Investigation report no. BI-662

| Summary |  |
| --- | --- |
| **Licensee [service]** | Prime Television (Northern) Pty Limited  |
| **Findings** | No breach of clause 3.3.1 [factual accuracy, misrepresentation of viewpoints] No breach of subclause 3.4.1 (a) [impartiality] |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised in 2018)  |
| **Program** | *7 News* |
| **Date of broadcast** | 5 December 2022 |
| **Type of service** | Commercial television |
| **Attachments** | **A** – relevant provisions and the ACMA’s approach to assessing content |
| **Date finalised** | 29 June 2023 |

Background

In March 2023, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into a news report (the **Report**)broadcast on *7 News*.

The Report was broadcast on *7 News* by Prime Television (Northern) Pty Limited (the **Licensee**) on 5 December 2022.

The ACMA had received a complaint alleging that the Report incorrectly reported facts, did not report readily ascertainable facts and lacked impartiality.

The ACMA has investigated the Licensee’s compliance with clause 3.3.1 [factual accuracy, misrepresentation of viewpoints] and subclause 3.4.1(a) [impartiality] of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the **Code**).

Issue 1: Accuracy and representation of viewpoints

Relevant Code provisions

**3. News and Current Affairs**

**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 did not breach clause 3.3.1 of the Code.

Reasons

To assess compliance, the ACMA considered 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 broadcast material is factual are set out at **Attachment A**.

***What did the material convey to the ordinary reasonable viewer?***

The Report was approximately 1 minute 40 seconds in duration and looked at the shortage of affordable rental accommodation and increasing rents in the Coffs Harbour area. It presented a case study of a tenant [the **Tenant**] who had been given a termination notice by his real estate agent [the **Agent**] on the lease of his apartment because the owner of the property wished to renovate. An excerpt transcript of the Report is below.

*REPORTER: After 15 years living here, [the Tenant] was given his marching orders.*

*TENANT: … kicked me out, jacked the rent up from 300 to 500’.*

*REPORTER: The termination notice said the 2-bedroom unit had to be empty for renovations, but [the Agent] put the property back on the market almost immediately, the new tenants moving in today.*

*TENANT: Within seven days it was advertised for 500 dollars – no renovations whatsoever.*

*REPORTER: The 66 year old said he enjoyed a great relationship with the owner, who regularly expressed her gratitude for his work maintaining the property.*

*TENANT: I’d get a bottle of spirits and a box of chocolates every year from my landlord, thanking me.*

*REPORTER: [The Tenant] managed to secure a neighbouring unit for $400 a week in a competitive market, taking on extra work to pay the rent.*

*TENANT: Sydney, Brisbane, you have a look at the number plates around town, they’re moving here from everywhere.*

*REPORTER: But now [the Agent] has imposed a two-week rental fee for breaking his lease. The matter is now before the Bond Tribunal. [The Agent] declined to comment today.*

The Reporter went on to note that ‘for coastal investors, putting the rent up is the obvious next step in a market driven by record demand’. The local State MP noted that there is no mechanism for controlling rents, which ‘is probably as it should be’, followed by a representative from a local charity, who appealed to landlords to ‘have a social mindset when they’re looking at their rents’.

The ACMA considers the meaning conveyed to the ordinary reasonable viewer was that:

* the Tenant was given a termination notice for his lease because the landlord wanted to renovate the property
* the Tenant secured another unit
* the property was re-advertised at a substantially higher rent (from $300 to $500) within a week of the Tenant moving out, without renovations having occurred
* the Agent imposed a two-week rental fee on the Tenant for breaking his lease
* the matter was before the bond tribunal
* the Agent declined to comment on the matter
* there was record demand for rental properties
* rents have increased in the local area, putting financial pressure on some tenants
* there are no mechanisms for controlling rents
* landlords should consider the impact of rent increases

The Report did not include information about why the renovations on the Tenant’s property had not taken place, before the property was re-advertised at a higher price.

