

# Investigation concepts

## Accuracy

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# About this paper

Section 5 of the *Broadcasting Services Act 1992* (the Act) confers on the Australian Communications and Media Authority (ACMA) a broad range of functions and powers to be used in a manner that will:

- > produce regulatory arrangements that are stable and predictable
- > deal effectively with breaches of the rules established by the Act.

This paper is part of the ACMA's *Investigation concepts* series. It covers accuracy in broadcasting and:

- > provides an overview of the subject matter covered
- > increases general awareness of the accuracy requirements under the broadcasting codes
- > assists broadcasters to better understand the accuracy requirements under the broadcasting codes.

The accuracy provisions in each of the codes differ in their terms. The precise obligation to which each broadcaster is subject will depend on the specific terms of the relevant accuracy provision(s) in the applicable code.

This paper deals only with the codes. The codes do not deal generally with unlawful, unethical or distasteful journalistic practices. Nor do they deal with defamation and other laws that may give rise to personal remedies against a broadcaster for the material broadcast or the manner in which such material has been obtained.

The ACMA makes administrative decisions and is not required to treat its prior decisions as binding precedents. The outcome of any ACMA investigation of non-compliance by a broadcaster with an applicable code provision will depend on the facts and circumstances of the particular case.

Separate publications in the *Investigation concepts* series consider other requirements under broadcasting codes. The ACMA welcomes suggestions on topics for inclusion in the series.

Originally published in December 2014, this paper is a living document that is regularly updated. This version is current at July 2018 and includes investigations undertaken since the original paper was published.

# Key terms

Term	Definition
ABC code	ABC Code of Practice 2011 (as updated from time to time)
broadcasting codes (the codes)	The codes of practice that apply to the various sectors of the broadcasting industry
commercial radio code	Commercial Radio Code of Practice 2017 <sup>1</sup> (unless specific reference to a previous code)
commercial television code	Commercial Television Industry Code of Practice 2015 <sup>2</sup> (unless specific reference to a previous code)
community radio code	Community Radio Broadcasting Codes of Practice 2008 (unless specific reference to a previous code)
community television code	Community Television Broadcasting Codes of Practice 2011 (unless specific reference to a previous code)
national broadcasters	The Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS)
SBS code	SBS Codes of Practice 2014 (unless specific reference to a previous code) <sup>3</sup>
subscription code	Subscription Broadcast Television Codes of Practice 2013 (unless specific reference to a previous code)
the Act	<i>Broadcasting Services Act 1992</i>

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<sup>1</sup> A new commercial radio code of practice commenced on 15 March 2017 to apply to broadcasts from that date. The commercial radio case studies in this paper primarily refer to the previous codes dealing with equivalent clauses.

<sup>2</sup> A new commercial television industry code of practice commenced on 1 December 2015. The commercial television case studies in this paper primarily refer to the previous codes dealing with equivalent clauses.

<sup>3</sup> The new SBS Code was introduced from 3 March 2014 and has since been updated.

# 1. Introduction

Broadcasting codes of practice are developed by industry and registered by the ACMA under section 123 of the Act. In the case of the national broadcasters, codes are notified to the ACMA under section 8 of the *Australian Broadcasting Corporation Act 1983* or section 10 of the *Special Broadcasting Service Act 1991*.

One of the objects of the Act is to:

[...] encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest [...]

This object is reflected in each of the codes in various provisions.

The relevant provisions in each of the broadcasting codes are reproduced at Table 1 (see **Appendix A**). The codes can also be found on the [ACMA website](#).

The ACMA may investigate when:

1. a complaint about the relevant obligation under a broadcasting code has been made to a broadcaster in accordance with the applicable code
2. the broadcaster has not responded within 60 days, or the complainant considers the broadcaster's response to be inadequate
3. a valid complaint is then made to the ACMA.

The ACMA has the discretion to investigate a complaint if it thinks that it is desirable to do so. The ACMA may also investigate a potential breach of the codes by its own motion.<sup>4</sup>

The paper deals, broadly, with accuracy. There is some crossover between the concept of accuracy and the concepts discussed in the [ACMA's Investigation concepts—Fairness, impartiality and viewpoints](#) paper; for example, the obligation to report factual material accurately can intersect with the obligation not to misrepresent viewpoints.

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<sup>4</sup> The ACMA has the power to investigate compliance with broadcasting codes of practice (section 170 of the Act). It may commence such investigations of its own volition, at the request of the minister (section 171 of the Act) or, where it thinks it desirable, in response to complaints (sections 149 and 151 of the Act).

## 1.1 General observations

When assessing content, the ACMA considers the meaning conveyed by the material including the natural, ordinary meaning of the language, context, tenor, tone and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ viewer or listener.<sup>5</sup>

### **The ordinary reasonable viewer or listener**

Australian courts have considered an ‘ordinary reasonable’ viewer or listener to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.

In the case of factual material which is presented, the ACMA will also consider relevant omissions (if any).

The ACMA only investigates content that has been broadcast. While all codes include requirements for accuracy, the precise obligation to which each broadcaster is subject will depend on the specific terms of the relevant code. Typically, however, the accuracy requirements apply only to factual content.<sup>6</sup> Determining whether particular content is factual content for the purposes of the codes can be complex and the ACMA has developed a (non-exclusive) list of considerations to assist with the exercise. These considerations are updated from time-to-time and are often appended to relevant investigation reports.

Some considerations the ACMA has regard to in assessing whether or not particular content is factual material for the purposes of the code are set out below.

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<sup>5</sup> This approach was recently affirmed in the Federal Court—see *Channel Seven Perth Pty Limited v Australian Communications and Media Authority* [2014] FCA 669.

<sup>6</sup> The ABC code includes an explicit principle to the effect that the accuracy standard requires that opinions be conveyed accurately, in the sense that quotes should be accurate and any editing should not distort the meaning of the opinion expressed. See ABC Code 2011 (revised in 2016) Principles attaching to Standard on Accuracy.



### **Factual material for the purposes of the codes**

- > In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
- > The ACMA will have regard to all contextual indicators (including subject, language, tenor and tone, and inferences that may be drawn) in making its assessment.
- > The ACMA will first look to the natural and ordinary meaning of the language used.
- > Factual material will usually be specific, unequivocal and capable of independent verification.
- > The use of language such as 'it seems to me' or 'we consider/think/believe' will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common-sense judgement is required and the form of the words introducing the relevant content is not conclusive.
- > Statements in the nature of predictions of future events will rarely be characterised as factual material.
- > Statements containing argumentative and exaggerated language or hyperbole will usually indicate a subjective opinion and will rarely be characterised as factual material.
- > The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
- > Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
- > Where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.
- > Sources with expertise may be relied on more heavily than those without, but this will depend on:
  - > whether the statements are merely corroborative of 'lay' accounts given by other interviewees
  - > the qualifications of the expert
  - > whether their statements are described as opinion
  - > whether their statements concern past or future events
  - > whether they are simply comments made on another person's account of events or a separate assertion about matters within their expertise.

## 1.2 Program type—the different obligations

Factual accuracy obligations apply to:

### **Commercial television:**

- > news and current affairs—clause 3.3, commercial television code
- > promotions for news or current affairs—clause 3.6, commercial television code.

### **Commercial radio:**

- > news—3.1.1, commercial radio code
- > current affairs—including factual content in talkback radio—3.2.1, commercial radio code.

### **ABC television and radio:**

- > all fact-based content, including news and analysis of events, documentaries, factual dramas and lifestyle programs—Part iv, section 2, Accuracy, ABC code.

### **SBS television and radio:**

- > content produced by the News and Current Affairs division of SBS or by SBS Radio for inclusion in the news and current affairs segments in SBS Radio's programs—section 2.1, SBS code.

### **Subscription broadcast television:**

- > news and news updates—code 2.2, subscription broadcasting code.

### **Community television:**

- > news and current affairs (including magazine and opinion programs)—code 3.11, community television code.

### **Community radio:**

- > news and current affairs (including news updates and promotions, documentaries, feature programs and interviews)—code 3.6(b), community radio code.

## 1.3 Investigation approach

When investigating an alleged breach of a broadcasting code accuracy provision, the ACMA will consider the program type to determine which tests apply (see Figure 1 below).

It will consider the meaning that would be conveyed to the 'ordinary reasonable' viewer or listener by the content that was broadcast.

The ACMA will ask:

- > What does the material convey to the ordinary reasonable viewer?
- > Was the material factual in character?

### **For commercial television<sup>7</sup>:**

- > Did it convey a material fact or facts in the context of the relevant report?
- > Was the factual material accurate?

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<sup>7</sup> The commercial television code also requires consideration of the facts known, or readily ascertainable at that time, and the time pressures associated with the preparation and broadcast of such programming.

- > For relevant examples, see [Investigation Report 2573 \(Channel Seven News\)](#) and [Investigation Report 2803 \(Sunday Night\)](#).

**For commercial radio<sup>8</sup>:**

- > In broadcasting news programs, were reasonable efforts used to present news accurately? In broadcasting current affairs programs (including talkback), were reasonable efforts used to ensure that factual material was reasonably supportable as being accurate?
- > For relevant examples, see investigation reports [2597, 2614 and 2636 \(The Alan Jones Breakfast Show\)](#) and [Investigation Report 2888 \(The Ray Hadley Morning Show\)](#).

**For the ABC (reasonable efforts to ensure material facts are accurate and presented in context):**

- > Did the content convey a 'material' fact or facts in the context of the segment?
- > If so, and the material fact was not accurate (or its accuracy cannot be determined), did the ABC make reasonable efforts to ensure that the material fact was accurate and presented in context?

**For the ABC (do not present factual material in a way that will materially mislead the audience):**

- > Was factual content presented in a way that would materially (that is, in a significant respect) mislead the audience?
- > For examples, refer to [Investigation Report 2865 \(7:30\)](#), [Investigation Report 3066 \(Four Corners\)](#) and [Investigation Reports 329, BI-330 \(7:30\)](#).

**For SBS:**

- > Were reasonable efforts made to ensure factual content was accurate, having regard to the circumstances and facts known, at the time of preparing and broadcasting the program?

**For subscription broadcast television:**

- > Was news presented accurately?

**For community television and radio:**

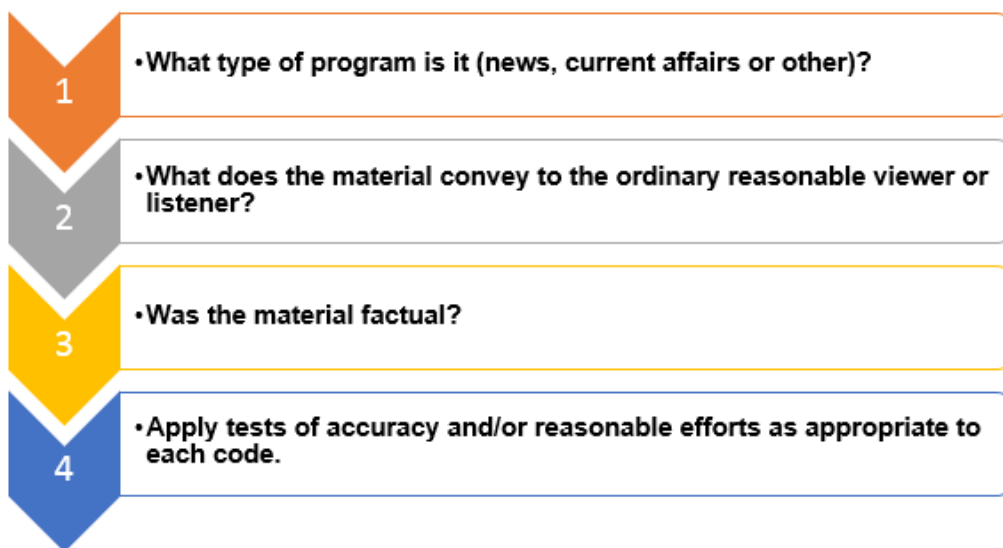
- > Was the material (in news or current affairs) presented accurately?

Figure 1 summarises the investigation steps that the ACMA takes in each (accuracy) investigation. Following step 5, the ACMA applies the tests as appropriate to each code.

**Figure 1: The ACMA's approach to factual accuracy**

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<sup>8</sup> The commercial radio code similarly requires consideration of the facts known, or readily ascertainable at that time, and the time pressures associated with the preparation and broadcast of such programming.



## 1.4 Corrections

Most of the broadcasting codes allow for the preclusion of a breach finding (for accuracy obligations) in the event that reasonable efforts have been made (within a specified or reasonable time) to correct significant or substantial errors. The ABC code includes a separate ‘Resolved Complaints’ section<sup>9</sup> that applies to any complaint (not just those about accuracy) for which the ABC has taken steps, prior to the complaint being made to the ACMA, that were adequate or appropriate in all the circumstances to redress the cause of the complaint.<sup>10</sup>

Where a correction has been made, the ACMA will consider the adequacy and appropriateness of the correction. An assessment of the adequacy and/or appropriateness of a correction will be made according to the facts and circumstances of the case. Generally, the ACMA asks:

- > Was the inaccurate material clearly identified?
- > Was there a clear on-air acknowledgment of the error?
- > Was there a clear statement of the correct position?

The relevant time frames and the impact of a correction will vary according to the applicable code. Corrections are discussed in more detail in Chapter 7.

### Relevant investigations



ACMA investigation reports [2573](#), [2803](#), [2597](#), [2614](#), [2636](#), [2888](#), [2865](#), [3066](#), [BI-329](#), [BI-330](#)

<sup>9</sup> ABC code, Section III.

<sup>10</sup> An example in the context of accuracy is [Investigation Report 3168 \(7 pm TV News\)](#).

## 2. Programs that attract accuracy obligations

Generally, the obligation to present factual material accurately applies to news and current affairs programs. The accuracy provisions in the ABC code refer to the ‘gathering and presentation of news and information’.<sup>11</sup>

### 2.1 News programs

The commercial television code does not define news but states that the obligations cover ‘news programs (including news flashes and updates)’.

By contrast, the commercial radio code defines a news program as:

... a Program, bulletin or news flash, the predominant purpose of which is to present factual new information on current events and which is typically prepared by journalists.<sup>12</sup>

### 2.2 Current affairs programs

The commercial television code defines a current affairs program as:

... a program focussing on social, economic or political issues of current relevance to the community.<sup>13</sup>

The commercial radio code’s definition of a current affairs program is similar to that of the commercial television code, but is more expansive and includes talkback radio programs:

... a Program the predominant purpose of which is to provide interviews, analysis, commentary or discussion, including open-line discussion with listeners, about current social, economic or political issues.<sup>14</sup>

### 2.3 Distinguishing between news and current affairs

The distinction between a news program and a current affairs program for the purposes of the commercial radio code was discussed in [Investigation Report 2279 \(Breakfast with Alan Jones\)](#). *Breakfast with Alan Jones* is characterised as a current affairs program for the purposes of the commercial radio code.

The ACMA had to decide whether the relevant announcement should be treated as a news flash within a current affairs program—and hence as a news program that would be subject to a different accuracy obligation. Two factors were relevant to the ACMA’s decision not to characterise the program content as a news flash:

- > the nature of the overall program (current affairs)
- > the fact that the announcement also contained commentary from the presenter.

