1.5 KEY CONTENT INVESTIGATIONS

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Complaints about the Kyle & Jackie O show

- In the period between 1 July 2023 and 30 September 2024, the ACMA has received 57 complaints and enquiries about the *Kyle & Jackie O* show.
  - 39 complaints and enquiries have been received since the Kyle & Jackie O show commenced broadcasting in Victoria on 29 April 2024.
- The ACMA is not currently undertaking any investigations into the program.

  - 2 complaints received are yet to be assessed and relate to allegations regarding inappropriate sexual content.
- The complaints and enquiries received have broadly been in relation to the material not suitable for broadcast provisions of the Commercial Radio Code.
- On 17 March 2023, the ACMA accepted an Enforceable Undertaking from the Licensee of the *Kyle and Jackie O* show (ARN) in response to findings of a breach of the decency provisions in relation to comments about the Paralympics. On 8 August 2023, in response to a breach finding in relation to comments about mpox, the Licensee agreed to extend the EU to include LGBTQI+ matters.
- On 17 September 2024, the ACMA received the third report from the Licensee under the EU, which is currently being assessed. The previous two reports were submitted on time and met the EU requirements. The fourth and final report is expected on 17 March 2025.
- The ACMA's oversight of the *Kyle and Jackie O* show has been the subject of recent media attention. On 9 September 2024, ABC's *Media Watch* program broadcast a segment criticising the program. The segment contained details about some of the content broadcast including a 'peeing competition'. The segment also questioned the ACMA's regulation of the program.
- The ACMA has received 4 complaints and enquiries about the *Kyle & Jackie O* show stemming from the *Media Watch* broadcast. We have not received any complaints from people who allege to have heard the 'peeing competition' episode.

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BACKGROUND

ACMA approach to broadcast content investigations

- The ACMA operates within the co-regulatory framework established under the *Broadcasting Services Act 1992* (the BSA) in relation to complaints about content.
- If a person believes there has been a breach of the relevant industry code, they can complain to the broadcaster. If they do not receive a response in the required time or they are dissatisfied with the response, they may then complain to the ACMA.
- The ACMA may also undertake 'own motion' investigations in the absence of complaints when there is clear and significant community interest to do so.
  - For example, the ACMA undertook an 'own motion' investigation in 2019 into coverage of the Christchurch terrorist attack on Australia's commercial, national and subscription television broadcast services.
- The ACMA has a broad discretion to open a broadcasting investigation following receipt of a complaint under the co-regulatory framework or, in the absence of a complaint, at its own initiative.
- The ACMA's primary consideration to open an investigation is whether it is in the public interest to investigate. Factors likely to be considered include:
  - the seriousness of allegations
  - whether the matter is indicative of a potential systemic issue
  - concerns around safeguards applicable to children, and
  - whether the matter has been the subject of debate within the community indicating a likely level of public interest.
- Content investigations can take a long time due to the complexity of investigations and timeframes needed by broadcasters to respond to potentially adverse findings.

Actions available for breach of a code of practice – commercial free-to-air broadcasters

- Where there has been a breach of a code of practice the ACMA will generally publish the report and a media release. It may also:
  - agree to accept measures by broadcasters to improve compliance – these could include educating staff or changing procedures to improve compliance
  - accept court enforceable undertakings for the purposes of securing future compliance with the rules
  - impose an additional licence condition requiring the licensee to comply.
- Remedial directions are also an option for code contraventions but only apply for a small section of the industry – subscription radio, subscription narrowcasting and open narrowcasting.

Actions available for breach of a licence condition (any standards or provisions of the Act)

- Where a broadcaster has breached the BSA, the ACMA may:
  - give a remedial direction requiring action to address the contravention

- institute court proceedings seeking remedies, including civil penalties. However, this option is not immediately available for breaches of additional licence conditions imposed by the ACMA. In these cases, the ACMA could give a remedial direction or accept an enforceable undertaking for non-compliance of the additional licence condition and in the event the public licensee failed to comply with those subsequent enforcement actions, the ACMA could then seek remedies including civil penalties.

- In the event the ACMA has given a remedial direction, and the party has not complied with the direction, the ACMA may seek civil penalties.
- In some instances, an infringement notice may also be an option. This is for matters to do with the control of a licence or the broadcast of tobacco advertising by commercial television broadcasters.

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Date: 23/10/2024

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