noted above, the ACMA considers the understanding of the ‘ordinary reasonable viewer’ in determining the meaning conveyed by the broadcast material, which is the subject of the complaint. However, when considering whether a person would have been identifiable from the broadcast, the ‘ordinary reasonable viewer’ is not relevant to the assessment. If it were, the protection afforded by clause 3.5, against a visual invasion of privacy, would be of very little use to most people. It would, in practical terms, be confined to well-known and easily recognisable public figures.

Both the First Report and Second Report specifically named Mr A and used other names that he allegedly is or has been known by. The Reports also included photos and footage of him and specific places he was known to frequent.

Accordingly, the ACMA considers that Mr A was identifiable from the material broadcast in the First and Second Reports.

**Did the broadcast material disclose personal information or intrude upon the person’s seclusion in more than a fleeting way?**

Personal information can include facts about a person’s sensitive personal matters and private affairs.[[5]](#footnote-6) This information need not be secret or confidential in order to be personal information.

The licensee submitted:

[…] we understand the essence of [the] complaint to be the assertion contained in the complaint extracts that the Reports published his ‘NAME, PHOTO, TEL, ADDRESS OR EVEN THE RENTAL CAR REGO [MR A] ONLY GOT A FEW DAYS AGO TO THE PUBLIC.

[…] Further, it cannot be claimed that deliberately false information is personal or private; to the extent those documents (or the details on them) were inauthentic or contained false information, they are not private or personal. As the documents contained multiple inconsistent details, no viewer could ascertain from the broadcast what in fact Mr [A’s] true birth date was.

35. The Second Report did contain an image of a Free TV Complaint submitted online by Mr [A], but in which the address and contact email were appropriately obscured. Additionally, both the address and email contact provided by Mr [A] were subsequently confirmed to be inaccurate. *A Current Affair* attended the address listed on the complaint, but were advised that Mr [A] did not live there and attempts to send correspondence to the email address were unsuccessful as the email was invalid.

The First Report included information about Mr A, including his name, copies of identification documents and footage of the registration of a car he had been using. The copies of identification documents and car registration plates were either appropriately obscured or insufficiently clear, and consequently, did not reveal personal information. There was, however, a reference in the First Report to a previous name that Mr A had used and an indication that he had ‘changed his name’.

The Second Report included names Mr A had previously used (and information that he had changed his name), his date of birth, his postcode, video footage recorded outside a property he had provided as his address, and information about his code complaint to the licensee about the First Report. The information about Mr A’s address and postcode was either appropriately de-identified or sufficiently non-specific to Mr A that they did not reveal personal information.

The licensee submitted that the other information revealed about Mr A was not personal information because it was ‘inauthentic or contained false information’.

The ACMA considers that regardless of whether some of the information in the Reports was ‘inconsistent’ or ‘false’, the Reports included personal information which was not ‘inauthentic’ or fake. In particular:

* Information in the Reports that Mr A had changed his name was personal information disclosed by the broadcast. This personal information was not inaccurate.
* Information in the Second Report that Mr A had made a Code complaint via Free TV about the First Report was personal information disclosed by the broadcast. This personal information was not inaccurate.
* In the Second Report, a copy of a driver’s licence was shown, including the driver’s relevant date of birth.[[6]](#footnote-7) Although that document may have contained other inaccuracies, it still disclosed Mr A’s date of birth, which is personal information.

In relation to whether the code complaint to the licensee was personal information, the licensee further submitted:

Finally, Nine submits that there is no proper basis upon which either the fact of, or content of, a complaint submitted via the Free TV website itself is "private" or "personal information”.

[…]

There is also nothing in the Code which states that a Code Complaint is confidential or private, nor is there any advice on the Free TV electronic lodgement Viewer Feedback form which indicates that a complaint about an alleged breach of the Code will or must be kept private. While Nine does not deny that certain information contained in a Free TV complaint (such as a specific residential address, or a personal email address) would likely qualify as private information, there is no basis for the blanket assertion that every aspect of a Free TV complaint or indeed the very existence of a complaint is a private matter. This is particularly so in the present circumstances and having regard to the context of the allegations in the broadcasts.

However, as noted above, personal or private information includes facts about a person’s sensitive personal matters and private affairs.[[7]](#footnote-8) This information does not need to be secret or confidential in order to be personal information. The fact that a complaint had been made to the licensee was the complainant’s private affair, irrespective of whether the form via which it was submitted or the Code stated that it was confidential.

For these reasons, the ACMA considers that the licensee broadcast personal information about Mr A’s change of name in the First Report and about Mr A’s change of name, date of birth and Code complaint in the Second Report.

**Was the person's consent obtained for the material to be broadcast?**

The licensee did not make any specific submissions on this issue. However, in relation to whether consent was obtained to broadcast a recorded conversation between a representative of the licensee and Mr A, the licensee submitted:

Mr [A] contacted A Current Affair for the express purpose of speaking to a journalist and responding to aspects of the previous story, in order to give his side of the story. Specific allegations are put to Mr [A] who provides expansive responses. It may be readily inferred from the content of the conversation that Mr [A] is both aware and voluntarily participating in an interview with *A Current Affair*.

[…]

Nine notes that consent can be express or implied. A consideration of implied consent must take into account the circumstances in which the conversation took place…

The ACMA does not accept that in contacting the program for the purposes of complaining about the program, Mr A gave implied consent for portions of his conversation with a representative of the licensee to be broadcast, namely the following interactions which were used in the Second Report:

LICENSEE REPRESENTATIVE: You’re the man in the vision that was captured on the CCTV are you?

MR A: Yeah, did I ask about that yet, I have not. It’s me.

LICENSEE REPRESENTATIVE: Were you the man in the CCTV, yes or no?

MR A: (following is subtitled) Can I please finish, can I please finish? Can I please finish? I used the card, I’m not denying that.

MR A: I picked up the first card by mistake. Cause the other customer only found the card on the floor.

LICENSEE REPRESENTATIVE: Is [Mr A] your real name is it?

MR A: [Mr A] and [Mr J] are both legal names.

Even if implied consent could be inferred from Mr A’s actions, if given, it could only relate to the specific information communicated in the conversation with the journalist and not to other personal information obtained by the licensee.

The nature of the complaint to the licensee and the complaint received by the ACMA indicates that the licensee did not obtain Mr A’s consent for any material to be broadcast about his change of name, Code complaint to Free TV or his date of birth.

Accordingly, the ACMA finds that consent for the material in the Reports to be broadcast, was not obtained.

**Was the broadcast material available in the public domain?**

The ACMA considers that using material that is already in the public domain will generally not be an invasion of privacy.[[8]](#footnote-9)

The licensee submitted to the ACMA:

Nine submits that Mr [A’s] name, past names, and image are not private and do not relate to his personal or private affairs by operation of the general presumption in clause 3.5.1 of the Code as they are publicly available information.

