

Investigation concepts

Decency, classification, and harm and offence

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About this paper

Section 5 of the *Broadcasting Services Act 1992* confers on the 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 the requirements in broadcasting codes of practice that apply to:

- > content that, taking into account prevailing community standards, should not be broadcast
- > content that may be unacceptable to individuals depending on personal taste and preferences.

Acknowledging both types of content points to the careful balancing that is required in broadcasting codes. On the one hand, it is important to provide Australian adults with the freedom to access content of their choice. On the other hand, the community expects safeguards about material that may be inappropriate, harmful or offensive to others. Freedom of expression for broadcasters licensed to use the public resource of the broadcasting spectrum must be tempered by the need to respect community standards in the content broadcast.

This publication is intended to:

- > provide an overview of the relevant code provisions
- > increase general awareness of the requirements concerning decency, and harm and offence under the broadcasting codes, including how classification correlates with these provisions
- > assist broadcasters to better understand the requirements concerning decency, and harm and offence under the broadcasting codes.

Classification provisions apply to television codes only. This includes the commercial free-to-air and subscription broadcasters, the national broadcasters and community television. While explicit 'decency' provisions appear only in the commercial radio code, the community radio code includes a directly comparable clause. The 'harm and offence' provisions are unique to ABC television and radio, while the SBS code includes a suite of provisions reflecting the diversity of its audience. The precise obligation to which each broadcaster is subject will depend on the specific terms of relevant provisions 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.

This paper refers illustratively to previous decisions of the ACMA (and its predecessor the Australian Broadcasting Authority) about code complaints. In dealing with code complaints, 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.

For clarity, the report does contain some strong language extracted from investigation reports discussed.

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 June 2015, 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
ABA	Australian Broadcasting Authority (the ACMA's predecessor)
ABC code	ABC Code of Practice 2011 (revised in 2016) (unless specific reference to a previous code)
broadcasting codes (the codes)	The codes of practice that apply to the various sectors of the broadcasting industry
commercial radio code	Commercial Radio Codes of Practice 2017 ¹ (unless specific reference to a previous code)
commercial television code	Commercial Television Industry Code of Practice 2015 ² (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)
National Classification Scheme Guidelines	<i>Guidelines for the Classification of Films</i> enabled by the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
SBS code	SBS Codes of Practice 2014 ³ (unless specific reference to a previous code)
subscription code	Subscription Broadcast Television Codes of Practice 2013 (unless specific reference to a previous code)
the Act	<i>Broadcasting Services Act 1992</i>

¹ 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.

² 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.

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

1. Overview

The ACMA's research has consistently shown that the community generally expects broadcasters to broadcast content that accords with community standards. But community standards are not hard and fast, they alter over time, and between audiences as societal norms shifts. Applying code provisions that address community standards is not straightforward.

The Australian Law Reform Commission's National Classification Scheme Review⁴ canvassed the difficulties of imposing standards on content, noting this is:

... an inherently contested space, characterised by strong views on the relative importance attached to particular principles—for example, individual rights and freedoms as compared to the protection of children from potentially harmful media content.⁵

This points to the careful balancing that is required in broadcasting codes. On the one hand, it is important to provide Australian adults with the freedom to access content of their choice. On the other hand, the community expects safeguards about material that may be inappropriate, harmful or offensive to others. Freedom of expression for broadcasters licensed to use the public resource of the broadcasting spectrum must be tempered by the need to respect community standards in relation to the content of programs broadcast. There is a suite of safeguards in each broadcasting code to address community standards. Despite some relative differences (for example, only content for television is classified) there are a number of similarities in the general approach taken in each code. These include providing consumer warnings and ensuring content does not offend generally accepted community standards. There are also safeguards relevant to a broad range of matters such as discrimination, inciting hatred, vilification and causing distress to viewers.

1.1. Addressing these matters

1.1.1. Community standards and values

In November 2011, the ACMA published a paper titled *Enduring concepts*. That paper identified 16 concepts that are of ongoing importance to media and communications in Australia, notwithstanding the pressures of convergence.

The ACMA reflected on these enduring concepts during the 2013 *Contemporary community safeguards inquiry* (CCSi), during which it highlighted seven of the original 16 concepts as being resonant to broadcasting regulatory interventions. One of these was 'community values':

Delivery of media and communications services and content should reflect community standards.

The CCSi acknowledged that identifying such shared community values and standards is complex. There is no clear 'measureable' line in the sand. Community standards and values can mean different things to different people. Despite these complexities, there was general support expressed during the CCSi for contemporary broadcasting codes to respect community standards and ensure content aligns with broad community values.⁶

⁴ Final report published March 2012.

⁵ ALRC, *Classification – Content Regulation and Convergent Media*, ALRC Report 118 (2012), p. 78.

⁶ ACMA, *Contemporary community safeguards inquiry—consolidated report*, March 2014, p. 13.

1.1.2. Freedom of expression

Freedom of expression comes into consideration when applying code provisions that touch on 'community values'. It is critical to balance any code safeguards with the freedom of Australian adults to access content of their choice and freedom of expression for broadcasters.

In [Investigation Report 1270 \(Double Dilemma\)](#), the licensee argued that the ABA had failed to consider freedom of speech as a relevant consideration. The ABA dismissed that argument and, in the context of that matter, said:

In relation to assessment of this complaint against the purpose of the Code, it is clear from the statement of the purpose in the Code that it has been devised by industry representatives on behalf of a section of the broadcasting industry, taking into account issues of freedom of speech and balancing them against the rights of others. Clause 1.5 of the Code clearly goes to the rights and morals of others, and a decision under it is within the ambit of article 19 of the International Convention on Civil and Political Rights (ICCPR). Freedom of speech is inherently considered in the framing of the Code, which strikes a balance between rights and responsibilities, bearing in mind that (unlike other forms of media) there is no classification system for radio.⁷

1.1.3. Different types of content

Given the complexities of identifying community standards and values, it can be helpful to distinguish two types of broadcast content.

First, there is content that, taking into account prevailing community standards, should not be broadcast on television or radio. This includes content that is so offensive because it is abusive, hateful or disturbing that it is considered to offend generally accepted community standards. In addition, there are some categories of classified content that are prohibited under the Act from being broadcast on television.⁸

Second, there is content that may be unacceptable to individuals depending on personal taste and preferences. The community understands that not everyone has the same tastes and values. Accordingly, there is some content that may be broadcast in certain circumstances, even though some members of the community could consider it to be distasteful or unacceptable.

1.1.4. Different audiences

Identifying content that most citizens agree should not be broadcast acknowledges there are whole-of-community expectations. In contrast, identifying content that some individuals may find inappropriate acknowledges there are also specific audience expectations.

Following from this, the provisions that address community standards contemplate two different audiences:

- > the whole community
- > targeted or intended audiences.

⁷ [Investigation Report 1270 \(Double Dilemma\)](#), pp. 12–13. This assessment was made under a previous version of the code. The decency provision in clause 1.5 of the former code has since been replaced by other clauses in more recent codes in relevantly similar terms.

⁸ Schedule 2 of the *Broadcasting Services Act 1992* prohibits commercial and subscription television and community broadcasters from broadcasting [RC](#) or [X18+](#) content or [R18+](#) films (unmodified). RC (refused classification) is content that 'falls outside generally accepted community standards'. X18+ films are restricted to adults and are only available for sale or hire in the ACT and the NT. R18+ content 'may be offensive to sections of the adult community'. Websites viewed 17 February 2015.



1.2. Strategies to address community standards

There is no one set of provisions to address inappropriate, harmful or offensive content. Rather, the codes contain a suite of relevant provisions that collectively address a range of issues in light of community standards, values and expectations. The combined effect is an overarching strategy that is variously employed in each code.

1.2.1. Strategies for television and radio

Content on television is subject to a classification system, with designated time zones, that assists viewers to make informed decisions about what to watch. This applies to the commercial free-to-air and subscription broadcasters, the national broadcasters and community television. All television codes also include provisions about consumer warnings or signposting to assist people to make choices about content suitability.

Radio content is not subject to a classification scheme, although the commercial radio code does restrict when programs with ‘an explicit sexual theme’ can be broadcast.⁹ Instead, whole-of-community expectations and the needs of the relevant audience are addressed via specific code provisions:

- > Commercial and community radio include a prohibition on broadcasting content that offends generally accepted standards of decency.¹⁰ Neither code includes general provisions about warnings or signposting, save for one reference in the commercial radio code to warnings before sexually explicit content.
- > The codes for the national broadcasters (except for the classification provisions) apply equally to television and radio. Accordingly, Standard 7 from the ABC code applies to content on ABC radio and Code 1 from the SBS code to SBS radio. ABC’s Standard 7 addresses content that is likely to cause harm and offence, and SBS’s Code 1 covers a range of matters including ‘controversial and provocative’ content and prejudice, racism and discrimination. The provisions in the SBS code about warnings prior to a news story that may cause distress apply to SBS radio and television. There are equivalent provisions for ABC radio and television under Standard 7 of the ABC code (warnings, advice and signposting).

All codes also include a suite of provisions that address a range of matters such as content that incites hatred, vilification, prejudice or discrimination, preventing undue distress on the audience and not depicting suicide favourably.

Key provisions from the strategies adopted for television and radio are discussed below.

⁹ The 2017 commercial radio code prohibits the broadcast of a feature program with an explicit sexual theme as its core component, unless it is broadcast between 7.00 pm and 6.00 am, and appropriate warnings are included.

¹⁰ While explicit ‘decency’ provisions appear only in the commercial radio code, the community radio code includes a directly comparable clause (that refers to community standards).

1.2.2. Classification

Television content is formally classified. Radio content is not. Not all television content is required to be classified, with news, current affairs and sporting events being generally exempt. See section 3.2 for further discussion about exempt programs.

Classification enables television broadcasters to ascribe a classification category (G, PG, M and MA15+) to content.

These classification categories are developed by reference to set criteria that are contained in guidelines or standards. Each television code references the National Classification Scheme Guidelines issued by the Department of Communications and the Arts for use within the National Classification Scheme that provides classifications for public exhibition films, DVDs and computer games.¹¹ These guidelines are enabled by the *Classification (Publications, Films and Computer Games) Act 1995*. While the codes all reference the National Classification Scheme Guidelines, not all codes directly mirror them, so there is some variation from code to code.

There are three essential principles that underlie the application of the National Classification Scheme Guidelines. These principles require a consideration of:

- > six classifiable elements—themes, violence, sex, language, drug use and nudity
- > context
- > impact.

All broadcast content that is classified references, in general, the same three principles. In this respect, classification is a 'tool' that uses relatively predictable criteria to categorise and label visual content. Assigning classification categories to television content, in turn, provides a signpost to viewers about the likely nature of the content and what to expect.

While the classification system does prohibit the broadcast of certain content, a key purpose of classification on television is to 'label' material to help viewers make informed choices about what to watch and what children in their care should watch. Applying the classification 'tool', therefore, allows broadcasters to address the needs of different audiences to access the content of their choice.

The application of the classification provisions for content on television is discussed at Chapter 3.

Time zones

The time zones are closely aligned with the classification provisions and only apply to television. The time zones are based on the most likely viewing audience for the time of day. They mandate, for example, that before 7.30 pm, when children are more likely to be watching television, programs carrying an M or higher classification may not be shown. Time zones later in the evening (after 8.30 pm) can carry the broadcast of content suitable for mature audiences only, that is, content classified MA15+.

The ACMA considered the ongoing utility of time zones in its CCSi. Here, the ACMA's community research indicated that many citizens use time zones to manage access to content. The ACMA also received a number of submissions calling for the phasing out of time zones because the changing and transitional nature of the current media environment was placing a strain on their usefulness. The ACMA noted the Australian Law Reform Commission's National Classification Scheme Review in 2013 had

¹¹ Some codes of practice reference the previous guidelines, which also covered computer games (a separate guideline for computer games was introduced on 11 September 2012).

suggested a phased transition away from time zones might be appropriate, but indicated it was likely that a number of preconditions would need to exist before this transition. The ACMA concluded there were:

... a range of views on the utility and value of time zones for audiovisual material in the future. On the one hand, there is conspicuous community support for maintenance of some time zone restrictions on free-to-air television and, on the other, well-reasoned arguments about their diminishing value. This suggests that any contemplated reduction of time zone restrictions might best be staged, taking into account children's viewing habits, the availability and acceptance of other viewing management tools and the provision of educational programs for parents and carers.¹²

Time zone restrictions do not apply to subscription television broadcasters because there is recognition that subscription audiences have different expectations about access to content. Further, these providers and their consumers have greater control over how content is delivered and accessed on these platforms.

1.2.3. Consumer warnings and signposting

Most codes include provisions about consumer warnings or advice. These help listeners or viewers decide what content to access.

The classification requirements in each television code include requirements to provide warnings in certain circumstances. This might be generalist consumer advice, such as 'Parental guidance is recommended for young viewers' or more specific information about the nature of the content; for example, 'Mild violence and coarse language'. The commercial, subscription and community television codes as well as the SBS code contain additional requirements to provide warnings prior to content in a news or current affairs program that may offend or cause distress to viewers (partly because these types of programs are exempt from classification and its associated consumer advice).

The radio codes do not use classification as a tool and therefore do not require the associated consumer advice and warnings that appear on television. Standard 7 of the ABC code requires warnings or advice to precede content on radio or television that is likely to cause harm or offence. The SBS code requires a warning to precede any news segment on radio or television that may cause distress to viewers. The commercial and community radio codes do not have general provisions about consumer warnings, although the commercial radio code does require a warning to precede sexually explicit content.

The ABC code (for both television and radio) also refers to:

... signposting that equips audiences to make informed choices about what they see, hear or read.¹³

There are no express requirements about what form this signposting may take. It could be explicit warnings like the consumer advice required in other codes. It could also be more subtle cues within a program such as comedy 'set-ups' that may indicate to an audience a particular style of joke is coming or an introduction to a segment that outlines the material to be discussed.

¹² ACMA, *Contemporary community safeguards inquiry—consolidated report*, pp. 71–2.

¹³ ABC Code of Practice 2011 (revised in 2016), Standard 7.

1.2.4. Proscribed content or general program provisions

All codes contain a suite of provisions that collectively address a range of 'harmful' or 'alarming' content that is likely to offend generally held community standards. The commercial, subscription and community television codes, and the commercial and community radio codes, all contain proscribed or general programming provisions. These cover a range of safeguards and include prohibiting content that:

- > causes alarm to viewers or listeners
- > provokes or perpetuates intense dislike or hatred (the community radio code refers to vilification).

The community television code and the commercial and community radio codes also include a provision about not encouraging violence.

The SBS code includes similar provisions about not condoning, tolerating or encouraging prejudice or discrimination, and a range of provisions aimed at respecting cultural sensitivities.

The ABC code under Standard 7 also includes similar provisions about not causing harm or offence and avoiding prejudice or discrimination. Standard 7 also refers to the need to be sensitive to cultural practices and to handle reports depicting violence with extreme sensitivity.

1.2.5. Demeaning or exploitative content

The commercial radio code includes provisions aimed at ensuring participants in *live hosted entertainment programs* are not treated in a highly demeaning or highly exploitative manner.¹⁴ The provision also recognises the special vulnerability of children in such live contexts.

1.2.6. Other general provisions about harm and distress

All broadcasting codes include additional provisions that generally address content that might cause 'distress' for viewers or listeners. Often these provisions are associated with news or current affairs programs.

In the television context, these safeguards cover a range of matters that may include variations of the following:

- > treating news content that may cause distress to viewers with sensitivity
- > having sensitivity to relatives and viewers when including images of dead or wounded people
- > not causing distress to victims, witnesses or bereaved relatives
- > not identifying accident victims until their family has been notified
- > not portraying suicide in a favourable light.

