Investigation report no. BI-646

| Summary |  |
| --- | --- |
| **Licensee [service]** | Network Investments Pty Ltd [Sky News Regional] |
| **Findings** | Breaches of clause 3.3.1 [factual accuracy, misrepresentation of viewpoints]  |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised in 2018)  |
| **Program [type]** | *Outsiders* [current affairs, discussion] |
| **Dates of broadcasts** | 3 October 202124 October 20217 November 20215 December 2021 |
| **Date finalised** | 19 December 2022 |
| **Type of service** | Commercial television |
| **Attachments** | **A** – extracts from the complaint to the ACMA**B** – extracts from the Licensee’s submissions to the ACMA**C** – relevant provisions and the ACMA’s approach to assessing content |

Background

In June 2022, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into four episodes of *Outsiders*.

The episodes were broadcast on Sky News Regional by Network Investments Pty Ltd (the **Licensee**) on 3 October 2021, 24 October 2021, 7 November 2021 and 5 December 2021, respectively. *Outsiders* is a program in which the three hosts discuss news and current affairs and interview guests. The program also includes ‘Outsiders News’ and a regular recurring segment called ‘Outsiders Weather and the Sceptics Ice-Age Watch’.

The ACMA had received complaints alleging that 10 episodes of Outsiders, broadcast over October to December 2021, included content that was inaccurate or misrepresented factual information or viewpoints. The complaints comprised 80 allegations.

Most of the allegations related to material that was presented during ‘Outsiders Weather and the Sceptics Ice-Age Watch’ segments. A central premise of the segment is to debunk or criticise the consensus position on climate science and global warming. It provides viewers with short information items taking a critical perspective on the consensus position on climate science. These items are generally related to recent weather events and research or occurrences that are presented as challenging the notion of anthropogenic global warming or policy responses to it.

The ACMA conducted pre-investigation assessments of each of the 80 separate allegations received.

The ACMA identified considerable repetition between each segment and this was reflected in a number of recurring concerns raised in the 80 complaint allegations. The ACMA’s review of the content complained about identified, as a recurring tendency, the presentation of certain, evidently credible, research that was overlayed with critical and contrary commentary making it difficult for the viewer to discern commentary from fact and to draw their own conclusions from the selection of material included.

Based on this assessment we identified a number of thematic concerns to investigate in the public interest. These were:

1. Misrepresentation of research
2. Concerns regarding the credibility of expertise and sources of information
3. Inaccurate reportage.

After assessment of the 80 complaints, the ACMA proceeded to investigate 6 of the allegations as they related to 4 broadcasts, taking into account the recurring concerns, identified themes, and the public interest. The ACMA has investigated the Licensee’s compliance with clauses 3.3.1 Commercial Television Industry Code of Practice 2015 (revised in 2018) (the **Code**).

To the extent that the complaints alleged that factual material had been presented unfairly, or was not clearly distinguishable from analysis and commentary, those allegations have not been investigated. The relevant Code provision – clause 3.4.1 – applies only to news programs and the ACMA does not consider that *Outsiders*, whilst it includes news content, can be characterised as a news program.

As the program is predominantly a panel discussion program about current affairs, the program is properly regarded as a current affairs program.

Issue: Accuracy and representation of viewpoints

Relevant Code provisions

**3. News and Current Affairs**

**3.1 Scope and Interpretation**

3.1.1 Except where otherwise indicated, this section applies to news Programs (including news flashes and updates) and Current Affairs Programs.

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:

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.

[…]

**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.

[…]

Finding

The ACMA finds that the Licensee breached clause 3.3.1 of the Code.

Reasons

**The context of the relevant segments**

Under section 3.1, the Code requires that compliance with clause 3.3.1 be assessed by taking into account ‘the context of the segment in its entirety’.

Relevantly, the Licensee also submitted:

The host of the segment, […], frequently uses an exaggerated presentation style to emphasise the satirical nature of the content – for instance, he gesticulates in an animated fashion, and uses different tones of voice to “ham up” his commentary.

The ACMA accepts this submission but does not consider that the general tone or presentation style of the segment counters the informative nature of the newsworthy content. The ACMA considers that, within the context of the ‘Outsiders’ Weather & Sceptics Ice Age Watch’ and ‘Outsiders News’ segments, the audience would expect that factual material would be presented accurately and that viewpoints would not be misrepresented, as required by the Code.

**Broadcast 3 October 2021**

**Outsiders Weather and the Sceptics Ice-Age Watch – Vostok ice cores**

In the segment, ‘Outsiders Weather and the Sceptics Ice-Age Watch’, broadcast on 3 October 2021, the host presented analysis reportedly sent in by an ‘Ice Age Watch fan’. This analysis, the host stated, questioned whether the accepted physical process by which atmospheric carbon dioxide traps outgoing radiation from Earth is ‘what really happens’. The host proceeded to present the analysis, accompanied by several on-screen images and graphics:

HOST: […] by analysing ice cores harvested at Vostok near the south pole […] we can look back through time to see what the climate was like and what it was doing. […] The analysis does show a connection between the global temperatures and carbon dioxide levels, but the striking feature is that a change occurs in the temperature *before* [emphasis in original audio] the carbon dioxide level changes.

Clearly, the temperature drives carbon dioxide, not the other way around.

So if global warming comes before carbon dioxide increases, then reducing carbon dioxide to net-zero is as pointless as it is laughable.

Stating that the broadcast used an ‘unsourced, unlabelled, untitled chart’ as a visual graphic, the complaint to the Licensee was that:

The segment claimed that ice cores harvested at Vostok, Antarctica, demonstrated that higher temperatures frequently preceded higher carbon dioxide concentrations in pre-industrial times. Therefore, the segment claimed, “clearly the temperature drives carbon dioxide, not the other way around” and “if global warming comes before carbon dioxide increases, then reducing carbon dioxide to net-zero is as pointless as it is laughable”.

This fallacious argument is frequently deployed by deniers of anthropogenic climate change in the post-industrial era. It has also been debunked time and again by climate scientists and science journalists.

The complaint submitted to the ACMA stated:

The broadcaster failed to present factual material accurately by claiming that higher temperatures drive carbon dioxide and not the other way around [and] that reducing global carbon dioxide emissions to net-zero would have no bearing on global temperatures.

The Licensee submitted:

[…] the segment does not convey the claims that [the complainant] alleges and instead presents historical data in order to query the wisdom of pursuing net zero carbon strategies in a way which is both accurate and appropriate.

[…]

Many scientists, and indeed many climate sceptics, consider that analysis of ice cores indicate [sic] a connection between the global temperature and carbon dioxide levels. Many also agree that the resulting data from the analysis of those ice cores show that historical temperature changes lagged behind carbon dioxide changes. [The host’s] statement – “the temperature drives carbon dioxide, not the other way around” – and the accompanying graph, accurately reflect this position.

[…] he does not state definitively that carbon dioxide increases do not contribute to global temperature increases. Instead, he queries the utility of pursuing net zero carbon strategies in circumstances where the extent to which carbon dioxide levels are responsible for driving temperature increases is not settled.

**Accuracy**

To assess compliance, the ACMA considers the following matters:

* 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 report?
* If so, was (or were) the material fact (or facts) accurate?

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

***What was the meaning conveyed by the broadcast material?***

The ordinary reasonable viewer would have understood the presentation to be of an analysis of ice core data supplied by the ‘Ice Age watch fan’. Although the analysis itself was not attributed to any specific individual or institution, a large graphic behind the presenter that illustrated an ice core drilled through a cross-section of the ice over Lake Vostok was labelled the ‘Lamont-Doherty Earth Observatory of Columbia University’.

The use of this graphic, in the absence of any other identifier, likely conveyed to the viewer that the ice-core was taken and analysed by the Lamont-Doherty Earth Observatory, and then provided to the program by the ‘fan’.

The association with Columbia University would have been understood by ordinary reasonable viewers as conferring the prestige of this highly regarded university upon the analysis as it was presented, including the subsequent assertion that temperature rises preceded increases in atmospheric concentrations of carbon dioxide.

The segment concluded with the presenter stating that, ‘clearly, the temperature drives carbon dioxide, not the other way around. So, if global warming comes before carbon dioxide increases, then reducing carbon dioxide to net-zero is as pointless as it is laughable’.

These concluding statements conveyed to the viewer what the analysis purportedly showed and the host’s interpretation of what the implications of that were on policy proposals with respect to carbon dioxide emissions.

***Was the broadcast material factual in character?***

The broadcast presents information about how ice cores can be used to analyse air trapped at the time the ice formed – up to 400,000 years ago in this case. It then relayed what such analysis had found with respect to global air temperatures and carbon dioxide concentrations over that period, and their relationship to each other:

The analysis does show a connection between the global temperatures and carbon dioxide levels, but the striking feature is that a change occurs in the temperature *before* the carbon dioxide level changes.

This statement about what the analysis showed was factual in character as it simply plotted the changes in carbon dioxide and temperature, as derived from the ice cores, over time. The statement about the changes was specific, unequivocal and capable of independent verification. Accordingly, the accuracy of this statement is assessed below.

Directly after the presentation of data about the ice cores, the host’s statement that ‘temperature drives carbon dioxide, not the other way around’ had features of both factual assertion and commentary. It directly followed the factual presentation of the findings of the ice core analysis and the unequivocal language used gave it the characteristics of a factual assertion.

However, the statement also had characteristics of commentary or a conclusion the host drew from the ice core analysis. Conclusions resulting from research, even though supported by factual evidence such as CO2 and temperature measurements, are inherently contestable and are therefore, generally not factual in character.

The ACMA considers this commentary by the host was a statement of opinion and therefore not subject to the accuracy provisions in the Code. The ACMA has not assessed whether the licensee clearly distinguished this commentary and analysis from the reporting of factual material (as required under clause 3.4) because under the Code this requirement only applies to news programs.

***Did the material convey a material fact or facts in the context of the relevant report?***

The central concern of the report was whether the accepted process by which atmospheric carbon dioxide traps heat radiated from the ground was ‘what really happens’. In this context, factual assertions about the evidence from Antarctic ice cores about the relationship over time between atmospheric carbon dioxide and temperature were material facts.

