



**Australian
Broadcasting
Authority**

Investigation Report No 1518

File No.	2005/0709
Licensee	TCN Channel Nine Pty Ltd
Station	TCN 9
Type of Service	Commercial Television
Name of Program	A Current Affair
Date of Broadcast	1 December 2004
Relevant Legislation/Code	Clauses 4.3.1 and 7.9 of the Commercial Television Industry Code of Practice 2004

Investigation conclusion

Breach of clause 7.9 of the Commercial Television Industry Code of Practice 2004, by failing to provide a substantive written response to the complaint.

The complaint

On 14 March 2005 the Australian Broadcasting Authority (the ABA) received a written complaint regarding a segment broadcast by TCN Channel Nine Pty Ltd (the licensee) on the *A Current Affair* program on 1 December 2004.

The complainant alleged that the licensee breached clause 4.3.1 of the Commercial Television Industry Code of Practice 2004 (the code) by failing to represent viewpoints fairly in a segment concerning a neighbourhood dispute. The complainant also alleged that the licensee failed to respond to his letter complaining about the segment.

Matters not considered by the ABA

The primary focus of the complaint concerns the behaviour of the reporter. The complainant contended that he did not receive any notice of the broadcast or a right of reply despite assurances from the reporter in this regard. He also complained about the reporter's statement to him during a telephone call that he had lied about the 'illegality' of his wife's home occupation. The ABA has not investigated these matters as they do not fall within the ambit of the code or the *Broadcasting Services Act 1992*.

The program

The segment concerned a dispute between a woman (the complainant's wife, HS) who worked from home distributing advertising pamphlets, and her neighbours who objected to the piles of pamphlets in the front yard and the pamphlet collection. The segment was introduced by the presenter as follows:

Now we all get it, not too many of us like it. I'm talking about junk mail, those advertising brochures continually being shoved into our letter boxes. They must come from somewhere. But how would you feel if that somewhere was right next door to your place?

The program featured interviews with HS, her neighbours (the Xs), and the general manager of Willoughby Council.

Assessment

The ABA obtained a copy of the segment from the licensee, and comments regarding compliance with relevant provisions of the code.

Issue 1: Whether the licensee represented viewpoints fairly

Clause 4.3.1 of the code states:

News and Current Affairs Programs

- 4.3 In broadcasting news and current affairs programs, licensees:
4.3.1 must present factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program.

Complainant's submissions

The complainant submitted that:

- the segment was not balanced or fair given that the Xs were 'dressed to the nines with prepared statements' and 'my wife in T-shirt caught on the hop ... not prepared at all, with a most aggressive man and a camera in her face ...', and
- false accusations were made by the Xs about the complainant and his wife in regard to her pamphlet distribution work from home. The only change required by Council to work from home was to ensure that the car space is used for a car.

Licensee's submissions

The licensee submitted that:

- the segment provided a balanced coverage of a neighbourhood dispute between the complainant and his wife and the Xs. The dispute had escalated to become a local government concern
- at the time the segment was broadcast, Willoughby Council advised *A Current Affair* that it was the Council's view that 'current usage of the premises for the distribution outlet is outside that allowable for home occupation business'. A statement to that effect was included in the segment
- the segment was balanced by broadcasting the following:
 - the assertion from HS that the Xs were the only people in the street who had complained about the service in 13 years and the petition supporting her position
 - the statement by the reporter that there are operations like this in 'most suburbs'
 - the statement by HS that the operation provides pocket money to children in the local area and the statement by the reporter that if the operation were shut down, 'a dozen delivery boys will be out of work'
 - the assertion from HS that the operation was not a business, but an occupation from home
 - the comment from another neighbour that he had 'no problems whatsoever', which clearly referred to the operation and
 - the statement from HS that she considered the actions of the Xs amounted to harassment and were a threat to her psychological health.

Finding

The ABA finds that the licensee represented viewpoints fairly in the broadcast of *A Current Affair* on 1 December 2004. Accordingly, the licensee did not breach clause 4.3.1 of the code.

Reasons

Clause 4.3.1 of the code requires licences to 'represent viewpoints fairly having regard to the circumstances at the time of preparing and broadcasting the program'. This does not require that all views relevant to the program must be presented, or that there must be balance in the representation of views. Rather, the code requires that, if the licensee does purport to represent a viewpoint, then it must do so fairly and in such a way as not to misrepresent an opinion or the person to whom the viewpoint is attributable.

Having examined the segment, the ABA finds that the viewpoints expressed by the Xs in relation to HS's home occupation were not misrepresented. They were presented as personal opinions and appeared to be fair representations of the Xs concerns. Although clause 4.3.1 of the code does not require a balance in the representation of views, the ABA nevertheless notes that a balance of views was provided in the form of the following statements:

REPORTER: There's an HS in most suburbs.

...

REPORTER: ... should HS be forced to close, a dozen delivery boys will be out of work. But on the other hand, do you want this next door to you?

...

HS: Yes because I've been here for 13 years, this is the way the company operates. I'm not the only house that does this.

...

HS: It's a children's occupation. Kids come here, they earn a bit of pocket money walking around this local area.

...

HS: No, it's a home occupation, it's not a business, it's a home occupation.

...

HS: Out of everybody in the street, this is the only complaint that I've ever had in 13 years of operating here.

The segment appears to have provided HS with ample opportunity to refute the claims made by the Xs. Further, HS expressed her own viewpoints which were not presented by the reporter or distorted in any way.

The ABA is therefore satisfied that there is no evidence that the licensee breached clause 4.3.1 of the code.

Issue 2: Whether the licensee provided a substantive written response to the complainant within 30 days

Clause 7.9 of the code states:

7.9 Where a Code complaint is made about material broadcast by a station within thirty days of its broadcast, the licensee must provide a substantive written response.

Complainant's submissions

The complainant submitted that the licensee failed to respond to his letter of complaint.

Licensee's submissions

The licensee submitted that:

- it would appear that a substantive written response to the complaint was not made within the time limit stipulated in clause 7.9 of the code
- the complainant's letter arrived while Mr M, executive producer for *A Current Affair*, was on a Christmas break. Once Mr M was made aware of the complaint, every effort was made to respond

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- a detailed written response was faxed to the complainant on 16 March 2005¹, and
 - Mr M is no longer executive producer. The licensee has reinforced the importance of time limits and procedures in clause 7 of the code.

Finding

The ABA finds that the licensee breached clause 7.9 of the code.

Reasons

The licensee has conceded that it failed to respond to the letter of complaint. The ABA notes the efforts of the licensee to rectify this failure in future.

Action taken by the licensee

The licensee has advised the ABA that it has reviewed the situation and has taken steps to ensure that the failure to respond to a letter of complaint does not arise in future.

The ABA considers this action addresses the compliance issues raised by the investigation and will continue to monitor the licensee's performance in this regard.

Decision

I, Andree Wright, Director, Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Broadcasting Authority, determine for the above reasons, in relation to a segment broadcast by TCN Channel Nine Pty Ltd on *A Current Affair* on 1 December 2004, that the licensee:

- presented viewpoints fairly in the broadcast and therefore did not breach clause 4.3.1 of the code and
- breached clause 7.9 of the code by failing to provide a substantive written response to the complaint.

Signed: -----
Andree Wright

dated this 28th day of April 2005

¹ A copy of the letter was provided to the ABA.