Equally, the images of Mr A used in the Reports either occurred in public, such as the CCTV footage of Mr A entering the store, or were publicly accessible, for example the image of Mr A as [Mr D].

The ACMA accepts the licensee’s submission that the disclosure of some of the material broadcast was not an invasion of privacy because it was available in the public domain. Specifically, Mr A’s name and past names are public information.

However, ACMA considers that the Second Report included additional personal and sensitive information which was not in the public domain. Information about Mr A’s date of birth and information revealing that he had made a Code complaint about the licensee was not information in the public domain.

Therefore, the ACMA is of the view that the licensee broadcast personal information in the Second Report that was not in the public domain. Accordingly, further consideration of the broadcast of personal information in the Reports is limited to the Second Report.

**Was the invasion of privacy in the public interest?**

Clause 3.5.1 of the Code permits a licensee to use material which relates to a person’s personal or private affairs, or which invades an individual’s privacy, where there is ‘a public interest reason for the material to be broadcast’.

The following are examples of matters of public interest:

Public health and security; criminal activities; corruption; misleading the public; serious anti-social behaviour; politics; government and public administration; elections; and the conduct of corporations, businesses, trade unions and religious organisations.[[9]](#footnote-10)

To satisfy the requirement that there is a public interest reason for broadcasting the particular material, any disclosure of personal information (or other invasion of privacy) should be relevant and proportionate to the public interest issues raised by the broadcast.

The licensee submitted the public interest reasons for broadcasting the Reports were to contribute to the public’s ability to assess:

… issues of public safety, regulation and safety of ride-sharing services, checks and audits conducted by ride-sharing services on drivers, whether people with criminal convictions should be prevented from being drivers, the use of multiple names resulting in obscuration of background checks, and allegations of dishonest and unlawful conduct including misuse of a bank card and alleged theft of property and money.

It argued that the invasion of privacy in the broadcasts was justified in this context.

With respect to the broadcast of the date of birth and the Code complaint to Free TV, the licensee further submitted:

* The validity of the identifying ‘particulars of the document (at the very least, the name and date of birth)’ were directly relevant to the public interest considerations being dealt with regarding the adequacy of background checks by ride-sharing services.
* It was a matter of public interest to broadcast the complaint form because it provided the ‘accused person's response to the allegations of wrongdoing and explanation for their conduct which are directly relevant to the accusations they are facing’.

The ACMA accepts that it was in the public interest to report on alleged criminal activities and issues with the vetting of ride-sharing drivers and public safety and that is was a primary focus of the Reports. The ACMA also accepts that it was in the public interest to disclose that Mr A refuted the claims made in the First Report about his alleged criminal activities.

However, it is not clear that it was in the public interest to broadcast the private information disclosed by the licensee.

*Code complaint*

The ACMA considers it was not in the public interest to disclose the fact that Mr A had made a Code complaint about the program via Free TV. The ACMA accepts that there may be a public interest in disclosing an accused person's response to allegations of wrongdoing. However, broadcasting Mr A’s Code complaint did not serve this purpose.

The references in the Second Report to the complaint only provided a moving image of the complaint which scrolled quickly and cut off before it could be read fully. The only other detail in the report about the complaint was the following statements:

VOICEOVER: While Ms R is still dealing with her complaints process, incredibly [Mr A] has decided to make his own against our program.

REPORTER: After we aired our story A Current Affair received a complaint from the driver who was still using the name [Mr A].

These statements did not include any detail about Mr A’s response to the allegations of wrongdoing in the First Report or provide any explanation for his conduct.

On this basis the disclosure of Mr A’s complaint did not directly or indirectly contribute to the public’s capacity to assess those allegations. Additionally, information about Mr A refuting the allegations in the First Report had already been provided to viewers in the Second Report in the recorded telephone conversation between Mr A and a reporter for the program. The disclosure of the fact that Mr A had made a Code complaint about the program in the Second Report did not provide any additional information to the public that was not already revealed by that recording.

Therefore, the disclosure of Mr A’s personal information, by revealing the fact that he had made a Code complaint about the licensee, was not in the public interest.

*Date of birth*

The ACMA considers it was not in the public interest to disclose details of Mr A’s date of birth. The ACMA accepts the licensee’s submission that information about the inconsistencies between the driver’s identification documentation directly contributed to the public’s capacity to assess the issue of the adequacy of the background checks performed on drivers. However, it was not necessary to reveal the driver’s full date of birth to illustrate these inconsistencies.

Therefore, the disclosure of Mr A’s personal information, by revealing his date of birth was not relevant to the public interest issues explored in the Second Report and therefore there was no public interest reason to broadcast that material.

Accordingly, the ACMA’s finding is that the licensee breached clause 3.5.1 of the Code in relation to the broadcast of the Second Report.

**Issue 3: Licensee must provide a response within 30 working days**

**Finding**

The ACMA’s finding is that licensee did not breach clause 7.3.1 of the Code.

**Reasons**

The complainant did not raise this issue in the complaint to the ACMA. However, the licensee submitted:

* On 2 April 2019, it responded to an email address provided by the complainant. It received a notification the email was ‘undeliverable’.
* It mailed a hard copy of the response by express post to the physical address provided by the complainant.

The Code requires a licensee to respond to a Code complaint within 30 working days of receipt.

The complainant submitted the complaint to the licensee via the Free TV Australia online complaint form on 22 February 2019. The licensee’s response was dated 2 April 2019, indicating it was sent 27 working days after the complaint was submitted.

Accordingly, the ACMA’s finding is that the licensee did not breach clause 7.3.1 of the Code.

Attachment A

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:

1. the facts known, or reasonably ascertainable, at that time;
2. the context of the segment (or Program promotion) in its entirety; and
3. the time pressures associated with the preparation and broadcast of such programming.

**3.5 Privacy**

3.5.1 In broadcasting a news or Current Affairs Program, a Licensee must not broadcast material relating to a person’s personal or private affairs or which invades a person’s privacy unless:

1. there is a public interest reason for the material to be broadcast; or
2. the person has provided implicit or explicit consent for the material to be broadcast (or in the case of a person under 16, a parent or guardian has given implicit or explicit consent).

Note: The broadcast of material that is publicly available or recorded in a public place will generally not be material relating to a person’s personal or private affairs or an invasion of privacy.

3.5.2 For the purposes of Clause 3.5.1, a licensee must exercise special care before broadcasting material relating to a Child’s personal or private affairs in a report of a sensitive matter concerning the Child

**8. Interpretation**

Child means a person under the age of 15.

