



**Australian  
Broadcasting  
Authority**

## **Final Investigation Report No 1511**

<b>File No.</b>	2005/0556
<b>Licensee</b>	Network Ten Brisbane Pty Ltd
<b>Station</b>	TVQ
<b>Type of Service</b>	Commercial Television
<b>Name of Program</b>	<i>First At Five news</i>
<b>Date of Broadcast</b>	23 July 2004
<b>Relevant Legislation/Code</b>	Clauses 4.3.5, 4.3.5.1 and 7.12 of the Commercial Television Industry Code of Practice 2004

### **Investigation Conclusion**

The ABA finds that the licensee of TVQ, Network Ten Brisbane Pty Ltd:

- breached clause 4.3.5 of the Commercial Television Industry Code of Practice 2004 (the Code) by using material which invaded the complainant's privacy;
- breached clause 4.3.5.1 of the Code by failing to exercise special care before using the name of the complainant's son; and
- breached clause 7.12 the Code by failing to advise the complainant that she may refer the matter to the ABA if not satisfied with the licensee's response.

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## The Complaint

On 23 February 2005 the Australian Broadcasting Authority (the ABA) received a complaint regarding a news item broadcast by Network Ten Brisbane Pty Ltd (the licensee) on the *First At Five* news program on 23 July 2004. The complainant alleged that the licensee breached her and her son's privacy by revealing their names and by including footage of her son in the news item. The ABA has investigated the complaint in terms of clauses 4.3.5 and 4.3.5.1 of the Commercial Television Industry Code of Practice 2004 (the Code).

The ABA also notes that the licensee did not advise the complainant that she may refer her complaint to the ABA if she was dissatisfied with the licensee's response. The ABA has decided to investigate this issue in regard to clause 7.12 of the Code.

## The Program

In July 2004, the licensee broadcast a series of news items on bullying in Queensland schools on the *First At Five* news. The complainant contacted the licensee after viewing one of these stories, to advise that her son had been a victim of bullying in schools, and consented to be interviewed. On 23 July 2004, the *First At Five* news featured an interview with the complainant and her son about his bullying experiences and concealed their faces.

The reporter referred to the complainant's full name on one occasion and to her son's first name on two occasions:

But [full name] says she won't pay a cent and she's fighting back, planning to take the Queensland Department of Education to the Anti-Discrimination Tribunal.

...

12 year old [first name] hasn't spent one day at school this year...

...

[first name] has been to four schools in seven years...

The segment screened a letter from the Queensland Department of Education to the complainant, ordering her to return her son to school or risk substantial fines. The letter was provided by the complainant to the reporter and revealed the full name of the complainant and her son:

Dear Ms [surname]

...

Your son [first name]

..

...best interest of [first name]

..

...is critical to give [first name]

The news item also included an interview with the Deputy Director-General of the Department of Education and a second parent who had removed her daughter from school as a result of bullying.<sup>1</sup>

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<sup>1</sup> This parent had given her consent for her and her daughter to be identified.

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## Assessment

The ABA obtained copies of the relevant segment from the licensee, and comments regarding compliance with relevant provisions of the Code. The ABA also viewed the original letter of complaint to the licensee and its response.

### **Issue 1: Whether the licensee used material relating to a person's personal or private affairs, or which invades an individual's privacy**

#### *News and Current Affairs Programs*

4.3 In broadcasting news and current affairs programs, licensees:

- 4.3.5 must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast.

#### ***Complainant's submissions***

The complainant submitted that:

- she had only agreed to be interviewed after repeated requests from the reporter to participate in the interview and numerous assurances that her privacy would be protected by silhouetting her face and using a pseudonym;
- the cameraman advised her that he would only film extracts relating to the fine in the letter from the Department of Education and asked her to point to the relevant part; and that her name would not be visible; and
- she was misled and deceived by the reporter and the cameraman who had promised her that her and her son's names would not be released.