***Was the factual material presented accurately?***

The complainant submitted scientific sources that appeared to address the analysis referred to by the host:

At least three careful ice core studies have shown that CO2 starts to rise about 800 years (600-1000 years) after Antarctic temperature during glacial terminations. These terminations are pronounced warming periods that mark the ends of the ice ages that happen every 100,000 years or so.[[1]](#footnote-1)

Ice cores from Antarctica show that at the end of recent ice ages, the concentration of carbon dioxide in the atmosphere usually started to rise only after temperatures had begun to climb. There is uncertainty about the timings, partly because the air trapped in the cores is younger than the ice, but it appears the lags might sometimes have been 800 years or more.[[2]](#footnote-2)

The Licensee submitted:

Many scientists, and indeed many climate sceptics, consider that analysis of ice cores indicate a connection between the global temperature and carbon dioxide levels. […]

Each of the sources the complainant cited agrees with the analysis as presented in the segment – that ice core data from Vostok shows that initial temperature change preceded changes in atmospheric carbon dioxide levels. Therefore, on this specific point the broadcast was accurate.

Accordingly, in broadcasting the statement that Antarctic ice-cores demonstrated that changes in temperature preceded changes in atmospheric carbon dioxide, the Licensee did not breach clause 3.3.1 of the Code.

**Broadcast 3 October 2021**

**Outsiders Weather and the Sceptics Ice-Age Watch – weather forecast website**

Following the preceding item, in the same segment, the host promoted a weather forecast website:

If you’re an Aussie farmer working the land and you want some alternative tips on what weather patterns lie ahead – droughts, floods, hot, cold – you could do worse than check out the new […], based on the sunspot activity and astronomy predictions of one of Australia’s most famous weather watchers, […]

The complaint to the Licensee stated:

[…] as an alternative to mainstream meteorology, the segment recommended farmers consult a website that purports to use astronomical observation and “the secret vibrations to planetary movements” to predict coming droughts and floods. […]

The complaint submitted to the ACMA stated:

The broadcaster failed to present factual material accurately by indicating the […] websites and [social media page] could provide reliable weather forecasts. […].

The host made the statement standing in front of a full-screen image of the [social media page] he was referring to.[[3]](#footnote-3) The statement consisted of a suggestion to Australian farmers that they ‘could do worse’ than source their weather and climate forecasts from that [social media page]. The host then concluded with a brief explanation that the information on the [social media page] was ‘based on the sunspot activity and astronomy predictions’ of […].

**Accuracy**

***What was the meaning conveyed by the broadcast material?***

The ordinary reasonable viewer would have understood the statement to convey that the host thought that Australian farmers could get alternative weather forecasting information from the […]. Viewers would have understood that the statement was promoting the page’s use.

***Was the broadcast material factual in character?***

The suggestion that farmers ‘could do worse’ than get weather information from the website being promoted was clearly an expression of opinion by the host, who was promoting the [social media page] page on the basis of that opinion. As the host’s recommendation to farmers, was promotional commentary and was not factual, the requirement for accuracy did not apply.

**Broadcast 24 October 2021**

**Outsiders Weather and the Sceptics Ice-Age Watch – heat pumps mandated in the UK**

The host made the following statement:

Boris Johnson, who […] is mandating that everyone in Britain get rid of their perfectly good gas heaters and replace them with desperately inefficient eco heat pumps at around 10 to 20 thousand pounds a pop.

The complaint to the Licensee was:

[…] that the UK Prime Minister is “mandating that everyone in Britain get rid of their perfectly good gas heaters and replace them with desperately inefficient eco heat-pumps”.

This is false. There is no such mandate. The UK Government is merely offering grants of £5000 for up to 90,000 applicants to subsidise the replacement of gas boilers with heat pumps. As The Chronicle reports, “while homeowners will be encouraged to switch to a heat pump when their boiler needs replacing, there is no requirement to remove boilers that are still working”.

The complaint submitted to the ACMA stated:

The broadcaster failed to present factual material accurately by claiming the UK government was requiring British residents replace working gas heaters with lower-emission heat pumps.

This is false.

The Licensee responded to the complaint:

[The host] describes Prime Minister Boris Johnson as “mandating” the British public to replace gas heaters with eco heat pumps. Although the UK policy is to offer subsidies to encourage homeowners to switch to heat pumps, the effect is that heat pumps will be mandated as gas boilers are intended to be phased out and in order for the UK to reach the net zero target the fossil fuel component used for heating will need to be replaced with low-carbon alternatives by 2050.

The Licensee submitted to the ACMA:

[The host]’s statement is accurate. He is referring to a policy to offer subsidies to encourage homeowners to switch to heat pumps, the *effect* of which was that heat pumps would be mandated as gas boilers were intended to be phased out. The policy was introduced in order for the UK to reach its net zero target by replacing the fossil fuel component used for heating with low-carbon alternatives by 2050. In the long term therefore UK citizens would need to replace their gas heaters (with low carbon heating i.e. heat pumps) in order to achieve those policy objectives.

**Accuracy**

***What was the meaning conveyed by the broadcast material?***

The ordinary reasonable viewer would have understood that UK government policy, as it stood at the time of the broadcast, was that everyone in Britain must replace gas heaters with heat pumps at a cost of 10-20 thousand pounds.

The Licensee has submitted:

The focus of this piece of commentary is clearly on the perceived hypocrisy [then UK] cabinet who had adopted a net zero emissions target, including the introduction of eco heat pumps to replace gas heaters, and yet none of the members of Cabinet had personally made the switch they were asking other Britons to make. […]

[…] the segment as a whole, comprising factual matters and commentary, is accurate material. The use of humour and very personalised attacks […] makes it inappropriate to pore over the segment on a line by line basis to determine the literal meaning of each part. Rather, it is more appropriate to determine what the segment as a whole would convey to the ordinary reasonable viewer. In our view, such a viewer would conclude from the segment that the Johnson government proposed that eco heat pumps would replace the use of traditional gas heaters, but that policy was not reflected in the heating choices made by the [then UK] Cabinet.

The ACMA accepts that the segment is critical of then UK [Government] and the inconsistencies between a policy that promotes the use of heat pumps and the UK Cabinet’s apparent reluctance to use heat pumps in their own domestic heating arrangements. However, the focus and purpose of the story is nevertheless clearly on reporting on a policy that was purportedly, at that time, compelling British residents to replace functioning heating systems with heat pumps.

***Was the broadcast material factual in character?***

In this excerpt, the host stated that then UK Prime Minister, Boris Johnson, was ‘mandating’ that ‘everyone’ in Britain ‘get rid of their gas heaters’ and buy heat pumps.

This was a clear statement of fact about then current UK government policy.

***Did the material convey a material fact or facts in the context of the relevant report?***

The report was about the UK government forcing residents to replace their existing heating systems with ‘eco’ heat pumps. Assertions with respect to the UK government’s policies in this regard were material assertions of fact.

***Was the factual material presented accurately?***

The ACMA does not agree with the Licensee that the statement referred to future government policy or to future actions required of UK citizens. The currency of the information provided by the host was underscored by the use of phrases such as ‘is mandating’, ‘as he huddles under the doona’ and ‘not a single one of his own 31 cabinet ministers actually owns one’.

The UK government’s ‘Heat and Buildings Strategy’, released in October 2021, stated:

**Signalling our intention to phase out the installation of new natural gas boilers from 2035:** Given the lifetime of a natural gas boiler is around 15 years, in order to reach Net Zero in a cost-effective consumer-friendly way, we aim to phase out the installation of new natural gas boilers beyond 2035, once costs of low-carbon alternatives have come down. No-one will be forced to remove their existing boilers. Instead, we will grow the market for heat pumps through incentivising early adopters through Boiler Upgrade Scheme grants, proposing introduction of a market-based regulation on manufacturers similar to that which has been successful in growing the market for electric vehicles, and phasing out the installation of the dirtiest and most expensive fossil fuel systems and deployment in new buildings.

This strategy statement indicates that a policy to replace gas heaters with heat pumps is not intended to commence until after 2035 and will not include forced replacement of existing equipment.

Therefore, the ACMA considers that the statement broadcast, which conveyed that UK homeowners were currently being forced to replace their existing heating equipment with expensive heat pumps, was inaccurate.

Accordingly, the ACMA finds that in broadcasting the statement, the Licensee breached clause 3.3.1 of the Code.

**Broadcast 7 November 2021**

**Outsiders Weather and the Sceptics Ice-Age Watch – Japanese temperature data**

At the beginning of the segment the host referred to data that was compiled on the ‘NoTricksZone’ website that he said was mostly sourced from the ‘Japan Meteorological Agency and the European Institute for Climate and Energy’. The host stated:

Clearly if the planet was warming to the dire extent that we are being told, it would show up in the data, wouldn’t it? […] In Tokyo where the October 2021 mean temperature data shows no warming in 30 years. Over the past 30 years, October temperature in Tokyo has been declining moderately. Not surprisingly this follows on from September where Tokyo’s mean temperature was 22.3C, the coolest recorded in over 30 years. Further south Osaka has seen September mean temperatures cooling modestly since 1994. In Sapporo, home of the famous beer, according to this particular chart, there has been no warming in Sapporo in October in 30 years.

The complaint to the Licensee was:

The segment presented various charts which it cited as evidence that the climate was not warming.

[…]

According to the segment, these charts were ultimately sourced from the Japan Meteorological Agency (JMA) and the European Institute for Climate and Energy (EIKE). However, […], these datasets were cherry-picked to create the impression that warming is not occurring. This was achieved by picking very specific categories of data across short [sic]. However, when the data is presented in full context, the warming trend is clear.

According to the JMA’s latest Climate Change Monitoring Report (CCMR), published in July 2021, it was “virtually certain” that global average temperatures have been rising at statistically significant rates at a confidence level of 99 per cent. This report further concluded that “these long-term trends in annual average temperatures can be largely attributed to global warming caused by increased concentrations of greenhouse gases such as CO2”.