**7.3 Responding to Code Complaints**

7.3.1 A Licensee must send a written response to a Code Complaint within 30 Working Days of receiving a complaint, unless one or more of subclause 7.3.3(b) to clause 7.3.5 (inclusive) apply.

Attachment B

***Extracts of complaint to the ACMA dated 5 March 2019:***

[…]

SINCE WHEN IS NEWS 9 […] ENTILTED TO PUBLISH SOMEONE NAME, PHOTO, TEL, ADDRESS OR EVEN THE RENTAL CAR REGO I ONLY GOT FEW DAYS AGO TO THE PUBLIC ...

[…]

1. […] They twisted the story and brought a client which has a different name from [Mr A’s] customer and both (them and uber) failed to disclose that to the public. [Mr A] was clear from day to police and others that [Mr A] made an innocent mistake and happy to pay for [Mr A’s] own mistake but none of that was mentioned.
2. They published a fake report about [Mr A’s] fake identity though [Mr A] have informed them that [Mr A] have changed [Mr A’s] name legally and when [Mr A] asked them about why not check for facts or distribution did they even check [Mr A] change of name certificate they just denied ...till today they are still lying about it and won't admit their mistake.

[…]

1. They had to lie about [Mr A’s] background and paint [Mr A] [as being from a particular background] in the public eye though that's not true and background has nothing to do...
2. [Mr A] have been in contact with police before and after and was advised to move and keep a low profile...they kept on lying on national TV that [Mr A] have been avoiding authorities and [Mr A] place is ‘unknown ‘ and they even had to publish the rego of the rental car [Mr A] am driving on TV...

[…]

1. After to spoke to ACMA and was informed that [Mr A] should lodge a complaint against News 9 by speaking to them directly...they had to cut all my conversation to them but for bits and pieces.

[…]

7. Even after [Mr A] confronted both them and uber about faking/changing customers name and [Mr A] told them that [Mr A] have uber correspondence and change of name in writing ‘ do U think they were Kean to publish that or tell the public the truth? ‘

[…]

Attachment C

NOTE: Several annexures were attached to the licensee’s submissions, they are referred to in the extracts below. However, the annexures themselves have not been included with this report.

Extract of licensee’s response and submissions to the original complaint dated 2 April 2019

[…]

ln order to respond [to] your complaint, our Compliance Department have reviewed the Report, the Code provisions referred to above, and the concerns that you have raised. ln particular, your complaint has raised issues with the accuracy and the impartiality of the Report.

Based on our review, we have not been able to identify any factual material contained in the Report that was inaccurate. Furthermore, you have not provided any material that demonstrates the inaccuracy of the Report.

[…]

Based on our review, we consider that the Report did not contain any material which would constitute a breach of the provisions of the Code referred to above. Accordingly, we do not consider that there has been contravention of any matter covered by the Code in this instance.

Extract of licensee’s submission to the ACMA dated 17 April 2019

2. At the outset, we advise that the broadcast details for these segments are as follows:

a) a report entitled *Uber Thief* was broadcast on 19 February 2019 (**the First Report**); and

b) a report entitled *Uber Thief twist* was broadcast on 27 February 2019 (**the Second Report**).

(collectively, **the Reports**)

3. We understand that [the complainant] has raised concerns with the Reports, particularly in relation to Nine's compliance with the Commercial Television lndustry Code of Practice 2015 (Revised 2018) **(the Code**).

The ACMA has provided Nine with extracts of [the complainant’s] complaint and advised that the focus of this investigation includes, but is not limited, to the Code provisions relating to accuracy, privacy and responding to Code Complaints. Accordingly, Nine has prepared these submissions on compliance with the Code in response to the specific allegations contained in the extracts, namely.

*Clause 3.3.1 - Accuracy*

a) Mr [A’s] customer was not [Ms R];

b) Mr [A] was using a 'fake name' or a 'fake identity';

c) Mr [A] has a [Country 1] 'background';

d) Mr [A] has been 'avoiding authorities';

*Clause 3.5.1 - Privacy*

e) The Reports published Mr [A’s] name, photograph, telephone number, address, and car registration; and

*Clause 7.3.1 - Responding to Code Complaints*

f) [the complainant] did not receive a response to [their] online complaint submitted via Free TV Australia

*Further information*

5. The ACMA have also made the following requests for further information:

[…]

b) materials relied upon by the Licensee that formed the basis for conveying that:

i) Mr [A] had a [Country 1] 'background'; and

ii) Mr [A] was using a 'fake name' or a 'fake identity';

c) [the complainant’s] initial complaint and the Licensee's response to same; and

d) information addressing the complainant's allegation that the name of and identity of the Uber customer featured in the Reports had 'a different name from [Mr A’s] customer’.

6. For the purposes of the information requested in sub-paragraphs (b), (c) and (d) above, we will address same in our submissions on compliance with the requirements of the Code.

**Accuracy and Fairness**

7 . Clause 3.3.1 is found in Section 3 of the Code. It provides that ‘ln broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented’.

8. This requirement is not unqualified. Indeed, clause 3.3.2 of the Code states ‘Clause 3.3.1 applies to material facts and material misrepresentations of viewpoints only’, and there is also an overarching qualification to Section 3 contained in clause 3.1.2 of the Code:

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

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

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

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

9. We deal with each of the allegations raised by Mr [A] in turn below.

*Mr* [A’s] *customer was not [Ms R]*

10. The Reports indicate that Ms [R] was one of the passengers in Mr [A’s] vehicle on the relevant evening and her belongings were left inside Mr [A’s] vehicle. The First Report includes the statement, ‘[Ms R] had been at a friend's house party ***when she and her girlfriends caught an Uber home***’ (our emphasis) and Ms [R] herself states in the First Report ‘***we put it through*** twice as lost or stolen and he marked it both times as item not found’ (our emphasis).

11. While Ms [R] may not have booked Mr [A’s] vehicle through her personal Uber account, the Reports accurately convey that she was a passenger in Mr [A’s] vehicle on the relevant occasion.

12. Further, [the complainant] confirms in [their] complaint to the ACMA that [Mr A] did commit the action alleged in the First Report, namely using Ms [R’s] bank card - ‘I made an innocent mistake and happy to pay for my own mistake’. This admission and indeed [Mr A’s] possession of the card confirms that Ms [R] was a passenger in [Mr A’s] vehicle on the relevant occasion.

*Mr [A] was using a 'fake name' or a 'fake identity'*

13. Nine submits that the assertions contained in the Reports regarding Mr [A’s] identity and name were accurate on the basis that Mr [A] has been known by a number of names and identities and had identity documents which were inauthentic and/or invalid and/or inconsistent in their identifying particulars.

