



Australian Government
**Australian Communications
and Media Authority**

Investigation Report No. 1572

File no.	2005/2058
Licensee	WIN Television TAS Pty Ltd
Station	TVT
Type of service	Commercial television
Name of program	<i>WIN News</i>
Date of broadcast	16 March 2005
Relevant code	Clauses 4.3.3, 4.3.5 and 7.9 of the <i>Commercial Television Industry Code of Practice 2004</i>

Investigation conclusion

The delegate has determined that the licensee of TVT, WIN Television TAS Pty Ltd, in relation to the broadcast of an item on *WIN News* on 16 March 2005:

- breached clause 7.9 of the Commercial Television Industry Code of Practice 2004, by not providing a substantive written response to a complaint about the broadcast
- did not breach clause 4.3.3 of the Commercial Television Industry Code of Practice 2004 in relation to regard to the feelings of relatives
- did not breach clause 4.3.5 of the Commercial Television Industry Code of Practice 2004 in relation to material relating to a person's personal or private affairs and invasion of privacy.

The complaint

On 13 July 2005, the Australian Communications and Media Authority (ACMA) received a complaint regarding a news item broadcast by the licensee of TVT, WIN Television TAS Pty Ltd, on *WIN News* on 16 March 2005. The item concerned the court appearance of a woman charged over a road accident that had occurred some 21 months previously. The complainant considered that the broadcast had shown a 'lack of compassion' for the family of a child killed in the accident, and no respect for their privacy. ACMA decided to investigate these complaints in relation to clauses 4.3.3 and 4.3.5 of the Commercial Television Industry Code of Practice 2004 (the code).

The complainant had written a letter of complaint about the broadcast to the licensee on 18 March 2005, but did not receive a written reply. ACMA decided to investigate this issue in relation to clause 7.9 of the code.

The complainant also raised issues relating to verbal undertakings made to her by the licensee about broadcasts after 16 March 2005. This aspect of the complaint has not been investigated, as these issues are not related to any matter covered by the code or the *Broadcasting Services Act 1992*.

The program

WIN News is broadcast on weekdays at 6 pm. The audio of the news item in question was as follows:

A former Tasmanian woman has appeared in court over a car accident in June 2003 which claimed the life of a child.

Forty-year-old [name of accused] is charged with causing the death of another person by negligent driving when she allegedly failed to keep left on the Domain Highway near the Botanical Gardens, her vehicle colliding with a truck laden with processed zinc.

[Child's name] was killed in the accident and a number of people were injured.

[The accused] appeared in the Hobart Magistrates Court this morning by videolink from Queensland but did not enter a plea and was ordered to re-appear next month.

The vision shown during the item included footage of vehicles and police at the accident scene.

Assessment

The assessment is based on submissions from the complainant and the licensee, a videotaped copy of the footage of the relevant broadcast and a transcript of the audio for the news item.¹ The delegate also viewed a copy of the complainant's letter of complaint to the licensee.

¹ The submission, videotape and transcript were provided to ACMA by WIN Corporation Pty Limited on behalf of the licensee.

Issue 1: Regard to the feelings of relatives

Relevant section of code

News and Current Affairs Programs

4.3 In broadcasting news and current affairs programs, licensees:

[...]

4.3.3 should have appropriate regard to the feelings of relatives and viewers when including images of dead or seriously wounded people. Images of that kind which may seriously distress or seriously offend a substantial number of viewers should be displayed only when there is an identifiable public interest reason for doing so.

Complainant's submission

The complainant submits that:

- the footage contained 'horrific scenes' of the accident
- the showing of the footage of the accident was 'callous and unnecessary' and had 'traumatised' the family and friends of the child who had been killed by bringing back memories of 'that terrible day'. The complainant makes particular mention of the impact upon the child's five-year-old brother, a survivor of the accident, of hearing his sister mentioned and 'seeing his Mummy's car in that state'
- the licensee had not informed the family beforehand of its intent to broadcast the footage.

Licensee's submission

The licensee submits that the report did not contain images of dead or seriously wounded people.

Finding

The delegate finds that the licensee did not breach clause 4.3.3 of the code in the broadcast of *WIN News* on 16 March 2005.

Reasons

It is appreciated that the family and friends of the child killed in the accident may have been distressed by the footage. However, the code requirement at clause 4.3.3 is confined to the situation where images of dead or seriously wounded people are broadcast. The news item broadcast on 16 March 2005 did not contain such images.

Issue 2: Material relating to personal or private affairs, or which invaded privacy; and material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child

Relevant section of code

News and Current Affairs Programs

4.3 In broadcasting news and current affairs, 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;

4.3.5.1 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 submission

The complainant submits that:

- the report named the child killed, so there was no way 'to disguise the accident'
- the licensee did not seek the family's permission for the material to be shown
- the footage contained images of the car belonging to the child's mother
- the child's family feel they 'can have no privacy' in their lives if such material is broadcast.

Licensee's submission

The licensee submits that:

- the child's name was a matter of public record, as it had been released and published after the accident in 2003
- the broadcast did not contain any material relating to the personal or private affairs of the child, nor was there any identifying image shown.

