

## Complaint and Investigation Assessment (CIA)

### COMPLAINT AND/OR BROADCAST DETAILS

Complainant Name	ACMA Complaint ID	Date Complaint received by ACMA	Summary of issue/s raised
n/a	BM-9104	n/a	Impartiality in news programs

  

Broadcaster or licensee	Prime Television (Southern) Pty. Limited
Station ID or name	PRIME7
Type of service	Commercial Television Broadcasting
Program or service title	Prime7 News Wagga
Date of broadcast	05 November 2020
Relevant provision/s of BSA, standard or code to be pursued	Clause 3.4.1 – present news fairly and impartially of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the Code)
Relevant provision/s of BSA, standard or code not to be pursued	n/a
Complaint or matter description	Alleged lack of impartiality in a news report about the 'Save Our Voices' campaign to amend legislation governing regional television broadcasters
Relevant breaches by the licensee/ network/broadcaster in last 12 months	Nil
Relevant current or recent investigations on similar matter/s	<p>██████████ impartiality – no breach – 4 December 2020</p> <p>BI-535 – <i>Seven News (Brisbane)</i> – impartiality – breach – 22 April 2020</p> <p>BI-525 – <i>Nine News (Brisbane)</i> – impartiality – breach – 7 February 2020</p> <p>BI-521 – <i>Seven News (Toowoomba)</i> – impartiality – no breach – 29 January 2020</p> <p>BI-456 – <i>Seven News (Melbourne)</i> – impartiality – no breach – 13 June 2019</p>

  

-Comments
<p>&gt; The ACMA has identified a number of news reports broadcast by Prime Television in different markets that covered the Save Our voices campaign. On 11 May 2021, the ACMA wrote to Prime Media Group (PMG) inquiring about coverage of 'current issues facing regional television broadcasters' and asked, 'how those commercial television licensees, who are choosing to cover this content, are satisfying themselves that the relevant content complies with the impartiality requirements in the Commercial Television Industry Code of Practice 2015 (revised 2018)'. A news report of 5 November 2020 was identified as an example of the coverage referred to.</p> <p>&gt; The news report was approximately 2 mins 30 seconds in duration and consisted of the studio presenter, positioned in front of a large 'Save Our Voices' graphic, introducing the report by stating that regional media companies, 'including Prime', were 'battling' outdated media laws but that the Minister for Communications, who had visited Wagga Wagga that day, 'was remaining tight lipped'. The reporter then introduced a number of excerpts of remarks by the Minister, interspersed with informing viewers that regional media companies were involved in the campaign 'Save Our Voices', stating that the need for reform was due to high-speed broadband allowing 'tech giants' into regional areas and commentary that without reform 'it won't be long before newsrooms crumble and the community's voice is silenced'. After the report concluded, the studio presenter stated 'we are asking you to join the fight to save our voices'.</p> <p>&gt; PMG's response referred to the public significance of the issue, and noted that it had 'broadcast the news story in good faith' and that it was confident that it had complied with 'the requirements of the Code'. The response did not refer to compliance with the impartiality provisions of the Code in any detail, nor did it refer to the presenter's invitation to the audience to take part in the 'Save Our Voices' campaign.</p> <p>&gt; The 'Save Our Voices' campaign states on its website (<a href="http://www.saveourvoices.com.au">www.saveourvoices.com.au</a>):</p> <p style="padding-left: 20px;">Regional Australia has a diverse range of local media outlets across television, radio and print. Many have been serving their communities for decades. Some newspapers have been published continuously for more than a century. But they may not survive.</p> <p style="padding-left: 20px;">The trusted local media voices that readers and listeners know and love — the outlets that are part of the very fabric</p>

of regional Australia — are at breaking point. They are battling under archaic regulations that restrict ownership and are well past their use-by date.

If our industry is to make it through this crisis, these regulations must be overhauled.

We are proud of the many trusted local media voices that connect communities and inform them of local events and issues, but newspapers and local TV newsrooms are slowly fading and switching off across the country. Our society, and our democracy, is the poorer for it.

We believe regional Australians deserve better, but unless the federal government acts quickly, a sustainable independent local media presence looks increasingly unlikely.

Your point of view is important, so please join us in our fight for change.

Use your voice to help us save our local services in news and community information. We will carry the voice of regional Australia with us as we argue for a viable, long-term and independent local media for all regional Australians.

- > Section 3.4 (Impartiality) of the Code requires that in broadcasting a news Program, a Licensee must: present news fairly and impartially; and clearly distinguish the reporting of factual material from commentary and analysis. The Code does not require a Licensee to allocate equal time to different points of view, or to include every aspect of a person's viewpoint, nor does it preclude a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest.

