



Impartiality and commercial influence in broadcast news

Australian Communications and
Media Authority

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1 Executive Summary

- Free TV broadcasters recognise the importance and value Australians place on quality public interest journalism. Australians rely on commercial-free-to-air television to be the on-the-ground source for local news across the country and a trusted source of news and current affairs in the face of increasing concerns about fake news and misinformation.
- The Discussion Paper highlights the importance and value Australians place on quality public interest journalism. However, it does not provide an evidentiary basis that would support the imposition of further regulation on the commercial free-to-air television broadcasting sector.
- Free TV broadcasters have an unrivalled commitment to delivering quality public interest journalism that is essential for Australian citizens to effectively participate in civil society. We deliver over 486 hours of news and current affairs programming to Australian households every week and employ hundreds of journalists throughout Australia.
- The Free TV Code provides a number of important safeguards to ensure broadcasting services produce news and current affairs programs that meet the community standards that Australians expect. In particular, the Code requires broadcasters, in broadcasting news or current affairs, to:
 - present material facts accurately and ensure that viewpoints included in the relevant program are not materially misrepresented (clause 3.3);
 - present news fairly and impartially and to clearly distinguish the reporting of factual material from commentary and analysis (clause 3.4);
 - disclose commercial arrangements when featuring third party products or services in current affairs, infotainment and documentary programs (clause 4).
- In relation to these safeguards, since 1 July 2015, during which time Australia's commercial television broadcasters have produced countless hours of news and current affairs programs, the ACMA has found:
 - only one instance of a breach of the impartiality provisions by a commercial television licensee; and
 - no instances of breaches of the disclosure requirements.
- These factual statistics indicate that the Code is working, that breaches are rare exceptions rather than common occurrences and that the Code provides the necessary protections regarding impartiality and commercial influence (as well as in relation to accuracy) that Australians need. Indeed, the ACMA drew similar conclusions in its 2014 *Contemporary Community Safeguards Inquiry* which found that, while news programs were considered to be largely fair and impartial by research participants, it was important to have a regulatory mechanism in place to provide appropriate community safeguards.¹

¹ See <https://www.acma.gov.au/sites/default/files/2019-08/research-contemporary-community-safeguards-inquiry-Mar-2014.pdf>, 53-55; and <https://www.acma.gov.au/sites/default/files/2019-08/research-qualitative-and-quantitative-findings-Mar-2014.pdf>, 3.

- There is no question that Free TV broadcasters need to continue to be vigilant in this area. However, there is no evidence to suggest that additional regulatory interventions on Free TV broadcasters are required at this time.
- The research relied on in the ACMA's discussion paper *'Impartiality and commercial influence in broadcast news'* shows that Australians are concerned that news and current affairs programs should be accurate, that the news should be impartial and that both news and current affairs programs should be free of undue influence.
- While the fact that this concern exists indicates the importance of this issue, it is not evidence that:
 - the current regulatory framework is not fit for purpose; or
 - news and current affairs programs breach existing regulations.
- As the ACMA recently acknowledged in the context of its recently released gambling review,² the perception of a problem is not of itself an indication of an actual problem.
- There are a number of significant limitations, inconsistencies, information gaps and flaws in the ACMA research program, as outlined in an independent review of the research by Resolve Strategic, commissioned by Free TV and ASTRA. As a result, the research study does not provide a complete or reliable evidence-base on which to determine a public policy agenda.
- A best practice regulatory approach would dictate that there should be hard evidence of systemic failure before a regulatory response is seriously considered. It is critical that there is a strong foundation of empirical evidence that news programs of commercial broadcasters' lack impartiality or that news and/or current affairs programs are subject to undue influence before any changes to the BSA or Code are considered. No such evidence is available or presented in this Discussion Paper.
- This is particularly important in the context of the ACCC's recent Digital Platforms Inquiry findings that the existing disparity in the regulatory framework that applies to different platforms has resulted in negative competition impacts and limited the effectiveness of existing regulations. The ACCC recommended an overhaul of existing regulations and the development of a platform-neutral regulatory framework. The Australian Government has accepted this recommendation and developed a roadmap for its implementation.
- Further regulation imposed only on commercial broadcasters, as contemplated by the Discussion Paper, is not consistent with the approach recommended by the ACCC and accepted by the Australian Government.
- If, as part of the implementation of the Government's roadmap for the ACCC's recommendation regarding media regulation, it is determined there are issues of concern in the areas of impartiality and commercial influence with news and current affairs items provided to Australians on other platforms, the Australian Government would do well to consider the extension of the Code framework to those other platforms. However, in the interim, further platform-specific regulation imposed only on commercial broadcasters is likely to simply exacerbate the problems that have been highlighted by the ACCC.

² [ACMA 'Gambling advertising in Australia Consumer and advertising placement research'](#)

2 Introduction

Free TV broadcasters are committed to delivering quality public interest journalism. Our members cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.

Every week our members create over 486 hours of news and current affairs related programming. This is an unrivalled commitment to bringing local news and current affairs direct to Australian households. We transmit 66 news bulletins into 40 markets across Australia. These bulletins reach over 13 million Australians weekly and over 6.5 million every day. There are hundreds of journalists and support staff employed to create this volume of news and current affairs content.