In the Australian Subscription Television and Radio Associations (ASTRA) Codes of Practice – Open Narrowcast Television Code, the requirement for accuracy applies to

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<sup>11</sup> ABC code, Standard 2.

<sup>12</sup> Commercial radio code, ‘Definitions’.

<sup>13</sup> Commercial television code, Part 8, ‘Interpretation’.

<sup>14</sup> Commercial radio code, ‘Definitions’.

'news and current affairs programs'. The code does not contain a definition of 'news' or 'current affairs'. Accordingly, in [Investigation Report 1990 \(Al-Hayat channel\)](#), the ACMA accepted the following Macquarie Dictionary definitions:

- > 'news'—a report of any recent event, situation etc.
- > 'current'—passing in time or belonging to the time actually passing
- > 'affair'—anything done or to be done; that which requires action or effort; business; concern or matters of interest or concern; particular doings or interests.

The ACMA concluded that none of the programs it reviewed on the Al-Hayat Arabic language Christian channel fell into the category of 'news' because they did not comprise reports of recent events or situations. Nor did they fall into the category of 'current affairs' because they did not deal with matters 'passing in time, or belonging to the time actually passing':

While two of the programs contained topical references these were considered an incidental accompaniment to the broadcast of program matter of a different kind and their inclusion did not mean that the program as a whole fell into the genre of current affairs program.

In [Investigation Report BI- 258 \(Nine News\)](#), the ACMA took into account the context of a health report in determining that it should be assessed as 'news':

The ACMA notes that the substance of the health report—general, life-style based information about diet and its effect on arthritis and gout pain, would not usually be characterised as 'news'. [...] However, as the health report was broadcast in a news program, it has been assessed accordingly.

## Relevant investigations



ACMA investigation reports [1990](#), [2279](#), [BI-258](#)

## 3. Content that attracts accuracy obligations

The codes attach different obligations to different types of program material, generally distinguishing between factual material and commentary and analysis.

### 3.1 Factual content/material for the purposes of the codes

When deciding whether or not particular content is factual material, the ACMA distinguishes factual material from other material, since the accuracy obligations apply only to factual material. Distinguishing between factual material and other material is not always straightforward. The primary consideration is whether, according to the natural and ordinary meaning of the language used and the substantive nature of the message conveyed, the relevant material is presented as a statement of fact.

Some of the considerations the ACMA has regard to in assessing whether or not particular content is factual material for the purposes of the code are set out above (see general observations above).

In [Investigation Report 3171 \(\*The Alan Jones Breakfast Show\*\)](#), the presenter discussed matters that had recently been published by both electronic and print media. After listing what it considered were the relevant 'factual assertions', the ACMA assessed other statements made by the presenter:

They were emotive, subjective and judgmental or speculative. Given the language, tenor and tone, and contextual indications from the rest of the segment, the ACMA considers that the ordinary reasonable listener would not have understood these statements as the presentation of factual material.

In [Investigation Report 2904 \(\*World News Australia\*\)](#), the ACMA asked what the ordinary reasonable viewer would have understood a range of different material to have conveyed, in context.

See also, for example, [investigation reports 2947 and 2960 \(\*The Alan Jones Breakfast Show\*\)](#). Some of the factors previously considered by the ACMA when characterising content for these purposes have been set out below in greater detail.

### 3.2 Contextual indicators

The ACMA evaluates the relevant statement in its context; that is, **contextual indications from the rest of the broadcast (including tone, tenor and delivery) are relevant** in assessing the meaning conveyed to the ordinary reasonable listener/viewer.

In [Investigation Report 2348 \(\*Channel Seven News and Sunrise\*\)](#), the ACMA relied on the tone and manner of delivery to reject an argument that the presenter was merely repeating another person's viewpoint. The ACMA stated:

The assessment has examined the impression conveyed by the material in the context of the item as a whole. The context was a news item, which is normally expected to carry a large amount of factual material. The presenter and reporter's tone and manner of delivery did not differ from those in which they delivered other material which was indisputably factual.

### 3.3 Tone, tenor and delivery

Where statements are presented in an unequivocal and unquestioning manner, without any allusion to the application of individual opinions and without any use of qualification or comparison, this will likely convey to the ordinary reasonable viewer that this is a statement of fact.

In [investigation reports 2597, 2614 and 2636 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA noted, in the context of a talkback radio program, that the nature of the language, tenor and tone used was unequivocal and conclusive.

By contrast, in [investigation reports 2947 and 2960 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA found that the tenor and tone used led to a conclusion that the material presented was opinion rather than factual. The ACMA stated:

The segment opened with a strong judgemental remark by the presenter which set the tenor and tone of the segment, 'Well, this NBN disaster rolls on'.

#### Relevant investigations



ACMA investigation reports [3171](#), [2904](#), [2947](#), [2960](#), [2348](#), [2597](#), [2614](#), [2636](#)

### 3.4 Language and images

Facts and factual material can be conveyed verbally or non-verbally. This means that an inaccurate visual representation may contravene the code provisions. See, for example, [investigation reports 1922 and 1953 \(\*Ten News at Five\*\)](#). In this matter, the ACMA observed that the ordinary reasonable viewer would expect visual file footage in news reports to be labelled as such. The ACMA also considered that the ordinary reasonable viewer would regard CCTV footage to be evidentiary in nature, and in this case, would have seen the opening (verbal) sequences as inferring the footage actually depicted an attack.

Visual images on screen are relevant in an inquiry as to whether a person's viewpoint is being conveyed or whether something is being presented as a statement of fact. However, in [Investigation Report 2348 \(\*Channel Seven News and Sunrise\*\)](#), the ACMA rejected the proposition that words spoken in a voiceover in a broadcast would be generally understood as being nothing more than the viewpoint of the person whose face happens to be on the screen at the time.

In [Investigation Report 1820 \(\*Today Tonight\*\)](#), the ACMA observed:

The presence of what appears to be re-enactment footage in reference to the cleaning of meat further provides a visual context to reinforce the factual nature of this particular allegation.

#### Relevant investigations



ACMA investigation reports [1820](#), [2348](#), [1922](#), [1953](#)

The use of language such as 'it seems to me', 'we consider/think/believe' tends to indicate that a statement is presented as an opinion. However, a common sense judgment is required as to how the substantive nature of the statement would be



understood by the ordinary reasonable listener/viewer, and the form of words introducing the relevant statement is not conclusive.

In [Investigation Report 2730 \(Media Watch\)](#), the ACMA concluded that the use of the introductory phrases 'It's an opinion we share' and 'I don't agree' made it clear that the comments that followed these phrases were opinions being expressed by the presenter rather than assertions of fact.

Similarly, in [Investigation Report 2904 \(World News Australia\)](#), the use of the words 'it appears to be' suggested a tentativeness of the spokesman's attribution of responsibility.

The phrase 'moral duty' was considered in [Investigation Report 2803 \(Sunday Night\)](#), and was found to introduce a subjective element, which is indicative of opinion and viewpoint. However, the ACMA found that the relevant content was a combination of fact and opinion, due to the nature of the statement:

The ACMA considers that the statement would have been understood as a combination of fact and opinion. The reference to moral duty introduces a subjective element, which is indicative of opinion and viewpoint. The remainder of the statement would have been understood as fact, given that it was expressed as an unqualified assertion and as a distinct and separate obligation to the moral one.

Similarly, in [Investigation Reports 2947 and 2960 \(The Alan Jones Breakfast Show\)](#), the ACMA noted that, in the context of the surrounding statements, and having regard to the rhetorical nature of the remark and the opening words ('Some say'), the ordinary reasonable listener would be likely to understand the material as a statement of opinion.

By contrast, in [investigation reports 2952, 2953 and 2954 \(The Alan Jones Breakfast Show\)](#), the use of the phrase 'You want facts? I'll give you the facts' in the context of a broadcast that included a number of precise statements about expenditure by the federal government, conveyed that factual material was being stated.

The term 'so-called' was considered in [Investigation Report 2410 \(Sunday Night\)](#) to be inherently subjective with a judgemental quality. Its use suggested that the statement was inconclusive and therefore a viewpoint rather than a statement of fact. The ACMA also concluded that the statement 'For 60 years the Church has been notoriously secretive about its practices and bizarre rituals—until now' would have been understood as being a mixture of fact and viewpoint, as the inclusion of words such as 'notoriously' and 'bizarre' are judgemental and subjective in nature.

In [Investigation Report 3032 \(AM\)](#), the ACMA found that, in the course of an interview, the interviewer clearly indicated that she was seeking the interviewee's opinion, through the use of the phrases: 'Can you see? ... do you think?'

#### Relevant investigations



ACMA investigation reports [2410](#), [2730](#), [2803](#), [2904](#), [3032](#), [2947](#), [2960](#), [2952](#), [2953](#), [2954](#)

### 3.5 Rhetorical construction

Hyperbole, argumentative and exaggerated language, rhetorical pronouncements or questions, or emotive terms are not generally considered factual material. For example:

- > 'White elephant', 'disaster' and 'hopelessly' were found to be statements that are inherently subjective and exaggerated, and emotive terms, and therefore indicative of an expression of opinion (see [investigation reports 2947 and 2960, \*The Alan Jones Breakfast Show\*](#)).
- > 'This is corruption with a capital C' was said following a series of rhetorical questions posed by the presenter and would have been understood as a statement of opinion (see [investigation reports 2952, 2953 and 2954, \*The Alan Jones Breakfast Show\*](#)).
- > 'Every American is worse off' is a hyperbolic statement and not a matter capable of independent verification. Further, the ACMA held that any assessment of whether Americans are 'worse off' is inherently subjective (see [investigation reports 2952, 2953 and 2954, \*The Alan Jones Breakfast Show\*](#)).
- > '... look at where the money's spent, school halls, useless green schemes, pink batts, and billions to buy the Security Council vote' were found to be statements that were inherently polemical and emotive, giving contextual indications of opinion rather than fact (see [investigation reports 2952, 2953 and 2954, \*The Alan Jones Breakfast Show\*](#)).
- > 'The B's are currently holed up in a villa somewhere hatching their next plan' and 'Behind the scenes, the B's were living it up, bleeding the company dry' were statements of a kind that would not have been interpreted by the ordinary reasonable viewer as statements of fact—they are, of their nature, emotive, hyperbolic and/or opinion (see [Investigation Report 2800, \*A Current Affair\*](#)).
- > 'All-Asian mall' was used in the title of a program segment and later repeated by the reporter; however, the ACMA concluded that these references would have been taken as emotive and hyperbolic, and viewers would have understood they were not to be taken literally (see [Investigation Report 2943, \*A Current Affair\*](#)).
- > 'Great global warming scare campaign', 'Australians aren't stupid', 'can't be fooled for long', 'all that propaganda', 'scaremongers', 'there's been no Armageddon' and 'no wonder', were considered by the ACMA to be indicative of subjective personal opinions about the matters being discussed by the host in a current affairs segment, rather than a concluded scientific position about global warming (see [Investigation BI-185, \*The Bolt Report\*](#)).

#### Relevant investigations



ACMA investigation reports [2800](#), [2947](#), [2960](#), [2943](#), [2952](#), [2953](#), [2954](#)

## 3.6 The medium or program and listener expectations

### Talkback radio

In several decisions, the ACMA has considered the characterisation of material (as factual or other) in the context of talkback radio and the commercial radio code. The talkback format is a common feature of current affairs programs, providing analysis, commentary and discussion with listeners about current social, economic or political issues.

The ACMA is cognisant that talkback radio approaches matters from a strong viewpoint and the ACMA acknowledges this is part of the appeal or value of such programs to their listeners and in the broader context of public discourse. The ACMA considers that, in this context, much of what is said on talkback radio will be in the nature of opinion.

However, the ACMA has warned broadcasters that care must be taken where statements of a factual kind are made as a prelude to, or in the course of, expressing opinions in a current affairs talkback broadcast (see [investigation reports 2947 and 2960, \*The Alan Jones Breakfast Show\*](#), [Investigation Report 2962 \(\*The Alan Jones Breakfast Show\*\)](#), and [investigation reports 2952, 2953 and 2954, \*The Alan Jones Breakfast Show\*](#)).

Where a current affairs talkback program includes factual material, the commercial radio code requires the licensee to use reasonable efforts to ensure that factual material is reasonably supportable as being accurate (the concept of reasonable efforts is discussed further below in Chapter 6).

#### Relevant investigations



ACMA investigation reports [2947, 2960, 2962, 2952, 2953, 2954](#)

### Reporting statements of third parties

When the statement (including statements of opinion or viewpoint) of another person or organisation is being reported, it should be reported accurately.

In [Investigation Report 1814 \(\*A Current Affair\*\)](#), the ACMA concluded that a statement as broadcast by the presenter was sufficiently different from the statement (provided to the licensee by the Child Support Agency) as to constitute an inaccurate presentation of factual material.<sup>15</sup>

[Investigation Report 2332 \(\*Drive\*\)](#) involved the broadcast of the content of a newspaper article. The ACMA first noted that the use of the following words: 'Now the story says';

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<sup>15</sup>The text of the statement was:

There has been absolutely no payment of child support for the two children found not to be [Mr M]'s because at the time of the Court's decision [Mr M]'s child support was in arrears and he had not paid enough child support to cover even his biological child.

The presenter summarised it as:

The Child Support Agency says [Mr M] is in no position to complain about paying support for the children that are not his, because he hasn't paid enough to cover his own biological child.

The ACMA found there were differences in timing ('at the time of the Court's decision had not paid' becomes 'hasn't paid'), and a reference to Mr M being 'in no position to complain' that were not part of the original statement.

'Herald Sun today has a story' ...' and 'it says' would have led an ordinary reasonable listener to have understood that the presenter, in broadcasting the statement complained of, was relaying the content of an article:

Whether or not the newspaper was accurate, it was made clear that the words of the article were being relayed. In terms of compliance with the Code, the issue is whether the presenter's account of the content of this article was accurate ... This investigation does not examine whether the statement published by the *Herald Sun* was itself accurate. The ACMA does not have jurisdiction in relation to print media.

In [Investigation Report 3025 \(ABC News\)](#), the ACMA noted that by attributing a direct quote to a source, the broadcast did not misrepresent what was said by the source.

In [investigation reports 3195 and 3224 \(Media Watch\)](#), and in considering whether content was factual, the ACMA noted that:

The statement identified the source of the range of figures as 'insiders'. In the context of the broadcast, this attribution to 'insiders' was likely to convey to the audience that the figures had been provided by people with access to accurate information reinforcing for the ordinary, reasonable viewer that the statement was factual in character.

## Relevant investigations



ACMA investigation reports [1814](#), [2332](#), [3025](#), [3195](#), [3224](#)

### 3.7 Is the material specific and capable of independent verification?

Factual material will usually be specific, unequivocal and capable of independent verification. In [investigation reports 2597, 2614 and 2636, The Alan Jones Breakfast Show](#), the ACMA found that the form of words under consideration neither indicated that it was contestable, nor qualified it as a statement of opinion. [Investigation Report 2865 \(7.30\)](#) noted that the particular material that was the subject of the complaint was appropriately characterised as factual in character, in that it was stated in unequivocal terms without any reference to judgement or opinion.