The complaint to the Licensee stated:

The narrative by [the Reporter] portrayed [the Agent] as acting on a frolic of their own, by lying to tenants and increasing rents, in breach of tenancy legislation. This story that aired was almost wholly inaccurate and completely misrepresented the facts […]

[the Agent] validly gave notice to a tenant that his lease would not be renewed at the end of the fixed term. […]

The termination notice was served by way of email to [the Tenant] advising that the termination of his tenancy at the end of his lease in no way detracted from his obligations under the lease and that he would not be permitted to break the lease earlier than the termination date. […]

The complaint to the ACMA stated:

Reporter […] interviewed [the Tenant] who alleged [the Agent] had evicted [the Tenant] from his property under false pretences to increase the rent. […]

Facts of the story were incorrectly reported. [The Tenant] had breached his lease by abandoning the property more than 4 months prior to expiry of his fixed term tenancy to take up an alternate tenancy. […]

[the landlord], who was unable to reschedule her renovations planned for February, was then faced with being left without income for an extended period of time. As a result, [the Agent] was instructed to claim a break lease fee from [the Tenant] and re-advertise the property for short-term occupancy.

The Licensee submitted to the ACMA:

[…] factual information was incorporated accurately in the Broadcast and […] none of the material viewpoints included in the Broadcast […] were misrepresented. […]

In order to corroborate [the Tenant’s claims], [the Reporter] sighted the following:

* the termination letter from the [Agent] to [the Tenant]
* other lease documentation in relation to the rental property
* written correspondence between [the Tenant] and the owner of the property regarding historical proposed rental increases
* a ‘For Lease’ sign with the [Agent’s] branding outside the property
* photographs of the property

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

The relevant information in the Report concerned the termination of the Tenant’s lease agreement. It was specific, unequivocal and capable of independent verification. It was therefore factual in character.

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

The central theme of the Report was a shortage of rental accommodation and increasing rents in the Coffs Harbour area. The Report presented the Tenant’s case as an example of this issue. It conveyed that the Tenant’s lease was terminated, giving planned renovations as the stated reason, and that the property was re-leased soon after the Tenant vacated for an increased rent, without renovations having occurred.

The Licensee submitted that ‘[the Agent’s] legal right to terminate [the Tenant’s] lease was not material to the story’. The ACMA agrees with the Licensee that the legality of the termination of the Tenant’s lease, which was raised as an inaccuracy by the complainant, was not in itself material in the context of the Report.

However, the ACMA considers that the broader facts of the termination of the Tenant’s lease, including that planned renovations had not been completed when the property was re-advertised at an increased rent, were material in the context of a report that used the termination of the Tenant’s lease as a case study to illustrate rising rents in the Coffs Harbour area.

***Was the factual material presented accurately or a material misrepresentation of viewpoints?***

The ACMA considers that the material facts in the Report were presented accurately. As noted above, the Licensee submitted that the Reporter had sighted relevant documentation and photographs to verify the Tenant’s claims in relation to his tenancy, the termination and the subsequent lack of renovations.

Viewpoints included in the Report relevant to the complaint were those of the Tenant and there is no information before the ACMA to suggest that they were misrepresented.

Accordingly, the Licensee did not breach clause 3.3.1 of the Code.

*Further observations*

The complaint in relation to accuracy was focused on the termination of the Tenant’s lease and the role of the Agent. While the Tenant appeared to be dissatisfied that the planned renovations (the stated reason for the termination) had not occurred, this dissatisfaction was clearly presented as his personal viewpoint, rather than factual material. There was no allegation in the Report of illegal or inappropriate behaviour on the part of the Agent. The ACMA considers that the lack of comments from the Agent on this point would be more appropriately assessed under the impartiality provisions of the Code.

The complainant also alleged that the Reporter ‘made no real attempt to verify [the Tenant’s] claims and failed to diligently contact [the Agent’s] directors for comment’, expressed in the Report as ‘the [Agent] declined to comment today’.

As the Agent’s viewpoint was not included in the Report and therefore cannot be said to be misrepresented, the ACMA considers that any omission of potentially relevant facts because of this should similarly be considered against the impartiality provisions, rather than the accuracy provisions of the Code.

Issue 2: Impartiality

Relevant Code provisions

**3. News and Current Affairs**

**3.1 Scope and Interpretation**

[…]

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.

[…]

**3.4 Impartiality**

3.4.1 In broadcasting a news Program, a Licensee must:

a) present news fairly and impartially;

[…]

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. […]

Subclause 3.4.1(a) requires news to be presented fairly and impartially. The impartiality requirement means that news must be presented in such a way that one side of an issue is not unduly favoured over another, and that the program does not show prejudice or bias against a particular side. To that end, an indicator of an impartial news program is that it provides sufficient information for viewers to make up their own mind about the issues presented.