Radio does not include a visual component and therefore does not include comparable requirements for distressing imagery. Both the commercial and community radio codes, however, include provisions about the treatment of suicide.

The SBS code includes similar provisions about items that may cause distress and about demonstrating sensitivity when interviewing people who are themselves

¹⁴ The code defines *live hosted entertainment programs* as those (excluding news and current affairs) that are produced and broadcast live to air and are a hybrid program, a substantial part of which includes a live host and one or more of the following—competitions, stunts and pranks. Straightforward telephone-only competitions are excluded.

distressed. The SBS code also includes a provision about the treatment of suicide. These provisions are applicable to both television and radio.

The ABC code, at Standard 7, includes similar provisions about not causing distress to victims, witnesses or bereaved relatives. Standard 7 also requires care to be taken with content that may lead to dangerous imitation, or that may exacerbate threats to public health or individual safety.

1.2.7. Decency

The ‘decency’ provisions apply to commercial and community radio.¹⁵ Broadly, these provisions require broadcasters, as part of their programming decisions, to make an assessment about the appropriateness of the content they broadcast, calibrating it against ‘generally accepted standards of decency’.

In assessing the application of these provisions, the ACMA’s considerations include:

- > subject matter or themes
- > tenor or tone of the broadcast
- > language
- > attitudes conveyed.

A key purpose of the decency provisions is to guide broadcasters in their respective decisions about what content to broadcast. A secondary purpose is to help broadcasters decide if content that some individuals may find inappropriate is nonetheless appropriate in a specific context (having regard to the ‘demographic characteristics of the audience of the relevant program’).

The application of the decency provisions for content on commercial radio is discussed at Chapter 4.

1.2.8. Harm and offence

ABC television content is formally classified. Standard 7 of the ABC code includes a classification provision as well as separate ‘harm and offence’ provisions that apply to both television and radio content.

The ABC code provides that content that is likely to cause harm and offence is permitted if it is justified by the editorial context. These provisions, therefore, facilitate the broadcast of content for targeted audiences whose interests and expectations may differ from generally held community attitudes.

The application of the harm and offence provisions for content on ABC television and radio are discussed at Chapter 5.

Distinctions can arise when applying the classification provisions to the same content as the harm and offence provisions. For example, content might meet appropriate classification requirements but still contravene the harm and offence provisions. This is also discussed at Chapter 5.

1.2.9. The focus of this paper

There is always an element of fine judgement when discerning what content should or should not be broadcast in accordance with prevailing community standards. Some code provisions, however, are expressed with more specificity than others and this can

¹⁵ While explicit ‘decency’ provisions appear only in the commercial radio code, the community radio code includes a directly comparable clause (that refers to community standards).

guide the required judgement. One example is the disclosure of a murder victim's identity prior to the immediate family being notified. Other examples include those regarding inciting hatred or vilification, or preventing undue distress to viewers. These more specifically focused safeguards are not further discussed in this paper.

The focus of this paper is on those provisions that have, comparatively, less specificity in their approach, and which broadly address content that should not be broadcast under any circumstances or content that may be unacceptable to individuals, depending on personal taste and preferences.

More often than not, discerning the distinction between content that may offend the whole community and content that may only offend some individuals requires a nuanced judgement that will be influenced by several factors. There are no hard and fast rules about how to make these judgement calls and each assessment relies on the particular merits of each relevant broadcast. The ACMA has therefore confined the focus of this paper to those provisions where it has particular experience and has developed a body of work over the years. Accordingly, the focus of this paper is on:

- > classification for television (see Chapter 3)
- > decency provisions for commercial radio (see Chapter 4)
- > harm and offence provisions for ABC television and radio (see Chapter 5).

These discussions also include references to consumer warnings and signposting, where relevant.

1.3. Commonalities and differences

There are concepts common to the classification provisions, and the decency and harm and offence provisions. No doubt these similarities arise, at least in part, because the provisions are intended to reflect community standards and values.

Accordingly, the code provisions all acknowledge:

- > Some individuals may find certain types of content inappropriate due to personal preferences or taste. This preference needs to be balanced with the rights of other individuals to access the same content and freedom of expression for broadcasters.
- > Notwithstanding an individual's right to choose what to watch, there is some content that 'crosses the line' and should not be broadcast. This is because it offends generally accepted standards of decency, or is inherently harmful or offensive, and cannot be justified by editorial context.

The six classifiable elements (themes, violence, sex, language, drug use and nudity) are a central reference point in the classification system generally. They reflect topics that by their very nature are likely to be sensitive for many people. Not unexpectedly, similar touch points are evident in decency and harm and offence provisions within the codes.

Context is a pivotal consideration in the classification system as well as for the decency and harm and offence provisions. An important contextual consideration is audience expectations. This consideration is not only relevant for decency and harm and offence assessments, but also to how viewers utilise the classification system to make informed choices about what to watch on television.

Application of the different code provisions, however, also highlights their differences. Assessments of compliance with classification obligations are confined to a close examination of how the material aligns with specific classifiable elements (having

regard to impact and context). In contrast, assessments of decency and harm and offence, while certainly employing a similar lens, tend to involve an overall assessment of a broader set of factors that contribute to audience expectations about community standards.

2. Introduction

Broadcasting codes of practice are developed by industry and registered by the ACMA under section 123 of the Act, or in the case of the national broadcasters' codes, notified to the ACMA after finalisation by the broadcaster, under section 8 of the *Australian Broadcasting Corporation Act 1983* or section 10 of the *Special Broadcasting Services 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 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.¹⁶

2.1. General observations

The ACMA takes a number of factors into account when assessing provisions that require consideration of community standards and values. The particular terms of the applicable code provision are critical but there are also other more general considerations that may affect an assessment.

The considerations that are listed below are generally relevant to all assessments against the decency and harm and offence provisions. Of these considerations, the most relevant to classification are context and cumulative impact, where they have a particular and nuanced meaning (see also Chapter 3).

2.1.1. The ordinary reasonable viewer or listener

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

¹⁶ The ACMA has the power to investigate compliance with broadcasting codes of practice (see 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).

inferences that may be drawn. This is assessed according to the understanding of an 'ordinary reasonable' viewer or listener:¹⁷

The ordinary 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).

In [Investigation Reports 2674 and 2717 \(*The Alan Jones Breakfast Show*\)](#), the ACMA considered statements made by the presenter about putting the then Prime Minister in a chaff bag and throwing her out to sea. In making a no-breach finding, the ACMA took account of how an ordinary reasonable listener would have understood the message:

... none of the statements would be taken literally, nor would they have been likely to incite violence or brutality.¹⁸

Where a program is aimed at children, the ordinary reasonable viewer or listener test is adapted accordingly. For example, in [Investigation Report 2909 \(*Prank Patrol*\)](#), the ABC advised the ACMA that the core demographic of *Prank Patrol* is likely to be children in the age group of eight to 12. The ACMA considered this group, with a focus on children at the younger end of the age spectrum:

Applying this description of the ordinary, reasonable viewer to the current investigation requires the ACMA to consider what an ordinary reasonable eight year-old child, who was of average intelligence, would have expected of the content being broadcast, having regard to the particular standard of the Code being assessed.¹⁹

The ACMA applied the same approach in [Investigation Report 3074 \(*You're Skitting Me*\)](#), where the ABC submitted that the broadcast channel has a core audience of children aged eight to 12. The ACMA observed:

Given the broad age range and the significant cognitive differences between an eight-year-old child and a 12-year-old child, however, when considering the likelihood of harm or offence being caused by a broadcast, the ABC's main focus should be at the younger end of the age spectrum, to ensure the majority of its audience is considered.²⁰

The decency and harm and offence provisions are mitigated, to some degree, by a consideration of the relevant or target audience for whom the content is intended.

In these cases, the ACMA applies the ordinary reasonable viewer or listener test to determine the natural ordinary meaning of the content and will then consider, as appropriate, how the relevant or target audience might react to the content.

¹⁷ This approach was recently affirmed in the Federal Court—see *Channel Seven Perth Pty Limited v Australian Communications and Media Authority* [2014] FCA 669.

¹⁸ [Investigation Reports 2674 and 2717 \(*The Alan Jones Breakfast Show*\)](#), pp. 11–12.

¹⁹ [Investigation Report 2909 \(*Prank Patrol*\)](#), p. 3.

²⁰ [Investigation Report 3074 \(*You're Skitting Me*\)](#), p. 3.

2.1.2. Sensitive issues

Contemporary debate can include discussion of issues that are by their nature sensitive, and code provisions do not preclude broadcasters from tackling sensitive or confronting topics per se.

In [Investigation Report 3071 \(John Laws\)](#), the presenter engaged in a discussion with a listener who disclosed she had been sexually abused by family members as a child:

At the outset, the ACMA observes that it is legitimate for broadcasters to discuss matters of public interest and concern, including extremely sensitive matters such as child sexual abuse and the sexualisation of children. However, such matters should be discussed with care.²¹

Tragic events can be legitimately raised, provided that the discussion is appropriate and sensitive. [Investigation Report 1270 \(Double Dilemma\)](#) involved a competition (dilemma) set against the backdrop of the Holocaust. The ABA found the dilemma posed was 'offensive not only to the Jewish community in Melbourne, but to the audience of the licensee's service'. The report stated:

The ABA acknowledges the right of people to discuss tragic events of both current or historical significance. However, these sorts of discussions should be conducted in a sensitive and appropriate context. In this particular case the placement of the discussion was neither appropriate nor sensitive.²²

2.1.3. Robust political debate

[Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#) concerned several statements made by the presenter about putting the then Prime Minister in a chaff bag and throwing her out to sea. In finding that these statements did not offend generally accepted standards of decency, the ACMA observed:

Strongly and colloquially expressed views are a common feature of Australian political discourse generally, and the discourse of politicians themselves.²³

The ACMA has acknowledged the right of broadcasters to engage in robust political debate. In [Investigation Report 3119 \(The Hamster Decides\)](#), the ACMA accepted:

... *The Hamster Decides* forms part of a broader culture of political debate in Australia, which has historically contemplated robust descriptions of participants in such discourse. The ACMA also accepts that programs that have a reputation for political satire may be permitted greater scope for the use of robust material.²⁴

While accepting the environment for such debate is robust in Australia, the ACMA qualified this by saying:

However, this does not mean that anything is permissible in the context of a free-to-air broadcast. Each situation requires careful assessment of the specific material and the editorial context in which it appears.²⁵

²¹ [Investigation Report 3071 \(John Laws\)](#), p. 5.

²² [Investigation Report 1270 \(Double Dilemma\)](#), p. 13.

²³ [Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#), p. 12.

²⁴ [Investigation Report 3119 \(The Hamster Decides\)](#), p. 14

²⁵ *ibid.*

2.1.4. Context

Context is pivotal in assessments of broadcast material against community standards. What may be justified in one context can be considered inappropriate in another. Context is also a significant consideration in classifying content for television. For example, context can determine whether a particular classifiable element is justified by the storyline or plot and therefore meets the requirements of the particular classification category.

When considering radio programs against the decency code provisions in the current commercial radio code, the audience of the relevant program is one important contextual consideration. This is also a relevant contextual consideration for the harm and offence provisions under the ABC code. Further, the ABC code explicitly states that content likely to cause harm or offence must be justified by the 'editorial context'.

2.1.5. Cumulative impact of the program

The frequency and intensity of discrete program segments or elements will naturally affect the intensity of a program as a whole, and therefore the cumulative impact of that program. This is important in assessments against the classification provisions.

In [Investigation Report 2380 \(*Dante's Cove—Come Together*\)](#), the ACMA found the episode contained frequent visual depictions of sexual activity and nudity with an impact higher than strong. Accordingly, the episode could not be accommodated within the AV classification category, then available.²⁶ In making its finding, the ACMA noted the cumulative impact of scenes might have been reduced by juxtaposing scenes of high impact with others of low impact. Thus, the editing of individual scenes and the sequencing of scenes may affect the impact of classifiable elements. See also [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#).

In [Investigation Reports 1557, 1558, 1559 \(*Big Brother Uncut*\)](#), the ACMA noted:

Intensity, as with frequency, may be a cumulative test, assessed by considering the program as a whole as well as on a scene-by-scene basis. In other words, consideration must be given to the overall frequency and intensity of the classifiable elements throughout the program, as well as in particular scenes.²⁷

In another example, the ACMA found the material in [Investigation Report 2070 \(*Ramsay's Kitchen Nightmares—Dillons*\)](#), was incorrectly classified M, as it contained frequent coarse language (including 43 uses of the word 'fuck' and its derivatives). The repetition and frequency of this language contributed to the ACMA's breach finding.

Cumulative impact is not confined to assessments of television content. The ACMA has considered cumulative impact on radio. In [Investigation Report 2848 \(*Bob Francis*\)](#), the ACMA found the presenter had used very coarse language and made disparaging and derogatory comments to describe a journalist such as 'bitch', 'wanker', 'dickhead woman' and 'smart-arse':

On their own each of the comments were vulgar and, in the context of the program as a whole, the ACMA considers that they had a strong cumulative effect.²⁸

²⁶ The 2010 (and previous versions) of the commercial television code included a separate AV classification category. In this category, depictions or themes of violence made the material unsuitable for an MA classification. In all other respects, content classified AV was required to conform to the MA classification.

²⁷ [Investigation Reports 1557, 1558, 1559 \(*Big Brother Uncut*\)](#), p. 6.

²⁸ [Investigation Report 2848 \(*Bob Francis*\)](#), p. 11.

Relevant investigations



ACMA investigation reports [2674 and 2717](#), [2909](#), [3074](#), [3071](#), [1270](#), [3119](#), [2018](#), [2380](#), [1557](#), [1558](#), [1559](#), [2070](#), [2848](#)

2.2. Program type—the different obligations

The ACMA only investigates content that has been broadcast. The requirements concerning decency, harm and offence, and classification in each of the broadcasting codes differ in their terms. The precise requirements for broadcasters in any case will depend on the terms of the applicable code provisions.

Each television code has provisions relevant to classification that reference the National Classification Scheme Guidelines. Not all codes import the National Classification Scheme Guidelines directly. Many of the codes use revised versions. See Appendix A for code extracts.

The decency provisions only apply to commercial radio, although the community radio code has a comparable clause. The harm and offence provisions only apply to the ABC.

2.2.1. Classification provisions

Commercial television

- > Films:
 - > clause 2.3.1, commercial television code
 - > classified using the National Classification Scheme Guidelines.
- > All other material for broadcast (except news, current affairs and sporting events):
 - > clause 2.1.1, commercial television code
 - > classified using the *Television Classification Guidelines* in the code.

ABC television

- > All domestic television programs (except news, current affairs and sporting events):
 - > clause 7.3 of Standard 7, ABC code
 - > classified using the *Associated Standard: Television Program Classification* in the code.

SBS television

- > All programs and program promotions (except news, current affairs, sport programs and general information):
 - > clause 4.1, SBS code
 - > classified using the *Classification Guidelines* in the SBS code.

Subscription broadcast television

- > All films, drama programs, documentaries and reality television programs:
 - > code 3, subscription code
 - > classified using the National Classification Scheme Guidelines.

Community television

- > All programs (except news, current affairs programs, magazine and opinion programs, community information and sporting events):
 - > code 4, community television code

- > classified using the National Classification Scheme Guidelines.

2.2.2. Decency provisions

Commercial radio

- > Program content:
 - > clause 2.2, commercial radio code
 - > decency provisions.