[Investigation reports 2947 and 2960 \(The Alan Jones Breakfast Show\)](#) noted that the inclusion of the term 'about' at the commencement of a discussion (as in the statement 'Only about 15 per cent of households have bothered to connect to it where it's been rolled out') would indicate that the figure following that term was not presented as a definitive figure. By contrast, the statement '... human beings produce three per cent of carbon dioxide in the air' was held to be factual, as the figure was specific and the statement was capable of independent verification (see [Investigation Report 2961, The Alan Jones Breakfast Show](#)).

The ACMA has considered the reporting of expert commentary with judgemental terms such as 'appropriate' or 'blame' to be statements of the expert's opinion rather than of fact (see, for example, [Investigation Report 2712, Today Tonight](#)).

Statements in the nature of prediction of future events will nearly always be characterised as statements of opinion. For example:

- > In [investigation reports 2947 and 2960 \(The Alan Jones Breakfast Show\)](#), the ACMA determined that the phrases 'the future is clearly wireless' and 'the NBN will be obsolete before it's built' were not factual material.

- > In [Investigation Report 2606 \(Sunday Morning\)](#), the ACMA noted that an estimate, like a prediction, generally would be characterised by the ACMA as an expression of opinion.
- > In [Investigation Report 3032 \(AM\)](#), the ACMA concluded that a reference by a Professor to the forecasting of global emissions indicated a level of supposition.

The ACMA considers the context of a broadcast as a whole.

In coming to the conclusion that a particular broadcast was not factual material ([Investigation reports 2947 and 2060, The Alan Jones Breakfast Show](#)), the ACMA summarised the context of the broadcast as:

Taken collectively, the statements created an overall impression of rhetorical pronouncements rather than factual material. The delivery was emotional; the language judgmental and hyperbolic and the statements lacking in specificity. On balance, given the context, language, tenor and tone of the segment, the ordinary reasonable listener would not have understood the relevant statements made by the presenter as the presentation of factual material for the purposes of Code 2.2 of the Codes.

Similarly, in [investigation reports 2952, 2953 and 2954 \(The Alan Jones Breakfast Show\)](#), the ACMA concluded that, although the impugned statement was surrounded by factual material, 'from the language, tenor and tone of the statement ... the inference made by the presenter from the facts he had just referred to would not have been construed by the ordinary reasonable listener as a statement of fact'.

#### Relevant investigations



ACMA investigation reports [2606](#), [2597](#), [2614](#), [2636](#), [2865](#), [2947](#), [2960](#), [2961](#), [2712](#), [3032](#), [2952](#), [2953](#), [2954](#)

### 3.8 Commentary and analysis

Another relevant distinction is between factual material and comment/analysis.

#### The SBS code

For example, code 2.2 of the SBS code provides:

While the emphasis in news is the reporting of factual information, news content, as well as current affairs content, may include comment and analysis.

[Investigation report 1994 \(World News Australia\)](#) illustrates the distinction between factual material and commentary/analysis. In a news broadcast on the 40th anniversary of the commencement of the Six-Day War in 1967, the ACMA concluded that the statement '... yet 450,000 Israelis now live on occupied land against every reading of international law other than Israel's own', when examined in the context of a report on the legacy of the war, was not intended to be a statement of fact.

The ACMA noted that, having regard to the context, the broadcast did not contain factual material but rather provided a range of views and presented differing opinions on a contentious political issue:

An ordinary, reasonable viewer would have understood that the story as a whole was one of commentary and analysis rather than simply fact, and that the particular statement complained of comprised comment or opinion of a judgemental kind, rather than a statement of fact.

[Investigation Report 2182 \(Tamil Language Program\)](#) considered several statements made as part of a broadcast. The ACMA concluded that, rather than an assertion of fact, each were analysis, commentary or constituted an element in a particular commentator's exposition of an argument. The introductory words used by the presenter made it clear that what was to follow was X's responses to opinions that had been raised in an interview broadcast the week before.

## Relevant investigations



ACMA investigation reports [1994](#), [2182](#)

### The commercial radio code

The commercial radio code also distinguishes between factual content and commentary/analysis as follows:

3.2. In broadcasting Current Affairs Programs, a Licensee must use reasonable efforts to ensure that:

3.2.2 factual material is clearly distinguishable from commentary and analysis<sup>16</sup>...

As discussed above, frequently much of what is presented and broadcast in talkback radio will be in the form of opinion. However, clause 3.2.2 provides that where factual material is also reported, it must be clearly distinguished from the commentary.

In [Investigation Report 2962 \(The Alan Jones Breakfast Show\)](#), the ACMA considered a segment on talkback radio that included both factual material and statements of opinion by the presenter.

The ACMA concluded that these different types of material would have been apparent to, and clearly distinguishable by, the ordinary reasonable listener, due to the differing context, language, tone and tenor of the presenter. In this regard, it was noted that, at some points, context, language, tone and tenor indicated expressions of opinion by X.

Examples of this included:

- > 'The carnage is everywhere'
- > 'For how many months have I been saying this?'
- > 'I suppose this is what the government wanted its carbon tax to achieve'
- > 'This is just ... ugh! Don't start me. An absolute disgrace.'

At other points in the broadcast, context, language, tone and tenor indicated the broadcast of factual material. For example, the report said:

The ACMA considers that in the context of ... statements about the impact of 'the government's carbon tax and renewable energy target' on the sustainability of the electricity market, the relevant factual material was that the carbon tax had been the primary cause of the closure of Power Station 2 and Power Station 3. Although it occurred in the course of talkback commentary, the factual material was specific, unequivocal and capable of independent verification.

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<sup>16</sup> This differs from previous codes by introducing a 'reasonable efforts' test in relation to ensuring that factual material is clearly distinguishable from commentary and analysis.



## 3.9 Other factual considerations

### Identity of the speaker

The identity of the person making the statement does not in and of itself determine whether the statement is factual material for the purposes of the code. A statement made by an interviewee can be factual material.

In [Investigation Report 2883 \(WIN News\)](#), the ACMA considered this point, noting that:

While the statement was made by an interviewee in the report, there was no surrounding context to suggest that the statement was (the interviewee's) opinion, or that the statement was not factual ... There was nothing to suggest that (the interviewee) was unqualified to speak about the issue or that her statements should be taken by viewers as mere opinion. Moreover, (the interviewee's) tone when referring to the 'medical literature' would likely have suggested to the ordinary reasonable viewer that she was in a position to speak authoritatively on matters of medical science.

### Re-enactments and dramatisations

Re-enactments may convey factual material to viewers. A recent example of the ACMA's observations in this context can be found in [Investigation Report 3060 \(Today Tonight\)](#). In that matter, the complainants submitted that dramatisations (used in the broadcast) were factually inaccurate. The ACMA observed that:

[...] dramatisations and re-enactments are well-established means of story-telling in current affairs programs. The ordinary reasonable viewer understands that dramatisations and re-enactments will not perfectly replicate the events portrayed and probably involve some 'colour'. Accordingly, some amount of leeway is permissible in the production of dramatisations of this nature.

However, the ACMA also made the point that:

Due regard must still be had to the (code requirements regarding accuracy) and particular care should be taken in the accurate presentation of matters that might contribute to the viewers' understanding of facts that are material to the story.

### Interviewees' accounts—clearly subjective and contestable or separately reinforced by presenter or reporter

Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.

On the other hand, where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or critical element of the program is built, it may be considered a factual assertion.

For example, in [Investigation Report 3214 \(7.30\)](#), the ACMA considered the statements of two interviewees on the program and made the following observations:

... the relevant allegations were based on the subjective accounts of (the interviewees). Although the reporter and presenter did refer to more general criticisms of (of the complainant) in the segment...they did not endorse or corroborate (the interviewee's) specific allegations.

In the context of the entire broadcast, (the interviewee's) accounts were accurately presented as contestable propositions and judgements ... it was clear enough that these were (the interviewee's) own versions of events which the reporter neither endorsed nor paraphrased.

[...]

Having regard to all these matters, the ACMA considers that (the interviewee's) accounts were presented as contestable personal accounts and could not, in the context of the entire program, be considered as assertions of fact to which Code standard 2.1 obligations apply.

## Relevant investigations



ACMA investigation reports [3060](#), [2883](#), [3214](#)

### 3.10 Specific factual issues the ACMA has considered

#### Scientific material is not always factual material

The ACMA distinguishes between the presentation of scientific studies, which are factual material, and commentary about such studies, or expression of scientific theories or a scientific hypothesis, which would not ordinarily be characterised as factual.

In [Investigation Report 2446 \(PM\)](#), the ACMA determined that the presentation of conclusions of a scientific study (into the correlation between mammography screening and mortality rates) was factual material and did not contain editorial comment or present a viewpoint. The ACMA concluded that the language used in the segment itself was objective, direct and scientific, with use of numbers and statistics. The opening remarks by the presenter that screenings reduced breast cancer deaths were based on the conclusions of the research. There was nothing in the segment that indicated that the material reported was the opinion of the reporter or the broadcaster. The ACMA considered that the ordinary reasonable listener would have understood that the purpose of the segment was to convey findings of a particular scientific study into the correlation between mammography screening and mortality rates, rather than to present a viewpoint in the broader debate or discussion on the benefits of mammography.

Similarly, in [Investigation Report 2728 \(Sunrise\)](#), the ACMA decided that the language used by the reporter, such as 'Australian researchers [...] found', would have given the ordinary reasonable viewer the impression that the reporter was imparting factual information concluded from the study. In [Investigation Report 3032 \(AM\)](#), the ACMA concluded that the interviewee summarised an article on anthropogenic (human-caused) climate change and that, as the scientific article was a central focus of the broadcast, the summary of the article provided by the interviewee was factual material.

By contrast, in [Investigation Report 2595 \(The Science Show\)](#), the ACMA considered that a report on the views of the scientists who produced a document outlining the evidence for climate change over time, and the role of human activities as the likely cause of recent climate change, were the viewpoints of the relevant scientists. One of the scientists referred to the content of the document as an 'opinion'. The ACMA concluded that the broadcast would have been understood by an ordinary reasonable listener as a summary of one scientific theory on climate change. Accordingly, the ACMA found that the statements identified amounted to opinions, having regard to the context in which they were made.



[Investigation Report 2855 \(Catalyst\)](#) concerned the presentation of a scientific hypothesis about how a specific disease may be carried across countries. Phrases used by the medical expert such as 'new research', 'new concept', 'sampling instruments', 'hope', 'if it's in fact true' and 'plenty of suspects' were found to suggest to the ordinary reasonable viewer that the medical expert's hypothesis was contestable, not yet proven and, at that point in time, her opinion. Further the presenter, in the introduction, stated that 'perhaps' the disease is carried by the wind, and that 'the scientists are using instruments 'in the hope of' isolating what the particles might be'. Consequently, the ACMA considered that the material was clearly an expression of scientific opinion.

In [investigation reports 2597, 2614 and 2636 \(The Alan Jones Breakfast Show\)](#), the ACMA found that the statement 'Human beings produce .001 per cent of the carbon dioxide in the air' was factual and scientific in nature, notwithstanding that it was contained in a program comprising overwhelmingly the personal opinion and comment of the presenter.

#### Relevant investigations



ACMA investigation reports [2446](#), [2728](#), [3032](#), [2595](#), [2855](#), [2597](#), [2614](#), [2636](#)

## 4. Assessing the meaning of factual material

### 4.1 The meaning conveyed to the ordinary reasonable viewer or listener

In assessing content against the codes, the ACMA considers the meaning conveyed by the relevant material. This is assessed according to the understanding of an 'ordinary reasonable' viewer/listener. See general observations above.

The ACMA's 'ordinary reasonable' viewer/listener approach has been tested in the Federal Court when Channel Seven sought judicial review of the ACMA's findings in [Investigation Report 2803 \(Sunday Night\)](#). Among other matters, Channel Seven referred to the ACMA's ordinary reasonable viewer test, and submitted that the test involved an impermissible two-step approach that did not accord with the approach required by the commercial television code. His Honour Foster J disagreed with Channel Seven, holding that the approach adopted by the ACMA was available in the circumstances.<sup>17</sup>

### 4.2 Misleading the audience

#### Relevant provisions

Standard 2.2 of the ABC code:

Do not present factual content in a way that will materially mislead the audience.

The ABC code is the only broadcasting code that contains an explicit standard about not misleading the audience (standard 2.2).

As the ACMA has observed, the obligation only applies to content that is factual. In [Investigation Report 3032 \(AM\)](#), the ACMA concluded that a professor's statements about the effects of greenhouse gas emissions were expressions of opinion rather than fact. Hence, the ABC did not breach standard 2.2 in its presentation of material on the question of climate change science.

In [Investigation Report 2855 \(Catalyst\)](#), the ACMA noted that in the presentation of a scientific hypothesis for a disease (see discussion of scientific material above), the ABC did not include material about the role diet and food colouring may play as a cause of the disease. The ACMA concluded that:

... as the program did not draw any conclusion as to the cause of the disease and that medical experts on the program stated that it is unclear what causes the disease, in the context of a program reporting on a particular scientific hypothesis, factual content about the disease was presented in a way that did not materially mislead viewers.

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<sup>17</sup> *Channel Seven Perth Pty Limited v Australian Communications and Media Authority* [2014] FCA 669.

## Relevant investigations



ACMA investigation reports [2803](#), [3032](#), [2855](#)

### Similar approach taken in other investigations

While there is no explicit rule against misleading the audience in the other broadcasting codes, the potential for material to mislead has arisen in the following circumstances, considered in turn below:

- > visual material
- > false balance
- > omission of facts
- > selective editing
- > ambiguity
- > broadcasting contested facts.

### Visual material

In [investigation reports 1922 and 1953 \(\*Ten News at Five\*\)](#), [Investigation Report 1943 \(\*Channel Seven News\*\)](#) and [Investigation Report 1952 \(\*National Nine News\*\)](#), the ACMA considered the accuracy of CCTV footage in conjunction with commentary. The relevant news programs primarily dealt with racial tensions, the possible operation of Sudanese gangs in Melbourne and the then federal government's decision to reduce the intake of African refugees. Each of the news stories contained CCTV footage of a man attacking a shopkeeper, accompanied by the presenter discussing the concern of local shopkeepers with rising violence from Sudanese gangs. The man featured in the CCTV footage was neither Sudanese nor African.

In each investigation, the ACMA concluded (among other matters) that the verbal commentary and footage (and the omission of clarifying information) on such an important element of the news story meant that the factual material broadcast was not presented accurately. The ACMA said that the accuracy of the CCTV footage was important because:

... the ordinary, reasonable viewer would regard CCTV footage to be evidentiary in nature, and in this case would have seen the opening sequences as inferring the footage actually depicted an attack by a Sudanese or African gang.<sup>18</sup>

In the ACMA's view, the ordinary reasonable viewer would have had:

... little choice but to infer from the commentary that the footage they were then shown represented visual evidence of the conduct described in the opening commentary. From the perspective of the story, the CCTV footage of the attempted break-in, and the scuffle in the bottle shop, which accompanied these statements in effect operated as evidence for the statements made in introducing the story.

However, in fact, the ACMA understands that the man prominently featured in the footage, shown fighting and being subdued, was neither Sudanese, nor indeed African.