[…]

The complaint submitted to the ACMA stated:

The broadcaster failed to present factual material accurately by claiming climate observations from the Japanese Meteorological Association contradicted the global warming trend anticipated by scientists.

The Licensee responded to the complainant:

[…] the website does not present information as definitive or beyond question. Rather, it presents the sceptical viewpoint, its motto being “Not here to worship what is known but to question it.”. It is compiled by […] who are not held out as experts in analysing climate data but, rather, were credited with “compiling information and charts”. Your letter refers to information and articles in support of your contention that “global average temperatures have been rising at statistically significant rates”. The segment does not seek to prove or disprove your contention, but only to present a range of climate data in order to query whether “the planet was warming to the dire extent that we are being told”. The data presented and [the host]’s summaries of it are entirely accurate and not misleading.

The Licensee submitted to the ACMA:

The segment then proceeds to show a series of graphs which […] are originally sourced from government organisations such as the JMA. [The host’s] comments about the information conveyed in the graphs is accurate and not misleading on any view.

**Accuracy**

***What was the meaning conveyed by the broadcast material?***

In this extended set of statements, the host responded to the hypothesis he put in his introductory rhetorical question, ‘if the planet was warming to the dire extent that we are being told, it would show up in the data, wouldn’t it?’. The sequence of statements that then followed, concerning information and charts ‘most of which are sourced from the Japanese Meteorological Agency’ (**JMA**) and ‘the European Institute for Climate and Energy’ (**EIKE**), sought to provide evidence that such ‘warming’ was not showing up in the data.

The complainant stated:

The segment’s logic is clear: if the climate were warming consistent with scientific expectations, it would show up in the data; the Japan Meteorological Agency’s data contradicts these predictions; therefore, the research conducted by JMA contradicts scientific expectations of global warming.

The Licensee submitted:

The statement complained of does not convey to viewers either expressly or by implication that climate observations from the Japanese Meteorological Agency (JMA) contradicted the global warming trend anticipated by scientists.

[...]

The segment does not claim that the JMA information “contradict[s] the global warming trend anticipated by scientists” but instead merely suggests to viewers that they take into account the NoTricks Zone’s motto and adopt a sceptical approach when considering what is “known”. [The host] proceeds to report the weather in specific locations over specific periods of time, as supported by the data, and at no point suggests that any conclusion should be drawn about that data.

The ACMA does not agree with the Licensee’s submission. The statements by the host are clear in their communication that the data shows ‘no warming’ or ‘cooling’, in contradiction of what ‘we are being told’. The ACMA concurs in the complainant’s description of the meaning conveyed to the ordinary reasonable viewer; that the data presented provided evidence that global warming was not occurring as predicted.

***Was the broadcast material factual in character?***

The information provided in the statements in response to the opening rhetorical question was presented in graphical form. The ACMA’s assessment is of the presentation of that graphical data.

Each graph illustrated individual data points and trend lines for temperature readings, in Osaka and Sapporo, respectively.

The temperature data points and trend lines were specific, unequivocal, and capable of independent verification and were, therefore, factual in character.

***Did the material convey a material fact or facts in the context of the relevant report?***

The central concern of the presentation was that the ‘dire’ predictions of global warming were not borne out in temperature records. Within this context, factual statements about temperature data over time from the three locations in Japan were material facts.

***Was the factual material presented accurately?***

The graphs the host referred to were sourced from the notrickszone.com website, as cited in the introduction by the host, and ultimately from JMA and German weather service Deutscher Wetterdienst (**DWD)** data. The host acknowledged the JMA as a source but not the DWD, referring instead to the EIKE (which had published the Sapporo graph[[4]](#footnote-4) prior to its use by NoTricksZone.com).

The ACMA has located each of the graphs on notrickszone.com and can confirm that visually their presentation in the broadcast appeared to accurately reflect how the graphs were presented on the website.

However, in presenting information sourced from identified third parties – in this case, the JMA and the DWD – there is also an obligation on licensees to present that source data accurately. It is not enough for licensees to solely rely on intermediaries when the ultimate source can be interrogated.

The ACMA has checked the JMA’s website and found that the original annual data points for Tokyo[[5]](#footnote-5) and Osaka[[6]](#footnote-6) appear to have been accurately represented on the relevant graphs used in the broadcast.

The ACMA was unable to access the source data that was cited as underpinning the Sapporo graph (from the DWD’s Climate Data Centre). However, the ACMA notes that corresponding Sapporo temperature data was also collected by the JMA and the data presented in this graph accurately reflects the relevant Sapporo temperature data collected by the JMA.[[7]](#footnote-7)

Accordingly, the ACMA considers the temperature data for the three locations in Japan was presented accurately.

The four temperature graphs broadcast also included what appeared to be lines-of-best-fit on each graph, a very common statistical method for approximating a linear trend, although it is not usually best practice to use linear trend modelling when relying on such small datasets.[[8]](#footnote-8) In this case, the line was used to represent the trend of mean monthly temperatures at the location in question. A line decreasing left-to-right (i.e. over time) would indicate a decreasing monthly mean, while a line sloping upwards, left-to-right, would indicate an increasing monthly mean.

These trend lines – which form the basis of the host’s commentary – do not appear to have been sourced from either the JMA or the DWD/CDC. They appear to have been inserted by authors at NoTricksZone.com and the EIKE. However, their reproduction in the broadcast appears to accurately reflect the appearance of the graphs on the relevant websites.

Accordingly, in presenting temperature information from three locations in Japan, the Licensee did not breach clause 3.3.1 of the Code.

The ACMA considers that it was misleading to audiences to set up a hypothesis and then present only the sub-set of available data that supported the view that the host wanted the audience to form. However, the ACMA has not assessed the host’s hypothesis for accuracy, because under the Code, the accuracy provisions apply to unequivocal, factual assertions. They do not apply to opinion or hypotheses.

The presentation of temperature data from Japan is further considered against 2 further Code provisions, in the following two sections.

**Representation of viewpoints**

As noted above, the ACMA accepts that the meaning conveyed to the ordinary reasonable viewer was that the JMA data presented provided evidence that global warming was not occurring as predicted.

The components of the presentation were firstly, the temperature data published by the JMA, and secondly, the interpretation of that data by the authors of the graphs from NoTricksZone.com and EIKE, and the host of the broadcast.

The interpretations were viewpoints expressed by the relevant authors of the graphs and the host, none of which was the JMA.

The ACMA accepts that the interpretations of JMA data presented in the program did not concur with the JMA’s own view on global warming, as expressed in the JMA report cited in the complaint:

The Japan Meteorological Agency (JMA) has published annual reports under the title of Climate Change Monitoring Report since 1996 to provide up-to-date information on climate change in Japan and around the world based on the outcomes of its observations and its monitoring of the atmosphere and oceans. […]

This report is intended to raise awareness of climate change, and is expected to be particularly useful to related organizations and stakeholders worldwide in their responses to climate change.[[9]](#footnote-9)

However, this disagreement in what the temperature data indicates did not amount to a misrepresentation of the JMA’s viewpoint, which was not included in the broadcast.

Accordingly, the ACMA does not consider that the broadcast misrepresented a viewpoint as alleged by the complainant.

**Fairness**

The complainant expressed a concern that the Licensee had misrepresented the viewpoint of the JMA by claiming its research ‘contradicted the global warming trend anticipated by scientists’. In raising this allegation, the complainant has pointed to the JMA’s own ‘Climate Change Monitoring Report 2020’ (the **JMA report**) published in July 2021. The JMA report states that its purpose is to ‘raise awareness of climate change’ and refers to the need for an ‘[u]rgent response to global warming related climate change’. The complainant was concerned that the audience had not been informed in the broadcast that the presenter’s conclusions differed significantly from those of the JMA.

As noted above, there were analytic vulnerabilities inherent in line-of-best-fit representations of trends in small datasets of approximately 30 data points. These vulnerabilities were not communicated to the audience.

Furthermore, as noted above under ‘accuracy’, the host’s hypothesis – that climate change would ‘show up’ in the temperature data – was then ‘disproven’ by the use of these subsets of available data that supported the view that the host wanted the audience to form. That much larger sets of data were actually available was also not made clear to the audience.

The ACMA has not assessed whether these aspects of the segment comprised a fair presentation (as required under clause 3.4) because under the Code this requirement only applies to news programs.

**Broadcast 5 December 2021**

**Outsiders News – ‘there’s never been so much coral’**

At the beginning of a segment introduced as Outsiders News, the host stated:

The coral reefs are looking fantastic. They’ve done a report. The Australian Maritime Institute [sic] has done a report. They’ve come out and said there’s never been so much coral. [Mr R’s] out there saying, ‘I’ve been telling you this, it’s great news, great coral …’

The complaint to the Licensee was:

The program claimed the Australian Institute of Marine Science had produced a report finding “there’s never been so much coral” on the Great Barrier Reef. This is false. The report stated:

While there have been hard coral cover increases across all three regions over recent years, *the Northern and Southern GBR are still below the highest recorded coral cover in the 1980s*, and preliminary analyses have documented shifts in the dominant corals on some reefs. (emphasis added)

The complaint submitted to the ACMA stated:

The broadcaster failed to present factual material accurately by claiming the Australian Institute of Marine Science had produced a report which found ‘there has never been so much coral’ on the Great Barrier Reef.

[…]

The broadcaster failed to ensure that the Australian Institute of Marine Science’s view was not misrepresented by deliberately ignoring its concerns about the temporary nature of the reef’s ‘recovery window’ and the continuing risk of climate change.

The Licensee responded to the complainant:

The AIMS report shows that each major region of the Great Barrier Reef has experienced increases in average hard coral cover in recent years, and that current levels are close to historical peak coral coverage levels (at least since reporting began in the 1980s). In circumstances where peak coverage has only ever reached 30% or so, it is not unreasonable to claim that “there's never been so much coral” when compared to historic levels. [The host] also refers to the commentary of [Mr R] who, in referring to the AIMS report, wrote that “For all three major regions of the reef, once data uncertainties are considered, there has never been more coral since records began in the mid-1980s”.[…] The factual content that is presented during the hosts’ discussion is correct and based on data contained in the AIMS report itself, and no third party viewpoints were presented, let alone misrepresented.