Community radio

- > General programming:
 - > clause 3.2, community radio code
 - > consider 'community standards'.

2.2.3. Harm and offence provisions

ABC

- > All content (television and radio):
 - > Standard 7, ABC code
 - > harm and offence provisions.

2.3. Investigation approach

Although the specific obligations in the various codes differ, each requires a reflection on community standards and values.

2.3.1. Television

All television codes include classification. Relevant investigations require the broadcast material to be assessed against the classification guidelines specified in each code. This may include whether appropriate consumer warnings were provided.

For ABC television investigations that involve both classification and harm and offence provisions, the content is generally:

- > first assessed against the classification guidelines in the ABC code
- > then considered against the harm and offence provisions, including the use of signposting or consumer warnings.

2.3.2. Radio

Relevant investigations require the following assessments, taking into consideration the needs of the relevant audiences:

- > commercial radio—whether the program content offends generally accepted standards of decency
- > ABC radio—that any content likely to cause harm and offence is justified by the editorial context
- > community radio—that the programming has considered a range of matters including community standards and the social importance of the broadcast.

3. Classification

3.1. The National Classification Scheme Guidelines

Each television code includes requirements that reference the National Classification Scheme Guidelines. Although most codes use modified versions of these guidelines, the core principles remain the same. These are:

- > the importance of context
- > assessment of impact
- > consideration of six classifiable elements (themes, violence, sex, language, drug use and nudity).

3.1.1. Context

Relevantly, the National Classification Scheme Guidelines provide:

Context is crucial in determining whether a classifiable element is justified by the story-line or themes. In particular, the way in which important social issues are dealt with may require a mature or adult perspective. This means that material that falls into a particular classification category in one context may fall outside it in another.²⁹

3.1.2. Impact





The National Classification Scheme Guidelines include an 'impact test' that determines the threshold for each classification category and provide some guidance to this test. This includes consideration of the treatment of individual classifiable elements as well as their cumulative effect. It also requires consideration of the purpose and tone of a sequence, level of detail, use of special effects, frequency and whether it is stylised or realistic.

The guidelines measure impact on a scale that moves, relevantly, from very mild to strong, using a hierarchy of impact, as illustrated in Table 1.³⁰

²⁹ *Guidelines for the Classification of Films 2012.*

³⁰ The impact test in the National Classification Scheme Guidelines also covers R18+ at high and RC, which exceeds high. The *Broadcasting Services Act 1992* prohibits these classification categories from being broadcast on television.

Table 1: The impact test in the National Classification Scheme Guidelines

Category		The impact of the classifiable elements for material classified at this level should be ...
	General (G)	Very mild only
	Parental guidance (PG)	No higher than mild
	Mature (M)	No higher than moderate
	Mature accompanied (MA15+)	No higher than strong

3.1.3. Classifiable elements

The National Classification Scheme Guidelines provide that the context and impact of each element must be considered. This assessment will necessarily include the frequency, intensity, and cumulative effect of the elements. The guidelines also provide that the purpose, tone of a sequence and how material is treated will be relevant to determining the overall classification of content.

3.1.4. Classification and television

While the codes all reference the National Classification Scheme Guidelines, not all codes directly mirror them, so there is some variation from code to code. Some of these modifications are quite clear. For example:

- > the commercial television code includes additional classifiable elements such as dangerous imitable activity and suicide
- > the SBS code gives ‘special attention’ to the cultural context.

There are also some nuanced differences that arise from how the commercial television, ABC and SBS codes have modified the application of each element. For example, the National Classification Scheme Guidelines provide the following advice for the element of violence at the G level:

Violence should have only a low sense of threat or menace, and be justified by context.

In contrast, the *Television Classification Guidelines* from the commercial television code provide the following advice for the element of violence at the G level:

Depictions of physical and psychological violence must be very restrained. The use of weapons, threatening language, sounds or special effects must have a very low sense of threat or menace, must be infrequent and must not show violent activity to be acceptable or desirable.

The ACMA will assess complaints about the classification of material broadcast on television against the guidelines in the relevant television code. Each code is briefly described below.





3.1.5. Commercial television code

The *Television Classification Guidelines* that are included in the commercial television code are a modified version of the National Classification Scheme Guidelines. They apply to all material (other than films—see below) broadcast on commercial television, except for news, current affairs, and sporting events. The commercial television code notes that, for the purpose of classifying films, a licensee must apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995* and make any necessary modifications to films classified under that system to ensure that they are suitable for broadcast or for broadcast at particular times.³¹

The *Television Classification Guidelines* use the six classifiable elements in the National Classification Scheme Guidelines with the addition of ‘suicide’ (across all classifications) and ‘dangerous imitable activity’ (in the G classification):³²

Dangerous imitable activity should only be shown when absolutely justified by the story line or program context, and then only in ways which do not encourage dangerous imitation.

Table 2: The classification categories in the commercial television code

Category		Description
	General (G)	Not necessarily intended for children but must be very mild in impact and must not contain any matter likely to be unsuitable for children to watch without supervision. All elements must be justified by context.
	Parental guidance (PG)	May contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context.
	Mature (M)	Recommended for viewing only by persons aged 15 years or over. The impact must be moderate (i.e. higher than mild but lower than strong). All elements must be justified by context.
	Mature accompanied (MA15+)	Suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of violence, sexual depictions, or coarse language, adult themes or drug use. The impact may be strong. All elements must be justified by context.

Program promotions are also subject to further restrictions, under certain conditions, during G and PG programs. These include restrictions on the promotion of programs classified M or MA15+ during specified time zones. [Investigation Report 3095 \(Ripper Street program promotion\)](#) and [Investigation Report BI-43 \(Catching Milat program promotion\)](#) are two examples where the licensee breached the provisions of the commercial television code in force at the time³³ by broadcasting a promotion that included scenes which had the cumulative effect of breaching the very low sense of

³¹ Clause 2.3.1 of the commercial television code.

³²The commercial television code also includes at G: ‘Other: Music, special effects and camera work may be used to create an atmosphere of tension or fear, but the overall impact should be very mild’.

³³ Provisions in the 2010 version of the code were prescriptive with regard to the type of depictions that could be broadcast. The current code (2015) permits the broadcast of promotions classified PG during G programs.

threat or menace permitted during a program classified G. These requirements are additional to the *Television Classification Guidelines* and are not further discussed in this paper.

3.1.6. SBS code

The SBS system of television classification is a modified version of the National Classification Scheme Guidelines. It applies to all programs and program promotions except for news and current affairs, sport programs and general information.

The SBS system is also built around the six classifiable elements; however, it prioritises four of those elements (violence, sex, nudity and language) and includes the additional element of 'culture'. Clause 4.1 of the SBS Code explains:

SBS's role as a multilingual and multicultural broadcaster requires SBS to reflect a diversity of cultures including those of Aboriginal and Torres Strait Islander communities. SBS classifies programs based on SBS's knowledge of the cultural context of each program. SBS will interpret the relevant classification elements so as not to impede the presentation of relevant cultural information to audiences or limit its ability to reflect diverse cultural values.

3.1.7. ABC code

The *Associated Standard: Television Program Classification* that is included in the ABC code is a modified version of the National Classification Scheme Guidelines. It applies to all domestic television programs with the exception of news, current affairs and sporting events. It applies the six classifiable elements in the National Classification Scheme Guidelines.

The overarching requirement to classify program material appears under Standard 7 of the ABC code. Standard 7 is accompanied by relevant principles that refer to a range of matters, including that the ABC broadcasts innovative and challenging content and provides content for specific target audiences. Another key principle is that the ABC should 'never gratuitously harm or offend'. Accordingly, whether content is gratuitous or not can be a consideration for classification matters.

3.1.8. Subscription code

The subscription code applies the National Classification Scheme Guidelines without modification. Under the subscription code, those provisions apply to films, drama programs, documentaries and reality television programs.

3.1.9. Community television code

The community television code applies the National Classification Scheme Guidelines without modification. Under the community television code, these provisions apply to all programs except news and current affairs, magazine and opinion programs, news updates and news and current affairs promotions, community information material and sporting events.

3.2. Exempt material

The television codes exempt some material from classification. Generally, this includes:

- > news and current affairs (in the case of community television this also includes magazine and opinion programs)
- > sporting events (or in the case of SBS, sporting programs)
- > general information (SBS) or community information (community television).

The effect of these exemptions is that the material is not accompanied by a classification symbol and will generally not require the consumer warnings that accompany some classified material (for example, under the commercial television code, consumer warnings are mandatory for all MA15+ programs).³⁴

This exempt material, however, is still subject to other restrictions under the codes. The commercial television code, for example, requires that licensees exercise care in selecting material for broadcast having regard to the likely audience of the program and any identifiable public interest for presenting the program material.³⁵

A number of provisions in the television codes are aligned with community standards and apply to material that may be exempt from classification. For example, news is generally subject to restrictions in the television codes. Clause 3.2 of the commercial television code provides a number of requirements for news and current affairs programs, including that they:

- > must provide warnings when (for an identifiable public interest reason) broadcasting material that may seriously distress or seriously offend a substantial number of viewers
- > should broadcast reports of suicide or attempted suicide only where there is an identifiable public interest reason to do so, and should exclude any detailed description of the method used, and exclude graphic details or images.

Similar warnings for distressing events in news are also required under the SBS and subscription codes, and the ABC code has a related protection for the reporting of violence, tragedy or trauma. Similarly the community, subscription and SBS codes all have provisions relating to the reporting of suicide.

3.3. Context

Context is a crucial consideration in determining whether a particular classifiable element is justified. Material that falls into a certain classification level in one context may fall outside it in another context.

In [Investigation Report 2141 \(*Cathouse—Hot to Trot*\)](#), the ACMA considered an episode classified MA15+ of a reality TV series about day-to-day life inside a legal Nevada brothel. This was broadcast on subscription television. The ACMA found the episode in question contained sexual content with an impact higher than strong that could not be accommodated within the MA15+ classification. In this assessment, the ACMA noted that the classifiable element 'sex' was high in viewing impact largely because the:

... documentary context and style in which the scenes were filmed and presented implies that the sexual activity depicted is not simulated and viewing impact of these is high.³⁶

The context for drama programs includes the requirement for character development and a believable narrative. Often material that could cause offence to some people is justified by the storyline or plot. For example, in [Investigation Report 2738 \(*The Slap—Hector*\)](#), the ACMA found the scenes that depicted sexual activity were justified because:

³⁴ Clause 2.5.1 of the commercial television code.

³⁵ Clause 2.3.3 of the commercial television code.

³⁶ [Investigation Report 2141 \(*Cathouse—Hot to Trot*\)](#), p. 6.

The sex scenes are considered relevant to the narrative of the program, serving to establish character traits, and are justified within the context of a drama program that is driven by the evolving relationships of its characters.³⁷

In [Investigation Report 2810 \(*The Hamster Wheel*\)](#), the ACMA found that coarse language was used several times in the program but that the comedic tone and context mitigated its impact. Additionally, techniques such as the obscuring of words (through 'bleeping') and the use of sky-writing were employed for humorous effect and lessened the impact. Overall, the ACMA noted the use of coarse language was justified by context and was therefore not gratuitous.

A consideration of the intended audience can also be relevant to context. In [Investigation Report 3314 \(*Degrassi: The Next Generation*\)](#), the ACMA considered a program classified PG. The ABC submitted that the program was aimed at the 'high end' of an age demographic that ranges from those aged six to 15. In deciding that the program was adequately classified at the PG level, the ACMA noted that an important contextual consideration was the intended audience. The ACMA observed that while the PG category covers material that is suitable for viewing, with parental guidance, by children aged under 15 years, the intended audience for the relevant program was teenagers. In making these contextual observations, the ACMA noted:

These considerations do not, alone, indicate appropriate classification of material. They do, however, provide an aspect of context for assessing whether the program meets the specific requirements within the Associated Standard relevant to PG material.³⁸

Relevant investigations



ACMA investigation reports [3095](#), [2141](#), [2738](#), [2810](#), [3314](#)

3.4. Impact

Although the television codes have modified the National Classification Scheme Guidelines somewhat, they employ the same hierarchy of impact that is applicable across the classification categories. For example, under the commercial television code, all material classified G must 'be very mild in impact'; at PG, material must be 'mild in impact'; impact at the M level must be moderate; and, impact at the MA15+ level may be strong. These impact descriptors reflect those employed in the National Classification Scheme Guidelines.³⁹

3.5. Classifiable elements

The television codes that have modified the National Classification Scheme Guidelines still apply the six classifiable elements of themes, violence, sex, language, drug use and nudity to the classification of content. There are, however, nuanced variations in how these elements are applied. For example:

- > Under the commercial television code, the use of coarse language ranges from very mild coarse language being permitted in programs classified G (in certain circumstances) to very coarse language being permitted in programs classified MA (when appropriate to the storyline or program context and not overly frequent or impactful).

³⁷ [Investigation Report 2738 \(*The Slap – Hector*\)](#), p. 6.

³⁸ [Investigation Report 3314 \(*Degrassi: The Next Generation*\)](#), p. 11.

³⁹ Impact is also a consideration in non-classification matters, such as the suitability of material for broadcast in programs promoted to or likely to attract significant numbers of children.

- > Under the ABC code, the use of coarse language ranges from very mild, infrequent and not gratuitous in programs classified G, to 'coarse language may be used' in programs classified MA.

Despite these differences, there is still much in common with how the classifiable elements are applied in each television code. To illustrate the overarching characteristics of each element, the following section provides examples of some ACMA decisions.

3.5.1. Themes

In [Investigation Report 2738 \(*The Slap—Hector*\)](#), the ACMA found no breach of the ABC code in relation to themes. Relevantly, the ABC code states, at the M level:

Most themes can be dealt with, but the treatment should be discreet and the impact should not be strong.

The relevant material was a character breastfeeding a preschool-aged child. The ACMA found this content could be accommodated at the M level, as it was discreetly portrayed, not long in duration and considered less than strong in impact. It was also justified within the context of a drama program, being used to establish particular traits within the development of a character.

[Investigation Report 1685 \(*The Lost Secret of Catherine the Great*\)](#) was also conducted under the ABC code.⁴⁰ In this example, the ACMA considered a brief but strong treatment of the theme of bestiality. The ACMA considered the reference to bestiality was discreet; however, its impact was heightened by accompanying drawings of implied bestiality. The impact was further heightened by the cumulative impact of showing two different drawings consecutively. In this case, the ACMA found the material was incorrectly classified as M content.

In contrast, the ACMA considered the theme of bestiality in [Investigation Report 3119 \(*The Hamster Decides*\)](#), and found this depiction could be accommodated at the MA15+ level under the ABC code. The assessment concerned a collage of suggested sexual activity between a named and pictured individual and a dog. The ACMA considered the image created a high degree of intensity. Relevantly, the ABC code provided:

The treatment of themes with a high degree of intensity should not be gratuitous.

The ACMA, in making its finding, considered the content was not gratuitous:

The image is utilised in order to make a joke that drew on matters that were being covered in the program and through use of irony to make a point relating to the ABC's purpose and funding. [...]

Furthermore, one of the key factors in determining whether material can be accommodated within the MA15+ classification, as established in the introduction to the MA15+ guidelines, is its 'degree of explicitness'. In this regard it is noted that while the image is clearly intended to imply bestiality (as underlined and reinforced by the introduction, voice over and text), it is nevertheless a stylised image that, given its construction, is unlikely to be seen as realistic.⁴¹

⁴⁰ This assessment was made under the 2004 version of the ABC code. The relevant provision was 'Most themes can be dealt with, but the treatment should be discreet, and the impact should not be high'.