The footage of the assailant, on closer inspection, is of a man of indeterminate origin. The identity and race of the assailant is not clear. If anything, this acts to reinforce the

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<sup>18</sup> [Investigation Report 1943 \(\*Channel Seven News\*\)](#). However, investigation reports [1922 and 1953 \(\*Ten News at Five\*\)](#) and [Investigation Report 1952 \(\*National Nine News\*\)](#), drew similar conclusions about a broadcast by other licensees on the same incident.

strong impression given to the ordinary reasonable viewer in the commentary that they were witnessing an actual African gang at work. This was not the case.

The ordinary reasonable viewer could also have been given the impression that the change in Federal Government policy concerning African refugees was in response to violence by Sudanese or African gangs and that LG had been murdered by Sudanese people or gangs.<sup>19</sup>

In each investigation, the ACMA noted the licensees' submissions that their program had not specifically stated or identified persons in the footage as Sudanese and commended the licensees' efforts to avoid an explicit statement. However, it was still the ACMA's view that, on these occasions:

... the surrounding commentary was simply of such overwhelming strength, and the implicit link to the visuals which were embedded in the story so strong.<sup>20</sup>

that the programs, in effect, made the claim anyway.

## Relevant investigations



ACMA investigation reports [3063](#), [3054](#), [1922](#), [1953](#), [1943](#), [1952](#)

### **False balance**

'False balance' is not an issue explicitly dealt with in the codes. It can be dealt with either as a possible breach of the obligation to present news fairly and impartially, or as a possible breach of the factual accuracy provisions.

In [Investigation Report 2883 \(WIN News\)](#), the ACMA considered that a news item, as a whole, was presented in such a way that the ordinary reasonable viewer would have been misled, as the program conveyed a higher level of controversy and uncertainty about the dangers of immunisation than was justified by the facts. The ACMA noted that there was no obligation in the code requiring the licensee to include an anti-vaccination position to 'balance' the advice of the medical community. The ACMA found the program misled the audience and failed to present factual information accurately through:

- > the opening statement, which introduced the concept of a controversy about the relevant medical advice
- > the inclusion in the opening statement of an anti-vaccination view in strong and emotive terms
- > the inclusion of an inaccurate statement on the link between vaccinations and autism
- > the conclusion of the story calling for more research, which was likely to leave an ordinary reasonable viewer in doubt as to whether the recommendation to vaccinate children was justified
- > the failure of the program to mitigate the impression created by contextualising X's assertions or by offering X's credentials to provide a view on the matter.

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<sup>19</sup> [Investigation Report 1952 \(National Nine News\)](#). However, investigation reports [1922 and 1953 \(Ten News at Five\)](#) and [Investigation Report 1943 \(Channel Seven News\)](#) drew similar conclusions about a broadcast by other licensees on the same incident.

<sup>20</sup> Investigation reports [1922 and 1953 \(Ten News at Five\)](#). However, [Investigation Report 1952 \(National Nine News\)](#) and [Investigation Report 1943 \(Channel Seven News\)](#) drew similar conclusions about a broadcast by other licensees on the same incident.

## Relevant investigations



ACMA Investigation Report [2883](#)

### Omission of facts

In general, the mere failure to state, or omission of, certain facts will not render a broadcast inaccurate. However, the ACMA has found breaches where the omission of some factual material meant that the factual material presented was not presented accurately. For example, where a broadcast fails to include salient facts, the ACMA has found that this may lead to a misrepresentation of factual material. The ACMA considers whether a particular omission has this effect on a case-by-case basis.<sup>21</sup>

In [Investigation Report 1641 \(\*A Current Affair\*\)](#), the ACMA concluded the relevant broadcast omitted salient facts that led to a misrepresentation of factual material:

It would have been clearer to viewers had the ratio of raw and cooked chickens been given, and of this ratio, the proportion of raw and cooked chickens that were contaminated with bacteria that cause food poisoning. Without these details, the reporter's reference to 'two-thirds of those chickens' was inaccurate, as ordinary, reasonable viewers would not be able to understand from this, for example, whether eight raw and two cooked chickens, that is, two-thirds of the chickens, 'were contaminated ...

In [Investigation Report 2712 \(\*Today Tonight\*\)](#), the broadcaster showed 'after shots' of an alleged botched facial cosmetic procedure, but did not show any 'before shots':

The ACMA considered that an ordinary reasonable viewer, having regard to the context of the Segment, would have understood that there had been a degree of previous pigmentation to A's face, as it would have been clear that this is why she sought, or agreed to, treatment ... The Segment sought to highlight the apparently permanent damage to A's face as an example of a 'botched' Intense Pulsed Light (IPL) procedure. The segment visually portrayed the worst area of damage as A's upper lip. Other areas of pigmentation were visible on A's cheeks, chin and forehead. While the IPL treatment may not have worsened pigmentation in these areas, it is clear that it did not remove them either. In light of this, the degree of pigmentation in these areas of A's face prior to treatment was an incidental matter, and the omission of this information did not mean that the material that was presented was inaccurate.

In [Investigation Report 2855 \(\*Catalyst\*\)](#), the ACMA concluded that the omission of certain facts in the context of a scientific program reporting on a particular hypothesis was not in breach of the code:

In relation to the complainant's concern that the role of diet and food colouring was not referred to as a cause of the disease, the ACMA notes that no conclusion as to the cause of Kawasaki Disease was drawn in the program. Rather, both the Head of Cardiology at the Royal Children's Hospital Melbourne and the Director of the Kawasaki Research Centre stated that it is unclear what causes the disease. The ACMA is of the view that, in the context of a program reporting on a particular scientific hypothesis, factual content about Kawasaki Disease was presented in a way that did not materially mislead viewers.

In [Investigation Report 3107 \(\*Catalyst\*\)](#), the ACMA considered (among other matters) the omission of a range of material during a broadcast reporting on the controlled addition of fluoride to drinking water to improve dental health. Finding no breach on

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<sup>21</sup> See [Investigation Report 1943 \(\*Channel Seven News\*\)](#), [Investigation Report 1952 \(\*National Nine News\*\)](#) and [Investigation Report 2803 \(\*Sunday Night\*\)](#).

this count, the ACMA's observations included the following (on the omission of information about the cause of dental decay):

As noted above, the segment focussed on the different approach to controlled water fluoridation in Queensland compared with the rest of Australia and the effects of controlled water fluoridation in Australia. It included statistics suggesting that areas where water was fluoridated contained lower caries rates and also illustrated how teeth react to fluoride creating resistance 'to the acid that causes tooth decay'. It did not discuss or explore the various causes of caries, and did not state that caries are caused by fluoride deficiency ... The ACMA is satisfied that in the context of the segment, the omission of a fact concerning the cause of caries was not a material fact. The relevant material facts were accurate and presented in context and any factual content concerning the cause of caries was not presented in a way that would have materially misled the audience.

Context and materiality are key considerations, particularly in current affairs programs that, by their nature, include commentary and opinion. In [Investigation Report 3238 \(A Current Affair\)](#), the broadcaster did not include clear material clarifying the nature of Special Religious Instruction (SRI) in a segment about religious education in schools.

... a broadcaster is not obliged under the Code to reveal all factual matters that might have a bearing on a particular matter, or even to be fair in the presentation of factual matters. However, such omissions become problematic when, as in this case, a program presents a range of material that encourages the viewer to infer the opposite of what is the case on a key factual matter, while avoiding any pointer that might suggest a different view is possible. ... An ordinary reasonable viewer is unlikely to give much attention to matters that are merely hyperbolic, impressionistic or incidental. By contrast, omissions are likely to be more germane to matters that recur throughout a program, and/or which go to central contentions being made by program presenters. Thus, context and materiality will usually be key considerations.

In this case, the licensees had no obligation to present in detail, or even in a balanced way, how religion is taught in the Victorian education system. However, it can be noted that, if the segment had included a direct discussion of the role of SRI in the Victorian education system, the identified problems with the broadcast might have been avoided.

## Relevant investigations



ACMA investigation reports [1641](#), [2712](#), [2855](#), [3107](#), [3238](#)

## Selective editing

The selective editing of material can change the meaning conveyed by the content, and the conclusions that an ordinary reasonable viewer may draw from it. In [Investigation Report 2433 \(Channel Seven News\)](#), the ACMA confirmed that the ordinary reasonable viewer would understand that footage used by a broadcaster will not necessarily depict an entire incident. However, in that decision, the ACMA concluded that 'the news item, as broadcast, did not contain footage to indicate that there was a history to the altercation; such footage, if broadcast, would have contextualised the incident and X's reaction'.

In [Investigation Report 2434 \(Ten News at Five\)](#), on a broadcast about the same incident by a different broadcaster, the ACMA observed that the misleading impression created by editing of material to selectively present only one aspect of factual material was exacerbated by the newsreader's commentary.

In [Investigation Report 1660 \(A Current Affair\)](#), the presenter of a current affairs program omitted to state the primary reason given on behalf of a minister for not

attending a forum. The broadcast was found to be in breach when proffering another reason for the minister's non-attendance.

In [Investigation Report 3025 \(ABC News\)](#), the presenter clearly attributed a statement as a direct quote to the source. The ACMA found:

There is no evidence that the statement was not correctly quoted or that its meaning was distorted. The ACMA considers that the material was not taken out of context, and did not misrepresent what was said by the source.

## Relevant investigations



ACMA investigation reports [1660](#), [2433](#), [2434](#), [3025](#)

### Ambiguity

Where factual material is ambiguous, broadcasters need to exercise caution to correctly contextualise the status of material.

Presenting a statement as the allegation of a third party, even where that statement subsequently proves to be inaccurate, can avoid a breach of the accuracy provisions of the codes.

In [Investigation Report 2712 \(Today Tonight\)](#), some of the relevant material presented by the broadcaster was a factual assertion about what 'A' told the reporter, rather than an assertion about the clinic's action (or failure to act). The ACMA did not have any evidence to contradict the licensee's submission that 'A' did tell the reporter (that is, 'A says') she was not warned about any of the possible risks:

It is noted that, in this respect, 'A' apparently misled the reporter [...] However, the licensee's presentation of the material as an allegation by 'A', rather than an assertion of fact, meant that, in the context of this broadcast, the material met the accuracy requirement of [...] the Code.

By contrast, other material such as the statement that a patch test was performed on A's skin prior to the procedure, was presented as a statement of fact, even though the reporter was relying on information given to him by person 'A'. At the time of the broadcast, the licensee, relying on A's statement, asserted that no test had been carried out. During the investigation, it became apparent that a patch test had been performed. As the ACMA observed:

The ACMA considers that the material was inaccurate. Even if, as the licensee submitted, the test was done on A's collarbone and with a different IPL machine from that used on her face, the fact remains that the Clinic carried out at least one test patch for IPL treatment on A's skin.<sup>22</sup>

In [investigation reports 2947 and 2960 \(The Alan Jones Breakfast Show\)](#), the presenter discussed the average number of households that had connected to the NBN as at a particular date. The ACMA found that the presenter did not need to

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<sup>22</sup> In [Investigation Report 2712 \(Today Tonight\)](#), the licensee sought, unsuccessfully, to rely on clause 1.5.2 (discussed below), claiming that it was reasonable for it to rely on information supplied by A. The ACMA found that it was not reasonable as it was foreseeable that the complainant might have a different view on the story:

In light of this, at the time of the broadcast, the licensee was obliged, at the very least, to present the statement as a claim or allegation, and not as unequivocal fact.

include figures about the likely future take-up rates of the NBN over the next few years.

Similarly, in [Investigation Report 2803 \(Sunday Night\)](#), the presenter's statement 'You can read [MM]'s statement on our website ...' was not misleading, even though only the first page of the documentation supplied to the broadcaster was made available on the broadcaster's website. The ACMA accepted that the first page of the relevant documentation supplied to the broadcaster was specifically headed 'Statement by [MM] to licensee', while the rest of the material was not so headed. The ACMA concluded:

For this reason, the Presenter's statement was an accurate one in the sense contemplated by clause 4.3.1. A one-page document written by MM and entitled 'Statement' was made available in full, on the Licensee's website. There was no suggestion or implication that the Statement necessarily constituted the entirety of what the complainant had to say about the background and circumstances relating to the incident.

Where a report presents factual information that supports only one (erroneous) conclusion, there is a risk this may result in inaccurate information being conveyed to an ordinary reasonable viewer.

In February 2014, the ACMA considered two broadcasts involving the use of the word 'illegal' about asylum seekers. The ACMA assessed the (commercial radio) licensee's compliance with provisions requiring it (in the preparation and presentation of current affairs programs) to 'use reasonable efforts to ensure that factual material is reasonably supportable as being accurate'.

In [Investigation Report 3063 \(The Ray Hadley Morning Show\)](#), the ACMA made no finding about the licensee's compliance with relevant code provisions, given a lack of clarity about the meaning conveyed by 'illegal' in the context of the particular broadcast. Nevertheless, the ACMA considered that the term 'illegal' with reference to asylum seekers should be used only with great care, due to its dependence on context:

At the outset, the ACMA notes that the use of 'illegal' with reference to asylum seekers has the potential to be misleading. It may, depending on the context in which it is used, give listeners the false impression that asylum seekers have committed a crime by coming to Australia or that their presence in Australia is illegal, or even that their claim for asylum lacks validity.

In [Investigation Report 3054 \(The Ray Hadley Morning Show\)](#), the ACMA reiterated its comments that the use of 'illegal' with reference to asylum seekers has the potential to be misleading and should be used only with great care. However, the ACMA found no breach of the code:

In this instance, the ACMA considers that 'illegal' was used to describe the manner in which the asylum seekers arrived in Australia, and the ordinary reasonable listener would have understood the broadcast to convey that their arrival was without authorisation.

## Relevant investigations



ACMA investigation reports [2712](#), [2803](#), [2947](#), [2960](#)



## Broadcasting contested facts

In deciding whether factual material has been presented accurately, the ACMA does not necessarily discern the truth. For example, [investigation reports 1418 and 1474 \(Four Corners\)](#) concerned the accuracy of the statement that Forestry Tasmania was exempt from freedom of information laws. The ACMA noted:

This is a complex and contested legal issue that is open to interpretation. It is beyond the scope of this investigation for the ACMA to make a firm finding on the interpretation of this legislation.<sup>23</sup>

In circumstances where the accuracy of a factual statement is disputed by a complainant and defended by a licensee, and there is insufficient independent or otherwise reliable evidence available for the ACMA to be satisfied as to the correct factual position, the ACMA cannot be satisfied that there has been a breach of the code requirements for factual accuracy (see, for example, [Investigation Report 2082, Today Tonight](#)).

In [Investigation Report 2800 \(A Current Affair\)](#), the ACMA observed:

In this case, the accuracy of each of the factual statements was vigorously contested. This was apparent from the Segment itself which showed X disputing or explaining the allegations put to him by the reporter. Having considered all the material before it, the ACMA regards none of it as conclusive of the matters in contest. Accordingly, in these particular circumstances, the ACMA must reach a non-breach finding due to the inconclusive nature of the evidence.<sup>24</sup>

Where statements are contested or relate to complex and technical matters where facts are open to interpretation, the issue for the ACMA is how the broadcaster has presented that material. It is not necessary for broadcasters to present every available fact on a particular issue. Where witnesses give contradictory accounts of facts, the obligation to present factual material accurately will usually require that competing assertions of fact be presented as such (that is, as competing assertions).