The Licensee’s submission to the ACMA made similar points.

**Accuracy**

***What was the meaning conveyed by the broadcast material?***

The Licensee has indicated that the host was referring to a report released by the Australian Institute of Marine Science (**AIMS**). The Licensee has confirmed the report the host was referring to – ‘Long-Term Monitoring Program - Annual Summary Report on Coral Reef Condition for 2020/21’ – was released in July 2021.

The meaning conveyed was that AIMS had found that the Great Barrier Reef (**GBR**) had more coral coverage than at any time previously. The ACMA does not agree with the Licensee’s response to the complainant that the meaning was that coral coverage was ‘close to historical peak coral coverage’.

The Licensee further submitted that the ‘exaggerated nature’ of the reference to the AIMS (‘they’ve come out and said there’s never been so much coral’) should be understood within the context of a segment that also employed ‘hyperbole and light-hearted criticisms’ of media ‘competitors’. This submission appears to imply that the statement about what the AIMS had said in its report was not meant to be understood literally but just as one of a number of exaggerations.

The ACMA does not agree with this submission and considers that the statement conveyed exactly what the words indicated – that the AIMS had said in its report that coral on the GBR had never previously been so abundant.

A meaning also conveyed was that [Mr R] believed his previous comments regarding the GBR had been justified and that he considered the coral growth reported by AIMS to be ‘great news’.

The Licensee further submitted:

As the hosts note, [Mr R] chose to describe the AIMS report as finding there was “great news, great coral”. The ordinary reasonable viewer would therefore be properly and accurately informed by the segment that AIMS had published a report on the state of coral levels on the Great Barrier Reef which the hosts and [Mr R] considered to be very positive.

The ACMA agrees that [Mr R]’s reaction to the AIMS report was conveyed through the segment to be a positive one. However, an accurate description of [Mr R]’s reaction to the AIMS report does not exclude the possibility that the segment could also have inaccurately conveyed the meaning of what the AIMS report had said.

The ACMA considers that the segment focused on the AIMS report and its ‘great news’ for the GBR and that this was the central meaning conveyed to the ordinary reasonable viewer, more so than the subsidiary points about [Mr R] or other media outlets.

***Was the broadcast material factual in character?***

Information published in the report is specific, unequivocal and capable of independent verification. The broadcast content was therefore, factual in character.

***Did the material convey a material fact or facts in the context of the relevant report?***

The short report concerned the findings of the AIMS with regard to coral growth on the GBR. Factual statements about what was contained in the relevant AIMS report were material facts within this context.

***Was the factual material presented accurately?***

The ACMA has confirmed the complainant’s assertion that the AIMS report included the following statement:

While there have been hard coral cover increases across all three regions over recent years, the Northern and Southern GBR are still below the highest recorded coral cover in the 1980s, and preliminary analyses have documented shifts in the dominant corals on some reefs.[[10]](#footnote-10)

The AIMS report also includes three graphs corresponding to each of three sectors of the GBR – Southern, Central and Northern.[[11]](#footnote-11) Each indicates that hard coral cover in 2021 was lower than at least one other occasion since the mid-1980s, and in the case of the Southern GBR, below multiple previous peaks.

The Licensee has submitted that [Mr R]:

[…] who, in referring to the AIMS report, wrote that “For all three major regions of the reef, once data uncertainties are considered, there has never been more coral since records began in the mid-1980s.[[12]](#footnote-12)

Although [Mr R] may have written about his interpretation of what the AIMS report indicated about coral growth, the broadcast statement being assessed was not about the extent of coral growth on the GBR but what the AIMS report had said about the coral growth. The AIMS report itself, rather than commentary associated with it, was the appropriate source for statements about what it contained.

As the statement:

… they’ve done a report. The Australian Maritime Institute [sic] has done a report. They’ve come out and said there’s never been so much coral

was inaccurate, the ACMA finds that in broadcasting the statement the Licensee breached clause 3.3.1 of the Code.

**Representation of viewpoints**

Referring to the statements examined in the preceding section, the complaint to the Licensee was:

These statements were designed to cause the viewer to believe that the reef was not under threat. In fact, the report attributed the recent regrowth to a “low disturbance year” following seven years of “widespread disturbances”. This recovery phase may well be temporary, and its prolongation hinges on other factors, including action to restrain climate change. […]

The program’s failure to include this essential context constitutes a misrepresentation of the AIMS report […]

The complaint submitted to the ACMA stated:

The broadcaster failed to ensure the Australian Institute of Marine Science’s view was not misrepresented by deliberately ignoring its concerns about the temporary nature of the reef’s “recovery window” and the continuing risk of climate change.

The Licensee responded to the complainant:

The factual content that is presented during the hosts’ discussion is correct and based on data contained in the AIMS report itself, and no third party viewpoints were presented, let alone misrepresented.

The question for the ACMA with respect to this aspect of the complaint is whether a viewpoint expressed in the AIMS report was misrepresented.

The summary on page 1 of the AIMS report states:

Hard coral cover increased across all three regions (Northern, Central and Southern) in the last two years, and most reefs surveyed had moderate or high coral cover.

After a decade of cumulative disturbances, the Great Barrier Reef (GBR) has experienced a low disturbance year in 2021. There was no prolonged heat stress or any cyclones of note, and decreased numbers of crown-of-thorns starfish outbreaks across much of the GBR. Results from 2021 revealed minimal loss of coral from the 2020 coral bleaching event, as only a few survey reefs experienced heat stress during 2020 above the threshold at which coral mortality is expected.

While there has been recovery of hard coral cover, this was driven by fast-growing Acropora corals which are vulnerable to the common disturbances affecting the GBR. Surveys also recorded shifts in coral communities on some outer reefs in the Northern and Central GBR following the 2016/17 mass coral bleaching events.

The GBR remains exposed to the predicted consequences of climate change, including more severe cyclones and more frequent and intense heatwaves. The observed recovery has been seen previously and can be reversed in a short period of time.

The Licensee submitted to the ACMA:

The segment presents AIMS’ factual findings, rather than additional commentary and longer term predictions made by AIMS in the survey. To the extent that AIMS expresses a viewpoint as to the results of the current survey, then it is presented accurately in the segment.

[…]

The additional viewpoint of AIMS as to the long-term effects of climate change was not referred to in the segment as it was not directly relevant to the discussion as to whether the Great Barrier Reef was in a better condition than what had been portrayed by some mainstream media outlets in recent years, and the hosts’ opinion that mainstream media has a tendency to focus on negative reports about the coral reef and does not give sufficient attention to positive news.

The essence of [the] complaint is that certain matters in the AIMS survey were not covered in the segment. However, this does not form the proper basis for a complaint or a breach of the Code.

The ACMA’s finding in the preceding section was that the results of the current survey were not presented accurately.

The ACMA accepts that it is an editorial decision for the Licensee to determine which aspects of an issue to cover and the ACMA would not necessarily have concerns under clause 3.3.1 if it were merely the case that complex matters were not covered comprehensively.

However, the ACMA may have concerns if the result of the editorial process is to omit significant information so as to create a different impression about a matter than might be formed if the omitted information were provided. These are circumstances in which it might legitimately be asked whether a presentation misrepresented a view such that a misleading or false impression was conveyed to viewers as a result.

In this instance, the credibility of the AIMS was central to the strength of the message conveyed in the segment. The inaccurate use of GBR survey results drawn from a prestigious institution undermined the notion that the GBR is at risk, which AIMS clearly stated in its report to be the case. In summary, the segment conveyed to the ordinary reasonable viewer that a prestigious public education organisation had found that coral growth on the GBR had never been healthier, contrary to all those (including other media organisations) who have persisted in arguing that the GBR was in a fatal decline and had been ‘dying for decades’.

The program included the statements ‘the coral reefs are looking fantastic, they’ve done a report’ that conveyed an understanding of what the AIMS said about the condition or health of the reef. This was reinforced by the specific factual assertion that ‘there’s never been so much coral’, which the ACMA has found to be inaccurate.

The ordinary reasonable viewer would have understood from these statements that the viewpoint of the AIMS, as it was expressed in the AIMS report, was that the reef was in a fantastic condition, so fantastic that it had experienced unprecedented coral growth.

But the AIMS report did not make that finding. Although the AIMS report did find that coral coverage had increased in the most recent survey period and that the reef had not suffered as severely as had been expected, the report nevertheless found that the recovery was fragile and at risk and that the longer-term prognosis was uncertain.

None of this important context was provided. The ACMA considers that a viewer would have been left with the idea, incorrectly, that the AIMS report had demonstrated that the proposition that reef health was at serious risk was a false proposition.

The Licensee further submitted:

[…] the short statement regarding the survey can constitute either factual material or a viewpoint but not both. It cannot be the case, in WIN’s opinion, that a viewpoint can be “included in the program” implicitly or by deduction for the purposes of considering clause 3.3.1 of the Code. Instead, any consideration of the inclusion of viewpoints is restricted to viewpoints which are clearly and explicitly stated. Since the segment does not set out expressly any views of AIMS regarding the overall health of the Great Barrier Reef or the possible future effect of climate change, it is WIN’s submission that there can be no breach of the Code regarding the representation of such views.

The ACMA does not accept this submission. Where a statement conveys that a party had expressed a certain view – in this case, that of the ‘fantastic’ condition of the GBR – that statement is both a statement of fact about the viewpoint expressed and a representation of that viewpoint. In this instance, the host misrepresentated the viewpoint of the AIMS by inaccurately conveying to the audience what that viewpoint was.

Accordingly, the ACMA finds that in broadcasting the item on the AIMS report in *Outsiders News*, the Licensee breached clause 3.3.1 of the Code.