## RISK RATING & DECISION MAKER LEVEL FOR INVESTIGATION

The ACMA has established a system of risk oversight and management by virtue of the MI on Risk Management and the *ACMA Risk Management Guide*. The risks assessed in this CIA are operations level risks associated with the investigations undertaken by the Content Safeguards Branch. Once identified, risks and consequences will generally be reduced by the use of integrated, everyday controls.

Low to medium risk decisions will generally be made under delegation. High risk matters will generally be considered by the Authority. Extreme risk matters will always be considered by the Authority. The risk level will be determined by completing the below table with reference to the risk level matrix at **Attachment B**. The level of risk may change in the course of an investigation and the level of decision-maker changed accordingly.

Risk category and key examples	Key risk and consequence	Current Controls	Likelihood	Consequence
<b>Compliance</b> , e.g. the matter: <ul style="list-style-type: none"> <li>- is of significant public interest</li> <li>- may impact on the community at large</li> <li>- may be novel and/or have precedent value</li> <li>- may concern systemic non-compliance</li> <li>- may involve formal enforcement action</li> <li>- may raise concerns about the adequacy of the relevant code or involve policy considerations.</li> </ul>	Decision and subsequent actions not adequately informed by Authority views / Level of compliance and safeguards not adequate and/or consistent	<p>The ACMA will make decisions in accordance with the Codes and BSA.</p> <p>Authority oversight of investigation outcomes and delegated decisions enables monitoring of the effectiveness and relevance of a code.</p> <p>Work with industry to develop regulatory and non-regulatory responses to audience concerns and complaints.</p>	Very Unlikely	Minor
<b>Stakeholder management</b> , e.g. the matter has, or may: <ul style="list-style-type: none"> <li>- develop, strong community, political, media or industry sensitivity</li> <li>- involve a wider context and/or broader environmental considerations.</li> </ul>	Stakeholder expectations not met and/or not managed at appropriate level / Reduced confidence in ACMA and/or legislative framework	<p>Work with industry to develop a culture of broadcasting code and act compliance and reduce costs of compliance over time.</p> <p>Educate citizens, proactively via published decisions, social media and website information.</p> <p>Quality assurance monitoring of complaints processing and CSC interaction including adherence to ACMA customer service charter and complaints handling manual.</p>	Unlikely	Moderate

Given the above, the risk level is **Medium** and it is anticipated that the decision maker will be:

- ☐ **A delegate**, where the power is delegated in the *Instrument of Delegation*; or  
☒ **The Authority**; or  
☐ **Not applicable** (for matters that will not be investigated).

## DECISION WHETHER TO INVESTIGATE MATTER

I, being the appropriately delegated officer of the Australian Communications and Media Authority, noting the public interest considerations at **Attachment A** and the following factors:

- > a copy of what appears to be the broadcast has been located in the public domain. Based on a preliminary examination of the broadcast, including the seriousness of the allegations and/or nature of the material, and the licensee's lack of meaningful response to enquiries by the ACMA to date, an investigation will enable relevant facts and material to be considered appropriately
- > a decision may have educative value to the complainant, industry and/or the community.

decide that the matter:

- ☒ **will be investigated under the *Broadcasting Services Act 1992* being an own motion investigation under section 170; or**  
☐ **will not be investigated.**



\_\_\_\_\_  
 Rochelle Zurnamer  
 Executive Manager, Content Safeguards Branch

Date: \_\_18\_\_ / \_\_07\_\_ / \_\_21\_\_

## The ACMA's discretion to investigate matters

The ACMA has a broad discretion to commence an investigation into broadcasting and datacasting matters.<sup>1</sup> It can do so upon receipt of a complaint<sup>2</sup>, on its own initiative<sup>3</sup> or at the direction of the Minister<sup>4</sup>. The scope is also a matter for the ACMA's discretion.

The ACMA's primary consideration is whether it is in the public interest having regard to the subject matter, and the purpose of the BSA.<sup>5</sup> Importantly, each matter must be considered on its merits. A consideration of the public interest in any given case may be informed by a range of factors, including one or more of the considerations noted below.

