

## Jenny Allen

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**From:** McCarthy, Justine <[REDACTED]>  
**Sent:** Thursday, 16 April 2020 6:22 PM  
**To:** [REDACTED]  
**Cc:** McLintock, Jack  
**Subject:** RE: Investigation about Seven News Brisbane broadcast on Seven on 30 and 31 July 2019  
[SEC=OFFICIAL]

Dear [REDACTED]

We refer to your letter dated 27 March 2020 regarding a preliminary breach finding in respect of two *Seven News* reports that related to the Queensland Building and Construction Commission (**QBCC**), broadcast by BTQ Seven on 30 and 31 July 2019. The ACMA has requested comments from Seven in relation to the preliminary view taken by the ACMA that Seven breached clause 3.5.1 (privacy) and breached clause 3.4.1(a) (fairness and impartiality) of the Commercial Television Industry Code of Practice (**Code**).

Seven has no further comments in respect of clause 3.5.1. However Seven's comments in relation to fairness and impartiality are set out below

### **Fairness and Impartiality**

The Code requires that news programs must be presented fairly and impartially. However, as the ACMA has noted in its preliminary investigation report, a program that presents a perspective that is opposed by a particular person or group is not inherently partial.

The ACMA appears to have based its preliminary decision that the report breached clause 3.4.1(a) of the Code primarily on the basis that Seven did not put to the QBCC the specific details of Mr A's allegations. However:

- the allegations made by Mr A were clearly presented as a representation of Mr A's own perspective. The Code is clear that there is no obligation to present all viewpoints on a matter or to allocate equal time to differing views;
- Seven's reporter was specifically told by QBCC that they would not comment on the specifics of any particular case due to privacy restrictions.

While we acknowledge that "unfair selection of material from the range of material available" could be an indicator of impartiality, in the present circumstances there was no material available in relation to QBCCs position regarding the allegations of Mr A – and the reason such material was not available was because QBCC had indicated they were unwilling to comment.

In these circumstances we believe it would be entirely unfair and unjust for the ACMA to then hold that failing to include a point of view that QBCC was unwilling to provide was evidence of bias in the report. If this standard were to be applied to all news reports then Governments, institutions and powerful individuals could easily avoid media scrutiny in relation to their conduct by refusing to comment on allegations and then accusing the media of bias for failing to include their perspective.

We entirely accept the QBCCs position that it was not in a position to comment and no negative inference was drawn from that in the relevant report. Therefore, we believe the report was presented fairly.

Further, we note that the requirement in the Code is to "present" news fairly and impartially and therefore, in our view, the report should be judged from the perspective of the viewer. The language, style and tone of the program

was neutral and was not subject to any commercial arrangement, predisposition or enmities of the presenter or the network.

We note that clause 3.2.1 of the Code specified that compliance with section 3 must be assessed taking into account the facts known or readily ascertainable at the time of preparing and broadcasting the relevant program. QBCC has now brought to the networks attention its view that Mr A's allegations regarding building defects were not all raised in the complaint to the QBCC (which we are not in a position to confirm or refute). However, there is no suggestion that this was known to the broadcaster or the reporter at the time the program went to air, or that Mr A was misrepresented or manipulated in any way.

For these reasons, we believe the ACMA's preliminary view that the broadcast breached clause 3.4.1(a) of the Code should be reversed.

Please contact me if you require any further information. My direct line is 0407 184 236.

Kind regards

Justine

**Justine McCarthy**  
**Head of Regulatory & Government Affairs**

**Seven West Media Limited**  
Media City | 8 Central Ave Eveleigh NSW 2015 Australia  
PO Box 7077 | Alexandria NSW 2015 Australia  
Telephone + [REDACTED]



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**From:** [REDACTED]  
**Sent:** Friday, 27 March 2020 4:18 PM  
**To:** McCarthy, Justine [REDACTED]  
**Subject:** Investigation about Seven News Brisbane broadcast on Seven on 30 and 31 July 2019 [SEC=OFFICIAL]

ACMA reference: BI-535

Dear Ms McCarthy,

**Investigation about *Seven News Brisbane* broadcast on Seven on 30 and 31 July 2019**

As you are aware, the Australian Communications and Media Authority (the ACMA) has been investigating a complaint about the above programs.

A preliminary view has been reached that the licensee:

- > breached clause 3.4.1 [impartiality]
- > breached clause 3.5.1 [privacy]

of the Commercial Television Industry Code of Practice 2015 (revised in 2018).

The preliminary view and the reasoning behind it are set out in the attached Preliminary Investigation Report.

During the course of the investigation, the ACMA sought further information from the complainant. Extracts from the complainant's further submission are included in the report at pp. 8-9.

Please note that the complainant withdrew their complaint in relation to accuracy.

### Response requested

You and, through you, the presenter/reporter/producer involved in the program, are invited to comment on the preliminary view of the ACMA before a final investigation decision is made. Your response should include submissions on action that the licensee intends to take to remedy the contravention if the preliminary view does not change.

### Proposed publication

The ACMA may publish relevant extracts from submissions in investigation reports. Other than in exceptional circumstances, or as required by law, only material which would be exempt from release under the *Freedom of Information Act 1982* (Cth) will be treated as confidential.

The ACMA proposes to publish the final investigation report and the details of any remedial action taken as a result of this investigation. Publication may include the full report being posted on the ACMA's website as well as a summary appearing in the ACMA's Annual Report and other ACMA publications. A media release may also be issued.

Accordingly, you and, through you, the presenter/reporter/producer involved in the program are also invited to comment on the publication of the report and remedial action in terms of section 180 of the *Broadcasting Services Act 1992*, which states:

If publication of matter in a report or part of a report would or would be likely to adversely affect the interests of a person, the ACMA must not publish the report or the part of the report until it has given the person a reasonable period, not exceeding 30 days, to make representations, either orally or in writing, in relation to the matter.

### Next steps

Comments regarding the preliminary view, publication and remedial action are due by **5pm, Tuesday 14 April 2020**.

If a response is not received by the due date, the ACMA may proceed to finalise the investigation without further reference to you or those involved in the program.

Please note that giving false or misleading information to the ACMA in the course of an investigation is a serious offence. This includes information that may be misleading due to omission.

### Confidentiality

As this matter has not yet been finalised, you and those involved in the program are asked to treat this preliminary report as strictly confidential.

Please contact me on [REDACTED] if you have any queries.

Yours sincerely,

[REDACTED]  
Investigations and Compliance Officer  
Content Investigations Section

Australian Communications and Media Authority

T + [REDACTED]

[www.acma.gov.au](http://www.acma.gov.au)



*The ACMA acknowledges the traditional custodians of this land on which we meet, work and live. We recognise and respect their continuing connection to the land, waters and communities. We pay our respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

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