Attachment A

Complaint

***Complaint to the Licensee dated 7 October 2021:***

**Re: “Outsiders’ Weather & Sceptics’ Ice Age Watch”, 3 October 2021**

[…]

The segment claimed that ice cores harvested at Vostok, Antarctica, demonstrated that higher temperatures frequently preceded higher carbon dioxide concentrations in pre-industrial times. Therefore, the segment claimed, “clearly the temperature drives carbon dioxide, not the other way around” and “if global warming comes before carbon dioxide increases, then reducing carbon dioxide to net-zero is as pointless as it is laughable”.

[…]

This fallacious argument is frequently deployed by deniers of anthropogenic climate change in the post-industrial era. It has also been debunked time and again by climate scientists and science journalists. I attach the following articles addressing this argument:

- […], ‘What does the lag of CO2 behind temperature in ice cores tell us about global warming?’ Real Climate, 3 December 2004

- […], ‘Climate myths: Ice cores show CO2 increases lag behind temperature rises, disproving the link to global warming’, New Scientist, 16 May 2007

- […], ‘The Vostok Ice Core’, Pennsylvania State University College of Earth and Mineral Sciences, 2004

- […], ‘The lag between temperature and CO2. (Gore’s got it right.)’, Real Climate, 27 April 2007

- […], ‘Paleoclimate from ice cores’, Geosciences, March 2006

Further, as an alternative to mainstream meteorology, the segment recommended farmers consult a website that purports to use astronomical observation and “the secret vibrations to planetary movements” to predict coming droughts and floods. The dubiousness of using space weather to predict the weather on earth has also been addressed by peak scientific bodies (for example, in the attached article by [Mr T] of the Bureau of Meteorology). A responsible broadcast would not have presented such claims without, at the very least, warning of these scientific shortcomings.

[…]

***Complaint to the Licensee dated 27 October 2021:***

**Re: “Outsiders’ Weather & Sceptics’ Ice Age Watch”, 24 October 2021**

[…]

The segment also claimed that the UK Prime Minister is “mandating that everyone in Britain get rid of their perfectly good gas heaters and replace them with desperately inefficient eco heat-pumps”.

This is false. There is no such mandate. The UK Government is merely offering grants of £5000 for up to 90,000 applicants to subsidise the replacement of gas boilers with heat pumps. As The Chronicle reports in the attached article, “while homeowners will be encouraged to switch to a heat pump when their boiler needs replacing, there is no requirement to remove boilers that are still working”.

[…]

***Complaint to the Licensee dated 9 November 2021:***

**Re: “Outsiders’ Weather & Sceptics’ Ice Age Watch”, [7 November] 2021**

[…]

The segment presented various charts which it cited as evidence that the climate was not warming.

The segment directed viewers to the website www.notrickszone.com and its authors […].

According to the segment, these charts were ultimately sourced from the Japan Meteorological Agency (JMA) and the European Institute for Climate and Energy (EIKE). However, as is often the case on Sky News, these datasets were cherry-picked to create the impression that warming is not occurring. This was achieved by picking very specific categories of data across short. However, when the data is presented in full context, the warming trend is clear.

According to the JMA’s latest Climate Change Monitoring Report (CCMR), published in July 2021, it was “virtually certain” that global average temperatures have been rising at statistically significant rates at a confidence level of 99 per cent. This report further concluded that “these long-term trends in annual average temperatures can be largely attributed to global warming caused by increased concentrations of greenhouse gases such as CO2”. I attach the JMA report for your convenience.

[…]

***Complaint to the Licensee dated 7 December 2021:***

**Re: “Outsiders”, 5 December 2021**

[…]

***The Great Barrier Reef***

The program claimed the Australian Institute of Marine Science had produced a report finding “there’s never been so much coral” on the Great Barrier Reef.

This is false. The report stated:

While there have been hard coral cover increases across all three regions over recent years, *the Northern and Southern GBR are still below the highest recorded coral cover in the 1980s*, and preliminary analyses have documented shifts in the dominant corals on some reefs. (emphasis added)

[…]

These statements were designed to cause the viewer to believe that the reef was not under threat. In fact, the report attributed the recent regrowth to a “low disturbance year” following seven years of “widespread disturbances”. This recovery phase may well be temporary, and its prolongation hinges on other factors, including action to restrain climate change. It stated:

The prognosis for the future disturbance regime under climate change is one of increasingly frequent and longer lasting marine heatwaves and a greater proportion of severe tropical cyclones. Mitigation of these climatic threats requires immediate global action on climate change…

The predicted consequences of climate change, which include more frequent and intense mass coral bleaching events, are now a contemporary reality. Simultaneously, chronic stressors such as high turbidity, increasing ocean temperatures and changing ocean chemistry can all negatively affect recovery rates, while more frequent acute disturbances mean that the intervals for recovery are becoming shorter…

The observed recovery has been seen previously and can be reversed in a short amount of time [<https://www.aims.gov.au/reef-monitoring/gbr-condition-summary-2020-2021>].

The program’s failure to include this essential context constitutes a misrepresentation of the AIMS report, in defiance of the broadcaster’s own commitment to “present factual material accurately and ensure viewpoints included in the program are not misrepresented”.

[…]

***Complaint to the ACMA dated 22 March 2022:***

**Re: Sky News ‘Outsiders Weather and the Sceptics’ Ice Age Watch’**

Following these four events, my office started monitoring a regular scripted segment, the Outsiders Weather and the Sceptics’ Ice Age Watch, and documenting the most readily apparent breaches of its relevant Codes of Practice each week. Over 10 weeks, we documented the appended 80 suspected breaches – about one per minute – and this would not be an exhaustive list. […] These breaches cannot be explained away as the ordinary mistakes of live television since Sky News itself says each segment was “researched and fact-checked well in advance of broadcast”.

These incidents document how Sky News contorts and misrepresents the conclusions of actual science while presenting baseless conspiracy theories pulled from the darkest corners of the internet as “scientific”. […].

Climate data is frequently misrepresented, either by drawing false conclusions about its meaning, or through deceptive cherry-picking of data to create the impression that the earth may be cooling rather than warming. Short-term variations in weather – such as a cold snap in Europe or snowfall in China – are said, falsely, to dispute long-term climate forecasts.

In accordance with your processes, we have put these alleged breaches to Sky News and its regional broadcast partners for their response prior to seeking formal adjudication from you. Sky News’s defences to these alleged breaches defy logic. They claim the segment can be “fact-checked” but its claims are “not to be taken as … factual”. When their statements are discredited, they defend it as opinion. When such opinions are indefensible, they claim it is elaborate satire. Alternatively, they claim not to be making any statement at all but merely posing questions that might “encourage the audience to wonder”. This correspondence is attached.

Most disturbingly, they claim an exemption from the Codes of Practice by arguing no “reasonable person” would expect Sky News content to be factual anyway – a troubling echo of the legal argument that Fox News deploys in the United States [<https://thewest.com.au/news/weather/coral-rubble-a-threat-after-mass-bleaching-c-4782053>]. Sky News doesn’t just want to be exempt from professional ethical standards in practice, but in theory as well.

ACMA’s failure to enforce the Codes of Practice has serious consequences for media adjudications […]

The Codes of Practice speak to common-sense values such as: presenting factual materialaccurately, and ensuring viewpoints are not misrepresented. These values have not beenimposed on Sky News or its free-to-air broadcast partners, WIN Television and SCA, byoutsiders; these are the standards that the industry itself has developed and enshrined as thebare minimum requirements for ethical broadcasting in this country.

[…]

**October 3, 2021**

[…]

The broadcaster failed to present factual material accurately by claiming

that higher temperatures drive carbon dioxide and not the other way

around.

Carbon dioxide is a greenhouse gas that contributes to global warming.

[…]

The broadcaster failed to present factual material accurately by claiming that reducing global carbon-dioxide emissions to net-zero would have no bearing on global temperatures.

Human-induced greenhouse gas emissions are currently the dominant driver of climate change.

[…]

Sky News’s decision to offer no defence should be regarded as an admission of the breach.

[…]

The broadcaster failed to present factual material accurately by indicating the […] websites and [social media page] could provide reliable weather forecasts.

[…]

**November 7, 2021**

[…]

The broadcaster failed to present factual material accurately by claiming climate observations from the Japanese Meteorological Agency contradicted the global warming trend anticipated by scientists.

The segment’s logic is clear: if the climate were warming consistent with scientific expectations, it would show up in the data; the Japan Meteorological Agency’s data contradicts these predictions; therefore, the research conducted by JMA contradicts scientific expectations of global warming. In reality, the JMA says its data shows a warming trend of 1.26C/century for Japan, and it is virtually certain that the global average surface temperature has risen at a rate of 0.75C per century (statistically significant at a confidence level of 99%). “These long-term trends in annual average temperatures can be largely attributed to global warming caused by increased concentrations of greenhouse gases such as CO2,” the JMA says.

[…]

The broadcaster failed to present factual material accurately by claiming Japanese Meteorological Agency data showed a cooling temperature trend for Osaka, […] showed a declining temperature trend for Tokyo [and] showed no warming for Sapporo.

[…]

Climate scientists’ models do not depend on unremitting warming at each point of a timescale, but a trend of warming over time. What Sky News identifies as “cooling” that supposedly contradicts “warming to the dire extent that we are being told” is in fact a carefully manipulated dataset that depends on looking at narrow locations, in specific months over short stretches of time. When presented in their full context, these data do not reflect a cooling trend but continued warming consistent with the science. The broadcaster has breached its own professional standard of factual accuracy that it has agreed to uphold.

[…]

**December 5, 2021**

[…]

Sky News failed to present factual material accurately by claiming the Australian Institute of Marine Science had produced a report which found “there has never been so much coral” on the Great Barrier Reef.

[…]

The accuracy of the statement “there has never been so much coral” can been tested by the very report to which the broadcast refers. As the report says, “sustained recovery of the GBR back to historical high coral cover requires the next few years to be disturbance free to allow corals to continue to grow and increase their populations.”. It is especially peculiar that this program – which delights in taunting others for expedient contortions of the English language – would attempt to redefine “never” to mean something other than “not ever”.

