Investigation report no. BI-539

| Summary |  |
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| **Licensee [Service]** | Radio 2GZ Pty Ltd [Triple M 105.1 Central West] |
| **Finding** | Breach of 2.2 [offend generally accepted standards of decency] |
| **Relevant codes** | Commercial Radio Code of Practice (2017) (revised in 2018) |
| **Program [description]** | *The Ray Hadley Morning Show*[A discussion about conflict in a junior soccer club and the host’s comments about related social media posts.] |
| **Date of broadcast** | 31 May 2019 |
| **Date Finalised** | 8 April 2020 |
| **Type of service** | Commercial—Radio |
| **Attachments** | **A** - extracts of complaints to the licensee and the ACMA**B** - extracts of licensee’s response to the complaints, and submissions to the ACMA**C -** the ACMA’s process for assessing compliance |

Issue: Decency

Relevant Code provision

**2. Material not suitable for broadcast**

2.2. Program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant Program.

Finding

The licensee breached 2.2 of the Code.

Reasons

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

* What would the ordinary reasonable listener have understood the material to convey?
* What are the demographic characteristics of the audience?
* In light of the above, did the material offend any generally accepted standards of decency?

The ACMA’s approach to assessing content is set out in **Attachment C**.

The ACMA did not investigate the broadcast against 2.1.1 of the Code, under which a licensee must not broadcast a program which in all the circumstances is likely to incite or encourage violence or brutality or present gratuitous violence or brutality, as it considered the decency provisions of the Code adequately captured the concerns raised in the complaint.

***What would the ordinary reasonable listener have understood the material to convey?***

The relevant content concerned Mr Hadley’s discussion about social media attacks he had reportedly experienced. These related to his involvement in, and comments apparently made about, a junior soccer club and certain members of the community with a connection to that club.

The ACMA received a complaint alleging that Mr Hadley had issued physical threats to an unnamed individual and included ‘vile language’, which was offensive and that he had used his broadcast to intimidate and threaten people.

Two sets of comments in the broadcast were of concern to the complainant.

The first set of comments

In the first set of comments, Mr Hadley stated that he would refer threats he had received on social media to the police commissioner, and that he knew the identity of the person making the threats. The complainant’s concern was that this was itself a threat and that it was inappropriate to refer these to the police commissioner when an ordinary person would make this report to local police.

The relevant excerpt from the broadcast was:

After the revelations last week, I’ve been attacked myself on social media by someone who’s a coward, and calls himself ‘Harry Dunya’. Now Harry, you’re dumb, as well as ‘Dunya’ because I know exactly who you are, and I’ve made a report to the police about things you’ve said about me and my family. Harry is obviously a coward, not being able to put his real name to his social media post, but Harry I know you, because your family’s surname keeps cropping up every time people send me emails about the drama connected with the [junior soccer] club.

[…]

I’ve sent details of those making threats to the […] police commissioner, and in light of an email I’ve been sent this morning, perhaps Strike Force […] and the Gang Squad need to attend a few matches and let people know, they can watch the game safely and in peace, and we’ll see how tough the standover men [are], when confronting serious coppers who are used to dealing with people who try to intimidate others.

The ACMA considers that an ordinary reasonable listener would have understood the comments to convey that Mr Hadley is well connected enough to speak directly to a state police commissioner. The comment was made in passing and was accompanied by other references to possible police involvement in addressing the conflict at the club. The ACMA considers that the ordinary reasonable listener would have understood Mr Hadley was stating that he believed the behaviour of certain parties may warrant police investigation.

The second set of comments

These related to allegations made by Mr Hadley that an apparently anonymous individual had made a comment about his young granddaughter and that if members of Mr Hadley’s family found this individual, that person would be assaulted.

The relevant excerpt from the broadcast was:

One of these knuckleheads made a comment about my granddaughter on social media. Let me tell you that the uncles of my granddaughter, if they could get a hold of you - they’re fairly formidable people in their own right, very proud people - and, you’d be drinking through a straw for a long, long time. Pull your head in. Don’t attack my granddaughter under any circumstances. You flea. And you know who you are. And have the courage next time you attack someone, including my granddaughter, to put your name on it. You low-life dog.

The licensee submitted that:

… listeners would expect strong reactions when listening to Mr Hadley’s show and it would not be unusual for him to become passionate in discussion of a topic.

[…]

Mr Hadley is renowned for his passionate views and opinionated style, and in this case Mr Hadley expressed an emotional reaction to a social media post that targeted his young granddaughter.

The ACMA accepts that Mr Hadley was emotional about the comment made about his granddaughter online and that the audience of the program would be familiar with Mr Hadley’s ‘passionate views and opinionated style’ when presenting his talk back program.

The comments included the host calling the apparently unknown person insulting names, including ‘you flea’, ‘you low-life dog’. These names were delivered in a pointed and serious tone. While the pace was measured, the tone nevertheless conveyed menace and apparent genuine anger.