Consumer research has consistently shown that Australians value, rely on, and trust commercial free-to-air news services. The ACMA's most recent survey in regional Australia for example, found that, 'Regional Australians use, prefer and trust commercial free-to-air TV and the local print newspaper as a source of local news more than any other media'.³

The Commercial Television Industry Code of Practice ("Free TV Code") enshrines this commitment. It ensures that, regardless of Free TV's commitment to delivering high-quality news services, broadcasters are also held accountable for maintaining consistently high standards in relation to accuracy, fairness and impartiality in programming.

This is appropriate. Free TV understands that there is public concern in relation to impartiality in news, including in more recent times as a result of the proliferation of fake news and misinformation on online platforms. We accept the importance of Free TV broadcasters continuing to be vigilant in upholding these standards. The Free TV Code complaints statistics show that over the last 5 years broadcasters have indeed done so.

In this context, and in light of the ACCC's Digital Platforms Inquiry, we do not agree with the suggestion that further platform specific regulation is required on commercial free-to-air televisions broadcasters at this time. The evidence does not support this. We detail our reasoning below.

³ ACMA, Local content in regional Australia 2017 Report, 9.

3 Current legal framework

Commercial television broadcasters are subject to a comprehensive set of inter-related rules and regulations to ensure that their services meet community standards. Of most relevance to the issues raised in the Discussion Paper, Free TV Australia members are subject to the Code, which imposes requirements relating to accuracy, fairness, impartiality and the disclosure of commercial arrangements. Free TV Australia members are committed to meeting the standards and behaviours required by the Code.

Clause 3.3 of the Code requires broadcasters, in broadcasting news or current affairs programs, to present material facts accurately and ensure viewpoints are not materially misrepresented. Clause 3.4 requires broadcasters, in broadcasting news programs, to present news fairly and impartially and clearly distinguish the reporting of factual material from commentary and analysis.

As stated in the Discussion Paper,⁴ accuracy is closely related to impartiality and commercial influence. Therefore, the combined requirements of clauses 3.3 and 3.4 are very strong protections to assist in ensuring both impartiality (which is directly dealt with in clause 3.4) and an absence of commercial influence in news programs.

There is rightly no requirement that current affairs programs are impartial. It would be inappropriate to impose an impartiality requirement in respect of current affairs programs. The very essence of such programs is to provide forums for particular viewpoints to be put forward. Of their nature, current affairs programs are intended to provide for commentary and analysis. This reflects an intrinsic distinction between a news program, which would be expected to simply report the news without adopting a particular viewpoint, and a current affairs program, which analyses social, economic and political issues from different points of view.

In this regard, the Discussion Paper fails to distinguish between the different roles of news and current affairs programs. Although current affairs programs provide for commentary and analysis, nonetheless, current affairs programs, like news programs, must be factually accurate as required by clause 3.3 of the Code.

In addition to clauses 3.3 and 3.4, clause 4 of the Code provides additional protection, in relation to current affairs programs, in respect of inappropriate commercial influence. Clause 4 achieves this by setting out the rules for factual programs (which includes current affairs programs) that endorse or feature a third party's products or services as a result of a commercial arrangement, to notify viewers of this. We note that while other platforms are not subject to similar obligations of disclosure, broadcasters are required to comply with overlapping obligations, most notably under Part 5 of the BSA. In this particular example, broadcasters with interests in newspapers or radio licenses are required to meet onerous, intrusive and outdated methods of disclosure. In our view, whilst transparency of cross-media relationships may be of value to the public, disclosure of such relationships on a broadcaster's website would be more appropriate and more accessible disclosure given that widespread access to the internet has arisen since Part 5 was inserted into the BSA.⁵

In combination, the requirements of clauses 3.3, 3.4 and 4 provide powerful protections for Australian viewers. Material facts must be accurate, views cannot be materially

⁴ See for example page 6.

⁵ For example, see s 61BB, BSA.

misrepresented, news cannot be biased and commercial arrangements underpinning current affairs programs must be disclosed. In combination, these requirements mean that Australians are able to trust the news and current affairs programs they see on commercial television.

If any member of the public believes that a commercial television broadcaster has breached its obligations under the Code and wishes to make a complaint, that individual is required to first complain to that broadcaster. As pointed out in the Discussion Paper, an individual may then complain to the ACMA if he or she does not receive a response from the broadcaster within 60 days or considers that the response is inadequate. The ACMA may then investigate the complaint if it thinks it is desirable to do so. Furthermore, the ACMA does not need to receive a complaint to conduct an investigation, it can initiate an investigation by its own motion for the purpose of the exercise of any of its broadcasting functions and therefore would be able to independently examine any cases where it considered the Code may have been breached (see section 170 of the *Broadcasting Services Act*).

4 Evidence based regulation

It goes almost without saying that an evidence-based approach to regulation is an essential component in a best practice regulatory framework. Therefore, it is essential to first consider the evidence that is presented in the Discussion Paper. That evidence does not demonstrate that there is a lack of impartiality in news programs, or that there is commercial influence in news or current affairs programs, in either case, broadcast by commercial television broadcasters.

4.1 Quantitative and qualitative research

The two research pieces commissioned for the Discussion Paper, one qualitative and the other quantitative, both sought views from the public as to their perceptions of, or concerns about, impartiality and commercial influence in news. The research was not specifically focussed only on commercial broadcasting but considered all sources of news, including online.