[…]

The broadcaster failed to ensure the Australian Institute of Marine Science’s view was not misrepresented by deliberately ignoring its concerns about the temporary nature of the reef’s “recovery window” and the continuing risk of climate change.

[…]

Statements from the report that were conveniently ignored include:

* “In periods free from acute disturbances, most GBR coral reefs demonstrate resilience through the ability to begin recovery. However, the reefs of the GBR continue to be exposed to cumulative stressors, and the prognosis for the future disturbance regime is one of increased and longer lasting marine heatwaves and a greater proportion of severe tropical cyclones.”
* “The majority of recovery was driven by increases in the fast-growing Acropora corals... However, the fast growth comes at a cost, the skeleton is less dense than other slower growing corals, making them particularly susceptible to wave damage, like that generated by strong winds and tropical cyclones. They are also highly susceptible to coral bleaching and are the preferred prey for crown-of-thorns starfish. This means that large increases in hard coral cover can quickly be negated by disturbances on reefs where Acropora predominate.”
* “In the austral summer of 2020, the Great Barrier Reef was subjected to accumulated heat stress to the level at which mass coral bleaching occurred across much of the GBR. This included the Southern GBR which had escaped bleaching in the 2016 and 2017 events. The third such event in five years is a sign that the Great Barrier Reef is already experiencing the consequences of climate change.”
* “The predicted consequences of climate change, which include more frequent and intense mass coral bleaching events, are now a contemporary reality. Simultaneously, chronic stressors such as high turbidity, increasing ocean temperatures and changing ocean chemistry can all negatively affect recovery rates, while more frequent acute disturbances mean that the intervals for recovery are becoming shorter.”
* “The prognosis for the future disturbance regime under climate change is one of increasingly frequent and longer lasting marine heatwaves and a greater proportion of severe tropical cyclones. Mitigation of these climatic threats requires immediate global action on climate change.”

Sky News did not need to quote all of this, but it should have cited some of it to avoid AIMS’s viewpoint being misrepresented. Instead, this report was selectively misrepresented to confirm their preconceived conclusion that concerns about the reef’s welfare are misguided.

[…]

Attachment B

Licensee’s response and submissions

***Licensee response to the complainant dated 14 December 2021:***

[…]

Sky News is produced and operated by Australian News Channel Pty Ltd (ANC).

At the outset, ANC wishes to thank you for taking the time to write and express your concerns about our programming. ANC assures you that we value and respect all feedback and complaints in relation to its programs and aims to address them adequately.

ANC prides itself on being able to present a variety of views on matters of public interest to its audience through its commentators. ANC’s commentators are encouraged to provide their own opinions on such matters. ANC understands that there is a great deal of public concern about certain matters, including the COVID-19 pandemic and climate change, and how the response of government to these matters is unfolding in Australia. In such circumstances, ANC takes its responsibilities as a news and current affairs provider extremely seriously. ANC undertakes to provide its viewers with accurate information as a basis for any opinions that may be expressed by its commentators. ANC also values the importance of freedom of information, opinion and expression as the foundation of Australia’s democratic society.

Daytime programming on Sky News is mostly comprised of news reporting with a focus on breaking news and political stories. In the evenings, Sky News runs a number of opinion programs including those hosted by well-known personalities. Given the content and style of those evening commentary programs, viewers appreciate that they are being presented with a range of views, including those of the program host, on a number of news related topics and themes, rather than impartial news reporting. ANC notes that your complaints relate entirely to a number of commentary programs and not to any news reports.

[…]

**2. Outsiders’ Weather & Sceptics Ice Age Watch**

ANC acknowledges your complaints concerning a recurring segment on *Outsiders* called “*Outsiders’ Weather & Sceptics Ice Age Watch”* hosted by […] and, specifically, your various complaints that certain segments breach the accuracy and fairness provisions of the Subscription Code.

Each of your letters alleges that the segments in question conflate weather with climate and that the weather-related matter is subsequently relied on as evidence that global warming is not occurring, in addition to questioning the accuracy of various climate change-related reporting. As such, ANC intends to address your complaints as a whole.

To properly understand the comments made in *Outsiders’ Weather & Sceptics Ice Age* *Watch*, it is important to understand the context in which they are made, which will be obvious to any viewer of the program in general and the segment in particular. *Outsiders’ Weather & Sceptics Ice Age Watch* and *Outsiders* as a whole, as the names each suggest, provide commentary on the news from a sceptic’s point of view. *Outsiders* prides itself on its ability to provide intelligent opinions, present unorthodox news items and shed light on alternative perspectives in an entertaining manner. However, unlike the rest of the *Outsiders* show, *Outsiders’ Weather & Sceptics Ice Age Watch* is much more light hearted and uses a mixture of humour, satire, factual weather reports and other data to question aspects of the theory of anthropogenic global warming in the post-industrial era.

Acknowledging that the climate change theory is accepted by many scientific and political organisations, the role of Outsiders is to critique the ‘majority view’ and, like any other scientific theory, climate change is and should be subject to critical analysis. Each *Outsiders’ Weather & Sceptics Ice Age Watch* segment is researched and fact checked well in advance of broadcast and the content is carefully curated to be humorous and flippant whilst keeping in line with the overall themes of the program. In this respect it is important to note that the host of *Outsiders’ Weather & Sceptics Ice Age Watch*, [the host], does not ever claim that global warming or climate change are in fact not occurring.

[…]

(h) UK policy concerning heat pumps

In the 24 October segment, [the host] describes [UK Government] as “mandating” the British public to replace gas heaters with eco heat pumps. Although the UK policy is to offer subsidies to encourage homeowners to switch to heat pumps, the effect is that heat pumps will be mandated as gas boilers are intended to be phased out and in order for the UK to reach the net zero target the fossil fuel component used for heating will need to be replaced with low-carbon alternatives by 2050.[[13]](#footnote-13)

[…]

(j) [website] and reproduced charts

The 7 November segment refers to information provided on the website […]. As [the host] makes clear, the website does not present information as definitive or beyond question. Rather, it presents the sceptical viewpoint, its motto being “Not here to worship what is known, but to question it.” It is compiled by […] who are not held out as experts in analysing climate data but, rather, were credited with “compiling information and charts”. Your letter refers to information and articles in support of your contention that “global average temperatures have been rising at statistically significant rates”. The segment does not seek to prove or disprove your contention, but only to present a range of climate data in order to query whether “the planet was warming to the dire extent that we are being told”. The data presented and [the host]’s summaries of it are entirely accurate and not misleading.

[…]

***Licensee response to the complainant dated 14 January 2022:***

[…]

Thank you for taking the time to lodge your complaints regarding […] *Outsiders News* […] broadcast as part of the *Outsiders* program on Sky News on 5 December 2021 […].

Sky News is produced and operated by Australian News Channel Pty Ltd. In providing this response, the WIN Network has sought feedback from Australian News Channel. The WIN Network and Australian News Channel assure you that they value and respect all feedback and complaints in relation to their programs and aim to address them adequately. We note that your complaints followed similar complaints about 8 other segments of the Outsiders program and specifically comments made by [the host] in the *Outsiders’ Weather & Sceptics Ice Age Watch* segment. Our response to those complaints dated 14 December 2021 provided a great deal of information about the segment and the program, together with specific and detailed answers to your various previous complaints. We will assume that you have read that response and will not repeat the matters raised in it for the purpose of this response.

We also note the provisions of clause 7.3.5(c) of the Commercial Television Industry Code of Practice (The Code) pursuant to which the WIN Network is not required to provide you with a response to your recent subsequent complaints about the series of *Outsiders* programs in so far as they do not raise any new and distinct issues. In our view, clause 7.3.5(c) applies to the entirety of your recent complaints given that they each relate to alleged instances of conflating weather with climate, or examples of weather events which are alleged to have been cited for the purpose of misrepresenting climate science studies and discrediting the consensus view of scientists on global warming. You have made allegations of a similar nature in your previous complaints and they have been responded to comprehensively.

Notwithstanding, WIN is not obliged to respond to your recent complaints, we provide the following information below by way of summary explanation of the compliance of the programs with the Code.

*Coral reef*

[…] The segment begins with a discussion about the Australian Institute of Marine Science’s (**AIMS**) annual survey of coral on the Great Barrier Reef in July 2021. The AIMS report shows that each major region of the Great Barrier Reef has experienced increases in average hard coral cover in recent years, and that current levels are close to historical peak coral coverage levels (at least since reporting began in the 1980s). In circumstances where peak coverage has only ever reached 30% or so, it is not unreasonable to claim that *“there's never been so much coral”* when compared to historic levels. [The host] also refers to the commentary of [Mr R] who, in referring to the AIMS report, wrote that *“For all three major regions of the reef, once data uncertainties are considered, there has never been more coral since records began in the mid-1980s”*.[[[14]](#footnote-14)] The factual content that is presented during the hosts’ discussion is correct and based on data contained in the AIMS report itself, and no third party viewpoints were presented, let alone misrepresented.

[…]

***Licensee submission to the ACMA dated 27 July 2022:***

Our client’s submissions on the Segments’ compliance with the Code follow below.

1. **Outsiders’ Weather & Sceptics Ice Age Watch**

*Outsiders’ Weather & Sceptics Ice Age Watch* forms part of the Outsiders program. It is important to consider the nature of the *Outsiders* program and the context within which content comprising the Segments are presented to the program’s audience.

*Outsiders* provides a “no holds barred” commentary on politics and other topical issues. As indicated by their names, *Outsiders’ Weather & Sceptics Ice Age Watch* and *Outsiders News* as a whole shed light on alternative perspectives that are “outside” the box and present unorthodox news items that are not necessarily given as much attention by other mainstream media outlets. The hosts are experienced broadcasters who pride themselves on their ability to deliver informed opinions that are insightful and supported by contemporary research where relevant.