Likewise, the accuracy provision of a code may be breached where an unequivocal statement is made that a text makes a particular statement, but there are (well-founded or legitimate) competing interpretations of the text. In [Investigation Report 2298 \(Overnight with Jim Ball\)](#), the ACMA found the presenter used definite and unequivocal language, and did not state that his view was but one possible interpretation of the writings in the Qur'an.

The ACMA's focus is on what would have been conveyed to an ordinary reasonable viewer/listener. Broadcasters do not have an obligation to present an opposing view or to be impartial in order to be accurate. However, they should make it clear when a factual assertion is disputed, rather than allowing it to be presented as an uncontroverted fact.

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<sup>23</sup> In [investigation reports 1418 and 1474 \(Four Corners\)](#), the ACMA did, however, find that, based on the available evidence and the specific exemption in section 32A of the Tasmania *Freedom of Information Act 1991*, it was reasonable for the ABC to conclude that Forestry Tasmania is exempt from freedom of information laws.

<sup>24</sup> In [Investigation Report 2800 \(A Current Affair\)](#), the ACMA described these statements as essentially competing assertions, based on the accounts of individuals who had first-hand experience of the incidents in question, and who had recounted that experience during the segment. The ACMA noted that other statements in the segment were not based on first-hand accounts.

## Relevant investigations



ACMA investigation reports [1418](#), [1474](#), [2082](#), [2800](#), [2298](#)

# 5. Assessing accuracy

## 5.1 The context of the segment in its entirety

### Relevant provisions

#### Commercial television code

Clause 3.1.2 of the commercial television code:

Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:

- a) the facts known, or readily ascertainable, at that time;
- b) the context of the segment (or Program Promotion) in its entirety; and
- c) the time pressures associated with the preparation and broadcast of such programming.

Clause 3.3.1 of the commercial television code:

In broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented.

Clause 3.3.2 of the commercial television code:

Clause 3.3.1 applies to material facts and material misrepresentations of viewpoints only.

#### Commercial radio code

3.10. of the commercial radio code:

Compliance with 3.1 and 3.2 must be assessed by taking into account all of the circumstances at the time of preparing and broadcasting the material, including:

- 3.10.1. the facts known, or readily ascertainable, at that time;
- 3.10.2. the context of the material within the News Program or Current Affairs Program in its entirety;
- 3.10.3. the time pressures associated with the preparation and broadcast of News Programs and Current Affairs Programs; and
- 3.10.4. in relation to a Current Affairs Program, the format and style of the Current Affairs Program.

The previous commercial television code (2010) was amended to explicitly require that the accuracy of factual material be assessed in the context of the broadcast in its entirety. The current 2015 code makes it clear that this now applies to material facts and material misrepresentations of viewpoints only.

In [Investigation Report 2573 \(Channel Seven News\)](#), the ACMA observed that a particular factual statement was unclear and was capable of both a broad and a narrow interpretation.<sup>25</sup> In reviewing the broadcast in its entirety, including

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<sup>25</sup> [Investigation Report 2573 \(Channel Seven News\)](#) at p. 6:

The ACMA considers that the meaning of the words 'about the death' in the opening statement was unclear. The words were capable of being understood by viewers either as being about the death of a soldier per se (the 'narrow view') or as being about the broader circumstances of that soldier's death (the 'broader view').

contextualising material, the ACMA concluded that the ordinary reasonable viewer could have understood the factual statement broadly:

In the ACMA's view, the ordinary, reasonable viewer could have understood the factual statement that Mr Abbott made a remark about the death of an Australian soldier broadly—namely as a factual statement that Mr Abbott had made a remark about that death and its circumstances. Moreover, the ordinary, reasonable viewer of the entire segment would have understood that Mr Abbott's comment was not made in a cavalier or dismissive way but in the course of a broader discussion about the complex circumstances of that soldier's death.

Where the opening of a segment uses strong language or visuals to create a particular impression, subsequent isolated references to other material will not always be sufficient to displace or clarify the impression previously conveyed. For example, in [Investigation Report 2803 \(\*Sunday Night\*\)](#), the ACMA found that there was no link between a subsequent (allegedly clarifying) statement and the earlier impugned statements.

In each case, whether the broadcaster presents factual material accurately is a matter of judgement, which involves consideration of the way in which the information is communicated. In [Investigation Report 2934 \(\*A Current Affair\*\)](#), the ACMA considered the effect of the presentation of particular information, following a strong opening statement by the presenter, and concluded:

The ACMA notes, in addition, that this information was presented, not as statement or exposition, but in a subordinate position in a question to an interviewee about fairness. In such circumstances, it was unlikely to enlighten viewers whose understanding of the situation had already been formed by the presenter's phrase 'kicking them out' in the introduction.

In another example in [Investigation Report 1952 \(\*Channel Seven News\*\)](#), the ACMA concluded:

[...] the accuracy of the CCTV footage is important because the ordinary, reasonable viewer would have regarded this as a central and critical element of the story. Indeed, the ACMA considers that this footage was the primary and lead visual element, and largely set the tone for the story as a whole.

In [Investigation Report 3060 \(\*Today Tonight\*\)](#), the ACMA, in coming to a finding that the licensee had breached the accuracy provisions of the code, noted a range of contextual factors in the program, which, it said, 'reinforced the factual assertions ...'.

The ACMA considered that other contextual references did not provide sufficiently clear contextualising material:

The ACMA considers that the references to morphine in conjunction with references to prayer, and the rustic setting of the dramatization of (the patient's) death bed which included images of an intra-venous drip, did not provide sufficiently clear contextualising material to convey the fact that morphine was provided as part of the competent palliative care (the patient) received. Rather, in the context of the segment as a whole, it appeared to have been administered as part of a regime of prayer and 'third world' medical care.

In [Investigation Report 3199 \(\*Today Tonight\*\)](#), the ACMA said:

The ACMA also notes that any uncertainty that the viewer may have had at the beginning of the segment as to the use of this term ['Home Hijack'] would have been clarified in the context of the segment in its entirety. It was clearly established during the segment that there was a contract in place for the sale of a property located in the hamlet and that at some point 'things had turned sour' and a dispute had resulted over the finalisation of the sale.

The current commercial radio code explicitly requires that the accuracy of factual material be assessed in the context of the broadcast in its entirety.

Whilst not explicit in the 2013 code, the ACMA adopted an approach in radio investigations whereby it reviewed the accuracy of statements in the context of the whole segment being broadcast. For example, in [Investigation Report 2962 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA concluded that the presenter's:

... initial statement must be considered in the context of the three segments together. The ACMA considers that the ordinary, reasonable listener would have understood by the end of the Third Segment that the carbon tax was a contributory, but not the primary, factor behind the closure of Power Station 3.

In [Investigation Report 2781 \(\*Drive with Derryn Hinch\*\)](#), the ACMA considered the accuracy of factual material in light of a radio broadcast as a whole, including material that clarified earlier statements:

Taking into account the broadcast as a whole, the ACMA considers that the ordinary, reasonable listener would have understood by the later clarifying description made by the presenter that the documentary included footage of the actual victims rather than the act of rape and murder.

### Relevant investigations



ACMA investigation reports [1952](#), [2573](#), [2803](#), [2934](#), [3060](#), [3199](#), [2781](#), [2962](#)

## 5.2 Circumstances at the time of preparing and broadcasting the program

### Relevant provisions

Clause 3.1.2 of the commercial television code:

Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:

- a) the facts known, or readily ascertainable, at that time;
- b) the context of the segment (or Program Promotion) in its entirety; and
- c) the time pressures associated with the preparation and broadcast of such programming.

Clause 3.3.1 of the commercial television code:

In broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented.

3.10 of the commercial radio code:

Compliance with 3.1 and 3.2 must be assessed by taking into account all of the circumstances at the time of preparing and broadcasting the material, including:

- 3.10.1 the facts known, or readily ascertainable, at that time;
- 3.10.2 the context of the material within the News Program or Current Affairs Program in its entirety;
- 3.10.3 the time pressures associated with the preparation and broadcast of News Programs and Current Affairs Programs; and
- 3.10.4 in relation to a Current Affairs Program, the format and style of the Current Affairs Program.

Code 2.2 of the SBS code:

... To this end, reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate, having regard to the circumstances, and facts known, at the time of preparing and broadcasting or publishing the content.

Provisions in the commercial television code, the commercial radio code and SBS code state explicitly that an assessment of accuracy will have regard to the circumstances at the time of preparing the broadcast.

In [Investigation Report 2035 \(World News Australia\)](#), concerning the narrower test in the equivalent provisions of the previous code, the ACMA noted that the broadcaster was entitled to rely on a newspaper article as justification for its statement that 'the proposal has divided the community with claims that some opposition to the proposal may have been racially motivated'. Prior to the broadcast, a suburban newspaper had reported that a meeting to oppose the proposal had been 'interrupted by a few protesters who claimed opposition to the development was based on religious and racial grounds'. The ACMA decided that:

This is sufficient to show that, at the time of preparing and broadcasting the program, it had been reported, as fact, that claims had been made that opposition to the school proposal was based on 'racism' and/or 'racial grounds'.

The ACMA adopted a similar approach in its investigations under the previous commercial radio codes, despite the absence of the explicit words 'at the time of the broadcast'.<sup>26</sup> In [Investigation Report 2606 \(Sunday Morning\)](#), the ACMA considered whether material was reasonably supportable as being accurate. The broadcast took place on 27 March 2011. The licensee submitted that in quoting a particular figure it had relied on an article published in a newspaper on 26 March 2011 (the first article). In addition, the licensee pointed to a second article published in a newspaper on 1 April 2011. The ACMA observed that:

The ACMA's consideration is limited to the information available at the time of preparation and presentation of the program, in this case, (the first article) [...] as such, it appears on the facts that the material was reasonably supportable as being accurate at the time of broadcast. This is sufficient evidence in the circumstances to be satisfied that the reasonable efforts were made ...

## Relevant investigations



ACMA investigation reports [2035](#), [2606](#)

## 5.3 Freedom to comment on government and political matters

The ACMA has rejected arguments from broadcasters that it should not enforce strict compliance with the accuracy provisions where broadcasters are presenting factual material on political and governmental matters.

In [Investigation Report 1660 \(A Current Affair\)](#), the ACMA explained:

A requirement for commercial television broadcasting licensees, in broadcasting news and current affairs, to present factual material accurately could not reasonably be

<sup>26</sup> As noted above, the current commercial radio code explicitly refers to circumstances at the time of broadcast.

regarded as unduly infringing the implied Constitutional freedom of communication on political and governmental matters. There is no basis for interpreting the Code as if it permitted licensees to present factual matters inaccurately when broadcasting on political and governmental matters.

The ACMA reinforced the need for accuracy in presenting factual material on government and political matters in [Investigation Report 2888 \(\*The Ray Hadley Morning Show\*\)](#), which concerned a broadcast on commercial radio and was assessed against the 2010 commercial radio code equivalent of 3.2.1. The ACMA stated:

The ACMA is of the view that the political subject matter and context of the broadcast do not relieve the licensee of the obligations in Code 2.2(a) of the Codes. If, and to the extent that, the licensee may be suggesting that Code 2.2(a) of the Codes may infringe the implied constitutional freedom of political communication, the ACMA does not agree. Code 2.2(a) of the Codes is reasonably appropriate and adapted to serve a legitimate end, namely the facilitation of meaningful discourse of public affairs based on factually accurate material.

#### Relevant investigations



ACMA investigation reports [1660](#), [2888](#)

## 5.4 Obtaining responses from affected third parties

There is no explicit obligation in any of the codes for broadcasters to check the accuracy of facts directly with third parties who may be affected by allegations to be broadcast.<sup>27</sup> In [Investigation Report 1820 \(\*Today Tonight\*\)](#), the ACMA observed:

... while good journalistic practice may have required the licensee to put particulars of specific adverse allegations to the complainant to seek a response before the broadcast (a practice that would also be likely to reduce the risk of breaching clause 4.3.1), a failure to do so does not amount to a breach of clause 4.3.1.

However, in the ABC code, if allegations are made about a person or organisation, reasonable efforts must be made to provide a fair opportunity to respond.<sup>28</sup>

Standard 5.3 of the ABC code canvases the opportunity to respond. In [Investigation Reports BI-329 and BI-330 \(7:30\)](#) the ACMA noted standard 5.3 requires a consideration of what is reasonable in the circumstances. In [Investigation Report BI-319 \(7:30\)](#), the ACMA took into account that the subject of a report had been notified of the impending story more than 24 hours before the broadcast.

#### Relevant investigations



ACMA Investigation Report [1820](#), [BI-329 and BI-330](#), [BI-319](#)

<sup>27</sup> However, a code provision that requires reasonable efforts to ensure factual accuracy might comprehend this in particular cases.

<sup>28</sup> Standard 5.3 of the ABC code.

## 5.5 Interpreting language

The ACMA recognises that the ordinary reasonable viewer will often interpret language and phrases in a broad way rather than literally.

In [Investigation Report 2934 \(A Current Affair\)](#), the use of the phrases ‘kicking them out’ and ‘move’ were found to convey to the ordinary reasonable viewer that certain retailers were leaving the mall entirely rather than being relocated within the shopping centre.

A strong opening statement can set the tone for what is to follow and influence the manner in which words are interpreted. In [Investigation Report 1820 \(Today Tonight\)](#), the reporter had used the phrase ‘residents had to survive on a diet of rotten meat’. The ACMA observed that the use of the word ‘survive’, in juxtaposition with ‘diet’, in the presenter’s opening statement tended to convey the regular or habitual meaning of ‘diet’. In fact, the broadcast segment quoted a single incident of cleaning rotten meat with vinegar. The ACMA found that there was nothing to suggest that this was a habitual exercise or an ongoing issue for residents. The ACMA concluded:

The positioning of this statement as an opening statement sets the tone of what is to follow and would have made a relatively strong impression on the ordinary, reasonable viewer.

In the same [Investigation Report 1820 \(Today Tonight\)](#), the ACMA again referred to the presenter’s tone as a factor influencing the interpretation of language used:

Having regard to the reporter’s tone and the context of preceding material in the segment, the ACMA is satisfied that the ordinary, reasonable viewer would have understood the reporter’s use of ‘profit’ in the second statement as referring to some pecuniary gain for the owners and operators of the facility.<sup>29</sup>

Language is always interpreted in the context of the segment in its entirety. [Investigation Report 3043 \(Ten News at Five\)](#) concerned the description of Mr Nick Minchin (former senator and minister) as an ‘expert’ on climate change. The ACMA noted that the purpose of the news segment was to discuss opposing views on climate change, which were sparked by claims made in a report released by Professor Tim Flannery. The segment explored various viewpoints on the subject and included interviews with the general public. The views explored were not specific to those only with expertise or formal qualifications on the subject. The ACMA observed:

Although he is not a scientist, the ACMA accepts that as a former Senator and Minister for Industry, Science and Resources in the Howard Government who opposed emissions trading scheme proposals ... Mr Minchin has some qualifications as a commentator in the climate change debate. The ACMA considers that it was reasonable, in the context of the segment in its entirety, to refer to Professor Flannery, Mr Minchin and Mr Roberts as experts, in the sense that all three have well-regarded views and knowledge on the topic of climate change relevant to the purpose of the segment.