Mr Hadley’s statements indicated that the ‘comment’ about his granddaughter amounted to an ‘attack’ on her, and earlier in the broadcast he had indicated that he and his family had been otherwise threatened by people associated with the junior football club. Considering the comments together, the ordinary reasonable listener would likely understand that Mr Hadley considered the threats genuine and that he was responding in kind.

The ACMA also considers that the ordinary, reasonable listener would understand from the broadcast that Mr Hadley was issuing a threat of physical assault should other relatives be able to locate the person.

The ACMA is of the view that the ordinary reasonable listener would have understood that:

* an individual had written comments online that ‘attacked’ his granddaughter
* if the relatives were able to locate the person it is likely they would assault the individual
* the host was conveying a threat of assault to the individual.

**What are the demographic characteristics of the audience?**

The licensee submitted audience demographic data for the program. The data indicated a predominantly older audience of 40+ years of age.

The licensee submitted that regular listeners to the program would be familiar with Mr Hadley’s ‘opinionated broadcast style’, ‘strong views’, and with his habit of ‘addressing issues passionately’.

While 2.2 requires the ACMA to ‘have regard to’ the demographic characteristics of the audience of the relevant program, it does not confine the ACMA to considering only the standards prevailing within that subset, or core audience.

***In light of the above, did the material offend generally accepted standards of decency?***

Provision 2.2 requires the ACMA to consider the meaning of the phrase ‘generally accepted standards of decency’.

The objects of the BSA include the promotion of the availability of a diverse range of radio services to audiences throughout Australia. Another object is to encourage providers of broadcasting services to respect community standards in the provision of program material.

The phrase, ‘generally accepted standards of decency’ refers to the current consensus of recognised present-day standards of propriety. In this regard some guidance is provided by the courts which have said that community standards will be those of the average person who can be summed up as moderate, and ‘not given to thoughtless emotional reaction’ nor ‘given to pedantic analysis’.[[1]](#footnote-1)

The average person recognises that standards of decency are not fixed, either over time or across all sections of the community.

The first set of comments

The ACMA does not consider that the first set of comments made by Mr Hadley offended generally accepted standards of decency. The comments were reasonably neutral references to possible police involvement in sorting out a dispute within the community. Mr Hadley’s statements about his referring matters to the police, and the police commissioner, were unobjectionable.

Accordingly, the licensee has not breached 2.2 of the Code.

The second set of comments

The licensee submitted that:

… Mr Hadley discussed the individual who posted the social media comment as if he was addressing the individual directly. We acknowledge that Mr Hadley stating that if his family members found this individual they would be ‘drinking through a straw for a long long time’ could be perceived as threatening and we do consider these comments to have fallen below the standards we expect of our shows.

[…]

Despite [our] self-imposed editorial standards however, we submit that the Second Comments did not breach generally accepted standards of decency. We consider the majority of listeners would see the comments as an emotional response from a grandfather and note that the ACMA has previously observed that ‘…material will not offend against “generally accepted standards of decency” simply because it has “shock value”, is distasteful or has the effect of making a person feel uncomfortable’.

[…]

… the language used was not so coarse, abusive or vulgar that it breached generally accepted standards of decency.

The ACMA considers that it was clear from these comments that the matter Mr Hadley was discussing was highly personal to him and that his comments would be interpreted by the ordinary reasonable listener as an emotional response to the alleged social media ‘attack’.

However, the ACMA does not agree that the response was nothing more than an ‘emotive’ outburst from a concerned grandfather.

The licensee has submitted that Mr Hadley spoke ‘as if he was addressing the individual directly’. The ACMA agrees and considers the statement was framed as a genuine message of threat. The comments were not light-hearted and general, but serious and directed toward an individual. Significantly, he implicitly approved the use of violence for retribution, to the extent the person would be left ‘drinking through a straw for a long, long time’. This increased the impact of the threat, and injected a menacing tone into the comments.

In considering compliance with 2.2 of the Code, one of the relevant factors is the likely audience expectations of the program at the time of the broadcast.

The ACMA acknowledges that diverse audiences in Australia will not have all their tastes and standards in common. Members of the community may accept that some material that they find coarse or offensive would not be similarly judged by others. People tend to accept, up to a point, the right of others to have such material broadcast during programs to which they listen.

The requirement for the ACMA to have regard to the demographic characteristics of the audience is an acknowledgement that different audiences may have differing tastes and standards. It is a recognition that adults make informed choices about what content to access.

The ACMA notes the licensee’s submission that the relevant audience demographic (of adults aged over 40 years) may be familiar with Mr Hadley’s approach and likely accept his ‘opiniated broadcast style’ and ‘strong views’. However, the ACMA does not consider that acceptance of an opinionated style equates to acceptance of the threatening intimidation of an individual using broadcast media.

