

Mr George Christensen MP
Federal Member for Dawson
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ACMA file reference: BM-6623

Dear Mr Christensen

ACMA's investigation—*The Alan Jones Breakfast Show* on 15 August 2019

Thank you for your email of 25 May 2020 requesting information as to the legal basis on which the ACMA undertook this investigation.

The *Broadcasting Services Act 1992* (the BSA) sets up the legislative framework under which the ACMA undertakes investigations into broadcast content on radio and television.

Under section 170 of the BSA, the ACMA has a broad discretion to commence an investigation into broadcasting and datacasting matters¹. It can do so upon receipt of a complaint², on its own initiative³, or at the direction of the Minister⁴.

Under the BSA, commercial radio broadcasters are required to develop and comply with codes of practice in relation to the content they broadcast⁵. The Commercial Radio Code of Practice, 2017 (revised in 2018) (the commercial radio code) is available on the ACMA's website at <https://www.acma.gov.au/industry-codes-practice>.

Relevantly in the case of this investigation, the commercial radio code contains industry-agreed requirements in relation to accuracy, decency and the incitement of violence, hatred, or severe ridicule. The ACMA investigates matters to assess a broadcaster's compliance with the industry-agreed commercial radio code.

The ACMA received over 125 complaints about the *Alan Jones Breakfast Show* broadcast on 15 August 2019 and the broadcast attracted significant media coverage, online petitions and multiple advertiser withdrawals. The ACMA commenced its investigation in September 2019, including consideration of submissions from the licensee (2GB) in regard to the broadcast, and released its final report on 19 May 2020.

Our investigation report (attached) identifies the relevant provisions of the commercial radio code against which we assessed the broadcast, our reasoning for our findings and general information in regard to our process for, and considerations in, assessing compliance.

¹ 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.

² 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.

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

⁴ Section 171 of the BSA.

⁵ Section 123 of the BSA

The ACMA found two breaches of the commercial radio code by the licensee in relation to the broadcast.

The first was that the broadcast breached provisions of the Code that require that content must meet generally accepted standards of decency. In making its finding, we made the following statement:

The ACMA acknowledges that it is important for broadcasters to be free to criticise policies and the behaviour of public figures, and to do so vigorously. There is no expectation that licensees should stifle debate on controversial issues in the community, or to curtail expression of criticism.

However, licensees have a responsibility to ensure that its presenters exercise care when using language on air to ensure that such statements do not offend against generally accepted standards of decency. In this case, the repeated use of violent metaphors, with an apparent encouragement of aggressive silencing of Ms Arden, was highly offensive to the audience and did not meet audience expectations of broadcast content in contemporary Australia.

Having regard to the foregoing, the ACMA finds that the content did not meet generally accepted standards of decency.

Of relevance, 2GB did not oppose ACMA's breach finding in relation to decency, acknowledging that the broadcast had caused offence to many in the community.

The second breach was that a statement of fact in the broadcast breached provisions in the Code that require the licensee to use reasonable efforts to ensure that factual material was reasonably supportable as being accurate.

The commercial radio code does not impose an absolute obligation of accuracy. However, in this case, the ACMA was not satisfied that the licensee used reasonable efforts to ensure that the factual material in a statement made in the broadcast was reasonably supportable as being accurate.

The ACMA's content regulation role is clearly defined under the BSA to ensure that public debate is not unduly constrained, differing opinions and viewpoints can be expressed but that community standards are respected by broadcasters.

I would like to assure you that this investigation, as with all others we undertake, was conducted with rigor, professionalism and in accordance with the regulatory role set for us by the Parliament.

Yours sincerely



Nerida O'Loughlin PSM

10 June 2020

cc: The Hon Paul Fletcher MP, Minister for Communications, Cyber Safety and the Arts