Free TV has a number of concerns in relation to the reliability of this research. Firstly, there is a blurring of the distinction between news and current affairs programs or content in the research. For example, in the quantitative research, when discussing the most common way Australians access “news” no distinction is drawn between news and current affairs programs.⁶ As mentioned previously, news and current affairs programs are very distinct. Given that current affairs programs of their nature include commentary and analysis and therefore would be unlikely to be objectively viewed as impartial, this blurring of the distinction between the 2 types of programs means the results of the research must be treated with caution.

Secondly, this research was conducted between July and September 2019. This timing coincided with significant Australian media coverage of the ACCC’s Digital Platform Inquiry. That media coverage highlighted, amongst other issues, concerns the ACCC had with “filter bubbles” and inaccurate reporting on digital platforms and also the importance of quality public interest journalism. This, combined with broader media coverage over recent years of concerns regarding news accuracy, has no doubt influenced the viewpoints of Australians. In other words, Australians have become more aware of issues of accuracy, impartiality and commercial influence from media reporting that they have consumed and consequently have become more concerned regarding these issues.

Thirdly, simply because Australians are concerned about these issues, as demonstrated by the Discussion Paper research, does not in fact mean that commercial broadcasters in Australia are producing news or current affairs programs that are inaccurate or subject to commercial influence or producing news programs that are not impartial.

No participants in either the quantitative or qualitative surveys were asked to identify specific instances of where they had observed either a lack of impartiality in news programs or evidence of commercial influence in news or current affairs programs. Therefore, there is simply no way of testing whether the perceptions of the participants are actually correct. To take one example, participants were asked “How much commercial influence have you noticed

⁶ See page 4 of https://www.acma.gov.au/sites/default/files/2020-01/Attitudes%20to%20news%20today_Impartiality%20and%20commercial%20influence_quantitative%20research_0.pdf. For example, 52% of Australians access “news” by watching news or current affairs on television.

in television news?”. It appears that no guidance was given as to what “commercial influence” should be interpreted to mean and no information was sought as to specific examples. This makes it impossible to test whether the finding that 89% of participants have noticed that there is at least “some” commercial influence results from the fact that commercial influence is actually a problem with Australia’s television news.

Finally, the research also does not adequately address whether the views of participants differed based on the source of news and current affairs programs. Only one of the 5 survey questions for the AMCA’s quantitative survey asked participants to respond based on the source of the news. There is no distinction made in the qualitative research, “Australians and news Impartiality and commercial influence”, between different sources of news or current affairs programs. This means that concerns driven by one or more news sources could skew the results for all news sources.

These fundamental issues highlight why caution should be taken when interpreting the results of the research that the ACMA is seeking to rely on. Nonetheless, of course, it is pleasing to note that the qualitative research indicated that evening television news bulletins are seen as a highly trusted news source.⁷

4.2 Literature review

Similar concerns in connection with over-reliance on consumer perception as a proxy for evidence of a lack of impartiality or commercial influence arise in relation to the literature review conducted for the Discussion Paper. The research questions, and consequently the literature that was reviewed, focused primarily on consumer perceptions and concerns, and to a lesser degree on the ability of individuals to detect commercial influence and their attitudes to regulation.

Of course, research of consumer attitudes and perceptions has a place in public policy making – it shows what consumers care about and can usefully identify areas that warrant further investigation. However, it is necessary to understand what is driving those views and whether they have any basis in fact before they are relied on as the basis for regulatory change.

Significantly, the literature review identifies some substantial gaps in the research that has been undertaken in this area, most notably:

1. there is very little research in Australia that charts current industry practice in relation to commercial content in news and current affairs programs and then examines consumer attitudes to these practices;
2. there is no qualitative Australian research establishing whether consumers can detect commercially supported content in news and current affairs programs, or whether they can identify native advertising online on news and current affairs sites;
3. research on consumer attitudes to commercial influence on news and current affairs programs has been limited to general questions, consequently it is unclear whether Australian consumers think that news is intrinsically different to other media content and should not be commercially supported other than in clearly segmented forms, or

⁷ See page 10 of https://www.acma.gov.au/sites/default/files/2020-01/Australians%20and%20news_Impartiality%20and%20commercial%20influence_qualitative%20research.pdf

whether consumers accept some form of announcement or disclosure of commercial support. Further, it is not known how consumer views on integration of commercial content might vary between news and current affairs, or across platforms or across different types of commercial content; and

4. there is no Australian research that separates attitudes on the importance of impartiality according to media source. While there is now an expanding body of research on consumer attitudes to concepts such as impartiality in online content, there is less about traditional media.⁸

These gaps highlight the need for further research to better understand the extent to which, in practice, the news and current affairs programs of commercial television broadcasters in Australia actually are unduly influenced or, in the case of news programs, not impartial.

Free TV Australia strongly encourages the ACMA to undertake further research before seeking regulatory change, noting any research should build on and support the work being undertaken to implement the media regulation recommendation from the Digital Platforms Inquiry, which is an issue we turn to later in this submission.

4.3 Independent Review of ACMA Research

Free TV and ASTRA jointly commissioned an independent review of the ACMA Research. The review was conducted by Resolve Strategic, one of Australia's most respected market and social research firms and is attached at **Annexure 1**.