Finding

The delegate finds that the licensee did not breach clause 4.3.5 of the code in the broadcast of *WIN News* on 16 March 2005.

Reasons

The footage shown in the item had been filmed in a public place, namely the highway where the accident took place. The item did not include any images of the child or her family, in private circumstances or otherwise. As such, it did not invade their privacy.

The item did not contain any material relating to the affairs of members of the child's family, personal or otherwise. While the item did contain the child's name, the delegate is of the view that, in this particular case, this did not amount to a breach of code requirements about the use of material relating to a child's personal or private affairs, as the child's name was in the public domain prior to the broadcast, and the broadcast included no other details except that she was a child and had been killed in the accident. That said, the delegate notes that the use of the child's name did not add to the story and was not necessary to the matter being reported.

Issue 3: Handling of a complaint about the broadcast

Relevant section of code

Time Limits on Responses to Code Complaints

7.9 Where a Code complaint is made about material broadcast by a station within 30 days of its broadcast, the licensee must provide a substantive written response.

Complainant's submission

The complainant submits that she wrote a letter of complaint to the licensee on 18 March 2005 (two days after the broadcast) and did not receive a written response.

Licensee's submission

The licensee submits that the complainant's letter had been preceded by a telephone conversation between the complainant and the station's News Director, in which the latter gave an undertaking in relation to future broadcasts about the court case arising from the accident. The News Director 'reasonably mistook' the complainant's letter to be a confirmation of the arrangement they had agreed to on the telephone, as the complainant referred to the undertaking in her letter, and thanked him for giving it. The News Director was therefore 'confident that the matter had been resolved and was not a code complaint'.

The licensee submits that as the licensee's failure to provide a written response was due to a 'reasonable mistake' it was not a breach of the code.²

Finding

The delegate finds that the licensee breached clause 7.9 of the code by not providing a substantive written response to a complaint made to it about the broadcast of *WIN News* on 16 March 2005.

Reasons

The complainant's letter of 18 March 2005 ends with an expression of thanks to the licensee for its undertaking in relation to future broadcasts; however, it begins:

Further to our phone conversation on Friday 18th March 2005 I wish to express in writing my complaint regarding the 6 pm *News* on Wednesday 16th March 2005.

² Clause 1.5.1 of the code provides that, while licensees must seek to comply fully with the code, a failure to comply will not be a breach of the code if that failure was due to a reasonable mistake.

This is followed by eight paragraphs in which the complainant raises concerns about the broadcast on 16 March 2005. While the letter does not mention the code specifically, it raises concerns about privacy and regard for the feelings of relatives, both of which are matters covered by the code.³

The delegate is of the view that the licensee could reasonably be expected to have recognised the complainant's letter of 18 March 2005 as a code complaint, which it was obliged, under the code, to respond to in writing, addressing in substantive terms the concerns raised about the broadcast of 16 March 2005 and, pursuant to clause 7.12 of the code, advising the complainant that she could refer the matter to ACMA if not satisfied with the response.

In response to the preliminary finding, the licensee submitted that the delegate's view does not give sufficient weight to the final paragraph of the complainant's letter, which reads:

My family and myself thank you for your undertaking, thus allowing us as a family to prepare other family members for the coming news item and that prior notice will be given to me.

The licensee also submitted that the majority of viewers prefer to have access to local responsible officers, and expressed concern at the prospect of taking away the ability for viewers to discuss issues with local news directors and resolve them satisfactorily without resorting to writing:

Should ACMA's preliminary view be upheld, a review of telephone complaint calls will be required so that matters which are resolved by telephone locally do not end in a breach of the Code for the company, which was not the intention at all.

Notwithstanding the licensee's undertaking to the complainant in relation to future broadcasts, for which the complainant expressed her thanks, the delegate considers that it was clear, from the complainant's letter of 18 March 2005, that not all issues arising from the broadcast of 16 March 2005 had been resolved to her satisfaction. In light of this, the delegate is not persuaded to revise the preliminary finding. The view that in this instance a code complaint was made, and should have been responded to, does not affect the licensee's ability to receive oral complaints or resolve issues with viewers by telephone.

Action taken

The licensee advises that it has complaints handling processes in place, has revisited its complaints handling procedure and highlighted the circumstances of this case to news staff so that letters, such as the complainant's, are drawn to the attention of relevant officers.

³ Clause 7.2 of the code defines a complaint as one which relates to a matter covered by the code; is in writing; and adequately identifies the material broadcast, the nature of the complaint, and the identity of the complainant. Clause 7.2.1 provides that the complaint need not refer to the code, or specify the section of the code to which the complaint relates.

The delegate considers that these actions address the compliance issue raised by the investigation and will continue to monitor the licensee's performance in this regard.

Decision

I, Phyllis Fong, Manager, Investigations Section, Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that the licensee of TVT, WIN Television TAS Pty Ltd, in relation to the broadcast of an item on *WIN News* on 16 March 2005:

- breached clause 7.9 of the Commercial Television Industry Code of Practice 2004, by not providing a substantive written response to a complaint about the broadcast
- did not breach clause 4.3.3 of the Commercial Television Industry Code of Practice 2004 in relation to regard to the feelings of relatives
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Signed: -----
Phyllis Fong

dated this 31st day of August 2005