14. The First Report suggested that Mr [A] was not using his ‘real’ name and had inauthentic identity documentation, specifically a passport and an lndustry Authority card. Annexed to these submissions and marked with:

a) the letter ‘A’ is a copy of a passport; and

b) the letter ‘B’ is a copy of an lndustry Authority card

15. With respect to the passport, Nine notes that it contains two different printed names, ‘[Mr A]’ and ‘[Mr J]’. Furthermore, the signature on the passport also shows the name ‘[E]’. ln light of this naming inconsistency, the document therefore appears to be inauthentic.

16. With respect to the lndustry Authority card, Nine also notes that despite it having an expiry date of 18 [month] 2020, the [State] Government's Driver Authorisation Register indicates that the driver authorisation number is not current. Annexed to these submissions and marked with the letter ‘C’ is a copy of the search results from the Driver Authorisation Register of the [State] Government for Mr [A’s] driver authorisation number.

[…]

17. Ms [R] states in the First Report that ‘It’s pretty clear that he's not using his real name and when I spoke to the police about it as well, they told me that's not his legal name, he's changed his name’. Annexed to these submissions and marked with the letter ‘D’ is a copy of an email exchange between A Current Affair and the Media Unit of [State] Police wherein [State] Police advised that they ‘were not quite sure if that's his real name’. Please note that personal information has been redacted in Annexure D.

18. ln light of the above and with particular reference to the questionable authenticity of the documents at Annexures A and B, Nine maintains that the representations contained in the First Report regarding Mr [A’s] identity and name were accurate based on the material known by and ascertainable by Nine at the time of broadcast.

19. The Second Report stated that Mr [A] ‘stands accused of using multiple names’ and proceeded to trace the various names used by Mr [A], ultimately linking Mr [A] to a [Mr D]. Nine submits that information was verified at the time by the documents referred to in the Second Report detailing the names that Mr [A] had used since 2016.

20. ln addition to Annexures A and B, the Second Report also referred to a document purporting to be a driver's licence containing Mr [A’s] picture and bearing the name ‘[Mr J]’ obtained from Mr [A’s] former landlord. Annexed to these submissions and marked with the letter ‘E’ is a copy of that licence. Nine notes that this identification document states Mr [A’s] date of birth as [Date 1], whereas the passport at Annexure A records his date of birth as [Date 2]. Furthermore, the licence details themselves are not registered with the Department of Transport and Motoring of the [State] Government. Annexed to these submissions and marked with the letter ‘F’ is a copy of an online search of the [State] Government's transport and motoring website for the licence details contained in Annexure E. Accordingly, the authenticity of this identification document is also questionable.

21. The Second Report also referred to an ABN number which linked the name ‘[Mr J] to the names ‘[Mr H] and ‘[Mr D]. Annexed to these submissions and marked with the letter ‘G’ is a copy of an online ABN search result for ABN […].

22. Finally, [the complainant] has conceded in his complaint to the ACMA that [Mr A] is the same person as the […] general practitioner named [Mr D] who was deregistered for a criminal offence against a patient - ‘[Mr A] used to work as a gp 7 years ago and [Mr A] made a mistake and paid [his] dues for that’. Annexed to these submissions and marked with the letter ‘H’ is a copy of an image of [Mr D], publicly accessed via an internet search.

23. ln addition to the numerous inconsistencies across [Mr A’s] identification documents, and the links between each of these identities, Mr [A] himself has confirmed that he has gone by multiple identities – for example, when Mr [A] contacted the offices of *A Current Affair*, he stated ‘[Mr A] and [Mr J] are both legal names’. Nine is not aware of the legal process, if any, undertaken by Mr [A] to change his name and indeed, Mr [A] has not provided any documentary evidence to verify his assertion that these names are either his concurrent or consecutive legal names.

[…]

25. ln light of the above, Nine does not consider that the Reports breached clause 3.3.1 of the Code and maintains that on the available information, the Reports accurately conveyed that:

a) Mr [A’s] identification documents were inauthentic, not current or valid, and contained inconsistent details;

b) Mr [A] used multiple names; and

c) Mr [A], of his own volition, created at least one new identity for himself after he was convicted of a criminal offence.

*Mr [A] has a ‘country 1’ 'background'*

26. The only reference to Mr [A] being of a ‘Country 1’ 'background' is in the context of the First Report discussing the recorded place of birth, ‘[…]’, in Mr [A’s] passport (Annexure A). The First Report stated the passport ‘also claims he's 41 and was born in a town [Country 1]’. Nine understands that […] is in fact a town in [Country 1] and also a town in [Country 2].

27. At the time of the preparation of the First Report, Nine understood […] to be a reference to the town in [Country 1], and reported it accordingly. Nine is not aware of where Mr [A] was in fact born.

28. ln any event, Nine submits that in the context of the Reports, the reference to Mr [A] being born in a town in [Country 1] is not a material fact of the First Report. The material facts of the First Report are that Mr [A] used a bank card belonging to one of his [ride-share company] passengers, he went by multiple names, and he had identification documents that were inconsistent and inauthentic. Nine maintains that these material facts were accurate. Accordingly, Nine does not consider that the accuracy requirements of clause 3.3.1 of the Code would be applicable to Mr [A] having a [Country 1] 'background' by virtue of clause 3.3.2 of the Code.

29. The Second Report did not refer to Mr [A] as having a [Country 1] background.

*Mr [A] has been ‘avoiding authorities'*

30. The Reports did not state this. The only reference to Mr [A’s] whereabouts is contained in the Second Report, ‘It’s believed [Mr D] / [Mr J] / now [Mr A] was evicted from his rental over the weekend, so where he is now is anyone's guess'. Accordingly, Nine submits that the Reports do not contain any factual assertions that Mr [A] has been 'avoiding authorities'. Nine maintains that the Reports were factually accurate in all relevant respects.

**Privacy**

31. Clause 3.5.1, the Code provides that:

*ln broadcasting a news or Current Affairs Program, a Licensee must not broadcast material relating to a person's personal or private affairs or which invades a person's privacy, unless:*

*a) There is a public interest reason for the material to be broadcast; or*

*b) The person has provided implicit or explicit consent for the material to be broadcast (or in the case of a person under 16, a parent or guardian has given implicit or explicit consent).*

*Note: The broadcast of material that is publicly available or recorded in a public place will generally not be material relating to a person's personal or private affairs or an invasion of privacy.*

32. The ACMA has not particularised any specific aspect of the Reports alleged to be in breach of clause 3.5.1. Accordingly, we understand the essence of [the complaint] to be the assertion contained in the complaint extracts that the Reports published his ‘NAME, PHOTO, TEL, ADDRESS OR EVEN THE RENTAL CAR REGO I ONLY GOT A FEW DAYS AGO TO THE PUBLIC’.