Resolve looked at the three components of the ACMA research; the desk research conducted by the Centre for Media Transition UTS, the quantitative research conducted by the Social Research Centre and the qualitative research conducted by Heartward Strategic. Resolve found that, due to a combination of:

- the methodologies used
- how the three methods worked together
- the questions asked and important omissions
- the data treatment and analysis techniques used; and
- the interpretation and reporting of the results and how they compare with other contemporary sources;

there are doubts about the results as presented and that further extensive research should be conducted before actual instances of impartiality and commercial influence and the attitudes of Australians towards news, especially for specific media channels, can be reliably drawn.

Resolve made the following assessment of the ACMA Research:

“Whilst the combined research does look at the behaviours and attitudes of news consumers (in 2019), it does not;

⁸ See sections 1.8 and 2.8 of 'News in Australia – Impartiality and commercial influence: review of literature and research', Centre for Media Transition, January 2020.

- conduct any content analysis that might point to the nature, prevalence or severity instances of impartiality or commercial influence;
- assess any specific safeguards or instances of compliance;
- include the expert views of industry practitioners (only inexperienced public views) on this or industry practices;
- very rarely differentiates between news and current affairs, or reliably between channels, platforms, providers or programs; and,
- does not clearly define either impartiality or commercial influence, or put them in any context of wider issues or concerns.

It is Resolve's view that these are serious flaws in the research's specifications, and may have resulted (at least in part) from a lack of coordination between the various research components."

In relation to the remaining research gaps that Resolve considered would need to be addressed in order for the research to form a reliable evidence-base, the Resolve Report found:

"Taking the study as a whole, we identify the following areas of inquiry as being left unanswered (or only partially or unreliably addressed). This is by no means an exhaustive list of information gaps, but focuses on those that would be most useful in policymaking.

- Do consumers believe media issues are a priority for government and regulators compared to other areas? Is news provision a priority for regulators when looking at media? What is the nature of these priorities, i.e. do they relate to impartiality and/or commercial influence, and are different standards placed upon news content?
- How do experiences, expectations and standards of news differ by channel, platform and provider? Are these expectations and standards being met, i.e. are consumers satisfied, or do consumer need or want further action?
- Do such opinions vary by type of news program, notably the difference between 'news bulletins' and current affairs, comment, opinion, talkback and panels?
- How do consumers define impartiality and commercial influence, or do they accept definitions provided by the likes of ACMA? What are the views, experiences and practices of industry in these areas?
- Given such definitions, are there actual instances of poor behaviour, or are they perceptions based on personal biases and opinions? What is the nature, (changing) prevalence and severity of instances, including by channel and provider (notably driven by the growth in on-line news sources, algorithms, 'influencers', etc.)?
- What actions are already being taken by consumers, such as avoidance, fact-checking and source choice, that would offset any impacts of such instances? Are consumers willing, able (in light of media literacy strategies) and satisfied to take their own action?
- Do consumers know what safeguards are in place already, what is their opinion of them (including compliance) and do they see the need for further action by regulators? If so, how should current safeguards be changed, including by channel and provider?

- Is there an appetite for further safeguards given potential trade-offs with story clarity, 'false balance', freedom of speech, free news content, government intervention, supporting funding, etc.?

This list contains some quite fundamental questions. It is Resolve's view that many need to be addressed reliably in further research **before ACMA and its stakeholders can be confident of having a firm evidence-base on which to make critical decisions.**" (emphasis added).

4.4 ACMA investigations of Code compliance

Our view is that the ACMA's investigations of Code compliance by commercial television broadcasters are the best available source of evidence of whether there is an actual lack of impartiality in news programs and/or commercial influence in news and current affairs programs.

The Discussion Paper states that complaints made to the ACMA regarding Code compliance may not be reliable indicators of levels of community concern either because Australians may not pursue complaints which they perceive to be of general public interest rather than having a personal impact or, in the case of commercial influence, because individuals may not recognise it.

Free TV Australia disagrees with this proposition (and it is noted that no empirical evidence is provided in the Discussion Paper to support it). Given the high level of awareness of these issues amongst the public (as evidenced by the research undertaken for the Discussion Paper) Australians would be likely to identify issues and also to be highly motivated to complain about these issues. In addition, the ACMA does not need to wait to receive a complaint. If it perceived an issue of concern with breach of the relevant provisions of the Code, it could investigate that matter on its own initiative.

The complaints and investigations statistics set out in the Discussion Paper are not broken down by the type of television or radio broadcaster. For example, complaints concerning the national broadcasters are included in the data provided, despite the national broadcasters being out of scope of the Discussion Paper. There is also no explanation of the ACMA's own process for determining which complaints to investigate (for example, it may not investigate complaints that are frivolous or vexatious). Consequently, the statistics could easily be misinterpreted by readers who might believe there are more complaints and investigations into commercial television broadcasters than is actually the case.

An analysis of the outcomes of the ACMA's investigations involving accuracy, impartiality and commercial influence in relation to commercial television broadcasters from 1 July 2015 to 31 December 2019 presents a much clearer picture.⁹ The ACMA conducted a total of 15 investigations of commercial television broadcasters in this time period as follows:¹⁰

⁹ Free TV Australia has reviewed the investigations from 1 July 2015 to 31 December 2019. The review included investigations during 2018 and 2019 that are published on the ACMA website [here](#) and information about investigations conducted during 1 July 2015 to 31 December 2017 provided to Free TV Australia by the ACMA.