### Relevant investigations



ACMA investigation reports [1820](#), [2934](#), [3043](#)

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<sup>29</sup> [Investigation Report 1820 \(Today Tonight\)](#) was considered under the 2004 Commercial Television Code of Practice and pre-dated the insertion of clause 4.3.1.1 (in 2010), which explicitly requires an assessment of factual accuracy to be determined in the context of the segment in its entirety.



## 5.6 Reporting on legal matters

The ACMA has accepted that an ordinary reasonable viewer, through his or her 'general knowledge and experience of worldly affairs', would be familiar with common concepts of the law and crime including:

- > The **court and crime reporting convention**, whereby assertions that a person has committed a crime are only made where the person has admitted this or where a finding of guilt has been made by a court. Until and unless this happens, such assertions are qualified by the use of terms such as 'allegedly', 'accused of' or 'charged with' according to the case (see, for example, [Investigation Report 2348, Channel Seven News and Sunrise](#)).<sup>30</sup>
- > The **crime of murder** and the phrase 'Company X has been accused in a US Court of an act of murder' would be understood to mean that the company was facing criminal charges of the most serious kind rather than civil proceedings (refer, for example, [Investigation Report 2803, Sunday Night](#)).
- > How **parliamentary privilege** operates and of the kinds of situations in which its use is controversial because of the potential for abuse (see, for example, [Investigation Report 1660, A Current Affair](#)).<sup>31</sup>
- > The **law, including international law**, which by its nature is open to interpretation and 'the relevant statement complained about is not factual but rather a **contestable** interpretation of the law for which there is a large body of research available to both support and refute' (see, for example, [Investigation Report 1994, World News Australia](#)).
- > The distinction between **interrogation and arrest**, as observed in [Investigation Report 2800 \(A Current Affair\)](#), where the ACMA concluded that the ordinary reasonable viewer would have understood from the words 'in France, X is released from the police station after several hours of interrogation' that X was questioned, but not arrested, by French police.
- > The **Israel–Palestine conflict** has long been disputed, with a major part of that dispute being the right of settlement in the West Bank (see, for example, [Investigation Report 1994, World News Australia](#)).
- > **Laws differing between jurisdictions**, for example, in [Investigation Report 3083 \(Bish's Bash\)](#), the ACMA found that a reference to Ms de Rossi as Ms DeGeneres' 'wife' was not misleading, as the ordinary reasonable viewer would not have understood the statement to suggest that same-sex marriage is legally recognised in Australia.

### Relevant investigations



ACMA investigation reports [1660](#), [1994](#), [2348](#), [2800](#), [2803](#), [3083](#)

<sup>30</sup> In [Investigation Report 2348 \(Channel Seven News and Sunrise\)](#), in reviewing a broadcast where a statement was made that 'Person X had attacked person A', the ACMA found that the statements were assertive and unqualified. As there was nothing to indicate that the proposition X had attacked A was merely an allegation, a belief or a suspicion on the part of A or others, including the reporter, the ACMA concluded the statement conveyed that it was an accepted, established and undisputed fact that X had attacked A, which was inaccurate.

<sup>31</sup> In [Investigation Report 1660 \(A Current Affair\)](#), the ACMA stated:

The broadcast therefore placed viewers in the situation where they could make up their own minds on whether the criticisms made by the minister were such that they would have been discouraged by defamation laws if spoken outside Parliament.

The report went on to find that the statement 'exploiting the safety of parliamentary privilege' was an expression of opinion rather than factual material.

## 5.7 Minor factual inaccuracy

### Relevant provisions

Standard 2.1 of the ABC code:

Make reasonable efforts to ensure that material facts are accurate and presented in context.

The ABC code explicitly confines the accuracy obligations to material facts.<sup>32</sup> The new 2015 commercial television code now also confines accuracy obligations to material facts. In addition, it includes a provision (see clause 1.1.4 below) that a failure to comply with the code (including the obligation to present factual material accurately) will not be a breach of the code if the failure was due to an act or failure to act, which, in all the circumstances was clearly peripheral or incidental, and unlikely to offend or materially mislead viewers. While the commercial radio code does not explicitly confine accuracy requirements to material facts, it provides that accuracy provisions will not be breached if a disputed fact was not a material fact. Other codes do not have a materiality threshold.

The obligation to correct a factual inaccuracy contained in the codes is limited to the correction of material or significant facts.<sup>33</sup> The concept of corrections is discussed further below.

### Relevant provisions

Clause 1.1.4 of the commercial television code:

Licensees will seek to comply fully with the Code, but a Licensee will not be in breach of the Code if the non-compliance was in respect of a minor, peripheral, incidental or trivial matter ...

1.3 of the commercial radio code:

Licensees must comply with the Code, but a failure to comply will not be a breach of the Code, if the non-compliance was in respect of a minor, peripheral, incidental or trivial matter ...

3.5 of the commercial radio code:

There will be no breach of the accuracy requirements at 3.1.1 or 3.2.1 if:

3.5.1. the Licensee can establish on the balance of probabilities that the news or factual material is accurate; or

3.5.2. a disputed fact was not a material fact ...

Where the equivalent clause applied (clause 1.5.4 of the 2010 commercial television code), the ACMA considered whether the broadcast of a particular inaccurate fact was, in all the circumstances, clearly peripheral or incidental, and unlikely to materially mislead viewers.

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<sup>32</sup> This 'materiality' qualification was introduced into the ABC code in 2011.

<sup>33</sup> The commercial radio code in 3.4, the commercial television code in clause 4.3.11, the SBS code in code 2.2, the subscription code in clause 2.2(b)(iv) and the community code in clause 3.6(b).

For example, in [Investigation Report 2712 \(Today Tonight\)](#), the broadcast included the statement of a patient who referred to staff at a cosmetic clinic as wearing white gowns, when in fact the clinic staff wore black gowns. The ACMA did not make a definitive finding as to whether the statement was factual material or opinion. The ACMA observed that it is the wearing of a gown itself, rather than its colour, which gives the impression of medical professionalism:

In the ACMA’s view, the effect on ordinary reasonable viewers would have been the same if A had referred to black gowns, or omitted any reference at all to the colour of the gowns. Accordingly, in terms of the main thrust of the Segment, nothing hung off the colour of the Clinic gowns ... the ACMA considers that clause 1.5.4 would apply in this case.

By contrast, in the same investigation, in relation to a different statement of fact about the performance of a patch test, the ACMA did not agree that the inaccuracy was incidental or peripheral to the primary focus of the report:

The licensee has largely relied on A’s case story as an example of a ‘botched’ procedure. The statement that the beauty therapist failed to conduct a recommended patch test was a significant ingredient of this ‘botched’ procedure leading to the damage caused to A.

In [Investigation Report 3199 \(Today Tonight\)](#), the ACMA identified several statements complained about that might properly be characterised as incidental and unlikely to materially mislead viewers.

... the central facts presented in the segment went to (the person’s) occupation of the property and the dispute between (that person) and the complainant about the final payment due under the sale contract. In that context, any factual statements as to: who ‘convinced’ whom to contract; who called the police; and whether instalments were to have been paid into one account or two are clearly peripheral and if inaccurate (a matter on which the ACMA makes no finding) would be statements in respect of which clause 1.5.4 would apply.

In the *Consolidated report of its Contemporary community safeguards inquiry*, the ACMA noted that for future codes, there is evident support, from both citizens and industry, for the use of regulatory mechanisms, including contemporary broadcasting codes, to protect and correct only what is important, while relying on professional standards and market forces to encourage accuracy and transparency in other content.<sup>34</sup>

## Relevant investigations



ACMA investigation reports [2712, 3199](#)

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<sup>34</sup> ACMA, *Contemporary community safeguards inquiry—Consolidated report*, March 2014, p. 73.

## 5.8 Reasonable mistake and reasonable reliance on a third party

### Relevant provisions

#### 1.3 of the commercial radio code:

Licensees must comply with the Code, but a failure to comply will not be a breach of the Code, the non-compliance was in respect of a minor, peripheral, incidental or trivial matter or was due to:

- 1.3.1. a reasonable mistake;
- 1.3.2. reasonable reliance on information supplied by another person;
- 1.3.3. the broadcast of material which was accidental, provided that the Licensee took reasonable precautions and exercised due diligence; or
- 1.3.4. an act or default of another person, which was outside the Licensee's control, or an accident, technical/engineering issue, or some other cause beyond the Licensee's control.

#### Clauses 1.1.4 a) and b) of the commercial television code:

Licensees will seek to comply fully with the Code, but a Licensee will not be in breach of the Code if the non-compliance was in respect of a minor, peripheral, incidental or trivial matter, or was due to:

- a) a reasonable mistake
- b) reasonable reliance by the Licensee on information supplied by another person.

#### Clause 1.2 of the subscription broadcast code:

Licensees undertake to comply fully with the Codes, but a failure to comply will not be a breach of the Codes if that failure was due to:

- (a) a reasonable mistake;
- (b) a reasonable reliance on information supplied by another person.

Under the code provisions set out above, a broadcaster's failure to comply with a code will not be a breach if the failure was due to a reasonable mistake or reasonable reliance on information supplied by another person.

[Investigation Report 3029 \(Today Tonight\)](#), which concerned the broadcast of a statement made in an interview by the Chairman of the Australian Competition and Consumer Commission (ACCC), was assessed against the commercial television code 2010 equivalent to clause 1.1.4 (a). The relevant statement—'We've had seven penalties in the last 12 to 19 months of over \$1 million'—was considered inaccurate, as it misled viewers into understanding that the seven penalties only related to jewellery companies. The licensee provided an excerpt from the transcript of the unedited interview, with the ACCC Chairman to demonstrate that the statement was illustrative of the ACCC's powers and was not quoted out of context:

The ACMA considers that the relevant statement is inaccurate as the penalties did not apply solely to the jewellery industry. However, on reviewing the transcript of the interview by the ACCC Chairman provided by the licensee, the ACMA accepts its submission that the statement was not quoted out of context, and that the inaccuracy resulted from a reasonable mistake, or reasonable reliance on another person and therefore clauses 1.5.1 and 1.5.2 of the Code apply.

In [Investigation Report 2712 \(Today Tonight\)](#), the broadcaster did not present all material as an allegation being made by A. When a statement that no patch test had been performed on A subsequently proved to be inaccurate, the broadcaster sought to rely on the equivalent of clause 1.1.4, arguing that its breach of the code was due to ‘reasonable’ reliance on information supplied by A. However, prior to the broadcast, the broadcaster was informed by the complainant that it was not yet in a position to comment on the allegations to be aired in the story, as it had not finalised an internal investigation into the matter. The ACMA concluded that it was not reasonable for the licensee to rely on A’s testimony without hearing whether the complainant was able to controvert it.

The ACMA noted:

The complainant had—reasonably, in the ACMA’s view—indicated that he was not yet in a position to comment. It was reasonably foreseeable that the Complainant might have a different view on this point about the patch test, and/or evidence to the contrary. In light of this, at the time of broadcast, the licensee was obliged, at the very least, to present the statement as a claim or allegation, and not as unequivocal fact.

### Relevant investigations



ACMA investigation reports [2712](#), [3029](#)

# 6. Assessing reasonable efforts

There are different methods of testing accuracy.

The commercial television code requires that material facts must be presented accurately, across both news and current affairs.

The commercial radio code requires licensees to use reasonable efforts to present news accurately.<sup>35</sup> Additionally, the test for accuracy in current affairs focuses on reasonable efforts being made to ensure that factual material is 'reasonably supportable' as being accurate.

The ABC code requires that 'reasonable efforts' are made to ensure that material facts are accurate and presented in context. The SBS code also requires that 'reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate'.

## 6.1 Factors relevant to the commercial radio code only

### Reasonable efforts to ensure that factual material is reasonably supportable as being accurate

#### Relevant provisions

3.2 of the commercial radio code:

In broadcasting Current Affairs Programs, a Licensee must use reasonable efforts to ensure that:

3.2.1 factual material is reasonably supportable as being accurate...

Often radio current affairs programs will have limited preparation time. The ACMA has acknowledged the realities of the nature, time limits and constraints of live opinion-based talkback radio programming (see, for example, [Investigation Report 2888, \*The Ray Hadley Morning Show\*](#)). However, these realities do not excuse the licensee from making reasonable efforts to check the accuracy of factual material.

In [Investigation Report 2888 \(\*The Ray Hadley Morning Show\*\)](#), the ACMA considered that the broadcaster had ample time in which to make further inquiries when it received a statement at 8.12 am, clearly alerting the licensee to the serious possibility that the material on which it was relying for a subsequent broadcast might be incorrect. The program began at 9 am with the relevant segment broadcast at 10.12 am.

In applying this code provision, the ACMA is required to focus on the efforts made by the broadcaster to support the accuracy of the broadcast factual material, rather than just on the accuracy of that factual material. For example, in [Investigation Report 2606 \(\*Sunday Morning\*\)](#), the ACMA said:

In the context of an investigation that involves subject matter that may be open to some dispute or is generally not agreed, the role of the ACMA is not to adjudicate on the accuracy of the factual content broadcast. Rather, it must adjudicate on the licensee's reasonable efforts to ensure that the factual content was reasonably supportable as being accurate.

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<sup>35</sup> The 'reasonable efforts' test for accuracy in news was introduced in the commercial radio code in 2017.

The question of what efforts are reasonable will depend on all the relevant circumstances. Where the equivalent clause applied (clause 2.2(a) of the 2010 commercial radio code), in [investigation reports 2952, 2953 and 2954 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA said:

However, the wording of Code 2.2(a) makes it clear that the licensee's obligation is to make reasonable efforts to ensure that factual material broadcast is reasonably supportable as being accurate. This requires consideration of the evidence provided by the licensee as to its efforts at the time the material was broadcast.

In [Investigation Report 2606 \(\*Sunday Morning\*\)](#), the ACMA considered whether the licensee had used reasonable efforts to ensure that the factual content broadcast was reasonably supportable as being accurate. The ACMA concluded:

The investigative and/or research steps that are necessary to meet the standard of 'reasonable efforts to ensure' may vary according to the nature and significance of the factual material in question, in the context of the relevant broadcast. Even in a current affairs talk back radio program, due care must be taken when information is presented as factual assertions ... the [broadcaster] did not provide a copy of the article relied on or other independent evidence of its existence. In the absence of any further information relating to these efforts the ACMA cannot be satisfied that the licensee has met its obligations under the Codes.

The ACMA has indicated that it will focus on the reasonable efforts made in the specific case, rather than on resources provided by the licensee to its presenters generally. In [investigation reports 2597, 2614 and 2636 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA held that the licensee was in breach of the reasonable efforts obligation when, despite the provision of production resources and researchers and writers for its presenters, no research was actually conducted on the material broadcast.

In [Investigation Report 3182 \(\*John Mackenzie's Morning Show\*\)](#), the ACMA considered that a licensee's 'broad assertion' was insufficient evidence of 'reasonable efforts' having been made in that particular case.

In summary, while the licensee considers that there are 'strong indicators of much higher crime rates in the relevant indigenous communities than the general community', it has not provided sufficient information about the steps actually taken prior to the broadcast to ensure accuracy. Therefore the ACMA does not consider that the licensee has demonstrated that in the preparation and presentation of the program the licensee used reasonable efforts to ensure that the factual material (the crime rate for indigenous communities was **'30 times greater' than that of the Cairns community**) that the factual material was reasonably supportable as being accurate.