⁴¹ [Investigation Report 3119 \(*The Hamster Decides*\)](#), p. 9.

In [Investigation Report BI-157 \(Tosh.0\)](#), the ACMA again considered the theme of bestiality in a comedic context. In this investigation, conducted under the Subscription Broadcast Television Codes of Practice 2013, the material included both realistic and stylised depictions:

The segment contained the classifiable element of themes in the form of a reference to implied bestiality which was strong in viewing impact. Specifically, a heavily pixelated image followed by an adolescent male adjusting his trousers and covering his (clothed) crotch area while standing a short way behind a donkey. The sequence was shown twice within the segment, once in full-frame and then glimpsed on a smaller screen being held by a man.

[...]

This inexplicit treatment of a strong theme was justified in the context of a specific segment that serves to parody a well-known television show, *Cheaters*, within an established comedy series for an older audience.

In [Investigation Report 3314 \(Degrassi: The Next Generation\)](#), the ACMA considered themes at the PG level; in particular, the themes of implied rape and self-harm. The ABC code specifically provides that 'material classified PG will not be harmful or disturbing to children'. In addition, the ABC code also provides guidance for the treatment of themes, which:

... should be discreet and mild in impact. More disturbing themes are not generally dealt with at PG level. Supernatural or mild horror themes may be included.

The ACMA notes a complexity within the ABC code. On the one hand, there appears to be a specific prohibition against material that is disturbing to children; on the other, the description of what is allowed under 'Themes' appears to contemplate that some disturbing themes may be entertained on an exceptional basis.

The ACMA found the themes could be accommodated at the PG level:

Relevantly, the ACMA is of the view that while thematic material that deals with rape and self-harm is reasonably likely to have a capacity to be inherently disturbing to children, its treatment and context may mitigate against the material itself being disturbing or higher in viewing impact.⁴²

Cumulatively, the impact of the sequences was further mitigated by the narrative context that sensitively explored serious themes of potential interest and relevance to the intended audience.

3.5.2. Violence

In [Investigation Report 2520 \(Waking the Dead—Magdalene 26\)](#), the ACMA found a breach of the ABC code.⁴³ Under the relevant code, at the M level:

Generally, depictions of violence should not contain a lot of detail, and not be prolonged. In realistic treatments, depictions of violence that contain detail should be infrequent, and not have a high impact, and/or not be gratuitous.⁴⁴

The episode included realistic depictions of violence, including the depiction of a dead body. The ACMA found this could not be accommodated at the M level, due to the degree of detail, frequency and high impact of the material.

⁴² [Investigation Report 3314 \(Degrassi: The Next Generation\)](#), p. 13.

⁴³ This assessment was made under the 2007 version of the ABC code; however, the provisions were, relevantly, similar to the current code.

⁴⁴ Excerpt is from the 2007 ABC code.

The ACMA considered examples of violence that were restrained or stylised in [Investigation Report BI-43 \(*Catching Milat*\)](#).⁴⁵ Under the 2010 commercial television code, at the M level, violence relevantly:

May be realistically shown only if it is not frequent or of high impact and is justified by the story line or program context. Violence should not be presented as desirable in its own right. Any visual depiction of or verbal reference to violence occurring in a sexual context must be infrequent and restrained, and strictly justified by the story line or program context.

The ACMA found the content was appropriately classified, noting the flashback depictions of violence were stylised and lacking in detail, which mitigated their impact, and verbal references to sexual violence were, in context, infrequent, restrained and justified within the storyline. See also [Investigation Report 2023 \(*Underbelly—Wise Monkeys*\)](#) and [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#).⁴⁶

In [Investigation Report 3314 \(*Degrassi: The Next Generation*\)](#), the ACMA considered violence in a program classified PG. The ACMA did not find a breach of the ABC code, where, at the PG level:

Violence may be discreetly implied or stylised and should be mild in impact and not shown in detail.

The ACMA noted there was a single depiction of violence, which consisted of visuals discreetly implying violence as a character recalled disjointed details of being raped. These were brief, not shown in detail and mild in impact.

3.5.3. Sex

In [Investigation Report 2705 \(*The Slap—Hector*\)](#), under the ABC code, the ACMA found the depictions of sexual activity could be accommodated at the M level. The two relevant scenes discreetly implied sexual activity and were not prolonged. Regarding the impact of the content, the ACMA noted:

The two scenes in which sexual activity is depicted are not prolonged, each being less than one minute in duration, and are considered to take place infrequently within the context of an approximately 60-minute program. It is noted that the program contains a single depiction of nudity in a sexual context, the scene at 15:30 minutes, in which the level of detail is limited by the brevity of the scene, as well as the limited lighting and the wide angle of the shot.⁴⁷

Similarly, in [Investigation Report BI-203 \(*Rake*\)](#), also under the ABC code, the ACMA found the depiction of a sexual activity could be accommodated at the M level because the scene lacked detail, was not prolonged and the verbal references to sexual activity were limited. The sex scene was also considered within the narrative of the episode and was editorially justified within the context of a drama series that consisted of adult storylines.

⁴⁵ This assessment was made under the 2010 commercial television code. The current code (2015) states that depictions of violence may be realistically shown only if they are not detailed or prolonged. Any depiction of or verbal reference to violence occurring in a sexual context must be infrequent and restrained, and strictly justified by the story line or program context.

⁴⁶ These investigations were conducted under the 2004 commercial television code, which contained the same relevant provisions as the 2010 code.

⁴⁷ [Investigation Report 2705 \(*The Slap—Hector*\)](#), p. 5.

In [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#), the ACMA found a breach of the commercial television code.⁴⁸ Relevantly, the code stated, at the M level:

Visual depiction of intimate sexual behaviour may only be implied or simulated in a restrained way. It must be justified by the story line or program context. Verbal references to sexual activity should not be detailed. Visual depiction of nudity must be justified by the story line or program context, and must not be detailed if in a sexual context.

The ACMA found a 40-second depiction of intimate sexual behaviour was not implied or simulated in a restrained way, and therefore could not be accommodated at the M classification. In this report, the ACMA referred to the National Classification Scheme Guidelines for some guidance:

ACMA does not accept [the Licensee's] argument that the duration of a depiction is irrelevant to a judgement about whether or not that depiction is restrained. A judgement about whether or not a depiction is restrained requires consideration of its impact. While the Television classification guidelines do not explicitly identify factors that are likely to determine the impact of classifiable elements, it is noted that the Classification Board Guidelines for Classification of Films and Computer Games, which provide a comparable framework for the classification of material, offer guidance regarding the relationship between duration and impact, stating that, '*[i]mpact may be higher where a scene contains greater detail...[or] is prolonged*' (emphasis in original). ACMA also considers that the longer certain material is depicted, the greater its likely impact on the viewer, and the less likely it is restrained.⁴⁹

3.5.4. Language

The ACMA has considered coarse language in a variety of contexts at the M level. [Investigation Report 2070 \(*Ramsay's Kitchen Nightmares—Dillons*\)](#), assessed 43 uses of 'fuck' or its derivatives. Under the commercial television code, at the M level:⁵⁰

The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.

In this decision, the ACMA considered the meaning of the term 'frequent':

... viewers are likely to perceive the frequency of coarse language in terms of the number of times it is heard in a program, having regard to the length of the program, and that 43 uses of coarse language in a 60-minute period is likely to be regarded as frequent coarse language by viewers, regardless of the total number of words spoken during that period.⁵¹

The ACMA accordingly found the episode was incorrectly classified M as it contained frequent coarse language, which was also found to be not particularly important to the storyline or program context. See also [Investigation Report 2021 \(*Ramsay's Kitchen Nightmares—Secret Garden*\)](#).

⁴⁸ This assessment was made under the 2004 commercial television code; however, the relevant provision was the same as the current code.

⁴⁹ [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#), p. 6.

⁵⁰ This assessment was made under the 2004 commercial television code; however, the relevant provision was the same as the current code.

⁵¹ [Investigation Report 2070 \(*Ramsay's Kitchen Nightmares—Dillons*\)](#), p. 5.

In comparison, in [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#), also under the commercial television code, the ACMA found the episode complied with the M classification provisions for language.⁵² Although coarse language was used frequently (24 instances within a 60-minute period), it was considered particularly important in a dramatic context as it contributed to the realistic portrayal of criminal characters and their associates. The ACMA also noted the language was:

... largely confined to scenes depicting the criminal characters, these are intercut with scenes of the police investigation which generally do not include coarse language, and this mitigates its overall impact.⁵³

See also [Investigation Report 2706 \(*The Slap—Anouk*\)](#) and [Investigation Report 2752 \(*The Thick of It*\)](#) under the ABC code, where language also contributed to character development and was not considered gratuitous; [Investigation Report BI-352 \(*Hard Quiz*\)](#) where a colloquial sexual reference was considered mild in impact; and [Investigation Report 3103 \(*Funny As: Steve Coogan*\)](#) where coarse language was central to the comedy of the song.

In [Investigation Report 1407 \(*A Decade under the Influence*\)](#), the ACMA considered coarse language at the PG level. This was under a previous version of the ABC code, in which coarse language should be ‘mild, infrequent and be justified by context’.⁵⁴

This documentary contained numerous instances of coarse language and was classified M. The ABC edited the material for a PG broadcast, but in the process omitted to obscure one use of ‘fuck’. The ACMA found this one reference was enough to change the content from ‘mild’ to ‘strong’ coarse language, thereby making the content inappropriate for PG classification.

See also Chapter 6 for a discussion about the changing nature of language in the operation of broadcasting codes.

3.5.5. Drug use

In [Investigation Report 2816 \(*The AFL Footy Show*\)](#), the ACMA found the program complied with the M classification provisions of the commercial television code. At the M level:

Intravenous use of illegal drugs may not be shown in detail. The program must not promote or encourage the use of illegal drugs.

The segment considered a proposal to remove marijuana from the list of banned substances. One of the program’s hosts appeared to use a ‘bong’ to illustrate his views that the proposal would be damaging to the sport. The ACMA found the segment complied with the code as it did not promote or encourage drug use.

Similarly, in [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#), also under the commercial television code, the ACMA found that while the scenes depicting drug use did have some detail, drug use was not promoted or encouraged. It was also justified by the storyline in the context of a drama program.

⁵² This assessment was made under the 2004 commercial television code; however, the relevant provision was the same as the current code.

⁵³ [Investigation Report 2018 \(*Underbelly—I Still Pray*\)](#), p. 8.

⁵⁴ [Investigation Report 1407 \(*A Decade under the Influence*\)](#), p. 3. This requirement is relevantly similar to the provision in the current code.

In [Investigation Report 2772 \(Chiko\)](#), the ACMA considered drug use under the SBS code.⁵⁵ Under the relevant code, at the MA15+ level, 'Drug use should be justified by context.'⁵⁶

The ACMA found the depictions of drug use complied with the MA15+ classification provisions of the SBS code at the time:

Drug use is not glamorised in the scene; Tibet is depicted alone in a dimly lit bathroom and is shown initially to cough, then to sweat and drool after inhaling the vapour. At this point in the narrative, Tibet's life has degenerated; he has lost his job trafficking marijuana for Brownie and has fallen out with his close friend Chiko. The scene is relevant to the narrative as it establishes Tibet's feelings of isolation and dejection, as he turns to drugs, which fail to divert him from his problems. Accordingly, the drug use is considered to be justified by context.⁵⁷

Additionally, the ACMA found the drug use was not promoted, encouraged or glamorised, and the depictions were not frequent and were brief in duration.

3.5.6. Nudity

In [Investigation Report BI-216 \(Luke Warm Sex\)](#), the ACMA considered nudity under the ABC code. At the M level: 'Nudity outside of a sexual context may be shown but depictions that contain any detail should not be gratuitous'.

In this case, the documentary-style program, entitled *Fear of Being Nude* contained a number of depictions of full frontal nudity of adults. The ACMA found the scene could be accommodated at the M level because the scenes were filmed in a naturist's house within the context of a program that dealt with the discomfort of being naked, the nudity was not sexualised, genital detail was generally obscured and the 'participants clearly consented to being filmed and were comfortable with their state of undress'.

In [Investigation Report BI-203 \(Rake\)](#), the ACMA also considered nudity under the ABC code at the M level, where nudity in a sexual context 'should not contain a lot of detail, or be prolonged'.

In this case, the ACMA found the program complied with the classification level because of 'the lack of detailed nudity in a sexual context (both characters are predominantly clothed with only partial buttock nudity visible)'.

3.5.7. Suicide

The commercial television code includes suicide as a discrete classifiable element. At the M level, it must not be promoted or encouraged by the program and methods of suicide must not be shown in realistic detail.

In [Investigation Report 2040 \(Underbelly—Earning A Crust\)](#), the ACMA considered the brevity of the reference to suicide, finding the depiction of suicide did not exceed the M classification requirements of the code. In particular, the ACMA noted the depiction was brief, there were no visuals of the method of suicide and the scene contained no instruction or promotion of suicide.

⁵⁵ This assessment was made under the 2006 version of the SBS code. The current 2014 version of the SBS code, relevantly states drug use may be shown, but should not be promoted or encouraged. More detailed depictions should not have a high degree of impact.

⁵⁶ Excerpt from the 2006 SBS code.

⁵⁷ [Investigation Report 2772 \(Chiko\)](#), p. 7.

Relevant investigations



ACMA investigation reports [2738](#), [1685](#), [3119](#), [BI-157](#), [3314](#), [2520](#), [BI-43](#), [2023](#), [BI-203](#), [2018](#), [2705](#), [2706](#), [2340](#), [2070](#), [2021](#), [2752](#), [3103](#), [1407](#), [2816](#), [2772](#), [BI-216](#), [2040](#), [BI-352](#)

4. Commercial radio—decency

4.1. Introduction

Explicit requirements that content meet ‘generally accepted standards of decency’ only apply to commercial radio. The relevant provisions require that:

Program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant program.⁵⁸

Unlike film and television, there is no classification scheme providing consumer advice about the suitability of material broadcast on radio.⁵⁹ In [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#), the ACMA noted:

While there are general laws which protect listeners and citizens against the broadcast of certain material (for example, vilification and defamation laws), there is nothing beyond the Codes to enable listeners (and citizens) to protect themselves from material which is legally broadcast but which has the real prospect of giving unwanted offence or treatment.⁶⁰

The requirement in the code to consider the ‘demographic characteristics of the audience’ allows broadcasters to direct particular content to audiences that choose to listen to the particular program, with an awareness and expectation of the likely content to which they will be exposed.

The community radio requirements do not explicitly refer to ‘decency’; however, they are comparable in effect. The relevant clause states:

We will attempt to avoid censorship where possible. However, in our programming decisions we will consider our community interest, context, degree of explicitness, the possibility of alarming the listener, the potential for distress or shock, prevailing Indigenous laws or community standards and the social importance of the broadcast.⁶¹

Relevant investigations



ACMA Investigation Report [2266](#)

⁵⁸ The 2004 code, which predates the current code, referred to ‘the likely characteristics of the audience of the licensee’s service’.

⁵⁹ Although formal classification provisions do not apply to radio, the commercial radio code does prohibit the broadcast of a feature program with an explicit sexual theme as its core component, unless it is broadcast between 7.00 pm and 6.00 am and appropriate warnings are included. See [Investigation Report BI-195 \(*The Thinkergirls*\)](#) for consideration of a ‘feature program’.

⁶⁰ [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#), p. 11.

⁶¹ Community Radio Broadcasting Codes of Practice 2008, clause 3.3.