Achieving fairness and impartiality requires a broadcaster to present material in a way which avoids conveying a prejudgement or giving effect to the preferences of the reporter or presenter, who play key roles in setting the tone of the report through their style and choice of language.

A news report that presents a perspective that is opposed by a particular person or group is not inherently partial.

Whether a breach of the Code has occurred will depend on the theme of the news report, the range of perspectives that were presented or sought to be presented in relation to that theme, the overall presentation of the report, and the circumstances in which the report was prepared and broadcast.

When a news report investigates and reports on matters of public interest, care in framing is important.

A news report that is not presented fairly or impartially may include:

* an unfair selection of material from the range of material available
* an undue emphasis on certain material
* the unfair juxtaposition of material out of context.

Finding

The Licensee did not breach subclause 3.4.1(a) of the Code.

Reasons

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

* What was the meaning conveyed to the ordinary reasonable viewer?
* Did the broadcast present news fairly and impartially?

***What was the meaning conveyed to the ordinary reasonable viewer?***

The meaning conveyed, relevant to the complaint, was that the Tenant had been evicted with the stated reason being planned renovations, but that the property was subsequently advertised within a week at a higher price, without renovations having occurred.

***Did the broadcast present news fairly and impartially?***

The ACMA found above that the Report accurately presented information and did not misrepresent the Tenant’s viewpoint. The issue to consider here is whether the information was presented fairly and impartially.

Based on the complaint to the ACMA, information about potential reasons why the renovations had not been undertaken when the property was re-leased could have been provided by the Agent. However, the Agent’s perspective was not included in the Report. In these circumstances, it is relevant to consider whether the Reporter made sufficient attempts to include the Agent’s perspective. In addition, it is relevant to consider whether the Report fairly and impartially presented those perspectives that were available.

*Attempts to include the Agent’s perspective*

The complaint was that the Reporter ‘failed to diligently contact’ the Agent for comment. The Licensee has provided the ACMA with the Reporter’s call logs on the day of the Report. Based on the call logs, it was apparent that the Reporter made at least 2 attempts to contact the Agent. One of these calls was to the Agent’s office number and lasted for 300 seconds.

While the complainant and the Licensee dispute the nature of the conversation that took place between the Reporter and the Agent’s office, the ACMA is satisfied that sufficient attempts were made to contact the Agent for comment.

The ACMA also notes that the Report included a statement by the Reporter that ‘the [Agent] declined to comment today’, signalling to viewers that there is likely to be another perspective on the issues presented.

*Presentation of available relevant perspectives*

The theme of the Report was rising rents in the Coffs Harbour area in the midst of record demand for rental properties. Relevant to this theme, the Report presented the perspective of the Tenant, whose lease had been terminated and the property re-advertised at an increased rent. A local MP offered another perspective when he suggested that rent increases should not be moderated by political measures, and a representative from a local charity argued for landlords to be mindful of the impact when increasing rents on low income earners, against the background of increasing numbers of people seeking help.

As noted above, the absence of the Agent’s perspective meant that the reason why the renovations to the Tenant’s property had not occurred was not included. This absence meant that some viewers may have interpreted the re-leasing of the property as opportunistic and an example to illustrate the Reporter’s reference to the ‘logical next step’ of ‘investors, putting the rent up […] in a market driven by record demand’.

While the Report left it open to a viewer to make their own interpretation, it did not contain an express allegation to that effect and highlighted that the matter was in doubt and not settled. The Report made it clear that the matter was before the bond tribunal, indicating that there was dispute between the Tenant, and landlord, and they may have differing views.

The ordinary reasonable viewer would have understood that the Report was raising broader questions around rent affordability and did not aim to present a fulsome or final view on the dispute between the landlord and the Tenant.

The ACMA considers that the omission of the Agent’s perspective on this question was unlikely to affect a viewer’s understanding of the broader fact of, and possible reasons behind rising rents in the area. The Reporter accurately presented the facts and relevant perspectives available and made sufficient (although unsuccessful) attempts to include the Agent’s perspective and highlight that the matter was in dispute. The ACMA therefore considers that, in these circumstances, the Report presented news fairly and impartially.

Accordingly, the Licensee did not breach subclause 3.4.1(a) of the Code.

Attachment A

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;

[…]

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.[[1]](#footnote-1)

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.[[2]](#footnote-2)
* 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[[3]](#footnote-3)
	+ whether they are simply comments made on another person’s account of events or a separate assertion about matters within their expertise.
1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)
2. 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-2)
3. 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-3)