*Outsiders’ Weather & Sceptics Ice Age Watch* is a satirical segment that mimics the weather report that usually appears at the end of traditional news programs. Unlike most other content on the program, *Outsiders’ Weather & Sceptics Ice Age Watch* employs a much more entertaining and relaxed style that uses a blend of humour, satire, rock music, factual weather reports and other data to question aspects of the theory of anthropogenic global warming in the post-industrial era. Both regular and first-time viewers of *Outsiders’ Weather & Sceptics* Ice Age Watch immediately appreciate the satirical tone of the segment. Most segments conclude with a pun or joke. The segments also use “memes” and other “viral” content to poke fun at the issues that are being discussed. The host of the segment […] frequently uses an exaggerated presentation style to emphasise the satirical nature of the content – for instance, he gesticulates in an animated fashion, and uses different tones of voice to “ham up” his commentary. […]

[…]

The segments are rife with entertaining and parodic content like this which not only determines the tone but also creates an obvious contrast to the factual information that is presented in the segment […]

Consistent with the requirements of clause 3.1.2 of the Code, the comments made in *Outsiders’ Weather & Sceptics Ice Age Watch* and *Outsiders News* can only properly be understood in their full context, which includes the commentary as a whole, the tone of voice and presentation style of the host/s, and the accompanying visual content.

The hosts of *Outsiders* do not deny the indicators of climate change, including rising temperatures. They acknowledge that climate change theory is accepted by many scientific and political organisations. However, like any other scientific theory, climate change is and should be subject to critical analysis and *Outsiders* plays a role, through satire, as critiquing the ‘majority view’. Contrary to many of the assertions made in the Complaints, [the host] therefore never claims that global warming or climate change are in fact not occurring. Rather, he poses unanswered questions to viewers, thereby encouraging them to draw their own conclusions and consider their own position. He refers viewers to external source materials (including as graphs and survey findings) to assist with their analysis.

It is nevertheless apparent from the Complaints that […] does not accept that there is a place for any such questioning or analysis regarding climate change. Whilst […] is entitled to that view, our client does not consider it appropriate that he is seeking to use the mechanism of the Code to stifle debate on such an important issue of public interest. This is particularly the case given the explicit acknowledgment in clause 3.4.3 of the Code that Current Affairs Programs are not required to be impartial and may take a particular stance on issues.

With this context in mind, our client submits that the Segments each comply with the relevant obligations under the Code and in particular with clause 3.3.1. Our client relies on the following specific matters in relation to each of the Segments.

1. **Segment broadcast on 3 October 2021**

[…]’s complaint mischaracterises this segment. He considers that a discussion about carbon dioxide and temperature offends against climate change orthodoxy and therefore is in breach of the Code. On closer inspection, the segment does not convey the claims that […] alleges and instead presents historical data in order to query the wisdom of pursuing net zero carbon strategies in a way which is both accurate and appropriate.

[…] claims that this segment suggests (incorrectly) that carbon dioxide does not contribute to global warming, and that reducing carbon dioxide emissions to zero would have no bearing on global temperatures. However, that is not what is conveyed by the segment at all.

Many scientists, and indeed many climate sceptics, consider that analysis of ice cores indicate a connection between the global temperature and carbon dioxide levels. Many also agree that the resulting data from the analysis of those ice cores show that historical temperature changes lagged behind carbon dioxide changes. [The host]’s statement – *the temperature drives carbon dioxide, not the other way around* – and the accompanying graph, accurately reflect this position.

It is less clear, however, how that data can be used to predict future patterns, particularly when the atmosphere began to be affected by human influences such as industrialisation. It is therefore often debated whether the lag between temperature and carbon dioxide levels continues past the period of industrial revolution. Some prominent scientists consider that the temperature continues to lag behind carbon dioxide levels. For instance,[…] has stated that:

*“It has long been known that a rise in atmospheric temperature is followed by a rise in atmospheric CO2. The evidence is unequivocal and contrary to populist opinion. The evidence is repeatable and in accord with evidence from other disciplines of science. This has been shown over the last 4 glaciations and as well as over billions of years and is in accord with a fundamental law of chemistry, Henry’s Law”.*

[the host] relies on the analysis of those such as […], as well as information supplied by […] and legitimately poses whether, “*if global warming comes before carbon dioxide increases, then reducing carbon dioxide to net zero is as pointless as it is laughable*”. By doing so, he does not state definitively that carbon dioxide increases do not contribute to global temperature increases. Instead, he queries the utility of pursuing net zero carbon strategies in circumstances where the extent to which carbon dioxide levels are responsible for driving temperature increases is not settled. Further, he certainly does not state that reducing global carbon-dioxide emissions to net-zero would have no bearing on global temperatures.

The factual material presented in the segment is accurate in compliance with clause 3.3.1 of the Code.

1. **Segment broadcast on 24 October 2021**

This segment refers to (now former) UK Prime Minister Boris Johnson’s controversial energy policy and his government’s approach to residential heating. [The host] describes Prime Minister Boris Johnson as “mandating” the British public to replace gas heaters with eco heat pumps. [The host]’s statement is accurate. He is referring to a policy to offer subsidies to encourage homeowners to switch to heat pumps, the effect of which was that heat pumps would be mandated as gas boilers were intended to be phased out. The policy was introduced in order for the UK to reach its net zero target by replacing the fossil fuel component used for heating with low-carbon alternatives by 2050.[[[15]](#footnote-15)] 1 In the long term therefore UK citizens would need to replace their gas heaters (with low carbon heating i.e. heat pumps) in order to achieve those policy objectives.

It is notable that UK Media outlets reported on the highly politicised scheme in the same way, reflecting the general sentiment that the proposed policy was effectively a mandate – for instance, the *Daily Mail* UK reported that: “None of the Cabinet ministers ordering us to get expensive heat pumps have revealed if they've got theirs installed yet - despite Boris Johnson's push to ban traditional boilers” (emphasis added).[[[16]](#footnote-16)] Similarly, the headline of an article by Utility Weekly read “Heat pump mandate will not achieve installation target” (emphasis added).[[[17]](#footnote-17)]

Moreover, the context and purpose of [the host]’s very brief comment about the heat pump scheme was not to report on the specific details of a complicated and controversial policy being pursued overseas. Rather, it formed part of a broader comment about […] [UK] cabinet ministers who, when asked by *The Telegraph*, either admitted they had not converted to heat pumps themselves or declined to comment.[[[18]](#footnote-18)]

Accordingly, the relevant material facts have been presented accurately and there is no breach of clause 3.3.1.

1. **Segment broadcast on 7 November 2021**

The statement complained of does not convey to viewers either expressly or by implication that climate observations from the Japanese Meteorological Agency (JMA) contradicted the global warming trend anticipated by scientists.

Rather, [the host] here asks viewers to query the “dire” predictions on warming made by some by looking at the available data. Each of his statements in this regard is accurate in compliance with clause 3.3.1 of the Code.

Although it is not apparent from the extracts provided in the ACMA Complaint (Annexure A) [not included in this report], the information presented was sourced from the website www.notrickszone.com which, as [the host] makes clear, was itself primarily sourced from the JMA and the European Institute for Climate and Energy. [The host] sets the tone of the segment by quoting No Tricks Zone’s motto which is 'Not here to worship what is known but to question it.' In other words, [the host] suggests that viewers should adopt a sceptical attitude rather than blindly following whatever is presented to them. The segment then proceeds to show a series of graphs which, as noted above, are originally sourced from government organisations such as the JMA. [The host]’s comments about the information conveyed in the graphs is accurate and not misleading on any view.

The segment does not claim that the JMA information *“contradict[s] the global warming trend anticipated by scientists*” but instead merely suggests to viewers that they take into account the No Tricks Zone’s motto and adopt a sceptical approach when considering what is “known”. [The host] proceeds to report the weather in specific locations over specific periods of time, as supported by the data, and at no point suggests that any conclusion should be drawn about that data. In other words, the segment does not seek to prove or disprove any idea in particular. The most that can be said is that it presents a range of climate data in order to query whether *“the planet was warming to the dire extent that we are being told”* (emphasis added).

**5. Segment broadcast on 5 December 2021**

The matters discussed in this short segment of *Outsiders’ News* concern the Australian Institute of Marine Science’s (**AIMS**) annual survey of coral on the Great Barrier Reef in July 2021. The finding of the survey is briefly, but accurately, stated and to the extent that the viewpoint of AIMS is expressed, it is not materially misrepresented.

The hosts state that they have some *“great news”*; that *“the coral reefs are looking fantastic”*; *“the reef is looking better than it’s looked for years”*; and that *“there’s never been so much coral”*. The hosts also refer to the commentary of [Mr R] that this is *“great news, great coral”*.

The statements are accurate summations and commentary on findings in the AIMS survey that:

• each major region of the Great Barrier Reef has experienced increases in average hard coral cover in recent years;

• current levels of coral cover are close to historical peak coral coverage levels (at least since reporting began in the 1980s).

In circumstances where peak coverage has only ever reached 30% or so, it is accurate to state that *“there's never been so much coral”* when compared to historic levels. Similarly, [MR R] who, in referring to the AIMS report, wrote that *“For all three major regions of the reef, once data uncertainties are considered, there has never been more coral since records began in the mid-1980s”*.[ …]

The segment did not “deliberately ignore” AIMS’ views or misrepresent them as claimed. The Code does not require ANC to include all the views of all relevant parties on all related issues – the obligation in clause 3.3.1 is to present factual material accurately and ensure viewpoints included in the program are not misrepresented. The segment presents AIMS’ factual findings, rather than additional commentary and longer term predictions made by AIMS in the survey. To the extent that AIMS expresses a viewpoint as to the results of the current survey, then it is presented accurately in the segment. The additional viewpoint of AIMS as to the long-term effects of climate change was not referred to in the segment as it was not directly relevant to the discussion as to whether the Great Barrier Reef was in a better condition than what had been portrayed by some mainstream media outlets in recent years, and the hosts’ opinion that mainstream media has a tendency to focus on negative reports about the coral reef and does not give sufficient attention to positive news.

The essence of […]’s complaint is that certain matters in the AIMS survey were not covered in the segment. However, this does not form the proper basis for a complaint or a breach of the Code. It is also not surprising that a discussion lasting 50 seconds did not explore (or purport to explore) all of the matters covered by the survey.