33. Nine submits that Mr [A’s] name, past names, and image are not private and do not relate to his personal or private affairs by operation of the general presumption in clause 3.5.1 of the Code as they are publicly available information. Equally, the images of Mr [A] used in the Reports either occurred in public, such as the CCTV footage of Mr [A] entering the store, or were publicly accessible, for example the image of Mr [A] as [Mr D] in Annexure H. Furthermore, the content of the Reports and the allegations against Mr [A] contained in the Reports are clearly matters of public interest.

34. To the extent that any material relating to Mr [A’s] personal or private affairs may have been included in the Reports, Nine submits that the inclusion of that information was broadcast for a public interest reason, including for example, the portions of identity documents that were shown unobscured for the purpose of evidencing the multiple inconsistent identifying particulars on those documents. Further, it cannot be claimed that deliberately false information is personal or private; to the extent those documents (or the details on them) were inauthentic or contained false information, they are not private or personal. As the documents contained multiple inconsistent details, no viewer could ascertain from the broadcast what in fact Mr [A’s] true birth date was.

35. The Second Report did contain an image of a Free TV Complaint submitted online by Mr [A], but in which the address and contact email were appropriately obscured. Additionally, both the address and email contact provided by Mr [A] were subsequently confirmed to be inaccurate. *A Current Affair* attended the address listed on the complaint, but were advised that Mr [A] did not live there and attempts to send correspondence to the email address were unsuccessful as the email was invalid (see paragraph 44 below).

36. With respect to Mr [A’s] car registration, Nine notes that he states the vehicle is a rental and therefore the registration number does not identify Mr [A] nor relate to any personal or private information of his. ln any event, Nine submits that any image or footage of the registration numbers for Mr [A’s] vehicle and indeed all other vehicles depicted were either not visible, or appropriately obscured by blurring.

37. All the material included in the Reports was included for reasons in the public interest, including without limitation, issues of public safety, regulation and safety of ride-sharing services, checks and audits conducted by ride-sharing services on drivers, whether people with criminal convictions should be prevented from being drivers, the use of multiple names resulting in obscuration of background checks, and allegations of dishonest and unlawful conduct including misuse of a bank card and alleged theft of property and money.

38. Having regard to the above, Nine submits that the Reports did not breach the requirements of clause 3.5.1.

**Responding to Code Complaints**

39. Clause 7.3.1 of the Code states that ‘A Licensee must send a written response to a Code Complaint within 30 Working Days of receiving the complaint, unless one or more of subclause 7.3.3(b) to clause 7.3. 5 (inclusive) apply’.

40. A ‘Working Day’ is defined in the Code as being Monday to Friday (inclusive) and is exclusive of public holidays.

41. On 22 February 2019, Nine received two online complaints via Free TV Australia […]. Based on its content, the complaint received at '12:09pm […] appeared to be the first of the two (**the Initial Complaint**), and the complaint received at 12:08pm […] appeared to be a duplicate in substance of the Initial Complaint (**the Duplicate Complaint**), which raised no new or distinct issue. Additionally, the Duplicate Complaint did not satisfy the requirements of clause 7.2.2 of the Code, in particular sub-clause (d), as it did not contain a valid physical address.

42. Having regard to clauses 7.2.2 and 7.3.5(c) of the Code, Nine identified the Initial Complaint as the substantive complaint and provided a substantive response to it. Annexed to these submissions and marked with the letters ‘I’ and ‘J’ are copies of the Initial Complaint and the Duplicate Complaint respectively.

43. On 2 April 2019, Nine issued its response to the complaints by email to the address provided…. […] in the Initial Complaint […].

44. After sending this email, a return to sender notification was received by Nine indicating the email was undeliverable. […].

45. ln light of the preceding paragraph, Nine mailed a hard copy of its response by Express Post to the physical address provided […] in the Initial Complaint […].

46. Nine submits that it did respond to [the complainant’s] code Complaint as required by the Code as a response was provided within 30 Working Days of receipt and the response was both emailed and posted based on the details provided […] in the Initial Complaint.

[….]

e) […] It is important in this regard to note that [Mr A] contacted *A Current Affair* for the express purpose of speaking to a journalist and responding to aspects of the previous story, in order to give his side of the story. Specific allegations are put to Mr [A] who provides expansive responses. It may be readily inferred from the content of the conversation that Mr [A] is both aware and voluntarily participating in an interview with *A Current Affair*. We also repeat the submissions in paragraph 47(b) above.

f) Even if the conversation were a ‘private conversation’ (which is not conceded), Nine draws the ACMA's attention to section 43(2)(a) of the lPA, which makes clear that the prohibition in section 43(1) does not apply to the use of a listening device by a party to the conversation.

g) ln respect of the issues of consent to record and to publish, Nine notes that consent can be express or implied. A consideration of implied consent must take into account the circumstances in which the conversation took place including without limitation the matters referred to in paragraphs 47(b) and (e) above.

h) ln respect of the ACMA's question about consent to publish, even if there were no express or implied consent (which is not conceded):

i) we note that section 44 of the IPA applies only to records made in contravention of section 43 of the lPA, and therefore does not apply; and

ii) we draw the ACMA's attention to the operation of section 45(2)(c) and (d) of the lPA. It is clear from the content of the Reports that to the extent portions of the recording were included in the Reports those portions were not more than was reasonably necessary in the public interest, and in the performance of Nine's duty in informing the public about matters of public interest (including without limitation in respect of the important issues of public safety and allegations of misuse of personal property to which the Reports related), and for the protection of Nine's lawful interests (including without limitation, allegations of the kind the subject of the complaint that forms the basis for the present investigation).

[…]

 **Other matters**

48. On the broader questions of credibility and reliability of the allegations sought to be made against Nine in this investigation, we draw the ACMA's attention both to the matters the subject of the Reports, the conduct of Mr [A] as evidenced in the Reports […].

**Conclusion**

49. ln light of the submissions above, Nine submits that the content of the Reports was both compliant with the requirements of Code and compliant with all relevant State and Commonwealth legislation.