4.2. What do we mean by ‘decency’?

The term ‘decency’ is not defined in the commercial radio code. The ABA and the ACMA have consistently adopted its ordinary English meaning derived from dictionary definitions.⁶²

The following definitions from the *Macquarie English Dictionary (Sixth Edition)* are relevant to the meaning of the phrase ‘generally accepted standards of decency’:

Generally *adverb*: 1 with respect to the larger part, or for the most part.
 2 usually; **commonly**; ordinarily

Accepted *adj*: customary; established; approved

Standards *noun* 1 **anything** taken by **general consent** as a basis of comparison; an approved model

Decency *noun* 1 The state or quality of being decent
 2 conformity to the recognised standards of **propriety**, good taste, modesty;
 3 something decent or proper⁶³

Determining generally accepted or prevailing standards is challenging because there is a range of standards within the community and there will always be different views on these matters.⁶⁴

In [Investigation Report 3352 \(*The Kyle and Jackie O Show*\)](#), the ACMA acknowledged that:

... standards are not hard and fast and may change over time and across sections of the community. Determining any consensus is difficult because there are many standards within the community and there will be different views on these matters. Diverse audiences in Australia will not necessarily have tastes and standards in common.

... most people are likely to accept, up to a point, that material that they find coarse or offensive may not be offensive to others. In any given circumstance context will play a key part in determining what offends - or does not offend - against generally accepted standards of decency.⁶⁵

It can be deduced from a number of previous ACMA investigations that the decency provisions set a high bar. For example, in [Investigation Report 2928 \(*Summer 30*\)](#), the ACMA observed:

A program does not offend standards of decency, in the sense contemplated by the Codes, if it simply has ‘shock value’ or has the effect of making one cringe or feel uncomfortable.⁶⁶

⁶² In [Investigation Report 1270 \(*Double Dilemma*\)](#), p. 3, the ABA stated, ‘There is no case law which indicates that the word ‘decency’ is to be given any technical meaning in the Code. Accordingly, the word should be given its ordinary English meaning [...]’.

⁶³ Substantially similar definitions from earlier editions of the *Macquarie English Dictionary* have been adopted by the ABA and the ACMA in earlier investigations.

⁶⁴ See, for example, [Investigation Report 2848 \(*Bob Francis*\)](#), p. 7.

⁶⁵ [Investigation Report 3352 \(*The Kyle and Jackie O Show*\)](#), p. 5.

⁶⁶ [Investigation Report 2928 \(*Summer 30*\)](#), p. 6.

In deciding whether a breach has occurred, the ACMA will reflect on whether material offends against generally accepted standards to the extent that it is inappropriate for broadcast.

Certain debates can include discussion about issues that by their very nature are sensitive, without offending recognised standards of decency. In [Investigation Report 2848 \(Bob Francis\)](#), the ACMA stated:

It is important to distinguish an exchange of ideas and disagreement on talk-back radio from speech which may offend generally accepted standards of decency. In the course of inquiry and argument, a talk-back radio presenter may well introduce material or comments that are challenging and confronting. The discomfort this may give rise to among listeners and the wider community does not in and of itself constitute the offending of generally accepted standards of decency.⁶⁷

4.2.1. Decency and indecency

The concept of decency is broader than material that may be considered 'indecent'. For example, in [Investigation Report 1270 \(Double Dilemma\)](#), the ABA considered submissions on behalf of the licensee that presented case law in respect of the word 'indecency', particularly as used in the criminal law context, and with reference to laws on obscenity and blasphemy. The ABA noted that the word used in the code is not 'indecency' but 'decency' and, in this regard said:

While it is correct that the case law establishes that 'indecency' will take its ordinary dictionary meaning, that is not the term used in the Code. There is no case law which indicates that the word 'decency' is to be given any technical meaning in the Code.⁶⁸

In [Investigation Report 2266 \(The Kyle and Jackie O Show\)](#), the ACMA considered:

... the term 'contemporary standards of decency' refers to the current consensus of recognised present day standards of propriety as opposed, for example, to content that is generally indecent or coarse ... [...]

... the average listener recognises that standards of decency are not hard and fast, either over time or across all sections of the community. In particular, he or she may accept that some material that he or she would consider indecent would not be so judged by some sections of the community, and he or she may be prepared to accept the right of those other groups, up to a point, to have such material broadcast in programs to which they listen.⁶⁹

More recently, but still under the 2013 commercial radio code, the ACMA described the distinction between decency and indecency in these terms:

Generally accepted standards of decency is a broad concept and is not only defined by material that might be considered 'indecent'. In determining whether a breach of Code 1.3 has occurred, the ACMA must reflect on whether material, which may not be to everyone's taste, so offends generally accepted standards that it is inappropriate for broadcast.⁷⁰

Relevant investigations



ACMA investigation reports [3352](#), [2928](#), [2848](#), [1270](#), [2266](#).

⁶⁷ [Investigation Report 2848 \(Bob Francis\)](#), p. 9.

⁶⁸ [Investigation Report 1270 \(Double Dilemma\)](#), p. 3.

⁶⁹ [Investigation Report 2266 \(The Kyle and Jackie O Show\)](#), p. 6.

⁷⁰ [Investigation Report 2928 \(Summer 30\)](#), pp. 4–5.

4.3. Common factors that are considered

Content that offends generally accepted standards of decency can arise in a variety of ways and circumstances. Some content, almost from inception, is likely to offend, while in other cases the offensive elements will unfold, sometimes unexpectedly. There are, however, a number of common factors that can be applied to assessments of the decency code provisions. These include:

- > subject matter or themes dealt with
- > tenor or tone of the broadcast
- > language used in the broadcast
- > attitudes conveyed.

There are some overarching contextual considerations that also affect these factors. They can include the cumulative impact and intensity or strength of the material under question. These particular elements pervade all of the considerations below.

4.3.1. The subject matter or themes dealt with

Care needs to be taken with material with a sexual theme or that is extremely sensitive.

In [Investigation Report BI-195 \(*The Thinkergirls*\)](#), the ACMA found no breach for segment that included an explicit sexual theme. A number of factors were influential, including that:

- > the content was educative, targeted to an adult audience and preceded by a warning to listeners
- > the tone was light-hearted
- > there was no coarse language and references to anatomy were not vulgar or lewd
- > there was no material that was exploitative or demeaning.

In [Investigation Report 2194 \(*Triple M's Porn Star Competition*\)](#), the ACMA found no breach and was influenced by the mildness of the content, which did not use descriptive, sexually explicit or graphic detail, nor feature explicit sexual behaviour.

In contrast, [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#) concerned a segment broadcast on a breakfast show in which a 14-year-old girl was questioned live-to-air about a range of matters, including her sex life, while attached to a lie detector. The ACMA considered:

[...] the breach of accepted standards of decency ultimately arose in this broadcast not because of the disclosure of traumatic circumstances by the participant, or by way of the presenter's ill-considered response to the disclosure, but because of the ill-judged approach to the segment generally, an approach that is ultimately the responsibility of the management of the licensee.⁷¹

In concluding that the segment offended contemporary standards of decency, the ACMA left open the possibility that the theme of child sexual activity could form part of a broadcast if it were handled more carefully:

The ACMA does not suggest that interviewing a child about sexual activity is indecent per se, as it can well contemplate circumstances where any empathetic examination of the subject matter is a vital part of community dialogue and consideration. Rather, it was the manner of the segment that

⁷¹ [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#), p. 10.

offended against contemporary standards of decency, having regard to the audience of the service, including the purported use of a lie detector to sensationalise and render as mere entertainment what might in a different context be an acceptable topic for a radio broadcast.⁷²

Similarly, in [Investigation Report 3071 \(John Laws\)](#), the presenter engaged in a discussion with a listener about sexual abuse. Contemporary debate can legitimately include disagreement or heated discussion of issues that are, by their nature, sensitive, as long as due care is taken:

At the outset, the ACMA observes that it is legitimate for broadcasters to discuss matters of public interest and concern, including extremely sensitive matters such as child sexual abuse and the sexualisation of children. However, such matters should be discussed with care.⁷³

While the ACMA found no breach of the decency provision in this case, it observed:

... child sexual abuse and the sexualisation of children are topics which licensees should approach with great care. In the broadcast complained of, the two matters were clumsily juxtaposed and at times conflated.⁷⁴

The right to discuss tragic events, provided that the discussion is appropriate and sensitive, was raised in [Investigation Report 1270 \(Double Dilemma\)](#). In this case, the subject of the broadcast was a competition (dilemma) set against the backdrop of the Holocaust. The ACMA concluded that the broadcast material,

... was offensive not only to the Jewish community in Melbourne, but to the audience of the licensee's service. The ABA acknowledges the right of people to discuss tragic events of both current and historical significance. However, these sorts of discussions should be conducted in a sensitive and appropriate context. In this particular case the placement of the discussion was neither appropriate nor sensitive.⁷⁵

Relevant investigations



ACMA investigation reports [BI-195](#), [2194](#), [2266](#), [3071](#), [1270](#)

4.3.2. The tenor or tone of the broadcast

A consideration of tenor and tone may include whether the tone was light-hearted or threatening, matter-of-fact or salacious. Aggressive, menacing and vitriolic tones can contribute to a determination that content has breached generally accepted standards of decency. In [Investigation Report 2848 \(Bob Francis\)](#), the ACMA stated that it:

... holds the view that listeners would not expect to hear a sustained, vitriolic attack on an individual broadcast on the radio or consider it acceptable or appropriate.⁷⁶

⁷² *ibid*, p. 12.

⁷³ [Investigation Report 3071 \(John Laws\)](#), p. 5.

⁷⁴ *ibid*, p. 9.

⁷⁵ [Investigation Report 1270 \(Double Dilemma\)](#), p. 13.

⁷⁶ [Investigation Report 2848 \(Bob Francis\)](#), p. 11.

In [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), the ACMA found the licensee in breach of the decency provisions due to the menacing and vitriolic tone of the presenter:

The ACMA makes the following observations about the broadcast:

- > terms used were deeply derogatory and offensive and conveyed in a menacing and vitriolic tone;
- > expressions were used such as ‘you should be fired from your job’ and ‘I’m going to hunt you down’, ‘piece of shit’, ‘fat bitter thing’ and ‘little troll’ which would be understood as aggressive and extreme in this context; and
- > the content was of a kind more likely to be expected in a private conversation than in a public forum or broadcast.⁷⁷

In [Investigation Report 2928 \(*Summer 30*\)](#), the ACMA found the polite and light-hearted tone of the prank telephone call and surrounding context of the segment contributed to a no-breach finding on decency provisions.

In [Investigation Report BI-124 \(*The Kyle and Jackie O Show*\)](#), the ACMA accepted that while a comment concerning a transgender interviewee was crudely expressed and potentially insensitive, it was made within the context of a detailed interview that sought to explore specific transgender issues, and was directly related to the topic of discussion. In this context, the comment was not threatening, abusive, vulgar or contemptuous such that it was unsuitable for broadcast.

4.3.3. The language used in the broadcast

The language used may be so offensive, abusive, vulgar or lewd that it indicates the content may have breached prevailing standards of decency. See, for example, [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), in which the presenter described a journalist as a ‘piece of shit’, ‘fat bitter thing’ and ‘little troll’.⁷⁸

This includes using very coarse language and making disparaging or derogatory comments. In [Investigation Report 2848 \(*Bob Francis*\)](#), the presenter described a journalist as ‘bitch’, ‘wanker’, ‘dickhead woman’ and ‘smart-arse’. The presenter also made vulgar remarks. The cumulative impact of the language used was a contributing factor to the breach finding:

The ACMA notes [the presenter] launched an on-air, sustained and deeply personal verbal attack against the journalist, which was broadcast repetitively throughout the four hour duration of the program. [...]

[The presenter’s] comments became increasingly crude, disrespectful and aggressive with each comment more derogatory than the preceding one, culminating in him calling the journalist a ‘bloody bitch’. On their own each of the comments were vulgar and, in the context of the program as a whole, the ACMA considers that together they had a strong cumulative effect.⁷⁹

Coarse language often has alternate meanings. For example, in [Investigation Report 3352 \(*The Kyle and Jackie O Show*\)](#), the ACMA considered the word ‘wanker’, when directed at another person. The ACMA noted the Macquarie Dictionary recognised three alternate meanings for wanker, these being: someone who masturbates; a foolish or objectionable person; and a self-indulgent or egotistical person. In this case, the ACMA accepted the licensee’s submission that the use of the word was not sexual

⁷⁷ [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), p. 14.

⁷⁸ *ibid.*

⁷⁹ [Investigation Report 2848 \(*Bob Francis*\)](#), pp. 10–11.

in nature and accordingly it was used consistent with the second and third definitions, noting:

While the ACMA has previously acknowledged that the word may be considered offensive or coarse by some members of the community,⁸⁰ in this case it is considered that the program's regular listeners would understand the word is used in the 'Australian vernacular'.

In this sense, the use of the word, while again disrespectful, does not constitute a breach of the decency provision within the context of a robust political debate on a controversial topic where apparently heated statements were made by both participants.⁸¹

Some programs, by their very nature, can include lively debate that can get 'heated' or 'edgy'. In these circumstances, care still needs to be taken. [Investigation Report 1717 \(Saturday Football\)](#) concerned an afternoon sport program that often included heated debates. In this case, one of the program's presenters referred to a caller to the program as a 'fuckwit'. In making its breach finding, the ACMA noted it was an inappropriate comment to make to a listener, noting the:

... likely characteristics of the 3MMM audience would be listeners aged between 10 and 39, in particular, the 18–39 age group. [...]

... the language used did not meet contemporary standards of decency, having regard to the characteristics of the audience.⁸²

In contrast, in [Investigation Report 2928 \(Summer 30\)](#), the type of language used during the prank call contributed to the ACMA's conclusion that the material did not offend generally accepted standards of decency:

The tone of the telephone call and language used in the surrounding context was polite and light-hearted, and the language was not vulgar or sexually explicit.⁸³

The use of a colloquial phrase may, in some circumstances, mitigate what otherwise might offend prevailing standards of decency. [Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#) concerned several statements made by the presenter about putting the then Prime Minister in a chaff bag and throwing her out to sea. In finding these statements did not offend generally accepted standards of decency, the ACMA observed:

Strongly and colloquially expressed views are a common feature of Australian political discourse generally, and the discourse of politicians themselves.⁸⁴

At other times it may be unclear whether or not a phrase is used colloquially and the surrounding material may not assist. In [Investigation Report 3352 \(The Kyle and Jackie O Show\)](#), the presenter referred to a guest as 'just a gerbil of a thing'. In making a no-breach finding, the ACMA noted:

While the ACMA is aware of colloquial meanings that could be inferred from the comment, the lack of surrounding material supporting any such inferences renders the remark innocuous or, at worst, ambiguous. As such, the comment does not reach a level of offence that is in breach of the Codes.⁸⁵

⁸⁰ [Investigation Report 2132 \(The Kyle and Jackie O Show\)](#), p. 6.

⁸¹ [Investigation Report 3352 \(The Kyle and Jackie O Show\)](#), p. 8.

⁸² [Investigation Report 1717 \(Saturday Football\)](#), p. 4.

⁸³ [Investigation Report 2928 \(Summer 30\)](#), p. 6.

⁸⁴ [Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#), p. 12.

⁸⁵ [Investigation Report 3352 \(The Kyle and Jackie O Show\)](#), p. 8.