**6. Conclusion**

When viewed in their proper context, the Segments do not contain inaccurate factual material or misrepresented viewpoints. The audience is aware that the program presents climate information from a sceptic’s perspective and in that sense is not impartial. This includes presenting information, posing questions, and leaving the audience to make up its own mind about what to believe. Portions of the Segments are designed to entertain viewers with jokes, humour and absurd ideas. However, factual information and statements are supported by references, leaving no room for doubt as to what information is to be taken as fact, and what is to be considered satire and the opinion of the hosts.

The Segments comply with the obligations set out in clause 3.3.1 and the Code more generally.

***Licensee submission to the ACMA dated 24 November 2022:***

**1. Segment Broadcast on 24 October 2021**

ACMA has considered the accuracy of comments made concerning the then [UK Government] policy regarding heating in pursuit of its target to reach net zero emissions by 2050.

WIN submits that the ACMA has taken an unduly restrictive approach to the question of factual accuracy of this particular comment.

The comment commences with a joke, poking fun at Boris Johnson, referring to him light heartedly as […].

The focus of this piece of commentary is clearly on the perceived hypocrisy of the [then UK] cabinet who had adopted a net zero emissions target, including the introduction of eco heat pumps to replace gas heaters, and yet none of the members of Cabinet had personally made the switch they were asking other Britons to make. The use of humour, as well as criticism of hypocrisy cannot be separated from the rest of the segment and should form part of the ACMA’s analysis of the complaint as it informs issues of accuracy and materiality.

In WIN’s submission, the segment as a whole, comprising factual matters and commentary, is accurate material. The use of humour and very personalised attacks targeting the British Prime Minister makes it inappropriate to pore over the segment on a line by line basis to determine the literal meaning of each part. Rather, it is more appropriate to determine what the segment as a whole would convey to the ordinary reasonable viewer. In our client’s view, such a viewer would conclude from the segment that the [UK] government proposed that eco heat pumps would replace the use of traditional gas heaters, but that policy was not reflected in the heating choices made by the Johnson Cabinet. The reasonableness of this approach is reflected in the reports of the policy in the British media which variously referred to it as a “ban” on the installation of new gas boilers and a “mandate” of their replacement.[…]

In particular, Mr Johnson is quoted as saying that “dirty” technology including gas boilers should be swapped out for clean alternatives such as heat pumps and announcing aims of installing approximately 600,000 heat pumps by 2028 as part of its boiler upgrade scheme. With such ambitious targets, the media reported this scheme as effectively mandating the relevant replacement.

In the circumstances, WIN submits that there is no materially inaccurate material in the segment.

**2. Segment broadcast on 5 December 2021**

Similarly, the short segment referring to the health of the coral in the Great Barrier Reef should be seen in context of the overall presentation of the information in the segment. The segment involves each of the 3 hosts making comments about the findings in the Australian Institute of Marine Science’s (**AIMS**) annual survey of coral on the Great Barrier Reef in July 2021 as well as the comments made about the AIMS survey by [Mr R] in the [newspaper]. The hosts employ hyperbole and light hearted criticisms of their media competitors to express their own viewpoint that the people who had been predicting the death and demise of the Great Barrier Reef had been proven wrong by the publication of the AIMS survey which indicated widespread increases in coral levels.

The phrase “there’s never been so much coral” in the context of this segment and taking into account the way it was expressed, including the vocal tones and hand gestures which accompanied it, is clearly of an exaggerated nature. As the hosts note, [Mr R] chose to describe the survey as finding there was “great news, great coral”. The ordinary reasonable viewer would therefore be properly and accurately informed by the segment that AIMS had published a report on the state of coral levels in the Great Barrier Reef which the hosts and [Mr R] considered to be very positive.

WIN did not previously address in detail the issue of whether viewpoints had been accurately represented in the segment as WIN does not consider that any third party viewpoints were represented. WIN maintains that there are no “viewpoints included in the program” except the viewpoint of [MR R], which is correctly represented and which is shared by the hosts.

In WIN’s submission, it is erroneous for the ACMA to suggest that the reference to AIMS’ findings is both factually inaccurate and also a misrepresentation of a viewpoint. In WIN’s submission, the short statement regarding the survey can constitute either factual material or a viewpoint but not both. It cannot be the case, in WIN’s opinion, that a viewpoint can be “included in the program” implicitly or by deduction for the purposes of considering clause 3.3.1 of the Code. Instead, any consideration of the inclusion of viewpoints is restricted to viewpoints which are clearly and explicitly stated. Since the segment does not set out expressly any views of AIMS regarding the overall health of the Great Barrier Reef or the possible future effect of climate change, it is WIN’s submission that there can be no breach of the Code regarding the representation of such views.

For the reasons set out above, WIN submits that the ACMA should reconsider its findings in relation to both segments and find that no breach has occurred.

Attachment C

Relevant provisions

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

3. News and Current Affairs

*3.1 Scope and Interpretation*

3.1.1 Except where otherwise indicated, this section applies to news Programs (including news flashes and updates) and Current Affairs Programs.

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:

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.

[…]

*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.

[…]

*3.4 Impartiality*

3.4.1 In broadcasting a news Program, a Licensee must:

a) present news fairly and impartially;

b) clearly distinguish the reporting of factual material from commentary and analysis.

3.4.2 Nothing in this Section 3 requires 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.

[…]

The ACMA’s approach to assessing content

When assessing content, the ACMA considers the meaning conveyed by the material, 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’ listener or viewer.

Australian courts have considered an ‘ordinary reasonable’ listener or 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.[[19]](#footnote-19)

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

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.[[20]](#footnote-20)
* 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[[21]](#footnote-21)
	+ whether they are simply comments made on another person’s account of events or a separate assertion about matters within their expertise.
1. See <https://www.realclimate.org/index.php/archives/2004/12/co2-in-ice-cores/#:%7E:text=What%20does%20the%20lag%20of%20CO2%20behind%20temperature%20in,tell%20us%20about%20global%20warming%3F&text=All%20that%20the%20lag%20shows,from%20this%20ice%20core%20data>, accessed 27 July 2022. [↑](#footnote-ref-1)
2. See <https://www.newscientist.com/article/dn11659-climate-myths-ice-cores-show-co2-increases-lag-behind-temperature-rises-disproving-the-link-to-global-warming/>, accessed 27 July 2022. [↑](#footnote-ref-2)
3. See <https://inigojoneslongtermweatherforecaster.com/>, accessed 25 08 22 [↑](#footnote-ref-3)
4. See <https://eike-klima-energie.eu/2021/11/01/oktober-2021-laut-dwd-trocken-und-ueberdurchschnittlich-sonnig/>, accessed 24 August 2022. [↑](#footnote-ref-4)
5. See <https://www.data.jma.go.jp/obd/stats/etrn/view/monthly_s3_en.php?block_no=47662&view=1>, accessed 19 July 2022. [↑](#footnote-ref-5)
6. See <https://www.data.jma.go.jp/obd/stats/etrn/view/monthly_s3_en.php?block_no=47772&view=1>, accessed 19 July 2022. [↑](#footnote-ref-6)
7. See <https://www.data.jma.go.jp/obd/stats/etrn/view/monthly_s3_en.php?block_no=47412&view=1>, accessed 19 July 2022. [↑](#footnote-ref-7)
8. See ‘Big Trouble in Little Data’ at <https://towardsdatascience.com/big-trouble-in-little-data-7a1b02bfdc39> and ‘Is a Small Dataset Risky’ at <https://towardsdatascience.com/is-a-small-dataset-risky-b664b8569a21>, accessed 19 October 2022. [↑](#footnote-ref-8)
9. See <https://www.jma.go.jp/jma/en/NMHS/ccmr/ccmr2020.pdf>, accessed 26 August 2022. [↑](#footnote-ref-9)
10. See <https://www.aims.gov.au/sites/default/files/2021-07/AIMS%20Long%20Term%20Monitoring%20Program%20Annual%20Summary%20Report%20on%20Coral%20Reef%20Condition%20%28GBR%29%202020-2021_July2021.pdf>, (p12), accessed 14 June 2022. [↑](#footnote-ref-10)
11. See <https://www.aims.gov.au/sites/default/files/2021-07/AIMS%20Long%20Term%20Monitoring%20Program%20Annual%20Summary%20Report%20on%20Coral%20Reef%20Condition%20%28GBR%29%202020-2021_July2021.pdf>, (p 9), accessed 14 June 2022. [↑](#footnote-ref-11)
12. Source cited by the Licensee as <https://www.theaustralian.com.au/inquirer/too-much-coral-is-not-enough-but-its-not-goodeither/news-story/2d2c3c604a0c598fc593e9632a3d01d9>, but also appeared in <https://ipa.org.au/research/climate-change-and-energy/too-much-coral-is-not-enough-but-its-not-good-either>, accessed 9 August 2022. [↑](#footnote-ref-12)
13. Department for Business Energy and Industrial Strategy, ECO3 Impact Assessment. Retrieved on

06/09/19,

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749638/ECO_3_Final_Stage_IA__Final.pdf> [↑](#footnote-ref-13)
14. <https://www.theaustralian.com.au/inquirer/too-much-coral-is-not-enough-but-its-not-good-either/newsstory/2d2c3c604a0c598fc593e9632a3d01d9> [↑](#footnote-ref-14)
15. Department for Business Energy and Industrial Strategy, ECO3 Impact Assessment. Retrieved on 06/09/19, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749638/ECO_3_Final_Stage_IA__Final.pdf> [↑](#footnote-ref-15)
16. <https://www.dailymail.co.uk/news/article-10118609/NONE-30-ministers-attend-Cabinet-10-000-heat-pumpsinstalled-homes.html> [↑](#footnote-ref-16)
17. <https://utilityweek.co.uk/heat-pump-mandate-will-not-achieve-installation-target/> [↑](#footnote-ref-17)
18. See The Telegraph, <https://www.telegraph.co.uk/politics/2021/10/21/dont-have-heat-pumps-admit-cabinetministers-telling-public/> [↑](#footnote-ref-18)
19. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-19)
20. 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-20)
21. 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-21)