¹⁰ Some of these complaints involved allegations of other breach of the Code. We have not considered those aspects of the complaints as they are not relevant for responding to the Discussion Paper.

1. 8 investigations involving accuracy, of which 3 resulted in a finding of breach of the accuracy requirements of the Code (we note these investigations did not relate to commercial influence in news programs and were not provided to broadcasters by the ACMA as investigations they sought to rely on for the purposes of their analysis).¹¹
2. One investigation involving impartiality, for which no breach was found.
3. investigations involving both accuracy and impartiality, of which one resulted in a finding of breach of both the accuracy and the impartiality requirements of the Code.¹²
4. One investigation involving commercial influence (relating to an allegation that the broadcaster exceeded the advertising content quota for a feature film it broadcast and therefore, strictly speaking, is an investigation that is outside of the scope of the Discussion Paper), for which no breach was found.

The Discussion Paper at pages 22-23 identifies a number of news broadcast segments which it cites as examples of potential commercial influence in news. Free TV does not agree that any of the examples listed indicate any inappropriate commercial influence on Free TV broadcasters' news services. Below are the relevant extracts from the Discussion Paper together with individual network responses to each of the examples provided.

Upon request by subscription television body, ASTRA, the ACMA provided copies of 40 investigation reports which it relied on for the purposes of the Discussion Paper. An analysis of those investigations is contained in **Annexure 2**. That analysis shows only 12 investigations of Free TV broadcasters in relation to impartiality and commercial influence related issues over the four-year period. Of those 12 investigations, there was only one breach of the Code in relation to impartiality and no breaches in relation to the Code's commercial influence disclosure requirements, indicating near full compliance with these obligations. We note that of the 40 investigation reports, 25 related to the ABC, which was excluded from the scope of the inquiry.

Consumer concern about impartiality and commercial influence on commercial free-to-air television, as set out in the Discussion Paper, has therefore not been borne out in the outcomes of the ACMA's own investigation and enforcement activities in relation to commercial television broadcasters over the past 5 years (approximately).

4.5 News broadcast monitoring

For the purposes of the Discussion Paper, a monitoring program of commercial television broadcasters, the Special Broadcasting Service and subscription television broadcasters in metropolitan areas was undertaken, which involved monitoring 160 hours of television news and current affairs programs. This did not involve any investigations of any particular content. Instead, the monitoring was essentially a "desktop exercise".

Free TV Australia is very disappointed to see that the Discussion Paper nevertheless presents the results of this monitoring as definitively evidencing improper commercial influence, despite the absence of any investigation. Presentation of "observed trends" as if these were definitive

¹¹ Investigation report number BI-363; BI-484; BI-432.

¹² Investigation report number BI-227.

examples of commercial influence is misleading to readers as it implies wrongdoing on the part of Free TV Australia members when there is no evidence that this is the case.

To take one example, at page 23 of the Discussion Paper, it is stated: *Today was the only program with a reporter present at the US launch event for Uber Air despite wide coverage of the US launch event. There was no disclosure and therefore it was unclear if there was any arrangement between Uber and Nine.* No opportunity was provided to Nine, the broadcaster of the Today program, to provide information as to whether or not there was any arrangement between Uber and Nine. Instead the Discussion Paper assumes that this must have been the case, as Today was the “only program with a reporter present at the US launch event”.

To take another example, that section refers to the fact that news programs use information from media releases as indicative of improper commercial influence.¹³ This shows a fundamental misunderstanding of the legitimate and ethical practice of Public Relations and the use of media releases in newsrooms. Public relations is pivotal to the communication process between an organisation or person and their publics or audiences. The purpose of public relations and media releases is to effectively communicate information to the media and to provide facts that can be used in reporting on that story. There is nothing unethical or questionable about the use of PR or media releases. It is entirely appropriate that these should be used by the media as one source of material in reporting the news. Many businesses, government agencies and statutory authorities make use of press releases to seek coverage of issues of public importance. This is not itself indicative of any commercial arrangement.

In addition, the Discussion Paper cites ten examples at pages 22-23 as indicating a trend of commercial influence in news. Free TV does not agree that either a) ten examples from over 12,500 hours of broadcasting since June 2019 indicates a trend, or b) that any of the examples listed indicate any inappropriate commercial influence on Free TV broadcasters’ news services. Attached at **Annexure 3** are broadcasters’ individual responses to the examples provided.

4.6 Conclusion in relation to evidence

The ACMA has found 4 breaches of the accuracy requirements of the Code since 1 July 2015. The Discussion Paper states: Current broadcasting codes of practice all include accuracy requirements and ACMA monitoring does not suggest a pressing need to consider whether these requirements remain adequate. In comparison, the ACMA has found only one breach of the Code in respect of impartiality since 1 July 2015. It has not found, as a result of any investigation over the same period, evidence of undisclosed commercial influence in relation to current affairs programs of commercial television broadcasters.

This indicates that commercial television broadcasters are generally in compliance with the Code and that the Code is working effectively. As in the case of the accuracy provisions of the Code, there is no pressing need to consider further regulation in relation to either impartiality or commercial influence.

¹³ See page 9 of the Discussion Paper.

5 Platform-neutral regulation: A level playing field

We have demonstrated that there is no evidence supporting further regulation of Free TV Australia's members in relation to issues of impartiality or commercial influence.