The ACMA has also considered the use of euphemisms. In [Investigation Report 3089 \(*The Kyle and Jackie O Show*\)](#), the presenters referred to comments made by a caller during the 'Is it normal?' segment. To disguise the sexual nature of the comments, the presenters used terms such as 'intimate with my husband' and 'results' or 'outcome' to refer to ejaculation. In this instance, the ACMA made a no-breach finding; however, it cautioned:

... if the premise of a segment makes it inherently unsuitable for broadcast, the euphemistic, light-hearted tone, or unscripted nature of the material will not 'cure' it.⁸⁶

Relevant investigations



ACMA investigation reports [2848](#), [2751](#), [2928](#), [BI-124](#), [3352](#), [1717](#), [2674](#) and [2717](#), [3089](#)

4.3.4. The attitudes conveyed

The ACMA will consider whether the content demonstrated a contempt and disregard for human life or suffering. This includes references to real, historic and contemporary events that involved human tragedy and death. In these instances, a demonstrated lack of regard, apparent irreverence or contempt for the deceased might be sufficient to offend general standards of decency.

[Investigation Report 1270 \(*Double Dilemma*\)](#) concerned a competition (dilemma) that was set against the historical backdrop of the Holocaust:

... in the context of a genuine competition with an attractive prize, broadcast during the breakfast program, the ABA considers a likely expectation of the audience would be a dilemma that is hypothetical, fun or, at worst, irreverent. [...]

Further, the ABA finds that a likely characteristic of the licensee's audience is that the audience would have at least sufficient knowledge of 'Auschwitz' to appreciate that it is a historical fact that large numbers of ordinary people died there by way of the gas chamber.⁸⁷

The contestant was required to respond to a question involving a choice between the hypothetical survival of two family members:

The apparent need by the presenters to press the contestant into providing an answer demonstrated a high degree of insensitivity to the subject matter of the dilemma, and was likely to have added to the initial offence caused by the historical placement.⁸⁸

Similarly, [Investigation Report 2598 \(*The Chris Smith Afternoon Show*\)](#) involved a competition for prizes in which callers guessed the number of deceased asylum seekers to be buried in Sydney, following the boat crash at Christmas Island in mid-December 2010. The ACMA found the segment included elements of ridicule and contempt for the deceased:

... the quiz competition conveyed an apparent irreverence for the serious nature of the incident and the numerous fatalities that resulted by conducting a competition to guess the number of deaths.⁸⁹

⁸⁶ [Investigation Report 3089 \(*The Kyle and Jackie O Show*\)](#), p. 7.

⁸⁷ [Investigation Report 1270 \(*Double Dilemma*\)](#), p. 8.

⁸⁸ *ibid.*, p. 9.

⁸⁹ [Investigation Report 2598 \(*The Chris Smith Afternoon Show*\)](#), p. 8.

[Investigation Report 2848 \(Bob Francis\)](#) also concerned derogatory comments about asylum seekers. This included the presenter stating:

Bugger the boat people, I say. As far as I'm concerned I hope they bloody drown out there on their way over here! They're not welcome. In my opinion, they are not welcome here.⁹⁰

In this case, the ACMA noted it was likely the Australian community would have an awareness of asylum seeker issues, including the high number of recent asylum seeker fatalities at sea. It concluded the presenter used the context of a discussion about equitable access to crisis assistance for Australian citizens and refugees:

... to convey an unrelated and extremely insensitive view about asylum seekers, namely that he hopes that they drown while en route to Australia; and [the presenter's] comment was made in an aggressive and malevolent tone with a raised voice and conveyed a contemptuous disregard for the numerous fatalities that have occurred at sea.⁹¹

In contrast, portraying an attitude that is not extreme or contemptuous is likely to contribute to a no-breach finding for the decency provisions. This was the case with [Investigation Report 2928 \(Summer 30\)](#), where the ACMA found the attitudes conveyed during the prank call were not contemptuous to the Duchess or the nurses who received the phone call.

The portrayal of people in a demeaning manner, including making deeply derogatory or aggressive remarks about a person, is likely to offend standards of decency. [Investigation Report 2751 \(The Kyle and Jackie O Show\)](#) concerned derogatory comments made about a female journalist. In concluding that these comments had offended standards of decency, the ACMA referred to guidelines then attached to the code.⁹² The guidelines, now published on the CRA website, should assist in developing acceptable practice in the portrayal of women on commercial radio. The guidelines are not enforceable and do not specifically make reference to decency. Nonetheless, the ACMA considers they reflect broad community standards and attitudes.

[Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#) concerned disrespectful comments made about holders of public office. In this case, the ACMA noted, in the context of decency:

A number of these statements are very disrespectful to the Prime Minister and others in public office. However, as noted above, none of the statements would be taken literally ... [...]

The references are not the type or of a level that could be said to breach the Codes. Strongly and colloquially expressed views are a common feature of Australian political discourse generally, and the discourse of politicians themselves.⁹³

⁹⁰ [Investigation Report 2848 \(Bob Francis\)](#), p. 3.

⁹¹ *ibid*, p. 9.

⁹² These guidelines and explanatory notes on the portrayal of women on commercial radio no longer form part of the commercial radio code. Under clause 1.5 of the 2017 code, CRA now maintains a series of guidelines that include information to assist in the portrayal of women on its website.

⁹³ [Investigation Reports 2674 and 2717 \(The Alan Jones Breakfast Show\)](#), pp. 11–12.

Robust political debate often includes exchanges with politicians or other holders of public office. [Investigation Report 3352 \(The Kyle and Jackie O Show\)](#) concerned a heated exchange between the presenter and an Australian Government Minister. In this investigation, the ACMA acknowledged that the absence of 'courtesies' or expected behaviours will not necessarily lead to a breach finding:

... there is a culture of robust political debate and expression in Australia, including that directed from or at participants in such discourse. In this case, while the material within the broadcast did not reflect the courtesies or behaviours that many would prefer to see in public discourse, the absence of such courtesies and behaviours will not necessarily lead to a conclusion that material offends against generally accepted standards of decency.

An ordinary reasonable listener would have understood that the material conveyed that the participants in the interview held strong views that were robustly exchanged, albeit in a manner clearly disrespectful to a Minister of the Crown.⁹⁴

Relevant investigations



ACMA investigation reports [1270](#), [2598](#), [2848](#), [2751](#), [2674](#) and [2717](#), [2928](#), [3352](#)

4.4. What are the moderating factors?

Under the decency provisions, regard must be had to the demographic characteristics of the audience of the relevant program. As part of this, the ACMA considers:

- > audience demographics
- > audience expectations.

Although not determinative, the ACMA will also have regard to any audience or public response (or lack of it) to the broadcast material.

4.4.1. Audience demographics

The demographic characteristics of the audience of the relevant program are identified from survey and ratings data provided by the licensee, where available. For example, in [Investigation Report 1628 \(Lowie's Hot 30 Countdown\)](#), the ACMA identified the licensee's high audience share in the 10- to 17-year-old age group. The material under consideration included an interview with a porn actress. In making a breach finding, the ACMA found the graphic and explicit sexual content of the program was not appropriate considering the age of the program's audience. The ACMA observed:

The discussion focused on the adult sex industry and in the ensuing conversation there were numerous references to sexual activity ... It was foreseeable that inviting a guest introduced as a 'porn actress' to discuss her work in an early evening time slot might lead to the broadcast of explicit material.⁹⁵

Similarly, [Investigation Report 3127 \(Easy Listening\)](#) concerned coarse song lyrics broadcast on a community radio station, at a time when children would be likely to be listening. In relation to the community radio code, the ACMA noted:

In deciding whether or not to broadcast the song, the Codes require that the licensee consider its community interest, in this case, the general community in the licence area. At 4.20 pm on a Sunday afternoon the licensee could reasonably expect that children might be listening. In the context of a Sunday

⁹⁴ [Investigation Report 3352 \(The Kyle and Jackie O Show\)](#), p. 7.

⁹⁵ [Investigation Report 1628 \(Lowie's Hot 30 Countdown\)](#), p. 4.

afternoon, easy listening program, the theme of the song and its offensive lyrics have the potential to alarm and shock some listeners, being entirely out of character with the rest of the program. Prevailing community standards would dictate that offensive language should generally not be broadcast when children are listening, particularly if broadcast without warning, and then only if the language is very mild in intensity or the broadcast is of some social importance.⁹⁶

In other investigations, the ACMA found that some broadcast material, though likely to cause offence to some listeners, would not cause offence to people with the demographic characteristics of the program's audience.

[Investigation Report 2132 \(*The Kyle and Jackie O Show*\)](#) related to the broadcast of a song called *I Kissed a Girl* and coarse language, including the words 'cock', 'wanker' and 'cockhead'. The delegate found no breach of the decency provisions, noting:

The delegate is of the view that 2DAY's regular listeners are adults who are likely to be familiar with the 2DAY service [...]

The delegate also considers the song *I Kissed a Girl*, did not fall outside the expectations of 2DAY's regular audience. Given the likely characteristics of the audience of the licensee's service, it is unlikely that the content of the broadcast complained about, would have offended the audience of 2DAY's service.⁹⁷

See also [Investigation Report 2194 \(*Triple M's Porn Star Competition*\)](#), where the ACMA found no breach, in part due to the age of the audience indicated by demographic data.

Demographic data can be useful to identify who may be listening to the program; in particular, if there is a child audience. However, demographic research, such as the age and gender of a program's audience, can be limited in utility because it does not necessarily provide an insight into the attitudes of the audience, particularly to the specific material being investigated by the ACMA. This was discussed in [Investigation Report 1270 \(*Double Dilemma*\)](#), which concerned a competition set against the backdrop of the Holocaust:

... demographic research, such as into the age group of listeners, is less prone to variation in results due to methodology and interpretation than, for example, attitudinal research. Thus the information provided by the licensee's representatives regarding the age group of the listening audience (18–39 years), and the conclusion that it represents a broad cross-section in terms of gender, ethnicity and religion, education and occupations, is more reliable than information regarding the interests and preferences of the group. Further information regarding the interests and preferences of the group would only have relevance were a direct correlation established between this information and attitudes towards competitions involving the choice of which family members might be executed by gas chamber in the Auschwitz setting.⁹⁸

More recently, the ACMA also canvassed this issue in [Investigation Report 2848 \(*Bob Francis*\)](#):

The licensee further submitted [the presenter] is 'a passionate, opinionated announcer who is renowned in Adelaide for his strong views and passionate opinions'. The licensee submitted, [the presenter's] listeners understand his

⁹⁶ [Investigation Report 3127 \(*Easy Listening*\)](#), pp. 3–4.

⁹⁷ [Investigation Report 2132 \(*The Kyle and Jackie O Show*\)](#), p. 6. This assessment was made under the 2004 version of the code where the consideration was of the 'audience of the licensee's service'. Under the 2013 code, the consideration was of the 'audience of the relevant program'.

⁹⁸ [Investigation Report 1270 \(*Double Dilemma*\)](#), p. 4.

mannerisms and expect (and often demand) strong reactions and passionate debate when listening to his show'. While one of the relevant characteristics of the audience of a program would be the likely expectations of that audience, the demographic characteristics (including the fact that the audience is over 55) are not determinative of their attitudes.⁹⁹

A similar observation about audience attitudes was also made in [Investigation Report 3257 \(*Kate, Tim and Marty*\)](#), with reference to a younger demographic of 18 to 25-year-olds; in [Investigation Report BI-195 \(*The Thinkergirls*\)](#), with respect to 18 to 39-year-olds; and in [Investigation Report BI-259 \(*Mornings with John MacKenzie*\)](#), with reference to an audience aged over 55.

The ACMA, however, is not limited to demographic data and has observed that the demographic characteristics of the program's audience are not determinative of the question as to whether material offends generally accepted standards of decency. In [Investigation Report 2848 \(*Bob Francis*\)](#), the ACMA observed:

Clause 1.3(a) of the Codes requires the ACMA to have regard (though not sole regard) to the demographic characteristics of the audience of the program ...¹⁰⁰

Nor is the ACMA confined to considering the 'core audience' of the program. [Investigation Report 1270 \(*Double Dilemma*\)](#) concerned a dilemma set against the historical backdrop of the Holocaust. The ACMA observed that Jewish people may not make up the core demographic of the audience, but respect for that group may still be a likely characteristic of the overall audience. In making its finding, the ABA observed:

... it is likely that there are members of the Melbourne Jewish community who are amongst the licensee's audience, that some of these listeners would have relatives who were affected by wartime persecution, and that the material would have more acutely affected these listeners than other listeners ... The well-known sensibilities of a prominent minority group, such as the Melbourne Jewish community, may be taken into account where there is evidence to suggest that other audience members would expect that the particular group's sensibilities would be respected.¹⁰¹

The ACMA's consideration is also not confined to just the audience of the relevant program. In [Investigation Report 2751 \(*The Kyle and Jackie O Breakfast Show*\)](#), the ACMA observed:

Clause 1.3(a) ... requires the ACMA to have regard to the demographic characteristics of a subset of the broad community, being the audience of the program. But it does not confine the ACMA to considering only the standards prevailing within that subset.¹⁰²

In some examples, the content will be found to offend standards of decency regardless of the audience. In [Investigation Report 2598 \(*The Chris Smith Afternoon Show*\)](#), the ACMA observed that the relevant material would be offensive to everyone, irrespective of their demographic characteristics:

The ACMA considers that any section of the Australian community, including diverse audiences in Australia with differing everyday tastes and standards as well as the particular audience of the program, would regard the trivialisation

⁹⁹ [Investigation Report 2848 \(*Bob Francis*\)](#), p. 8.

¹⁰⁰ [Investigation Report 2848 \(*Bob Francis*\)](#), p. 7.

¹⁰¹ [Investigation Report 1270 \(*Double Dilemma*\)](#), p. 11.

¹⁰² [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), p. 13.

of the death and the mocking of the burial of a person or a group of persons, to offend standards of decency.¹⁰³

Similarly, in [Investigation Report 2848 \(Bob Francis\)](#), the ACMA was not persuaded by the licensee's argument that the program's audience, familiar with the presenter's style, would be likely to understand the presenter's remark 'to be ridiculous, ill-conceived and in poor taste rather than as offending generally accepted standards of decency'. The ACMA disagreed and stated:

... regardless of their views about the acceptance of asylum seekers, the general community and the audience of the *Bob Francis* program would consider remarks hoping that asylum seekers drown on their way to Australia, especially in the context of recent fatalities under such circumstances, to be deeply offensive.¹⁰⁴

Relevant investigations



ACMA investigation reports [1628](#), [3127](#), [2132](#), [2194](#), [1270](#), [2848](#), [3257](#), [BI-195](#), [BI-259](#), [2751](#), [2598](#)

4.4.2. Audience expectations

A presenter's style

The reputation of a presenter and the audience's familiarity with a presenter's style is relevant to audience expectations. In [Investigation Report 2324 \(Bob Francis\)](#), the ACMA noted:

One of the likely characteristics of a broadcasters' audience is the expectations of that audience. That is an audience would be entitled to expect that they would not, without warning, hear something outside the usual programming content of that broadcast.¹⁰⁵

Where a presenter is well-known for a particular style, potentially offensive material may be more acceptable to listeners accustomed to that style. [Investigation Report 2812 \(The Kyle and Jackie O Show\)](#) concerned remarks made by the presenter about a child with extra limbs. In finding that the material was not in breach of the decency provisions, the ACMA observed:

While the comments were in poor taste, were mocking of the Child and were or were likely to be offensive to some listeners, they were not lewd, coarse or indecent in the sense contemplated under clause 1.3(a). Furthermore, the ACMA considers that regular listeners of the Program would be aware of its standard format and content, as well as [the presenter's] irreverent and (intended) presentation style.¹⁰⁶

In [Investigation Report 2068 \(The Sunday Roast\)](#), the ACMA used a similar approach to explain why language that may be offensive to some people was permissible in a particular style of program:

The program *The Sunday Roast* 'is an interactive, light-hearted and often irreverent look at sport'. Given the talk-back nature of the program and its sports genre, it is considered that the program's purpose is to provoke discussion and debate. In other words, it would not be unusual that a presenter or listener would become opinionated and passionate in discussion or debate of a sports-related topic. In this regard, it is noted that at the

¹⁰³ [Investigation Report 2598 \(The Chris Smith Afternoon Show\)](#), p. 9.