[…]

**Extract of licensee’s submission to submission to the ACMA dated 21 August 2019:**

[…]

1. The ACMA states that based on the inconsistencies in documentation, it was open to Nine ‘to speculate about the authenticity of those documents and of the driver's name in those documents’. This is precisely what Nine did - speculate about the authenticity - and on the basis of that material, Nine formed the view that the complainant was using at least one fake identity. Nine submits that the description of the documentation as 'fake' was in this context an opinion, which (although not a requirement of the Code) was based on reasonable material for comment being the identity documents that were, on their face, inconsistent in respect of key identifying particulars.
2. Even if one accepts that the reference to 'fake' documentation was an assertion of fact, Nine notes that the identification page of the complainant's passport (Annexure A of Nine's written submissions) lists his name both as ‘[Mr A]’ (in the NAME field) and as [Mr J] (in the embedded coding at the bottom of the page). The Department of Foreign Affairs and Trading has confirmed to Nine that the name recorded next to the passport holder's picture and the name embedded at the bottom of the identification page usually match, but in some cases, the embedded name can be truncated due to character limits. The Department has also advised that if the two names were completely different, this could indicate fraud or a production error. Having regard to this, the document depicted in Annexure A is therefore either an illegitimate document by virtue of being fraudulent or an illegitimate document by virtue of containing a production error. In either case, the document contains false and therefore 'fake' information about the complainant. The Findings also do not reveal that the ACMA is in possession of evidence that would establish the authenticity of this document. In light of this information, Nine maintains it has a sufficient evidentiary basis (for the purposes of the Code) for the broadcast to state that this passport was a 'fake' identification document.
3. Additionally, the passport at Annexure A lists the complainant's name as "[Mr A]" and date of birth as 26 [month ‘J’] 1977. However, the copy of the complainant's driver's licence at Annexure E lists the complainant's name as "[Mr J]" and his date of birth as 27 [month ‘J’] 1973. As it is logically impossible for [Mr A] to have been born on two separate dates, it is correspondingly impossible for both Annexure A and Annexure E to depict authentic and valid identification documents. Accordingly, Nine maintains it was and remains accurate to state that one or both of these documents were not a legitimate form of identification and furthermore that one or both of these documents was a 'fake' identification document by virtue of having incorrect identifying particulars.

[…]

1. For these reasons, Nine respectfully submits that there is no proper evidentiary basis upon which the presentation of this information in the First Report could be found, in all the circumstances, to be inaccurate and in breach of clause 3.3.1.
2. As it is clear that at least one identification document is not legitimate (and therefore a 'fake'), Nine contends that it is not material in the context of the First Report as to whether that fake identification was used to create the complainant's Uber profile. The material fact is that this person (who did in fact use a credit card stolen from a customer) went by multiple identities and used identification documents (or at least one identification document) that was fake. As set out above, it is simply not possible for a person to have a legitimate passport and driver's licence with different dates of birth. The individual specific uses they make of those documents (such as for the purposes of becoming an Uber driver) is of secondary importance, and therefore not material in the relevant context.
3. In any event, even if one maintains it was material to assert that [Mr A] used fake documents to become an Uber driver, Nine notes that prospective drivers are required [to] meet certain requirements in order to become an Uber driver. These requirements include:

a. providing Uber with certain identification documents (https://www.uber.com/au/en/drive/requirements/), including:

i. A valid, full driver's licence for your state or territory; and

ii. Your passport or birth certificate; and

b. A full background check (https://www.uber.com/en-AU/drive/resources/bgc-application/), which includes a police check and requires disclosure of all names used.

1. As established above, it must be the case that either or both the passport and driver's licence are false in respect of at least one key identifying particular (the complainant's date of birth). In order to drive for Uber, the complainant must have provided a driver's licence and either a passport or a birth certificate (which Nine has not seen). We again note that the passport and licence are issued in different names. It is therefore entirely reasonable, based on the material available at the time of the First Report (as per clause 3.1.2(a) of the Code), to suggest that the complainant provided at least one false document to Uber in applying to become a driver.
2. It is also reasonable to suggest that if the complainant did provide Uber with all his previous names, he would have been unlikely to have passed the background checks or been approved to be a ride-share driver, on the basis of his prior history of criminal offences. Alternatively, if it is the case, as the complainant asserts in his complaint, that he *did* disclose all relevant aliases and background information, and was approved to be a driver despite the discrepancies in his identifying documents, and despite his prior conviction, then that itself raises serious questions and matters of public interest, about which the public have a right to be informed.
3. The Findings of the ACMA also consider it is relevant that Nine ‘’had not sighted originals’ of the documentation and had not obtained the documents from the complainant himself. Nine queries the relevance of this consideration, noting that in a report of allegedly criminal and fraudulent conduct by a person it [is] unlikely that the person would willingly make their passport or driver's licence available to the relevant media outlet for inspection.
4. Nine is not aware from either the extracts provided by the ACMA to Nine or from the complainant's correspondence to Nine, that the complainant himself alleges that the copies in Nine's possession are not true copies of his identity documents, or that they have been altered by someone other than the person to whom they purport to belong. If there is evidence before the ACMA that the copies in Nine's possession have been altered from the original documents of which they purport to be copies, we would be grateful to understand what that evidence is.
5. Nine is also not aware that the ACMA has been provided by the complainant with evidence of the authenticity of those identity documents (particularly with respect to the year of birth inconsistency). As such, the authenticity of the identification documents is still in issue, and Nine maintains that no accuracy breach could be sustained unless and until such time as all the identification documents included in the Reports have proven to be authentic.
6. Nine's understanding is that the copies in its possession were made by the complainant, and if the copies in fact differ from the original documents, then Nine submits that is further evidence of the complainant creating and/or using inauthentic identity documentation. Nine submits that it is entirely reasonable to conclude that there is no legitimate reason for a person to have copies of passports and driver's licences which have been altered from the originals in respect of key particulars (such as name or date of birth).
7. Indeed, following the broadcast of the Second Report, Nine also came into possession of further photocopies of identification documents depicting the complainant. These documents included two additional copies of the complainant's driver's licence with identifying particulars that do not match the driver's licence depicted in Annexure E of Nine's original submissions. Nine submits these further copies reinforce the position that one or more of the complainant's identification documents must necessarily be an inauthentic and therefore 'fake' identification documents. Annexed hereto and marked:
8. Annexure 1 is a copy of the complainant's driver's licence with an inconsistent date of birth; and
9. Annexure 2 is a copy of the complainant's driver's licence with an inconsistent date of birth and licence number.
10. Furthermore, the complainant has since faced the [State Capital] Magistrates Court in relation to the incident involving the use of Ms R's credit card. Annexed hereto and marked Annexure 3 is a copy of the Verdict and Judgment Record from the [State Capital] Magistrates Court. Relevantly, in addition to pleading guilty to this offence of fraud, the matter was also brought against the complainant under the name ‘’[name redacted]’ and with a date of birth recorded as [date of birth redacted].
11. Nine notes that the proceedings were not brought under either of the complainant's alleged ‘’legal names’" - as one would expect in circumstances were formal channels had been pursued to legally change one's name with the relevant authorities. Moreover, the court documentation in Annexure 3 does not refer to the complainant by the name under which he had registered on Uber, thus further reinforcing the accuracy of the suggestion that the complainant did not use his legal name to register as an Uber driver.
12. Having regard to the above, Nine submits that Annexure 3 further reinforces the validity of Nine's assertions in the reports with respect to the complainant's use of multiple identities and ‘’fake’ identification documents.
13. For the reasons above, Nine maintains it was entitled to report in the context of the First Report that the complainant's identity documentation was 'fake', and that he had used a 'fake identity' to create a ride sharing profile and was not using his 'real name'. Either those were opinions of Nine, validly based upon the evidentiary material referred to above, or they were assertions of fact, being conclusions drawn upon examination of the evidence, which were accurate in the circumstances at the time of broadcast, for the reasons indicated above.