#### ***Licensee's submissions***

The licensee submitted that:

- in response to the complainant's request that the news item should not identify herself and her son, the licensee pixellated the complainant's face, and silhouetted her son and blurred focus of his image at a distance;
- on location, the complainant produced a letter from the Department of Education and agreed for it to be filmed as part of the story. The reporter suggested to the complainant that the Department would be able to identify her based on the facts of the case as it was unlikely that there would be other cases of a child being withdrawn from five different Queensland schools, and the complainant agreed with this point. Given these circumstances, the complainant then agreed to use her and her son's name in the broadcast. The reporter regarded this arrangement as being clear to both parties;
- the complainant's recollection of the discussion concerning the letter was not the recollection of the reporter or the cameraman. Further, the footage used in the story does not support these allegations as the letter was filmed with the complainant in the shot and therefore she was clearly aware of the footage being taken and did not move to obscure any part of the letter; and

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- although the address block on the letter is visible, it is not legible as the writing is out-of-focus.

In response to the ABA's preliminary finding, the licensee submitted that:

- it is correct that the complainant did not consent to the use of her name when the interview was initially discussed, however, once on location for the interview, she changed her mind and consented to the use of her name in the news report;
- the complainant maintained that the report should not visually identify either herself or her son and TVQ complied with this request; and
- the ABA's reasoning that it was inconsistent to obscure the faces of the complainant and her son whilst identifying them by name was flawed, as by consenting to the use of her name in the report, she had waived her right to claim a breach of privacy.

### ***Finding***

The ABA finds that the licensee used material which invaded the complainant's privacy in the broadcast of 23 July 2004. Accordingly, the licensee breached clause 4.3.5 of the Code.

### ***Reasons***

Clause 4.3.5 stipulates that in broadcasting news and current affairs programs, a licensee must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast.

#### ***Did the licensee use material relating to a person's personal or private affairs?***

The complainant submitted that she had only agreed to be interviewed after repeated requests from the reporter to participate in the interview, and numerous assurances that her privacy would be protected by silhouetting her face and using a pseudonym. In addition, the complainant claimed that the cameraman had advised her that he would only film extracts relating to the fine in the letter from the Department of Education, and that her name would not be visible.

However, the licensee submitted that in response to the complainant's request that the news item should not identify her and her son, the complainant's face was pixellated and a silhouette image was shown of her son. In addition, the licensee argued that the complainant had produced a letter from the Department of Education and agreed for it to be filmed as part of the story, despite suggestions by the reporter that the Department would be able to identify her based on the facts of the case.

The ABA has reviewed a copy of the broadcast and the submissions of both parties and considers that the licensee used material relating to the personal and private affairs of the complainant and her son. In this regard, the ABA notes the inconsistency of pixellating the complainant's face and showing a silhouette image of her son, but then showing a letter on which the names of the complainant and her son are clearly visible. In addition, the reporter referred to the complainant and her son by name, which effectively negates the concealment of their identities.

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***Was there an identifiable public interest reason for the material to be broadcast?***

The ABA considers that in this instance, there was an identifiable public interest reason for the broadcast of a news item on the issue of bullying in schools. In this particular case, however, there was no identifiable public interest reason for the material relating to the personal and private affairs of the complainant and her son to be used in the manner that they appeared in the broadcast. Given the impact that bullying appears to have had on the education of her son, the issue of bullying in schools could have been dealt with without lessening the relevance of the news item were the names of the complainant and her son not revealed in the letter and by the reporter.

The ABA considers that the licensee's additional submission provides no new information to warrant a change to the preliminary finding.

**Issue 2: Whether the licensee exercised special care before using material relating to a child's personal or private affairs**

Clause 4.3.5.1 states:

for the purpose of this Clause 4.3.5, licensees must exercise special care before using material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child. The consent of a parent or guardian should be obtained before naming or visually identifying a child in a report on a criminal matter involving a child or a member of a child's immediate family, or a report which discloses sensitive information concerning the health or welfare of a child, unless there are exceptional circumstances or an identifiable public interest reason not to do so.

***Complainant's submissions***

The complainant submitted that:

When my son and I saw the 5 o'clock news, he suffered deep anguish and shock. He was in a state of shock and disbelief, as was I for that matter...[the reporter] repeatedly named my son's full name and flashed his name across the screen.

...

My son was sick and absolutely devastated after seeing the story and it continues to affect him and occupy him. The feelings of gross violation and betrayal cuts deep for him and it is the same thing for me.