Public interest considerations
<b>Complaints process (where relevant):</b> <ul style="list-style-type: none"> <li>&gt; Has the matter been raised with the broadcaster/licensee under the co-regulatory complaints process?</li> <li>&gt; If a matter has not been raised under applicable co-regulatory processes, why not?</li> <li>&gt; Is the complaint vexatious, frivolous and/or not made in good faith?</li> </ul>
<b>Timing:</b> <ul style="list-style-type: none"> <li>&gt; How long ago did the broadcast or issue occur (e.g. was it more than a year ago)?</li> <li>&gt; Are there extenuating circumstances to explain any delay in making the complaint?</li> <li>&gt; Are there matters suggesting an early intervention may deliver a better outcome?</li> </ul>
<b>Community concern:</b> <ul style="list-style-type: none"> <li>&gt; Has the matter raised genuine or widespread community concerns?</li> <li>&gt; Does the matter potentially affect the community at large, and if so, how does or could it affect others?</li> </ul>
<b>Significance:</b> <ul style="list-style-type: none"> <li>&gt; What is the nature and seriousness of the issues raised?</li> <li>&gt; Does the matter concern a possible or likely breach of legislative provisions?</li> <li>&gt; Does the matter raise matters of substance rather than issues of a trivial or technical nature?</li> <li>&gt; Is an issue of principle or precedent raised?</li> <li>&gt; Does the matter raise potential aspects of the regulatory framework (e.g. codes) that should be considered as a matter of priority?</li> </ul>
<b>Systemic issues:</b> <ul style="list-style-type: none"> <li>&gt; Is the ACMA aware of matters that may indicate a potential systemic issue or pattern of conduct?</li> <li>&gt; Is the alleged misconduct potentially ongoing?</li> <li>&gt; Has a similar issue been investigated recently? Was a breach or no breach finding involved?</li> </ul>
<b>Compliance history:</b> <ul style="list-style-type: none"> <li>&gt; Has the broadcaster/licensee been the subject of breach findings in relation to similar matters?</li> <li>&gt; Is intervention by the ACMA warranted because the conduct suggests a poor compliance culture or that previous regulatory intervention was ineffective?</li> </ul>
<b>Other avenues for redress and/or proceedings in train:</b> <ul style="list-style-type: none"> <li>&gt; Are there other avenues for redress (taking into account the complainant's capacity to pursue them)?</li> <li>&gt; Is the matter the subject of current legal, administrative or regulatory proceedings that may be complicated or compromised by opening an investigation at this time?</li> </ul>
<b>Efficiency and effectiveness:</b> <ul style="list-style-type: none"> <li>&gt; Would the resources used in an investigation be proportionate to the public interest matters involved?</li> <li>&gt; Would an investigation disproportionately divert resources from other priority matters?</li> <li>&gt; Has the broadcaster/licensee responded conscientiously to the complainant (if relevant)?</li> <li>&gt; Has the broadcaster/licensee done anything to address the issues raised by a complaint?</li> </ul>

<sup>1</sup> The ACMA may conduct investigations for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions and related powers under s170 of the BSA.

<sup>2</sup> Where it is 'desirable to do so', the ACMA may investigate a complaint made under s147, 148, 150 & clause 36 of Schedule 6 to the BSA.

<sup>3</sup> The ACMA may investigate any kind of complaint or part of a complaint, or without a complaint, under s170 of the BSA.

<sup>4</sup> Section 171 of the BSA.

<sup>5</sup> The objects of the BSA (s3), the regulatory policy (s4) and the ACMA's role (s5) are particularly relevant.



### Using the ACMA's risk matrix<sup>6</sup>

The level of risk, or risk rating, is calculated by combining the consequence and likelihood ratings. For any risk, there may be a number of different consequence/ likelihood scenarios. Within each category there may be multiple scenarios ranging from "minor but likely" to "catastrophic but very unlikely".

It is important to rate what is the realistic worst-case scenario, and which is the worst-case level of risk considering both consequences and likelihood. In these instances, it may be appropriate to rate the same consequence category more than once. Where there are multiple ratings for a risk, the highest combination of consequence/likelihood is taken as the level of risk.

Once you have evaluated the likelihood and consequence, each risk should be plotted against the ACMA's risk matrix to determine its overall risk rating.

	Insignificant	Minor	Moderate	Major	Catastrophic
Very Likely	Medium	High	High	Extreme	Extreme
Likely	Medium	Medium	High	High	Extreme
Possible	Low	Medium	Medium	High	High
Unlikely	Low	Low	Medium	Medium	High
Very Unlikely	Low	Low	Low	Medium	Medium

The ACMA uses the following definitions to evaluate risk against our acceptable level of risk tolerance:

Extreme	The risk is well above tolerable limits and must be further treated to reduce it to the lowest level practicable. Quarterly or monthly monitoring is required if the risk is accepted.
High	The risk is above tolerable limits, and further treatment is required to reduce the risk to the lowest level practicable. Quarterly monitoring is required if the risk is accepted.
Medium	The risk is tolerable, but should be reduced if practical. The risk should be monitored through routine operational and management practices.
Low	The risk is acceptable and no further treatment is required.

<sup>6</sup> See further the ACMA's *Management Instruction for Risk and the Risk Management Guide*, available at: [http://intranet.internal.govt.nz/media/Files/SP\\_Lists/SP2013\\_FFB\\_ACMA\\_Guides/ACMA\\_Risk\\_management\\_Guide.pdf.pdf](http://intranet.internal.govt.nz/media/Files/SP_Lists/SP2013_FFB_ACMA_Guides/ACMA_Risk_management_Guide.pdf.pdf)