 **Accuracy in Second Report**

1. The ACMA has also made the preliminary finding that ‘it was not accurate, based solely on those inconsistencies in copied documents or on the statements made by Ms R and police, to definitively state that the documents were 'fake’' in the Second Report. Nine respectfully maintains that there is no proper basis for this finding, for both the reasons articulated with respect to the First Report and the further reasons set out below.
2. The Second Report concerned further revelations that the complainant had been known by more aliases in addition to the two identities referred to in the First Report, and in fact he had been convicted of a criminal offence under another different name. Nine included in the Second Report the complainant's response to the allegation that he went by 'fake' names, stating that ‘[Mr A] and [Mr J] are both legal names’. It was therefore open to viewers to determine whether they accepted Nine's or the complainant's position.
3. Clause 3.1.2 of the Code states that ‘Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including: a) the facts known, or readily ascertainable, at that time; b) the context of the segment (or Program Promotion) in its entirety’ (our emphasis).
4. A consideration [of] the context of the Second Report includes the fact that Nine had persuasive evidence (including CCTV footage, bank statements, and witnesses) that the complainant had taken a passenger's credit card and used it to buy things for himself, had lied about the card being not found, had multiple identity documents that differed in key particulars for which there could be no legitimate explanation (such as year of birth), had a prior conviction for a criminal offence whilst working as a medical general practitioner, had lodged a complaint with Nine with inconsistent and/or invalid contact details, and had admitted to use of his customer's bankcard.
5. Based on that context, it was open to Nine to form the view that the complainant was not credible source of information and consequently it was also open to Nine to maintain the position that at least some or all of the relevant identity documents were 'fake'. As such, Nine maintains it was not an inaccurate presentation of factual material for Nine to report on the further matters regarding the complainant's multiple identities and 'fake' identity documents referred to in the Second Report.