***Licensee's submissions***

The licensee submitted that:

- the complainant was present on all the occasions her son was filmed and was aware that the footage was to be used in the news item; and
- the reporter sought and obtained permission from the complainant to interview her son and she was present throughout this interview.

In response to the ABA's preliminary finding, the licensee submitted that:

- as the complainant consented to the use of her son's name in the report she waived her right to later argue that a breach of her son's privacy occurred;

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- the ABA does not have any grounds for attributing greater weight to the complainant's account of whether consent was obtained compared to TVQ's account; and
  - Ten took care to approach the issue in a sensitive manner and to ensure that the son was not visually identified as requested by the complainant. However, as the complainant had consented to the use of her son's name, it was not a breach for TVQ to use his name despite the sensitivity of the circumstances.

### ***Finding***

The ABA finds that the licensee failed to exercise special care before using the name of the complainant's son in the broadcast of 23 July 2004. Accordingly, the licensee breached clause 4.3.5.1 of the Code.

### ***Reasons***

The test in relation to the privacy of children at clause 4.3.5.1 sets a higher threshold in comparison to the general test at clause 4.3.5. Clause 4.3.5 prohibits licensees from using material relating to a person's personal or private affairs unless there is an identifiable public interest to do so. In addition, clause 4.3.5.1:

- requires licensees to exercise special care before using material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child; and
- requires a licensee to obtain the consent of a parent or guardian before naming or visually identifying a child in a report on a criminal matter involving a child or a member of a child's immediate family, or a report which discloses sensitive information concerning the health or welfare of a child, unless there are exceptional circumstances or an identifiable public interest reason for not doing so.

The ABA has interpreted clause 4.3.5.1 in two stages. The first sentence may be regarded a general and overriding requirement for licensees to exercise special care before using material relating to a child's personal affairs in a report of a sensitive nature concerning the child. The second sentence serves as a subsidiary requirement for licensees to also obtain parental consent to use a child's name or visually identify a child in a sensitive report.

### ***Did the licensee exercise special care before naming the complainant's son***

In this particular instance, it is noted that the child is only 12 years of age and has suffered from his bullying experiences in several schools. Consequently, the identification of the child is especially relevant in that he would be concerned that those who had bullied him, or other children who may have been unaware of his past, could identify him in the broadcast. That is, the child's interests in anonymity were quite different from those of the parent, who was concerned with the Department of Education in this case. Given that this matter concerns a sensitive issue involving a child's welfare, the ABA finds that the licensee breached clause 4.3.5.1 by failing to exercise special care before naming the complainant's son in the news segment.

### ***Was consent obtained from a parent?***

The complainant submitted that the licensee assured her that her son would not be shown in the news item. The son is shown on three occasions:

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- playing in a park playground, with his image blurred;
  - a shot from the back, walking with his mother in the park; and
  - being interviewed about his feelings, with his image silhouetted.

Given that the complainant was filmed with her son on these occasions, the ABA is satisfied that she should have been aware that her son would be included in the broadcast.

The reporter also referred to her son's first name on two occasions and screened a letter from the Department of Education which included three references to his first name and to his mother's surname, thus revealing the son's full name.

The licensee's response dated 16 December 2004<sup>2</sup> to the complainant stated:

Ten accepts that you did not want your or your son's faces shown in vision and took steps to ensure that this did not occur.

However, your recollection of what was said regarding the use of your name in the broadcast is at odds with [the reporter's] recollection. [The reporter] is of the view that after you agreed to Ten filming the letter you had received from the Education Department, you also agreed with him that the Department be able to identify you from the circumstances of your son's case and that you then agreed to Ten using your name in the broadcast provided your face was not shown.

It is noted that in the first paragraph, the letter referred to the complainant's request to conceal her and her son's faces:

...you did not want your or your son's faces shown...

However, in the second paragraph, the letter referred to the complainant's consent to allow the licensee to identify herself only:

...your recollection of what was said regarding the use of your name...

...

...you then agreed to Ten using your name in the broadcast...