The commercial radio code does not impose an absolute or best-efforts obligation to ensure factual material presented in current affairs programs is reasonably supportable as being accurate. However, the material relied on to support the accuracy of a fact should be commensurate with the nature and context of the subject matter.

In [Investigation Report 2888 \(\*The Ray Hadley Morning Show\*\)](#), the ACMA found that earlier unrelated statements by an individual, whether true or false, are not relevant in determining whether reasonable efforts have been made by a broadcaster in a subsequent case.

The ACMA has held that quoting factual material from a person who is recognised as an expert on a topic may be sufficient to satisfy the reasonable efforts obligation.

For example, in [Investigation Report 2961 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA considered that the licensee had made reasonable efforts to ensure that the

statement ‘... of the Earth’s annual production of carbon dioxide ... nature produces 97 per cent and human beings three per cent’, was reasonably supportable as being accurate as it had quoted this figure from a recognised climate change expert:

The ACMA considers that the statements made by the presenter reflected the position set out by Professor Karoly.

### **Reliance on mainstream media reports**

Reference to and reliance on current mainstream media reports in many (if not most) situations will be evidence of a licensee’s reasonable efforts to ensure that factual material is reasonably supportable as accurate. For example, in [Investigation Report 2781 \(Drive with Derryn Hinch\)](#), the ACMA found that the broadcaster’s statement was reasonably supportable as accurate as it was consistent with a prior *Four Corners* documentary.

Similarly, in [Investigation Report 2606 \(Sunday Morning\)](#), the ACMA was satisfied with the broadcaster’s reliance on a newspaper article to support the factual accuracy of a statement.<sup>36</sup>

However, the ACMA has also held that regard must be had to all relevant circumstances, including the availability of credible material casting doubt on the accuracy of a mainstream media report, which the broadcaster relies on to support accuracy.

For example, in [Investigation Report 2888 \(The Ray Hadley Morning Show\)](#), the ACMA held that it was not reasonable for the broadcaster to rely on an article in the *Daily Telegraph* where the broadcaster had, at the time of the broadcast, credible material casting doubt on the accuracy of that article and, by implication, the material on which the article was based. In those circumstances, the ACMA found the broadcaster in breach of the 2010 commercial radio code equivalent of 3.2.1, as further effort was required to discharge its obligation to make reasonable efforts to ensure the factual material was reasonably supportable as accurate.

The availability of credible material that throws doubt on the accuracy of mainstream media sources was also considered in [Investigation Report 2962 \(The Alan Jones Breakfast Show\)](#). The ACMA concluded that the broadcaster had made insufficient efforts to test the accuracy of factual material it was relying on, as it had relied on dated material and secondary sources, rather than media releases issued directly from the relevant company that was the subject of the impugned statement. The relevant media releases were readily available on the company’s website. The ACMA also observed in [Investigation Report 2962 \(The Alan Jones Breakfast Show\)](#), that submissions from licensees:

... demonstrate that they often rely on a range of sources in addition to mainstream media sources in order to verify factual material in ... talkback programs including media releases, internet searches and primary research. It is self-evident that some sources will carry more weight than others.

The commercial radio code focuses on the level of effort made by broadcasters, which is not the same as a need to demonstrate that, in attempting to make further enquiries about factual content, the broadcaster was actually successful when making those additional enquiries. (See, for example, [Investigation Report 2888, Sunday Morning](#)).

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<sup>36</sup> [Investigation Report 2606 \(Sunday Morning\)](#) at p. 11.



## Relevant investigations



ACMA investigation reports [2781](#), [2952](#), [2953](#), [2954](#), [2597](#), [2614](#), [2636](#), [2606](#), [2888](#), [2961](#), [2962](#), [3182](#)

## 6.2 Factors relevant to national broadcasters' codes and commercial radio code only

### Relevant provisions

Standard 2.1 of the ABC code:

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

Code 2.2 of the SBS code:

... To this end, reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate...

Section 3 of the commercial radio code:

3.1 In broadcasting News Programs, a Licensee must use reasonable efforts to:  
3.1.1 present news accurately and impartially...

In applying standard 2.1 of the ABC code provisions, the ACMA asks:

- > Was the particular content complained about factual in character?
- > Did it convey a 'material' fact or facts in the context of the relevant segment?
- > If so, were those facts accurate?
- > If a material fact was not accurate (or its accuracy cannot be determined), did the ABC make reasonable efforts to ensure that the material fact was accurate and presented in context?

In the past and under previous iterations of the ABC code, matters were approached not dissimilarly, but without an explicit four-step process: the ACMA first considering whether the program conveyed inaccurate facts to an ordinary reasonable viewer. Where the ACMA found that programs *did* convey inaccurate facts to an ordinary reasonable viewer, the ACMA considered whether, in light of all relevant material available to it, including material provided by way of submission, the broadcaster made reasonable efforts to ensure factual accuracy (see, for example, [investigation reports 1418 and 1474 \(Four Corners\)](#)).

### Relying on third-party expertise

In [Investigation Report 3032 \(AM\)](#), the ACMA was able to conclude that the ABC had made reasonable efforts to ensure that material facts were accurate when it relied on the expertise of a professor to explain a scientific article's findings, in terms that a non-expert audience could understand. The ACMA concluded:

... the article and the IPCC's 1990 predictions referred to in the article were accurately summarised by the Professor in the broadcast and it was reasonable for the broadcaster to rely on the Professor's statements given his expertise in the field of climate science.

## Relying on sources

Where the accuracy of a fact cannot be established due to conflicting evidence, the ACMA has found that it is reasonable for the ABC to rely on a 'highly placed' and reliable source to demonstrate it made reasonable efforts to ensure the accuracy of its material. In [Investigation Report 2865 \(7.30\)](#), the ACMA observed:

The ACMA has been presented with different interpretations of the same event and is unable, on the evidence before it, to determine the purpose for which each photograph was taken on the day ... The ACMA has examined the ABC's efforts to ensure that this information was accurate. As noted above, the ABC has submitted that it relied on a highly reliable source ... In this case, an important factor in the ACMA's determination is that the broadcast itself included explicit denials by X of the core of the story. Accordingly, the ACMA considers that the audience expectations and understanding of this issue were appropriately informed ... The ACMA finds the ABC's efforts reasonable in these circumstances.

Relying on a source may not always amount to reasonable efforts. Each situation is judged on its merits, taking into account the ABC's own principles for assessing efforts made.<sup>37</sup>

[Investigation Report 2198 \(Tamil Language Program\)](#) discussed whether SBS had made all reasonable effort to ensure that the factual content of a program was accurate where the authenticity of a video was in issue. The previous 2006 SBS Code applicable at the time required that 'all' reasonable effort must be made to ensure that the factual material of news and current affairs programs is accurate. The ACMA agreed with the SBS Ombudsman's finding that the standard was not satisfied if SBS was not able to verify the authenticity of the video material:

The complainant has asserted that the video is a 'fake' but has not produced any conclusive evidence of this. SBS has accepted that the authenticity of the video is 'contested'. In such circumstances, the next issue to be considered is whether 'all reasonable effort' was made to ensure the accuracy of this factual content. SBS has not submitted that such an effort was made in relation to this broadcast.

## 'Insiders' as sources

[Investigation reports 3195 and 3224 \(Media Watch\)](#) concerned information obtained by the ABC from sources it referred to as 'insiders'. The ACMA noted, in relation to the attribution to 'insiders', that it did not necessarily convey that the sources were current employees of *The Australian* or News Corp, but rather that, in this case, 'insiders' would have been understood by ordinary reasonable viewers as referring to anonymous persons who had access to accurate information (not available to outsiders). The ACMA did, however, note that:

[W]hether a source is an 'insider' or not may have a temporal element to it and broadcasters should take care to use the term advisedly.

In response to the ACMA's queries about the ABC's efforts with respect to the information obtained from the 'insiders', the ABC explained that the program presenter or researcher spoke with each of the sources, they discussed the information obtained with the program's Executive Producer and they cross-checked the information 'with what is known' about the financial pressures facing (newspapers). This cross-checking included an article that appeared in the *Australian Financial Review*. The ACMA noted:

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<sup>37</sup> In this regard, the ABC's Accuracy Principles, as set out in the ABC code, state:

The efforts reasonably required to ensure accuracy will depend on the circumstances. Sources with relevant expertise may be relied on more heavily than those without...

In this instance, the ACMA considers that the ABC's reliance on the un-named sources, coupled with the cross checking it undertook, amounted to reasonable efforts. The ACMA noted the ABC's submission that it was reasonably believed there was no point in approaching (the relevant newspaper) for this information as it would not have been forthcoming.

#### Relevant investigations



ACMA investigation reports [1418](#), [1474](#), [2198](#), [2865](#), [3032](#), [3195](#), [3224](#)

### 6.3 Factors relevant to the commercial television code only

#### Relevant provisions

Clauses 3.6.1 and 3.6.2 of the commercial television code:

3.6.1. In broadcasting a Program Promotion for a news or Current Affairs Program, a Licensee must comply with Section 3 as far as practicable, having regard to its brevity.

3.6.2 A Licensee is not required by this clause to portray all aspects or themes of a Program or Program segment in a Program Promotion, or to represent all viewpoints contained in the Program or Program segment.

Clauses 3.6.1 and 3.6.2 of the commercial television code require broadcasters to present factual material accurately in *promotions* for news and current affairs programs.

Where a promotion for a program includes an extract of factual material from a program, and that factual material is subsequently found to be inaccurate, the licensee will generally also be in breach of clause 3.6.1.

For example, in [Investigation Report 1820 \(Today Tonight\)](#) (concerning the commercial television code 2010 equivalent of clauses 3.6.1 and 3.6.2), the ACMA found that the broadcaster had presented factual material inaccurately on the amount spent per resident per day on food and catering. The ACMA observed:

The requirements for factual accuracy are identical under 4.3.1 and 4.5 aside from the issue of 'brevity'. The ACMA does not consider that the brevity of the promotions of 6 and 7 July invalidates the findings regarding the inaccurate presentation of factual material.

#### Relevant investigations



ACMA Investigation Report [1820](#)

## 7. Corrections

### Relevant provisions

Clause 3.3.4 of the commercial television code:

If a Licensee makes a correction in an appropriate manner within 30 days of a complaint being received or referred to the ACMA (whichever is later), then the Licensee will not be in breach of clause 3.3.1 in relation to that matter.

3.4 of the commercial radio code:

A Licensee must make reasonable efforts to correct or clarify significant and material errors of fact which would be readily apparent to a reasonable person in the Licensee's position or which have been demonstrated to the Licensee's reasonable satisfaction in a timely manner.

3.5 of the commercial radio code:

There will be no breach of the accuracy requirements at 3.1.1 or 3.2.1 if: [...]

3.5.3 a correction, which is appropriate in all the circumstances, is made within 30 Business Days of the Licensee receiving either a Code Complaint being referred to the ACMA (whichever is later).

Part III and standard 3.1 of ABC code:

A failure to comply with Standards 2.1 or 2.2 will not be taken to be a breach of the Code if a correction or clarification, which is adequate and appropriate in all the circumstances, is made prior to or within 30 days of the ABC receiving the complaint

Standard 3.1—[the ABC will] acknowledge and correct or clarify, in an appropriate manner as soon as reasonably practicable:

Significant material errors that are readily apparent or have been demonstrated; or information that is likely to significantly and materially mislead.

Code 2.2 of the SBS code:

SBS will take reasonable steps to ensure timely correction of significant errors of fact.

Clause 2.2(b)(vi) of the subscription broadcasting code:

Licensees will make reasonable efforts to correct significant errors of fact at the earliest opportunity

In [Investigation Reports 2597, 2614 and 2636 \(\*The Alan Jones Breakfast Show\*\)](#), the ACMA considered a complaint about the broadcast of a statement that human beings produce 0.001 per cent of the carbon dioxide in the air. The ACMA found that the statement was one of fact and the licensee had not provided any evidence of efforts made to ensure that the statement was reasonably supportable as being accurate. The licensee submitted that a later broadcast explained how the presenter calculated the percentage and corrected the error. The segment referred to an interview with a climate change expert and an ABC *Media Watch* segment, and included a statement by the presenter purporting to give the correct proportions of annual emissions of carbon dioxide in the atmosphere.

In assessing compliance with the 2010 commercial radio code equivalent of 3.5.3, the ACMA considered whether the later broadcast contained a correction that was adequate and appropriate in all the circumstances. It observed that any correction must be judged according to the circumstances of the particular case, and noted that ordinarily, a correction would involve a clear on-air acknowledgement of the error made in a particular broadcast and a statement of the correct position, in such a way

that there was a clear connection between the error made and the correction. On this basis, the ACMA found that the material broadcast did not amount to a correction of the impugned statement in the earlier broadcast. In the absence of a sufficiently clear link between the impugned material and the 'correction', the ACMA did not consider the 'correction' to be 'adequate or appropriate' as contemplated by the code.

In [Investigation Report 2934 \(A Current Affair\)](#) (concerning the commercial television code 2010 equivalent of clause 3.3.4), the ACMA highlighted the need for a correction, to be made in such a way that it would have been clear to an ordinary reasonable viewer that an error had been made in the original broadcast, and that error was now being corrected. In that decision, the ACMA found it was not clear whether the material was a correction, an update on recent developments, or a confirmation of information previously provided. Accordingly, the ACMA found that the licensee did not broadcast a 'correction' that was adequate and appropriate in all the circumstances.

[Investigation Report 2888 \(The Ray Hadley Morning Show\)](#) considered the adequacy of corrections in some detail. The ACMA made the following comments about corrections:

- > A 'correction' need not be detailed or drawn out, and it need not (necessarily) show contrition or include an apology, but it does need to be unequivocal, and must include a clear reference to the original statement, an acknowledgment that it was incorrect and an indication of the correct position.
- > An assessment of the 'adequacy and appropriateness' of a correction must also take into account the context and consequences of the inaccuracy broadcast.
- > The correction ought to clearly convey to a listener that an error had occurred.
- > Whether a broadcast amounts to a 'correction that is adequate and appropriate in all of the circumstances' requires an assessment of the broadcast in its entirety, including all of the material that dealt with the topic, and not just individual excerpts. An assessment of the adequacy and appropriateness of a correction must also take into account the context and consequences of the inaccuracy broadcast.
- > The ACMA is not satisfied that this broadcast amounts to 'a correction that [was] adequate and appropriate in all of the circumstances'. It is very hard to discern in Broadcast 3 any acknowledgement that any error was made in Broadcast 1. Rather, it was used as a forum to justify the position taken in Broadcast 1. Indeed, it is difficult to reconcile the contents of Broadcast 3 with the submission of the licensee that it 'unequivocally accepts' that the assertion made in Broadcast 1 was 'inaccurate at the time of broadcast'.