The wider community, including the core demographic group, would likely be aware that a direct consequence of Mr Hadley’s emotive response, was to issue a credible threat of violence to intimidate an individual on-air.

The ACMA notes that Mr Hadley was responding to comments on social media that ‘attacked’ his granddaughter. Social media forums impose little accountability on people who make offensive comments, particularly those who do so anonymously, and the ACMA acknowledges the likely frustration experienced by Mr Hadley in not being able to hold this person to account. The ACMA notes however that Mr Hadley used his position as a broadcaster on a regulated medium to intimate that a violent response to the comments was appropriate.

The ACMA considers the ordinary reasonable listener, including the relevant audience demographic, who are familiar with Mr Hadley’s presentation style, would consider the threatening intimidation of an individual to be an inappropriate use of broadcast media, and highly offensive.

Having regard to the foregoing, the ACMA considers that the second set of comments did not meet generally accepted standards of decency.

Accordingly, the licensee breached 2.2 of the Code.

Attachment A

Extracts of the complaint to the licensee and ACMA

Ray Hadley was talking about complaints he had from parents of [the] soccer team of thuggery and threats, then he mentioned how one from a man who had put him down on social media said he knows who he is even though he gave a false name and he has passed his threats on to [the] police commissioner and names him. I thought only our prime minister would be raising threats with the police commission. I know the rest of us would be raising this with local police

[…]

Mr Hadley then turned on to the man who had made threats to him on social media and mentioned he had also put down his granddaughter.

[…]

he [said] the uncles will make sure he is drinking through a straw. Then he called him a ‘dog’ […] and was carrying on like the thug he was accusing this man of being himself.

 […]

He [Mr Hadley] has a public duty to abide by the law and should be courteous and respectful

[…]

He should not be using […] radio to intimidate and threaten people no matter what!

Attachment B

Extracts of the licensee’s response to the complainant

[…]

As a commercial broadcaster, we are mindful of community standards and the demographics of our audience. We do not wish to create content that our audience would find inappropriate or to appear to endorse behaviour that is disrespectful towards any individual or encouraging of violence.

In the current circumstances, the comments made by Mr Hadley fell below the standards that we expect of our shows and we agree he should have chosen his words more thoughtfully on this occasion. We have discussed this matter with 2GB and understand that 2GB has also explained their concerns to Mr Hadley.

[…]

Extracts of the licensee’s submissions to the ACMA

[…]

*The Ray Hadley Morning Show* discusses the latest news, sport, traffic, weather and involves political interviews and commentary.

The show is popular in Triple M’s Central West licence area, as shown by the most recent survey results for the period 15 July 2019 to 3 August 2019 (see Annexure A)[[2]](#footnote-2). [*attachment not included in this report*]

[…]

The ACMA has previously noted that in examining compliance with the decency provision of the Codes, the ACMA will consider:

* the subject matter or themes dealt with;
* the tenor or tone of the broadcast;
* the language used in the broadcast; and
* the attitudes conveyed.[[3]](#footnote-3)

It is our submission that the Broadcast complied with Code 2.2 for the following reasons.

1. Subject matter or themes dealt with

The Broadcast was made on 31 May 2019. By way of context, in the days preceding the Broadcast, Mr Hadley had discussed a Daily Telegraph article in his program[[4]](#footnote-4). The article had reported that the […] Football Association had warned parents and players that they could be kicked out of a […] Sydney soccer competition after police were called over an incident at an under-7s match in which parents apparently scuffled on the sidelines[[5]](#footnote-5). On 29 May 2019, Mr Hadley interviewed the chair of the […] Football Association […] in respect of the reports.

**The First Comments**: On 31 May 2019, Mr Hadley said during the Broadcast that, after the revelations discussed above, he had been attacked on social media and identified the individual by the online pseudonym used to post the comment. Mr Hadley called this individual ‘dumb’ and noted that he had made a report to the NSW Police Commissioner about the comments the individual had made about Mr Hadley and his family. Mr Hadley then called the individual a ‘coward’ for not putting their name to the social media post and indicated he knew who the individual was, based on emails received from listeners after his recent coverage of the reported violence. Mr Hadley then went on to discuss how he would not be intimidated by a small clique of members at the […] soccer club and neither should people who wish to attend the games and support their team. Mr Hadley proposed that Strike Force […] and the Gang Squad could attend and watch over the games for safety (together, the **‘First Comments**’).

We submit that discussing a social media comment on air is not an extremely sensitive or indecent subject matter nor are comments about safety in respect of publicly reported violence at a soccer game.