¹⁰⁴ [Investigation Report 2848 \(Bob Francis\)](#), p. 10.

¹⁰⁵ [Investigation Report 2324 \(Bob Francis\)](#), p. 6.

¹⁰⁶ [Investigation Report 2812 \(The Kyle and Jackie O Show\)](#), p. 12.

commencement of the segment, one of the presenters stated 'people are fired up this morning which we love.' In light of the nature of the program it is considered that the regular listeners of *The Sunday Roast* would be aware of the controversial nature of the program and accept its style of blunt and sometimes rude commentary as being part of this presentation style.¹⁰⁷

Similarly, in [Investigation Report BI-259 \(*Mornings with John MacKenzie*\)](#), the ACMA noted:

The ACMA accepts that the audience of *Mornings with John MacKenzie* would have been familiar with the, at times, confrontational and irreverent style of the host and his guests, as well as the nature of the language frequently used on the program. However, [...] (a)udience familiarity also does not necessarily mean that content does not offend against generally accepted standards to the degree that it is unsuitable for broadcast.¹⁰⁸

However, a presenter's style cannot be relied on as a justification for broadcasting material that is deeply offensive. In [Investigation Report 2848 \(*Bob Francis*\)](#), the ACMA considered an argument from the licensee that while the presenter's comments were distasteful, the audience would understand when the presenter is to be taken seriously and when he is simply venting or showing frustration at a listener or around an issue of concern to him:

... the licensee submitted that the program's audience would be 'likely to understand [the presenter's] remark to be ridiculous, ill-conceived and in poor taste rather than as offending generally accepted standards of decency'.

The ACMA is not persuaded by this argument ... regardless of their views about the acceptance of asylum seekers, the general community and the audience of the [program] would consider remarks hoping that asylum seekers drown on their way to Australia, especially in the context of recent fatalities under such circumstances, to be deeply offensive.¹⁰⁹

Similarly, in [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), the ACMA found that the licensee had breached the decency provisions, notwithstanding that regular listeners of a particular program would likely be familiar with the program's format, and the irreverent, aggressive presentation style.

Well-known program formats

Broadcasters need to exercise caution when departing from a well-known and pre-existing format, as this can be inconsistent with the audience's expectations. In [Investigation Report 1270 \(*Double Dilemma*\)](#), the ABA noted that prior to the broadcast under investigation, the licensee had run a series of hypothetical dilemmas. By contrast, the gas chamber dilemma scenario was not hypothetical:

The scenario that is the subject of this investigation was not hypothetical, as it was based on an actual historical event, unlike the scenarios of the previous dilemmas. Further, the persons involved in the scenario were not hypothetical as the contestant was required to choose publicly between two living close relatives. The dilemma thereby forced the contestant to risk damage to her relationships with these family members.¹¹⁰

¹⁰⁷ [Investigation Report 2068 \(*The Sunday Roast*\)](#), p. 8. This assessment was undertaken using the 2004 version of the code, where the provisions were relevantly similar.

¹⁰⁸ [Investigation Report BI-259 \(*Mornings with John MacKenzie*\)](#), p. 7.

¹⁰⁹ [Investigation Report 2848 \(*Bob Francis*\)](#), pp. 9–10.

¹¹⁰ [Investigation Report 1270 \(*Double Dilemma*\)](#), p. 9.

Similarly, in [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#), the presenters used the device of a lie detector to ask a 14-year-old girl about her sexual activity. As the ACMA observed:

The current broadcast can be distinguished from previous lie detector segments that have been broadcast on the Program. It is noted that previous segments, while also controversial, did not involve participants who would be considered vulnerable, were humorous in tone and appeared mostly to be intended for obtaining light-hearted gossip.¹¹¹

Signposts

The programming context also provides signposts for the likely expectations of the audience. Warnings on air and on a broadcaster's website may calibrate audience expectations about the style of program and the likely material that will be included in each program format. In [Investigation Report 3038 \(*Adelaide's Fun Breakfast*\)](#), in finding no breach of the decency provisions, the ACMA took into account that the event being commented on had been promoted beforehand:

The event had been promoted on the program for the previous five weeks creating audience awareness of the event, the preparation for the event (Snowy's promise to lose weight and exercise to improve his health), and the purpose of the event—to raise money for the South Australia Leukaemia Fund.¹¹²

See also [Investigation Report 2264 \(*Labrat, Camilla and Stav*\)](#) and [Investigation Report 2304 \(*The Kyle and Jackie O Show*\)](#), which also included prior promotion that was found to mitigate the circumstances.

4.4.3. Audience or public response to the broadcast¹¹³

As a background matter, the ACMA may note the public reaction or number of complaints about a particular broadcast. This observation, however, is not determinative as it is not a code matter.

[Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#) involved a high level of complaints and media responses. The ACMA noted:

The relatively high number of complaints that the licensee received (including from listeners), together with the wide-spread media reportage generated by the broadcast, is not determinative but is one indicator that both listeners and the broader community were offended by the segment and that the program content did not comply with generally accepted standards of decency.¹¹⁴

See also [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#); [Investigation Report 2848 \(*Bob Francis*\)](#); and [Investigation Report 1270 \(*Double Dilemma*\)](#).

¹¹¹ [Investigation Report 2266 \(*The Kyle and Jackie O Show*\)](#), p. 12.

¹¹² [Investigation Report 3038 \(*Adelaide's Fun Breakfast*\)](#), p. 4.

¹¹³ There is no requirement in either the *Broadcasting Services Act 1992* or the commercial radio code that a complainant must verify they had listened to the original broadcast. In [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), the ACMA rejected the licensee's argument that bona fide complaints are only those from audience members who heard the original broadcast of the program and not, say, from others who became aware of the content after the original broadcast.

¹¹⁴ [Investigation Report 2751 \(*The Kyle and Jackie O Show*\)](#), p. 14.

This approach is also reflected in no-breach findings. In [Investigation Report 2194 \(Triple M's Porn Star Competition\)](#), the fact that the licensee only received two complaints was relevant to the ACMA's no-breach finding.

Relevant investigations



ACMA investigation reports [2324](#), [2812](#), [2068](#), [BI-259](#), [2848](#), [2751](#), [1270](#), [2266](#), [3038](#), [2264](#), [2304](#), [2194](#)

5. ABC—harm and offence

5.1. Introduction

Section 7 of the ABC code sets out an overarching strategy that combines provisions relating to offence and provisions relating to harm. This strategy also includes classification. The ABC's *Guidance Note: Harm and Offence* provides a rationale for these requirements:

It's perfectly acceptable for us to broadcast or publish material that might harm or offend, or even content that we know will definitely do so, as long as there's sufficient editorial context and purpose to justify it. In other words, it can't be gratuitous.¹¹⁵

There are seven harm and offence standards. These are interpreted and applied in accordance with a set of underlying principles. The seven standards are:

- 7.1 Content that is likely to cause harm or offence must be justified by the editorial context.
- 7.2 Where content is likely to cause harm or offence, having regard to the context, make reasonable efforts to provide information about the nature of the content through the use of classification labels or other warnings or advice.
- 7.3 Ensure all domestic television programs – with the exception of news, current affairs and sporting events – are classified and scheduled for broadcast in accordance with the ABC's Associated Standard on Television Program Classification.
- 7.4 If inadvertent or unexpected actions, audio or images in live content are likely to cause harm or offence, take appropriate steps to mitigate.
- 7.5 The reporting or depiction of violence, tragedy or trauma must be handled with extreme sensitivity. Avoid causing undue distress to victims, witnesses or bereaved relatives. Be sensitive to significant cultural practices when depicting or reporting on recently deceased persons.
- 7.6 Where there is editorial justification for content which may lead to dangerous imitation or exacerbate serious threats to individual or public health, safety or welfare, take appropriate steps to mitigate those risks, particularly by taking care with how content is expressed or presented.
- 7.7 Avoid the unjustified use of stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice.

This combined suite of standards and principles help to judge whether content that has the potential to cause harm or offence is justified by the editorial context.

The ABC's *Guidance Note: Harm and Offence* helpfully articulates a distinction between offence and harm:

To offend someone is to 'irritate in mind or feelings' or to 'cause resentful displeasure' (*Macquarie Dictionary*). Causing harm, on the other hand, can go much further than that, and the consequences of more substantial harm can be greater. By way of example, standard 7.6 ... talks about the risk of 'dangerous imitation', which can have a significant impact on both public

¹¹⁵ ABC, *Guidance Note: Harm and Offence*, issued 29 July 2014, p. 3. This guidance note does not impose obligations on the ABC, but it can assist in interpreting and applying the standards.

health and the lives of individuals. Serious attacks on named individuals can also cause harm to reputation that carries legal risks.¹¹⁶

It is true that in some circumstances there may be no clear distinction between content that causes harm and content that causes offence. For the purposes of the discussion in this chapter, we have focused on only four of the provisions under Standard 7. The three standards that will not be discussed are those that principally address causing distress to victims (7.5), serious threats to public health (7.6) and discrimination (7.7). These matters were briefly canvassed at section 1.3 of this paper, where it was noted that similar matters are also addressed through comparable, but discrete, safeguards in other codes.¹¹⁷

In practice, the majority of assessments undertaken by the ACMA have concerned three of the seven standards listed under section 7 of the ABC code. They are standards 7.1 (harm and offence), 7.2 (signposting) and 7.3 (classification).

These provisions are interrelated and it is not uncommon for a complaint to reference two of these provisions or, indeed, all three (see the case study at section 5.4).

Prior to the harm and offence provisions coming into effect in 2011, the ABC code included provisions relating to discrete elements such as language, violence and sex. Generally, the code provided that such content should not be gratuitous and should be justified by the editorial context. See Chapter 6 for a discussion about the changing nature of language.

5.2. Addressing Standard 7.1

Under Standard 7.1:

Content that is likely to cause harm or offence must be justified by the editorial context.

Context is the foundation of the harm and offence provisions. The principles set out in the ABC code that relate to this standard state:

Context is an important consideration. What may be inappropriate and unacceptable in one context may be appropriate and acceptable in another. Coarse language, disturbing images or unconventional situations may form a legitimate part of reportage, debate, documentaries or a humorous, satirical, dramatic or other artistic work. Consideration of the nature of the target audience for particular content is part of assessing harm and offence in context, as is any signposting that equips audiences to make informed choices about what they see, hear or read.

When applying Standard 7.1, the ACMA will necessarily take into account the related principles. Relevantly, in acknowledging that the ABC should never gratuitously harm or offend, the principles refer to content by using terms such as 'challenging', 'inappropriate' and 'unacceptable'.¹¹⁸ In practice, the ACMA will determine an outcome by considering a wide range of factors and weighing them in light of the relevant context.

¹¹⁶ ABC, *Guidance Note: Harm and Offence*, issued 29 July 2014, p. 2.

¹¹⁷ See, for example, sections 2.6: Material not Suitable for Broadcast and 3.2: News and Current Affairs Programs in the commercial television code and 1.1: Proscribed Matter in the commercial radio code.

¹¹⁸ ABC Code of Practice 2011 (revised in 2016), p. 8.

This process of working through the range of factors can be stepped out as a series of questions.

Assessing harm and offence, Standard 7.1

1. Does the material have the intrinsic capacity to be likely to cause harm or offence?
 - > If it has no capacity to be likely to cause harm or offence, then the matter ends there. If the answer to question 1 is 'yes', then the following further questions arise:
2. What factors are there moderating any harm or offence?
3. What is the editorial context?
 - > the nature of the program
 - > the target audience
 - > signposting
 - > editorial purpose.
4. Does the editorial context justify the likely harm or offence?

5.2.1. Intrinsic capacity to be likely to cause harm and offence

There are no hard and fast rules about what content is likely to cause harm and offence. Accordingly, the ACMA will have regard to a wide range of factors.

The nature of the concerns raised by the broadcast and their relative seriousness are relevant. In [Investigation Report 3252 \(ABC News\)](#), the ACMA found:

... recruitment videos for ISIS, by virtue of their very nature and purpose of encouraging young Muslims to join an ASIO-defined terrorist organisation, have an intrinsic capacity to be likely to cause harm in some circumstances.¹¹⁹

[Investigation Report 2693 \(Tom and Alex\)](#) concerned sexual innuendo and references to young children.¹²⁰ The ACMA noted the sensitive nature of the complainant's concerns but noted that although the comments were 'vulgar', they did not explicitly describe or encourage sexual activity or abuse of children. [Investigation Report BI-203 \(Rake\)](#) more generally noted that, 'depending on context, depictions of sexual activity have some intrinsic capacity to cause offence to some viewers.' See also [Investigation Report BI-349 \(Hard Quiz\)](#) that included a brief reference to a person's genitals.

Sometimes assessments will canvas a complex range of interrelated factors. In [Investigation Report 3119 \(The Hamster Decides\)](#), the ACMA considered a conceptually strong and disturbing image, reference to social taboos and the depiction of an identified person. The report stated:

The ACMA considers that the image depicting implied bestiality, as well as the use of very strong coarse language in a personalised attack on a critic of the ABC, was reasonably likely to cause a high intrinsic level of harm or offence.¹²¹

In other examples, the assessment may focus on one key factor. These can include things such as language, sex, violence and drug use.

¹¹⁹ [Investigation Report 3252 \(ABC News\)](#), p. 4.

¹²⁰ [Investigation Report 2693 \(Tom and Alex\)](#), pp. 3–4.

¹²¹ [Investigation Report 3119 \(The Hamster Decides\)](#), p. 12.

For example, [Investigation Report 3272 \(Law Report\)](#), referred to the use of coarse language. In this report, the ACMA noted:

The *Macquarie Dictionary* defines coarse (when used in conjunction with language) as being 'rude or offensive'. As such, coarse language has an intrinsic capacity to be likely to cause offence.¹²²

The ACMA has considered language or phrases that are used as colloquialisms. In [Investigation Report 3021 \(Promotion for Shaun Micallef's Mad as Hell\)](#), the term 'Jesus Christ on a Bike' was used. The ACMA acknowledged in the report that the phrase was offensive to the complainant. Overall, the ACMA found the phrase was justified by the editorial context and:

... the phrase was spoken as an exclamation of surprise, and that it was not spoken in a seriously aggressive manner or as an expression of abuse or contempt, but rather for comedic effect. Given the phrase was used in this way, and that it is commonly used as a colloquialism, the ACMA considers that it was not used to gratuitously harm or offend.¹²³

The ACMA also considered the offensive nature of the colloquial use of coarse language in [Investigation Report BI-125 \(Four Corners\)](#), where the language used by an interviewee:

... was not directed at another person in a way that was intended to insult or offend that person. Rather, the coarse language was used in a colloquial sense either as an exclamation or intensifier to convey his views on allegations made against him and [his partner], his affection and concern for his partner and friend, and his view of his current situation.¹²⁴

The ACMA considered the capacity of comments specifically directed at an individual to cause offence in [Investigation Report BI-191 \(Veronica and Lewis\)](#):

The material was directed at a named individual in the terms noted by the complainant, and, on this basis, has an intrinsic capacity to be likely to cause offence.¹²⁵

Relevant investigations



ACMA investigation reports [3252](#), [2693](#), [BI-203](#), [3119](#), [3272](#), [3021](#), [BI-125](#), [BI-191](#), [BI-349](#),

5.2.2. What factors are there moderating any harm or offence?

If the answer to the first question of the 'assessing harm and offence' questions stepped out above is 'yes', then the ACMA will consider if there were any factors moderating harm and offence.