**Privacy**

1. The ACMA has formed a preliminary view in the Findings that Nine breached clause 3.5.1 of the Code in relation to the Second Report by broadcasting the date of birth depicted in the complainant's driver's licence, the suburban house and street that were shown, and including an image of the complaint submitted on the FreeTV website by the complainant (the FreeTV Complaint). At page 15 of the Findings, the ACMA concludes that ‘it was not proportionate [to the public interest] to disclose details of Mr A's date of birth, information about his address or a copy of his complaint to the licensee’ in the Second Report, because ‘it was entirely possible to convey the information about safety concerns ... without disclosing this information’ and ‘... the information did not directly or indirectly contribute to the public's capacity to assess the issue of the safety of ride sharing passengers or the adequacy of the background checks performed on drivers’.
2. Nine maintains that the date of birth on the complainant's driver's licence, the image of a house, and the FreeTV Complaint were not, in the circumstances, personal or private information that would constitute an invasion of the complainant's privacy. Further or in the alternative, Nine maintains that this information would be appropriately captured by the public interest exception in clause 3.5.1(a) as this information was both directly relevant to the matters of public interest at play (which include not just the safety issues, but also various instances of concerning conduct by the complainant), and necessary to substantiate the assertions made with respect to the developments in the matter since the First Report.
3. At the outset, while the ACMA states that ‘it was entirely possible to convey the information about safety concerns ... without disclosing this information’, this is, with respect, not the relevant test for determining whether there has been a breach of clause 3.5.1 of the Code. The ACMA is not required to conduct a comparison of an actual broadcast against a hypothetical broadcast with less information to see whether in the ACMA's view the public interest issue is adequately addressed. Rather, the relevant test requires an assessment of what was actually broadcast and a determination whether ‘there is a public interest reason for the material to be broadcast’. While a broadcast omitting certain information may still address a public interest issue, it does not follow that the inclusion of additional material constitutes a breach of privacy, particularly in circumstances where the additional material directly relates to the public interest issue.
4. With respect to the date of birth, an image of the complainant's driver's licence was briefly shown as part of a discussion on the complainant's ‘fake’ identification documents and new information that had come to light linking the complainant with two further identities. As previously submitted, the validity of the identifying particulars recorded in this driver's licence and indeed the complainant's other identification documents were directly relevant to the public interest issues being discussed in the Second Report - namely, the adequacy of background checks by ride-sharing services given the complainant's multiple identities and possession of inauthentic identity documents. Nine maintains that as evidence of authenticity issues with the details in the complainant's identification documents, the identifying particulars of the document (at the very least, the name and date of birth) that were shown, were directly relevant to the public interest considerations being dealt with in the Second Report and as such would be appropriately captured by the exception in clause 3.5.1(a). Further, it is not even clear from the material available at the time of the Second Broadcast whether the date of birth on the licence is in fact the complainant's actual date of birth, given he appears to have more than one date of birth recorded on his identification documents.
5. If, however, the ACMA maintains that the details on the driver's licence shown in the Second Report are not captured by the exception in clause 3.5.1(a), Nine says that it would only have been required to obscure part of the date of birth (day and/or month) to preserve the complainant's privacy whilst still addressing the issue of inauthentic identification documents (the year being the source of discrepancy). If this is the ACMA's final position on the issue, then Nine will remind all relevant staff about the importance of obscuring identifying particulars if and when including identification documents in broadcasts. Nine does note however that such documents tend to only be depicted in reports that deal with allegations of fraud or fake identities and these reports, by their nature, involve comparisons of certain identifying particulars.
6. With respect to the alleged disclosure of the complainant's home address in the Second Report, the ACMA states in the Findings that ‘a home address for Mr A was broadcast. Regardless, of whether this was a current or previous home address, this was personal information’. Firstly, no address was broadcast (only an image of an exterior of a property was shown) and at no stage in the broadcast was the location referred to as being the complainant's current or previous home address. The Second Report simply stated that the complainant had complained to Nine in relation to the First Report and ‘had put down an address in this street’. In circumstances where it is unknown to Nine or the ACMA whether the complainant ever actually resided at this particular location, Nine maintains that the location shown in the Second Report cannot be characterised as having disclosed private information relating to the complainant's home address. Furthermore, and in any event, when the occupants of the premises were asked if they knew the complainant, ‘no one at the house had ever heard of him’. At most, the Second Report published the location as a place where nobody had heard of the complainant, not as his actual or former residential address. It cannot logically be private or personal information of a person to show a location in which that person does not reside, and to state the person does not reside there.
7. Notwithstanding the above, the location of the suburban street and house included in the Second Report were not identifiable from the broadcast, and accordingly did not disclose the relevant address (whether the complainant had ever resided there or not). The number of the house was not visible, neighbouring houses and establishing shots of the street were not shown to remove the location's contextual surroundings, and no unique and distinguishing features of the particular house were depicted. Accordingly, Nine maintains that the vision of the suburban street and house did not disclose the relevant address (even if it were a current or past address of the complainant, which has not been established) and that the footage of same therefore did not and could not constitute personal or private information pertaining to the complainant.
8. With respect to the complainant's FreeTV complaint, the Second Report did briefly show an image of the FreeTV complaint and the ACMA has indicated it considers this invaded the complainant's privacy by showing the complainant's name, postcode and the fact that a complaint had been made.
9. Firstly, the ACMA's position that the disclosure of the name recorded in the complaint was [a] breach of the complainant's privacy appears to be inconsistent with the ACMA's position on the disclosure of the complainant's use of multiple names. On page 15 of the Findings, the ACMA states ‘it was proportionate to the public interest to include details in the First Report about Mr A's change of name and in the Second Report it was relevant to disclose information about Mr A's previous names and that he had changed his name’. Although the name in the FreeTV complaint was visible, the Second Report stated, ‘After we aired our story, *A Current Affair* received a complaint from the driver who was still using the name [Mr A]’ (our emphasis). Nine maintains the reference to the name used by the complainant in the FreeTV complaint was directly relevant to the fact that the complainant had changed his name and was using multiple names in different circumstances. Accordingly, Nine considers this reference to the complainant's name remains in line with the ACMA's position that information about the complainant's change of name was proportionate to the public interest issue being discussed, and thus it did not breach the privacy requirements of the Code.
10. In relation to the postcode included by the complainant on the complaint, Nine maintains that a postcode does not by itself constitute ‘personal’ or ‘private’ information about a person, particularly as it identifies a general area, not a precise location. Nine maintains that the precise street address provided by the complainant in the FreeTV complaint was appropriately obscured in the Second Report and as such it did not identify personal or private information about the complainant's (purported) home address.
11. To the extent that the ACMA finds that the postcode, by itself, did constitute ‘personal’ or ‘private’ information, the ACMA still cannot be satisfied that this information related specifically to the complainant's ‘personal or private affairs’ particularly as no one at the location had heard of the complainant before. At most, the Second Report, disclosed a postcode provided by the complainant, however no one at that location had heard of the complainant before. Accordingly, the postcode cannot be classified as private information relating to the complainant's personal or private affairs as the broadcast did not disclose the complainant's home address or even his residential area.
12. Finally, Nine submits that there is no proper basis upon which either the fact of, or content of, a complaint submitted via the FreeTV website itself is ‘private’ or ‘personal information’. Indeed, the Findings do not articulate the basis upon which the ACMA considers that a complaint itself is personal or private information of the complainant. There is also nothing in the Code which states that a Code Complaint is confidential or private, nor is there any advice on the FreeTV electronic lodgement Viewer Feedback form which indicates that a complaint about an alleged breach of the Code will or must be kept private. While Nine does not deny that certain information contained in a FreeTV complaint (such as a specific residential address, or a personal email address) would likely qualify as private information, there is no basis for the blanket assertion that every aspect of a FreeTV complaint or indeed the very existence of a complaint is a private matter. This is particularly so in the present circumstances and having regard to the context of the allegations in the broadcasts.
13. Even if one were to accept that either or both the fact and content of the FreeTV complaint itself were confidential (which is denied by Nine), the ACMA also finds that the disclosure of the complaint to Nine was not proportionate to the public interest in the Second Report. Nine respectfully submits it simply cannot be the case that in publishing a report alleging serious wrongdoing by a person, it is not a matter of public interest to publish the accused person's response to the allegations of wrongdoing and explanation for their conduct which are directly relevant to the accusations they are facing. The FreeTV complaint articulated the complainant's response regarding the allegations that he was using multiple names and had 'fake' identification documents – ‘unfortunately for them both [‘E’] and [‘B’] are my legal names with a certificate issued by state’. As such, Nine considers the FreeTV complaint was directly relevant to the matters of public interest being discussed, it would be appropriately captured by the public interest exception in clause 3.5.1(a).
14. If a person contacted Nine to deny the allegations of which they were accused, and Nine failed to include their denials, admissions or explanations, it would potentially be exposed to accusations of unfairness and inaccuracy pursuant to the Code. It therefore follows that even if the FreeTV complaint was private or personal information (which Nine maintains it was not) then it was clearly in the public interest to references to it that the Second Report did, which reflected the fact that the complainant had raised concerns about the content in the First Report. Similarly, if the complainant had emailed those statements directly to *A Current Affair*, likewise it would be entitled, indeed arguably obliged, to include them in its reporting, unless of course the correspondence was expressed to be 'confidential', 'not for publication', or 'off the record'. This was not the case in relation to the FreeTV complaint.
15. Nine therefore remains of the view that the reference to the FreeTV complaint did not breach the privacy provisions of the Code as it was not personal or private information and indeed personal or private information about the complainant in the complaint (the physical and email address provided) was appropriately obscured.

For the reasons above, Nine submits that the preliminary breach findings cannot be sustained and respectfully requests that the ACMA reconsider its preliminary breach findings.

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.[[10]](#footnote-11)
* 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[[11]](#footnote-12)
	+ whether they are simply comments made on another person’s account of events or a separate assertion about matters within their expertise.
1. The ACMA also sought information from the licensee about the compliance of the Second Report with relevant privacy legislation. Based on the information provided by the licensee, the broadcast did not appear to raise any issues in relation to compliance with that legislation and the matter has not been canvassed in this investigation. [↑](#footnote-ref-2)
2. <https://www.9now.com.au/a-current-affair> accessed on 26 April 2019. [↑](#footnote-ref-3)
3. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-4)
4. The ACMA accessed an online copy of this ‘Information Bulletin’ on 2 September 2019. [↑](#footnote-ref-5)
5. See the ACMA *Privacy Guidelines for Broadcasters* 2016, p. 2. [↑](#footnote-ref-6)
6. The accuracy of this date of birth was confirmed by the licensee in paragraph 15 of its 1 August 2019 submissions, as being the date of birth recorded by the [State Capital] Magistrate’s Court in proceedings against Mr A. [↑](#footnote-ref-7)
7. See the ACMA *Privacy Guidelines for Broadcasters* 2016, p. 2. [↑](#footnote-ref-8)
8. See the ACMA *Privacy Guidelines for Broadcasters* 2016, p. 5. [↑](#footnote-ref-9)
9. See the ACMA *Privacy Guidelines for Broadcasters* 2016, p. 6. [↑](#footnote-ref-10)
10. 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-11)
11. 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-12)