In [Investigation Report 2606 \(Sunday Morning\)](#), the ACMA considered corrections for the purpose of clause 2.2(b) of the commercial radio code (the 2010 equivalent of 3.5.3 in the current commercial radio code). In the broadcast, the presenter had referred to an incorrect figure for the number of attendees at the Grand Prix. The broadcaster, on becoming aware of the error, broadcast a correction in the following terms:

Yeah, I have to correct a figure ... now, on the Sunday of the Grand Prix I quoted a crowd figure on the Saturday crowds and I've now been told that figure was incorrect and I accept and I stress it was an honest mistake.

The ACMA observed that this satisfied clause 2.2(b), but made observations about better practice in these matters.

While the ACMA considers it would have been better practice for the licensee to broadcast the estimated 'correct' figure, it acknowledges that not doing so does not necessarily render the correction inadequate for the purposes of clause 2.2(b). In this case, when taking into account the uncertainty of a precise figure, the purpose and context in which the erroneous statement was made (that is, to demonstrate that a 'large number of people attended the Grand Prix'), and the relevance of the topic at the time the correction was broadcast, the ACMA is satisfied that the licensee complied with its obligations under clause 2.2(b).

In [Investigation Report 2888 \(\*The Ray Hadley Morning Show\*\)](#), the ACMA referred favourably to a print-media correction as providing an adequate and appropriate correction:

The opening paragraphs of the *Daily Telegraph* correction published by the *Daily Telegraph* in relation to the source article for Broadcast 1 provide a useful example of an adequate and appropriate correction, albeit in a print-media context.<sup>38</sup>

An example of an adequate correction was dealt with in [Investigation Report 2919 \(\*Weekend Sunrise\*\)](#). In that case, the ACMA found that the licensee had not breached clause 4.3.1 of the 2010 commercial television code (equivalent to clause 3.3.4 of the current commercial television code). This was because a broadcast in the same program on a later date stated that the material being corrected was a story that had been broadcast 'two weeks ago' and had reported 'that three Brand A diet products had been cancelled from the Australian Register of Therapeutic Goods (ARTG)'. The later broadcast acknowledged that the material required clarification and explained the correct position—that only one of the products cancelled from the ARTG was a Brand A product, while the other two products cancelled were not related to Brand A. The ACMA found that the correction was adequate and appropriate in the circumstances.

The ACMA has expressed concern in circumstances where a licensee has failed to correct significant errors of fact after it received complaints advising it of the errors. In [Investigation Report 2883 \(\*WIN News\*\)](#), the ACMA noted:

... the material was broadcast on 16 August 2012 and from 18–20 August 2012, the licensee received at least three complaints which referred to the errors. The ACMA further notes that at least two of those complaints included documentation to support the assertion that X's statement was incorrect. The ACMA considers that, on receipt of the complaints, the licensee should have undertaken its own assessment as to the accuracy of the broadcast and taken action according to that assessment. The ACMA is not aware of any measures taken by the licensee, in the face of cogent complaints, to test or verify the accuracy of the statement, or the accuracy of the broadcast as a whole, or of any attempt made by the licensee to correct or clarify the broadcast.

Ultimately, following its findings in [Investigation Report 2883 \(\*WIN News\*\)](#), and given the circumstances of the case and the important public health issues involved, the ACMA recommended to the licensee that it make an on-air statement about these findings, even though it had no power to direct the making of an on-air corrective statement.

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<sup>38</sup> The print article read as follows:

A DRAFT proposal to stop supplying bottled water and fruit treats for school groups visiting federal parliament has been rejected.

A News Ltd report yesterday suggested the decision had been made to axe the schools hospitality program as part of a raft of ideas to make \$500,000 worth of savings. That was incorrect.

In [Investigation Report BI-305 \(ABC News\)](#) the ACMA considered the adequacy of a correction made under the ABC code:

... there were 51 business days between receipt of the complaint by the ABC and the correction being placed on the website. The ACMA considers that the ABC should have made this correction earlier.

However, the ACMA is satisfied that the correction [...] was made in an appropriate manner. While it has concerns about the timeliness of the correction, the ACMA finds that, on balance, the ABC took steps which were adequate in all the circumstances and appropriate to redress that aspect of the complaint and did so prior to the complaint being made to the ACMA.

In [Investigation Reports 3195 and 3224 \(Media Watch\)](#), the ACMA considered the adequacy of steps taken, which included information communicated by way of broadcast, an online correction and a correction to the program's transcripts on its website. The ACMA considered that online correction and the corrections to transcripts did 'acknowledge and correct or clarify, in an appropriate manner as soon as reasonably practicable' the inaccuracy of the statement made in the first broadcast. The ACMA observed that:

- > The ABC was not aware of the lower estimated figure until 25 February 2014, when the complainant indicated a figure for 2013–14 in the 'ballpark' of \$15 million. The online corrections were made the next day, which the ACMA considers was 'as soon as reasonably practicable'.
- > In the online correction, the ABC acknowledged the error ('*Media Watch* accepts that the insiders' figure of \$40 million to \$50 million was too high') and cited the likely figure for 2013–14 (namely \$15 million).
- > The corrections to the transcripts are readily apparent—they appear in red font, start with '\*\*\*Correction' and state that '*Media Watch* has corrected the record'.
- > While the corrections to the transcripts are necessarily brief, they include a hyperlink to the more detailed online correction.

In [Investigation Report BI-329 \(7:30\)](#) the ACMA considered an on-air correction, and a correction posted on the ABC's Corrections and Clarifications webpage. The ACMA considered the on-air correction could have been clearer, however, it noted the steps taken by the ABC were nonetheless adequate and appropriate in all the circumstances and accordingly, under the terms of Section III of the ABC code, the ACMA found that the ABC, by virtue of complying with Standard 3.1 of the ABC code [Corrections and Clarifications], did not breach Standard 2.1 [accuracy] of the ABC code..

## 7.1 ABC code—as soon as reasonably practicable

### Relevant provisions

Standard 3.1 of the ABC code:

Acknowledge and correct or clarify, in an appropriate manner as soon as reasonably practicable

As noted above, the ABC code requires that significant material errors be corrected as soon as reasonably practicable. The ACMA considered this standard and its interaction with the related ABC Principles in [Investigation Report 2870 \(The World Today\)](#). In this case, the complainant lodged a complaint with the ABC on the same day as the relevant broadcast. The next day, following a telephone conversation with the ABC, the complainant provided further information on his complaint, including links to information that ultimately formed the basis of the ABC's online statement about the breach of standard 5.3. The first correction published on the ABC's website was some 35 days after the broadcast and was followed by two others.

The ACMA made the following observations about the ABC's obligation to correct errors as soon reasonably practicable:

While standard 3.1 does not define 'as soon as reasonably practicable', it is noted that Part III of the Code regarding Resolved Complaints refers to a 30-day period within which an error should be corrected ... The ACMA finds, in these particular circumstances, that the ABC complied with its obligations in relation to timing of the clarification/correction. In particular, in coming to the decision, the ACMA notes the ABC's decision, on receipt of the complaint, to remove the online transcript, the circumstances outlined by the ABC, and the fact that the ultimate correction involved both a clarification of the factual error and an acknowledgement that certain claims were not put to the complainant for response.

#### Relevant investigations



ACMA investigation reports [2870](#), [2597](#), [2614](#), [2636](#), [2934](#), [2888](#), [2919](#), [2883](#), [2606](#), [3195](#), [3224](#), [BI-329](#)



# 8. More information

## Copies of the codes

- > Download the codes at [www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/broadcasting-codes-schemes-index-radio-content-regulation-i-acma](http://www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/broadcasting-codes-schemes-index-radio-content-regulation-i-acma).

## The ACMA's investigation reports

- > Radio investigations—[www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Radio-investigations/radio-operations-investigations-codes-of-practice-compliance-i-acma](http://www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Radio-investigations/radio-operations-investigations-codes-of-practice-compliance-i-acma).
- > Television investigations—[www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Television-investigations/television-operations-investigations](http://www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Television-investigations/television-operations-investigations).

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# Appendix A

**Table 1: Accuracy provisions in codes**

Code	Provision
ABC Code of Practice 2011	<p><b>III. Resolved Complaints</b>            ... a failure to comply with Standards 2.1 or 2.2 (Accuracy) will not be taken to be a breach of the Code if a correction or clarification, which is adequate and appropriate in all the circumstances, is made prior to or within 30 days of the ABC receiving the complaint.</p> <p><b>IV. Principles and Standards</b>            ...</p> <p><b>2 Accuracy</b>            ...</p> <p><b>Standards:</b></p> <p>2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.</p> <p>2.2 Do not present factual content in a way that will materially mislead the audience. In some cases, this may require appropriate labels or other explanatory information.</p> <p><b>3 Corrections and clarifications</b>            ...</p> <p><b>Standards</b></p> <p>3.1 Acknowledge and correct or clarify, in an appropriate manner as soon as reasonably practicable:</p> <ul style="list-style-type: none"> <li>a. significant material errors that are readily apparent or have been demonstrated; or</li> <li>b. information that is likely to significantly and materially mislead.</li> </ul>
SBS Codes of Practice 2014	<p><b>2 NEWS AND CURRENT AFFAIRS</b></p> <p><b>2.2 Accuracy, impartiality and balance</b></p> <p>... reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate, having regard to the circumstances, and facts known, at the time of preparing and broadcasting or publishing the content.</p> <p>SBS will take reasonable steps to ensure timely correction of significant errors of fact.</p>
Commercial Television Industry Code of Practice 2010	<p><b>SECTION 4: NEWS AND CURRENT AFFAIRS PROGRAMS</b></p> <p>4.3 In broadcasting news and current affairs programs, licensees:</p> <ul style="list-style-type: none"> <li>4.3.1 must broadcast factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program;             <ul style="list-style-type: none"> <li>4.3.1.1 An assessment of whether the factual material is accurate is to be determined in the context of the segment in its entirety ...</li> </ul> </li> <li>4.3.11 must make reasonable efforts to correct significant errors of fact at the earliest opportunity.</li> </ul>

Code	Provision
Commercial Television Industry Code of Practice 2015	<p><b>NEWS AND CURRENT AFFAIRS</b></p> <p>3.1.2 Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:</p> <ul style="list-style-type: none"> <li>a) the facts known, or readily ascertainable, at that time;</li> <li>b) the context of the segment (or Program Promotion) in its entirety; and</li> <li>c) the time pressures associated with the preparation and broadcast of such programming.</li> </ul> <p>3.3.1 In broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and ensure viewpoints included in the Program are not misrepresented.</p> <p>3.3.2 Clause 3.3.1 applies to material facts and material misrepresentations of viewpoints only.</p> <p>3.3.3 Licensees must make reasonable efforts to correct or clarify significant and material errors of fact that are readily apparent or have been demonstrated to the Licensee’s reasonable satisfaction in a timely manner.</p>
Commercial Radio Codes of Practice and Guidelines 2013	<p><b>CODE OF PRACTICE 2: NEWS AND CURRENT AFFAIRS PROGRAMS</b></p> <p>2.1 News programs (including news flashes) broadcast by a licensee must:</p> <ul style="list-style-type: none"> <li>(a) present news accurately;</li> <li>...</li> <li>(c) distinguish news from comment;</li> </ul> <p>2.2 In the preparation and presentation of current affairs programs, a licensee must use reasonable efforts to ensure that:</p> <ul style="list-style-type: none"> <li>(a) factual material is reasonably supportable as being accurate;</li> <li>(b) substantial errors of fact are corrected at the earliest possible opportunity.</li> </ul> <p>A failure to comply with the requirement in Code 2.2(a) to broadcast factual material that is reasonably supportable as being accurate will not be taken to be a breach of the Code if a correction, which is adequate and appropriate in all the circumstances, is made within 30 business days of the licensee receiving a complaint or a complaint being referred to the ACMA (whichever is later).</p>
Commercial Radio Code of Practice 2017	<p><b>3. NEWS AND CURRENT AFFAIRS PROGRAMS</b></p> <p>3.1 In broadcasting News Programs, a licensee must use reasonable efforts to:</p> <ul style="list-style-type: none"> <li>3.1.1. present news accurately and impartially;</li> <li>...</li> <li>3.1.3. distinguish news from comment;</li> </ul> <p>3.2 In broadcasting Current Affairs Programs, a Licensee must use reasonable efforts to ensure that:</p> <ul style="list-style-type: none"> <li>3.2.1. factual material is reasonably supportable as being accurate;</li> </ul>

Code	Provision
	<p>3.2.2. factual material is clearly distinguishable from commentary and analysis; and</p> <p>3.2.3. viewpoints expressed to the Licensee for broadcast are not misrepresented or presented in a misleading manner by giving wrong or improper emphasis on certain material or by editing material out of context.</p> <p>...</p> <p>3.4. A Licensee must make reasonable efforts to correct or clarify significant and material errors of fact which would be readily apparent to a reasonable person in the Licensee's position or which have been demonstrated to the Licensee's reasonable satisfaction in a timely manner.</p> <p>3.5 There will be no breach of the accuracy requirements at 3.1.1 or 3.2.1 if:</p> <p>3.5.1. the Licensee can establish on the balance of probabilities that the news or factual material is accurate; or</p> <p>3.5.2. a disputed fact was not a material fact; or</p> <p>3.5.3. a correction, which is appropriate in all the circumstances, is made within 30 Business Days of the Licensee receiving either a Code</p> <p>3.6. A correction under this section 3 may be made in one or more of the following ways:</p> <p>3.6.1. during a later episode of the relevant Program or a comparable Program;</p> <p>3.6.2. on the Program's website, the station's home page or the Licensee's main website as appropriate; or</p> <p>3.6.3. in any other way that is appropriate in all the circumstances.</p> <p>3.7. For the purposes of 3.2 above, a contribution made to a Current Affairs Program by a talkback participant will not be considered factual material, unless it is factual material that is endorsed or adopted by the Presenter. 'Talkback participant' means a member of the public who contributes to open-line discussions via the Licensee's dedicated talkback line or by other communication methods accepted by the Licensee.</p> <p>...</p> <p>3.10. Compliance with 3.1 and 3.2 must be assessed by taking into account all of the circumstances at the time of preparing and broadcasting the material, including:</p> <p>3.10.1. the facts known, or readily ascertainable, at that time;</p> <p>3.10.2. the context of the material within the News Program or Current Affairs Program in its entirety;</p> <p>3.10.3. the time pressures associated with the preparation and broadcast of News Programs and Current Affairs Programs; and</p> <p>3.10.4. in relation to a Current Affairs Program, the format and style of the Current Affairs Program.</p>

Code	Provision
Subscription Broadcast Television Codes of Practice 2013	<p><b>2.2 News and Current Affairs Programs</b></p> <p>(a) News and current affairs programs, including news updates, broadcast by licensees must:</p> <ul style="list-style-type: none"> <li>(i) present news accurately, fairly and impartially;</li> <li>...</li> <li>(b) In broadcasting news and current affairs programs to the extent practicable licensees:</li> <li>...</li> <li>(vi) will make reasonable efforts to correct significant errors of fact at the earliest opportunity.</li> </ul>
Community Radio Broadcasting Codes of Practice 2008	<p><b>Code: 3 General programming</b></p> <p>...</p> <p>3.6 News, current affairs (including news updates and promotions), documentaries, feature programs and interviews shall:</p> <p>...</p> <ul style="list-style-type: none"> <li>(b) present factual material accurately and ensure that reasonable efforts are made to correct substantial errors of fact as quickly as possible;</li> </ul>