**The Second Comments**: As the Complainant described in their complaint, several minutes after the First Comments, Mr Hadley noted that ‘one of these knuckleheads made a comment about my granddaughter on social media’. He went on to note that if the uncles of his granddaughter could find this individual, the individual would be ‘drinking through a straw for a long long time’. Mr Hadley then commented ‘Pull your head in. Don’t attack my granddaughter under any circumstances, you flea, and you know who you are. And have the courage next time you attack someone, including my granddaughter, to put your name on it, you low life dog (together the ‘**Second Comments**’).

We submit that Mr Hadley did not offend generally accepted standards of decency by the Second Comments and that the ordinary, reasonable listener would consider this an understandably emotional response to unsavoury comments being made about Mr Hadley’s family.

1. Tenor or tone of the broadcast

**The First Comments:** In the First Comments, Mr Hadley called the individual ‘a coward’ for not putting their name to the social media post and indicated that nonetheless he felt he knew who this individual was. We do not consider this reference, and the tone in which it was made, so threatening that it breached generally accepted standards of decency. We also submit that Mr Hadley stating that he had reported the incident to the NSW Police Commissioner does not breach Code 2.2 and that the ordinary, reasonable listener would not consider this action indecent.

**The Second Comments:** In the Second Comments, Mr Hadley discussed the individual who posted the social media comment as if he was addressing the individual directly. We acknowledge that Mr Hadley stating that if his family members found this individual they would be ‘drinking through a straw for a long long time’ could be perceived as threatening and we do consider these comments to have fallen below the standards we expect of our shows. 2GB has indicated that this has been discussed with Mr Hadley and he has understood the concerns.

Despite 2GB and Triple M’s own self-imposed editorial standards however, we submit that the Second Comments did not breach generally accepted standards of decency. We consider the majority of listeners would see the comments as an emotional response from a grandfather and note that the ACMA has previously observed that ‘…material will not offend against ‘generally accepted standards of decency’ simply because it has ‘shock value’, is distasteful or has the effect of making a person feel uncomfortable’.[[6]](#footnote-6)

Given the talk-back nature of the program, the program is designed to provoke discussion and debate. Mr Hadley is known for his opinionated broadcast style, strong views and for addressing issues passionately. ACMA has noted that ‘Where a presenter is well-known for a particular style, potentially offensive material may be more acceptable to listeners accustomed to that style’. In its investigation into the program ‘The Sunday Roast’, the ACMA also observed that ‘In light of the nature of the Program it is considered that the regular listeners of The Sunday Roast would be aware of the controversial nature of the program and accept its style of blunt and sometimes rude commentary as being part of this presentation style.’ In keeping with this commentary, we submit that listeners would expect strong reactions when listening to Mr Hadley’s show and it would not be unusual for him to become passionate in discussion of a topic.

1. Language used in the broadcast

**The First Comments:** While Mr Hadley called the individual who posted the social media comment ‘dumb’ and ‘a coward’, we submit that the language used was not so offensive, abusive or vulgar that the content breached generally accepted standards of decency.

**The Second Comments:** Similarly, in the Second Comments, Mr Hadley called the individual a ‘flea’ and a ‘low life dog’. Again, we submit that this language was not so coarse, abusive or vulgar that it breached generally accepted standards of decency.

1. Attitudes conveyed

Mr Hadley displayed an attitude of anger at a social media post targeting his young granddaughter and expressed concern at violence, and the need for safety, on the sporting field. We submit that the ordinary, reasonable listener would not have had their general standards of decency offended by the attitudes he conveyed.

For the reasons set out above, we submit that the ordinary, reasonable listener would not have had their general standards of decency offended by the First Comments or the Second Comments. Mr Hadley is renowned for his passionate views and opinionated style, and in this case Mr Hadley expressed an emotional reaction to a social media post that targeted his young granddaughter.

While we agree that Mr Hadley should have chosen his words more thoughtfully on this occasion, we submit that the First Comments and the Second Comments did not breach Code 2.2.

[…]

Attachment C

The ACMA’s process for assessing compliance

Assessing the relevant code provision

**Material not suitable for broadcast**

2.2. Program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant Program.

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

* What would the ordinary reasonable listener have understood the material to convey?
* What are the demographic characteristics of the audience?
* In light of the above, did the material offend any generally accepted standards of decency?

The ordinary reasonable listener

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

Australian courts have considered an ‘ordinary reasonable’ listener 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.[[7]](#footnote-7)

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

1. *MacKinlay V Wiley* [1971] WAR 3 at 25. [↑](#footnote-ref-1)
2. Orange - Xtra Insights Survey 1, 2019. [↑](#footnote-ref-2)
3. ACMA Investigation concepts – Decency, classification, harm and offence (last updated July 2018), p.36. [↑](#footnote-ref-3)
4. [Reference to relevant media article] [↑](#footnote-ref-4)
5. ibid [↑](#footnote-ref-5)
6. Investigation Report BI-441 *(The Alan Jones Breakfast Show),* p.8. [↑](#footnote-ref-6)
7. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-7)