We would also like to draw attention to relevant findings from the ACCC's Digital Platforms Inquiry. The ACCC found that:

- Australia's current significant media regulatory disparity has the potential to distort competition.
- Australia's current, sector specific approach to media regulation has not adapted well to digitisation and media convergence and, as a consequence, has reduced the overall effectiveness of the current media regulatory framework.

As a consequence of these findings, the ACCC recommended (Recommendation 6):

A new platform-neutral regulatory framework be developed and implemented to ensure effective and consistent regulatory oversight of all entities involved in content production or delivery in Australia, including media businesses, publishers, broadcasters and digital platforms. This would create a level playing field that promotes competition in Australian media and advertising markets.

The Australian Government has accepted Recommendation 6. The Government's response to the ACCC's Final Report from the Digital Platforms Inquiry 14 provides that Recommendation 6 will be implemented over 2 stages. The second stage will consider (amongst other matters) measures to remove redundant legislation and implement a coherent legal framework for consumers and industry participants as well as a consideration of mechanisms to monitor and enforce the regulatory framework across all platforms.

It would appear from the Discussion Paper that, if increased regulation of the commercial broadcasting sector (both television and radio) was to be recommended, that this would occur either through modification of the codes of practice that are in place under the Broadcasting Services Act or through the ACMA making one or more standards applicable only to the commercial broadcasting sector. Either outcome would have the effect of increasing Australia's media regulatory disparity, thereby exacerbating the problems that the ACCC has identified. To increase regulation in this manner, at this point in time, would be directly contrary to Recommendation 6, as accepted by the Australian Government. It would also be inconsistent with the approaches adopted by the Department of Communications and the Arts (now part of the Department of Infrastructure, Transport, Regional Development and Communications) and the ACMA over a long period of time.¹⁵

In light of the findings of the ACCC, as accepted by the Australian Government, and noting that the ACMA has publicly stated that it supports the development of a harmonised media regulatory framework¹⁶, Free TV Australia has difficulty in understanding the specific focus only on commercial broadcasters in the Discussion Paper.

¹⁴ <https://treasury.gov.au/sites/default/files/2019-12/Government-Response-p2019-41708.pdf>

¹⁵ See for example the Department's paper "Deregulation in the Communications Portfolio – Policy Background Paper No. 1" (November 2013).

¹⁶ See: <https://www.acma.gov.au/articles/2019-07/acma-welcomes-accs-digital-platforms-inquiry-final-report>

It is stated in the Discussion Paper that the scope is limited as:

- The ACMA does not have a role in registering the ABC and SBS codes and therefore does not approve their content.
- The ACMA's remit does not extend to print media publishers or online news.

Although the ACMA may not approve the content of the ABC and SBS codes, the remit of the ACMA does extend to investigating complaints in relation to both the ABC and SBS. Therefore the Discussion Paper could have considered Australia's national broadcasters and invited public comment on whether a changed regulatory approach would appropriately apply to those broadcasters.

However, of most concern regarding the approach taken in the Discussion Paper is the fact that it ignores online news and current affairs content. Although it is the case that the ACMA's remit does not extend to print media publishers, the ACMA's remit already extends to online content in particular circumstances. The Discussion Paper, particularly given the research underpinning it covered all sources of news and current affairs programs including online, provided an appropriate opportunity to invite views from interested parties on whether there is in fact an issue of concern with impartiality or commercial influence in respect of online news and current affairs.

Had the Discussion Paper adopted a platform-neutral approach, and included an examination of the efficacy of the current regulatory frameworks applying to all platforms that provide news and current affairs programs and content to Australians, it could have made a valuable contribution to the 2 stage process that the Australian Government will adopt to implement Recommendation 6 from the ACCC's Final Report.

We would encourage the ACMA, in building on the work carried out in the Discussion Paper, to look more broadly at all of the platforms that provide news and current affairs programs to Australians. If that approach was taken, such further work would be able to be taken into consideration in the second stage of the implementation of Recommendation 6.

6 Production of quality news and journalism

As is well known, and supported by the Final Report of the Digital Platforms Inquiry, quality public interest journalism in Australia is produced by “traditional” media, that is, television (both commercial and public broadcasters), radio (again, both commercial and public broadcasters) and print media (though now largely in digital format and including in this category “digital natives”).

A conclusion of the ACCC in its Final Report was that disruption caused by digital platforms has impacted the ability of our platforms to produce quality public interest journalism. Free TV broadcasters are facing commercial pressures that have a continuing impact on their business models, particularly arising from the competition provided by streaming services. This commercial pressure limits the ability of commercial television broadcasters to commit resources to produce quality public interest journalism.

To add additional sector specific regulation on commercial broadcasters only further increases these pressures which act as a deterrent to producing quality public interest journalism. Accordingly, the effect of any such additional regulation may be to reduce the availability, and diversity, of quality public interest journalism for Australians, which would be a significant negative outcome.

7 Conclusion

The issues that has been raised in the Discussion Paper have already been taken on board by Free TV Australia and its members and are addressed in the Code. At the current time the Code works well to assist in ensuring that commercial television broadcasters in Australia produce news and current affairs programs that meet the standards Australians expect.