The licensee's submission to the ABA dated 24 March 2005 then indicated that:

It is the reporter's understanding that he obtained her permission to use her son's name at or around the same time that he received permission to use [Ms N's] name.

There appears to be an inconsistency in the licensee's submissions regarding whether or not consent was given by the complainant for the licensee to name her son. The ABA is not satisfied that the licensee has provided an adequate description of the discussions which occurred on the day the complainant and her son were interviewed.

On balance, the ABA finds that the licensee did not obtain consent from the complainant before naming her son in the report which discloses sensitive information concerning her child's welfare, namely, bullying at school. Consideration has been given to the complainant's insistence of privacy as a result of the torment her son experienced through bullying, and the licensee's failure to adequately convince the ABA that consent was obtained.

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<sup>2</sup> Signed by the licensee's legal counsel

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***Are there exceptional circumstances or an identifiable public?***

There are no exceptional circumstances or an identifiable public interest reason to release the name of the complainant's son. The use of the name has no bearing on the subject matter of bullying in schools. Rather, it could have the effect of exacerbating an already sensitive situation experienced by the son.

The ABA therefore finds that the licensee has breached clause 4.3.5.1 of the Code by failing to exercise special care before using the name of the complainant's son in the broadcast of a report of a sensitive matter involving the child's welfare.

The ABA considers that the licensee's additional submission provides no new information to warrant a change to the preliminary finding.

**Issue 3: Whether the licensee advised the complainant that she may refer the matter to the ABA**

The relevant provision of the Code is clause 7.12:

***Time limits on responses to Code complaints***

- 7.12 In all cases, a licensee's substantive reply will also advise the complainant that he or she may refer the matter to the Australian Broadcasting Authority if not satisfied with the licensee's response.

***Licensee's submissions***

The licensee submitted that:

..it regrets that it did not include the advice required by clause 7.12 in its written response to [the complainant]. Unfortunately, her letter did not go through Network Ten's standard procedure for assessing Code complaints. As the complaint was not identified as being code related, it was sent directly to the TVQ newsroom and to the Network's Legal area, and the advice required by sub-clause 7.12 was omitted from the final letter.

Network staff have since been reminded of the importance of ensuring that complaints are processed through the proper channels, and of advising complainant's of their right to refer Code complaints to the ABA.

***Finding***

The ABA finds that the licensee breached clause 7.12 of the Code.

***Reasons***

The licensee has conceded that it breached clause 7.12 the Code by failing to advise the complainant that she may refer the matter to the ABA if not satisfied with the licensee's response. The ABA is particularly concerned with the licensee's failure to adhere to complaints procedures in this instance. The right to complain to the ABA is a crucial component of the ABA's powers to regulate the broadcasting industry. Co-operation between the industry and the ABA is imperative in order administer the objectives in the *Broadcasting Services Act 1992*.

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### **Action Taken by the Licensee**

In relation to clause 7.12, the ABA notes that the licensee has reminded Network staff of the importance of ensuring that complaints are processed through the proper channels, and of advising complainants of their right to refer Code complaints to the ABA. The ABA considers that this action addresses the compliance issue raised by the investigation and will continue to monitor the licensee's performance in this regard.

In relation to clauses 4.3.5 and 4.3.5.1, the ABA notes that this is the second occasion where breaches of the Code provisions have been made in the past three years. In light of this, the ABA will not take any further action on this occasion and will continue to monitor the licensee's compliance with these Code provisions.

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## Decision

The Australian Broadcasting Authority determines, for the above reasons, that in the broadcast of a news item on the *First At Five* news program on 23 July 2004, the licensee of TVQ 10, Network Ten Brisbane Pty Ltd:

- breached clause 4.3.5 of the Commercial Television Industry Code of Practice 2004 (the Code) by using material which invaded the complainant's privacy;
- breached clause 4.3.5.1 of the Code by failing to exercise special care before using the name of the complainant's son; and
- breached clause 7.12 the Code by failing to advise the complainant that she may refer the matter to the ABA if not satisfied with the licensee's response.

The Common Seal of the  
Australian Broadcasting Authority  
was affixed to this document in  
the presence of:

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Signature of Member/General Manager

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Dated this 23<sup>rd</sup> day of June 2005.