The Discussion Paper provides no evidence of the need for further regulation in this area. Indeed, the Discussion Paper suggests there is no empirical evidence of widespread industry issues that warrant further regulation. Instead, there remains a pressing need to implement the recommendation of the Digital Platforms Inquiry, which has been accepted by the Australian Government, to develop a platform-neutral coherent regulatory framework that applies to all entities involved in content production or delivery in Australia. Free TV Australia looks forward to working with the ACMA, and other relevant Government agencies, to achieve that outcome.

To conclude, Free TV Australia and its members are committed to ensuring compliance with the Code, in its existing form. We are also committed to working with the ACMA, and other relevant Australian Government agencies, in implementing the Australian Government's roadmap for media sector regulatory reform which will remove impediments to competition and ensure that media sector regulation is effective, for the benefit of all Australians.

A1. Resolve Strategic Research Report

See attachment

A2. Review of past ACMA investigations

The Discussion Paper references 70 published ACMA investigations into impartiality, commercial influence and related issues.¹⁷ Upon request ACMA provided copies of 40 of these investigation reports to broadcasters (which excluded one withheld investigation report on privacy grounds). An analysis of those 40 investigations is provided below. Of the 40, 25 were broadcast on the ABC, 1 on SBS, 12 on Free TV and 1 on West TV open narrowcast. Of the 40, there were only 4 breach findings, 3 in relation to the ABC and only 1 in total in relation to commercial free-to-air television broadcasters (Nine).

Out-of-scope (ABC)		Out-of-scope (SBS)		Commercial FTA (No Breach)		Commercial FTA (Breach)	
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ACMA INVESTIGATIONS – IMPARTIALITY AND COMMERCIAL INFLUENCE RELATED ISSUES										
	Investigation No	Year	Impartiality	Fairness	Balance	Right of Reply	Diversity	Distinguishability / CI	Broadcaster	Breach?
1	3347	2015	X		X				ABC	No
2	BI-31	2015	X	X					Seven	No
3	BI-46	2015	X				X		ABC	No
4	BI-49	2015				X			ABC	No
5	BI-50	2015				X	X		ABC	No
6	BI-55	2015		X					Nine	No
7	BI-123	2015		X					ABC	No
8	BI-159	2016	X		X				ABC	No
9	BI-162	2016	X						4CA	No

¹⁷ Discussion Paper, 31.

10	BI-163	2016	X						ABC	No
11	BI-170	2016	X		X		X		ABC	No
12	BI-172	2016	X	X					Nine	No
13	BI-198	2016	X		X				ABC	No
14	BI-221	2016	X	X					ABC	No
15	BI-222	2016	X		X				ABC	No
16	BI-227	2017	X	X				X	Nine	Yes
17	BI-228	2016	X		X				ABC	No
18	BI-240	2016	X	X					Seven	No
19	BI-257	2016	X		X				ABC	No
20	BI-270	2017	X						ABC	No
21	BI-273	2017	X	X					TEN	No
22	BI-305	2017	X	X		X			ABC	Yes
23	BI-309	2017		X					Nine	No
24	BI-311	2017	X						ABC	No
25	BI-319	2017	X	X	X	X			ABC	No
26	BI-329	2017				X			ABC	No
27	BI-330	2017	X	X		X			ABC	No
28	BI-428	2018	X		X				ABC	No

29	BI-418	2018	X						Russia Today	No (impartiality)
30	BI-407	2018	X						ABC	No
31	BI-411	2018	X						ABC	No
32	BI-405	2018		X					Seven	No
33	BI-403	2018	X	X					Seven	No
34	BI-396	2018	X						ABC	No
35	BI-360	2018	X		X		X		SBS	No
36	BI-347	2018	X	X					ABC	Yes
37	BI-356	2018						X	Seven	No
38	BI-346	2018	X						WIN-Ten	No
39	BI-456	2019	X						Seven	No
40	BI-442	2019	X						ABC	Yes
	TOTAL		32	15	10	6	4	2		

A3. Response to individual network issues raised

The Discussion Paper at pages 22-23 identifies a number of news broadcast segments which it cites as examples of potential commercial influence in news. Free TV does not agree that any of the examples listed indicate any inappropriate commercial influence on Free TV broadcasters' news services. Below are the relevant extracts from the Discussion Paper together with individual network responses to each of the examples provided.

Extract	Broadcaster Response
<p>Nine News Now included a report on Big W's Toy Mania sale and an interview with a toy buyer for Big W. The story featured Big W products and prices and no other retailers, and no disclosure of an arrangement was made.</p>	<p><i>Response from Nine:</i></p> <p>There was no commercial arrangement between Nine News Now and Big W. There was therefore nothing to disclose, and no disclosure required. Nine News Now presented this story fairly and impartially, and in compliance with sections 3 & 4 of the Code.</p>
<p>A story on <i>Sunrise</i> featuring Tag Heuer watches revealed that the presenters' questions to the celebrity spokesperson had to be vetted by Tag Heuer, but no disclosure was made for a similar story on <i>Today</i>.</p>	<p><i>Response from Nine:</i></p> <p>There was no commercial arrangement between Tag Heuer and either <i>Today</i>, and therefore no requirement to make a disclosure of a commercial arrangement. <i>Today</i> presented this segment in accordance with sections 3 & 4 of the Code.</p>
<p>A former AFL Swans player and current director of business development at Six Park appeared on both Nine's <i>Today</i> and on Seven's <i>Sunrise</i>. Six Park is a new online and AI-based investment platform. Both segments were framed as general financial segments but included promotions of the Six Park platform. No disclosures were made, and it was difficult to determine if a commercial arrangement existed.</p>	<p><i>Response from Seven:</i></p> <p>As there was no commercial or financial arrangement whatsoever between Six Pack and Seven, there was no disclosure. If there was such an arrangement, there would have been a disclosure as required by the Code.</p>
	<p><i>Response from Nine:</i></p> <p>There was no commercial arrangement between <i>Today</i> and Six Park, and therefore no requirement to make a disclosure of a commercial arrangement.</p>

	Nine presented this story fairly and impartially and in compliance with sections 3 & 4 of the Code.
News segments featuring commercial products followed by an advertisement for the product during an ad break. For example, Seven News ran a story about Samsung's new 98-inch 8K QLED TV available at Harvey Norman. In the commercial break immediately following this story, a commercial for Samsung QLED televisions at Harvey Norman was aired.	<p><i>Response from Seven:</i></p> <p>7NEWS does not do news segments in conjunction with a commercial arrangement as hypothesised above. Any commercial placement is merely coincidental, as commercial scheduling is done in isolation from News & Public Affairs.</p>
<p>Reporters going on trips to the headquarters of businesses to report on the release of their new products. In some cases, it appears the trips were paid for by the businesses, but this was not disclosed. For example:</p> <p><i>Today</i> was the only program with a reporter present at the US launch event for Uber Air despite wide coverage of the launch. There was no disclosure and therefore it was unclear if there was any arrangement between Uber and Nine.</p>	<p><i>Response from Nine:</i></p> <p>There was no commercial arrangement between <i>Today</i> and Uber Air, apart from the receipt of the reporter's airfare and accommodation. <i>Today</i> retained full editorial discretion and control over the content of the segment, which was impartial. Therefore <i>Today</i> did not, and was not required by the Code to, make a commercial disclosure in respect of this segment. Nine submits that this segment was broadcast in compliance with sections 3 & 4 of the Code.</p>
In another case, <i>Today</i> had a reporter present at the Samsung Note 10 launch in New York. Before crossing to the reporter, the host stated that the reporter 'travelled with Samsung to New York' but the disclosure may not have been sufficiently clear for viewers to understand the nature of the commercial arrangement.	<p><i>Response from Nine:</i></p> <p><i>Today</i> was not required to make a commercial disclosure in respect of this story. No commercial arrangement was in place apart from the receipt of the reporter's airfare, the fact of which was disclosed, despite not being required by the Code. <i>Today</i> retained full editorial discretion and control over the content of the segment, which was accurate and impartial. Nine submits that this segment was broadcast in compliance with sections 3 & 4 of the Code.</p>

<p>A segment presented in part or in whole by a spokesperson for a business rather than a reporter. For example, an economist from Domain presented real estate market data on Nine News. Domain, as a major digital real estate business, benefits from positive news about the property market.</p>	<p><i>Response from Nine:</i></p> <p>In this example, during Nine News, Domain data analysts presented auction results data – data which was factual and accurate. There was no commercial arrangement in place, and the facts were presented impartially. Whilst not required to do so, Nine does regularly disclose the fact of a corporate relationship with Domain where appropriate. Nine submits that this segment was broadcast in compliance with sections 3 & 4 of the Code.</p>
<p>The promotion on news programs of sales campaigns in which the broadcaster has a financial interest. For instance, Nine News promoted 9Saver, a customer aggregation service, for which Nine may receive a fee or commission for the subscription of new clients.</p>	<p><i>Response from Nine:</i></p> <p>Nine News does not promote 9Saver. Nine News may refer to Nine Saver in the course of reporting news, but retains full editorial independence in respect of whether to make any such reference, and the nature of any such reference, and reports news fairly and impartially.</p> <p>In circumstances where <i>A Current Affair</i> and <i>Today</i> were to promote 9Saver, disclosures are made in respect of the commercial relationship during the segment. Nine submits that all such segments referring to 9Saver are broadcast in compliance with sections 3 & 4 of the Code.</p>
<p>News programs broadcasting a story about commercial entities or industries using information primarily from press releases. For example, during a Canberra 6.00 pm bulletin, WIN ran a story on the benefits of Australian beer and brewing for the economy. The report was overwhelmingly positive and closely followed information provided in a press release issued by the Brewers Association of Australia.</p>	<p><i>Response from WIN:</i></p> <p>A Brewers' Association press release was sent through on 30 May 2019. It is one of approximately 100 press releases each of our 12 newsrooms received each day.</p> <p>As regional journalists, we look for local angles in stories, whether they be found via networking, speaking to residents, or received in a press release. Some press releases are worthy and warrant reporting on, the majority are not.</p>

	<p>In this case, WIN stands by the newsroom's decision to run the story which had regional relevance. Lion Beer is a member of the Brewers' Association. Lion source barley from an industry that engages with over 1000 farmers. Many come from our regional areas, predominantly, the Gippsland region. The report properly cited the author of the economic analysis as being The Australian Brewers' Association. A Ballarat brewer supported the release and added further information to it.</p> <p>Our report had a regional focus on agriculture, jobs and domestic economic benefit and we stand by our decision to run that story as a traveller.</p>
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