The interpretation provision in the ABC code requires the standards to be interpreted and applied with due regard for the nature of the content under consideration in the particular case.¹²⁶ The ACMA will, therefore, consider whether the nature of the relevant content gives rise to any factors likely to moderate against any likely harm and offence.

¹²² [Investigation Report 3272 \(Law Report\)](#), p. 4.

¹²³ [Investigation Report 3021 \(Promotion for Shaun Micallef's Mad as Hell\)](#), p. 3.

¹²⁴ [Investigation Report BI-125 \(Four Corners\)](#), p. 5.

¹²⁵ [Investigation Report BI-191 \(Veronica and Lewis\)](#), p. 4.

¹²⁶ ABC Code of Practice 2011 (revised 2014), p. 4.

These moderating factors are generally considered prior to assessing the editorial context. There may, however, be some overlap between potentially moderating factors and factors that are relevant to the editorial context.

In [Investigation Report 3119 \(*The Hamster Decides*\)](#), the content under consideration was a joke that formed part of a satirical program about the media coverage of the 2013 federal election. Many of the moderating factors raised in this particular assessment focused on the presentation of the graphic image that was central to the joke. It was noted that the ‘very extremity of the ideas in the segment was essential to the nature of this particular joke’ and that the joke was ‘knowingly silly’.¹²⁷

Notwithstanding these moderating factors, the ACMA concluded the material was still likely to offend. This consideration of the nature of the joke ultimately contributed to the ACMA’s overall breach finding:

While, the strategy of using an extreme, likely to be offensive, and disproportionate image to make a humorous point was, from the producer’s viewpoint, important to the joke, it was also inherently risky. That risk is that the likely level of offence cannot be justified by the editorial context ... So the disproportionality, central to the joke, is also a central ingredient to that risk.¹²⁸

In [Investigation Report 3272 \(*Law Report*\)](#), the relevant content was the coarse language used. In this case, the language was used within a series of verbal quotes that concerned allegations about abusive language being directed at asylum seekers. The ACMA found:

While the coarse language used had the intrinsic capacity to be likely to cause offence, the material was alleged to quote others and was directly relevant to the accusations at hand. These factors, at least to some degree, moderate against likely offence.¹²⁹

Overall, the ACMA found these moderating factors contributed to a no-breach finding.

Humour as a moderating factor was also considered in [Investigation Report BI-191 \(*Veronica and Lewis*\)](#), [Investigation Report BI-216 \(*Luke Warm Sex*\)](#) and [Investigation Report BI-84 \(*Breakfast with Red Symons*\)](#).

The ACMA also considers the intensity of the potentially harmful content and whether it is discreet or overt. In [Investigation Report 2738 \(*The Slap—Hector*\)](#), the ACMA found the scenes that contained sexual activity, partial nudity, drug use and coarse language were depicted discreetly. This contributed to the no-breach finding.

Relevant investigations



ACMA investigation reports [3119](#), [3272](#), [BI-191](#), [BI-216](#), [BI-84](#), [2738](#)

¹²⁷ [Investigation Report 3119 \(*The Hamster Decides*\)](#), p. 12.

¹²⁸ [Investigation Report 3119 \(*The Hamster Decides*\)](#), p. 18.

¹²⁹ [Investigation Report 3272 \(*Law Report*\)](#), p. 4.

5.2.3. What is the editorial context?

If the answer to the second question of the 'assessing harm and offence' questions stepped out above is 'yes', then the ACMA will consider the editorial context, looking at:

- > the nature of the program
- > the target audience
- > signposting
- > editorial purpose.

The nature of the program

The ABC principles refer to a range of program genres that are relevant to editorial context, although this list is not intended to be exhaustive. These include reportage, debate, documentaries or a humorous, satirical, dramatic or other artistic work.

As stated in [Investigation Report 3119 \(*The Hamster Decides*\)](#), the

... nature of the program is a factor relevant to editorial context in large part because it establishes audience expectations.¹³⁰

A good example of audience expectations is comedy where there is an expectation that some content may push boundaries of good taste or cause offence. [Investigation Report 2784 \(*Raw Comedy Festival*\)](#) concerned a statement made by a comedian during a stand-up comedy segment that referenced a person with learning difficulties. In making a no-breach finding, the ACMA took into account and agreed with the ABC's submission:

... that 'the target audience would, we believe, reasonably anticipate some of the 'raw' comedy contained during the broadcast to take risks, on occasion pushing the boundaries of good taste'.¹³¹

Similarly, in [Investigation Report 2810 \(*The Hamster Wheel*\)](#), the ACMA found:

The program's strong comedic tone and context mitigates the impact of the coarse language.¹³²

In the case of [Investigation Report 2096 \(*Summer Breakfast*\)](#), sensitive issues were discussed in a humorous context. The presenters engaged in an exchange about their religious beliefs, the historical tensions between Christians and Jews over the crucifixion of Jesus Christ and whether the Jewish presenter celebrated Christmas. In making a no-breach finding, the ACMA noted the presenters both had backgrounds as comedians and often took a light-hearted, humorous and sometimes irreverent approach to their broadcasts:

Whilst it is accepted that the broadcast was offensive to the complainant and may have been considered offensive by other listeners ... In the context of the program as a whole, ACMA finds that the comments were not made exclusively with the intent of offending, notwithstanding the actual impact on the complainant or other listeners.¹³³

See also [Investigation Report 2016 \(*Breakfast with Red Symons*\)](#), [Investigation Report BI-84 \(*Breakfast with Red Symons*\)](#), and [Investigation Report 2673 \(*Judith Lucy's*\)](#)

¹³⁰ [Investigation Report 3119 \(*The Hamster Decides*\)](#), p. 13.

¹³¹ [Investigation Report 2784 \(*Raw Comedy Festival*\)](#), p. 5.

¹³² [Investigation Report 2810 \(*The Hamster Wheel*\)](#), p. 6.

¹³³ [Investigation Report 2096 \(*Summer Breakfast*\)](#), p. 5. This assessment was made under the 2004 version of the ABC code.

[Spiritual Journey](#)) for similar findings on the comedic nature of the programs and the irreverent style of the presenters.

In [Investigation Report BI-351 \(Get Krack!n\)](#), the ACMA considered the satirical nature of the program, noting:

The segment appeared in a comedy program directed at a mature audience which clearly signposted its irreverent style. It included material that was intended to be satirical. Satire is often used to critique the shortcomings of a society, and, if framed appropriately, can be a legitimate part of a robust environment for political debate.

In [Investigation Report 3119 \(The Hamster Decides\)](#), the ACMA accepted that the nature of political debate provided greater scope for robust material:

... *The Hamster Decides* forms part of a broader culture of political debate in Australia, which has historically contemplated robust descriptions of participants in such discourse. The ACMA also accepts that programs that have a reputation for political satire may be permitted greater scope for the use of robust material.¹³⁴

Comedy as a technique, however, does not automatically mitigate any likely harm or offence. In the same assessment, the ACMA also noted:

... even members of the audience who understood the joke may still have found the images or ideas offensive to a degree that they were inappropriate to be shown on free-to-air television.¹³⁵

In drama programs, narrative and character development are particular characteristics that are relevant to the nature of the program. In [Investigation Report 2738 \(The Slap—Hector\)](#), the ACMA found the scenes that depicted sexual activity, partial nudity, drug use and coarse language were justified because these scenes were used to establish particular traits that drove character development within the program. The narrative arc of the program was also considered relevant to justifying depictions of sexual activity in [Investigation Report BI-203 \(Rake\)](#).

[Investigation Report 2945 \(Redfern Now, Warehouse Comedy Festival, Alan Carr: Chatty Man\)](#) looked at a comedy show, chat show and drama. In each case, the ACMA found the use of expressions like ‘Oh my God’, ‘My God’, ‘For God’s sake’, ‘Christ’, ‘for Christ’s sake’, ‘Jesus’, and ‘Jesus Christ’ were justified by the nature of the program and the editorial context in which they were made.

In other assessments, the ACMA has considered different program types, such as news and current affairs. In each example, the nature of the program was a relevant consideration. See, for example, [Investigation Report 3272 \(Law Report\)](#), where the seriousness of the program was taken into account; and [Investigation Report 3252 \(ABC News\)](#), where the nature of the program was to provide comprehensive analysis.

Relevant investigations



ACMA investigation reports [3119](#), [2784](#), [2810](#), [2096](#), [2016](#), [BI-84](#), [2673](#), [2738](#), [BI-203](#), [2945](#), [3272](#), [3252](#), [BI-351](#)

¹³⁴ [Investigation Report 3119 \(The Hamster Decides\)](#), p. 14.

¹³⁵ *ibid*, p. 13.

The target audience

A principle stated in the ABC code as being relevant to the harm and offence standard is that:

Consideration of the nature of the target audience for particular content is part of assessing harm and offence in context ...

In [Investigation Report 2693 \(*Tom and Alex*\)](#), the ACMA considered content that contained sexual innuendo and references to young children. In making a no-breach finding, the ACMA was influenced by the knowledge that the target audience was young adults (18 to 24-year-olds) who would expect to be exposed to 'some low-level vulgar content and coarse language'.¹³⁶

In [Investigation Report 2909 \(*Prank Patrol*\)](#), the ACMA found the broadcast was not likely to cause harm or offence, by noting that the audience comprised 'ordinary, reasonable eight-year-old children' who would have understood the boys were performing in an audition and were exaggerating their behaviour.¹³⁷

[Investigation Reports BI-397 and BI-398 \(*Mardi Gras and Me promotion and Behind the News*\)](#) concerned broadcasts, aimed at a child audience, about the 40th anniversary of the Mardi Gras Parade. The ACMA noted;

The focus of the report was a significant anniversary of a popular public event that has widespread community support. The ACMA considers that a report that informed a young audience about the event's origins and only referred to its association with matters concerning sexual identity in a very indirect way, did not have the intrinsic capacity to be likely to cause harm or offence.

Consideration of the targeted audience also includes canvassing audience awareness and expectations. This can include an expectation of a particular presenter's style. In [Investigation Report BI-84 \(*Breakfast with Red Symons*\)](#), the ACMA took account of the licensee's submissions concerning the presenter's reputation for sarcasm and humour in making a no-breach finding:

Mr Symons' humour and style is well-known to his target audience of over-40 [years] listeners, who would be familiar with his musings on mundane aspects of life.¹³⁸

Similarly, in [Investigation Report 2673 \(*Judith Lucy's Spiritual Journey*\)](#), the ACMA noted:

... the adult audience who viewed the episode broadcast ... would likely be aware of [the presenter's] presentation style, humour, and use of coarse language.¹³⁹

[Investigation Report 3077 \(*Q&A*\)](#) concerned a reference to the authors of the Gospels as 'Iron Age peasants'. Audience expectations were a contributing factor to the ACMA's no-breach finding:

Q&A is a program in which topical issues are routinely discussed and debated. The ACMA considers that its target audience would expect a rigorous and, in many instances, critical examination of these issues, in this case religious and scientific views concerning homosexuality.¹⁴⁰

¹³⁶ [Investigation Report 2693 \(*Tom and Alex*\)](#), p. 3.

¹³⁷ [Investigation Report 2909 \(*Prank Patrol*\)](#), p. 4.

¹³⁸ [Investigation Report BI-84 \(*Breakfast with Red Symons*\)](#), p. 3.

¹³⁹ [Investigation Report 2673 \(*Judith Lucy's Spiritual Journey*\)](#), p. 5.

¹⁴⁰ [Investigation Report 3077 \(*Q&A*\)](#), p. 4.

Signposting

The relevant principles in the ABC code also state that assessing harm and offence in context includes:

... any signposting that equips audiences to make informed choices about what they see, hear or read.

This signposting can be a consumer warning. In [Investigation Report 3272 \(Law Report\)](#), the host provided a verbal warning that the program contained 'some strong language'. The ACMA considered this signpost in making a no-breach finding.

In [Investigation Report BI-229 \(ABC News\)](#), a verbal warning at the commencement of the first of two segments that contained offensive material was considered sufficient for compliance purposes. '[Given the proximity of this segment to the first segment, it is likely that most viewers would have been alerted to the 'distressing' nature of the material that followed.'¹⁴¹

Signposting does not have to be a discrete warning. It may also comprise alerts and indications within the material. For example, in [Investigation Report 3252 \(ABC News\)](#), there were no specific warnings; however, the ACMA considered that the newsreader's introduction to the subject matter of the report, given prior to the video excerpts being shown, was sufficient signposting in this case.

Similarly, in [Investigation Report 2016 \(Breakfast with Red Symons\)](#), the material:

... was presented, overall, in a humorous tone. There are early indications of this in the presenter's style and intermittent laughter. The item includes several other sarcastic and irreverent remarks all designed to prompt an amused response from the audience.¹⁴²

The ACMA found these signposts indicated the purpose was to create a humorous response and was not to offend.

Relevant investigations



ACMA investigation reports [2693](#), [2909](#), [2016](#), [2673](#), [3077](#), [3272](#), [BI-229](#), [3252](#), [BI-397](#) and [BI-398](#)

Editorial purpose

Another principle stated in the ABC code as being relevant to the harm and offence standard is that:

The ABC acknowledges that a public broadcaster should never gratuitously harm or offend and accordingly any content which is likely to harm or offend must have a clear editorial purpose.

A key factor, therefore, is that the content should not be 'gratuitous'. In [Investigation Report 1514 \(Triple J Breakfast Program\)](#), the term 'cum guzzling slut' was used to describe a celebrity during a discussion between two presenters. In this example, the ACMA considered the use of the coarse term was inappropriate and gratuitous. In

¹⁴¹ [Investigation Report BI-229 \(ABC News\)](#), p. 8.

¹⁴² [Investigation Report 2016 \(Breakfast with Red Symons\)](#), p. 5.

making its finding, the ACMA noted the dictionary meaning of ‘gratuitous’ was ‘... being without reason, cause or justification.’¹⁴³

In contrast, [Investigation Report 2748 \(Tim Minchin vs The Sydney Symphony Orchestra\)](#) concerned a satirical song about the Pope. The ACMA stated:

The ACMA considers that coarse language was deliberately used in the song with the clear editorial purpose of challenging what viewers found offensive. In this regard the coarse language formed a legitimate part of the song and was not gratuitous.¹⁴⁴

Similarly, in [Investigation Report 2752 \(The Thick of It\)](#), it was noted that the use of coarse language may be offensive to some but, in the context of a comedy program satirising the inner workings of modern British government, it was editorially justified. See also [Investigation Report 2724 \(Q&A\)](#), where the ACMA also found the use of coarse language was editorially justified. Language is discussed further in Chapter 6.

In [Investigation Report 2016 \(Breakfast with Red Symons\)](#), the ACMA stated that the requirement to avoid:

... gratuitous references is not intended to prevent content ‘presented in the legitimate context of humorous, satirical or dramatic work’.¹⁴⁵

In [Investigation report BI-191 \(Veronica and Lewis\)](#), the ACMA accepted that satirical content was not used to gratuitously harm or offend:

Rather, it was played as a topical satirical song in response to matters of widespread controversy within the community at the time of the broadcast. As such, there was a clear editorial purpose for the broadcast.¹⁴⁶

Indeed, the relevant principles in the ABC code make clear that such a ‘legitimate’ context could include any number of program genres where there is a clear editorial purpose. For example, [Investigation Report 3252 \(ABC News\)](#) concerned the broadcast of excerpts from an ISIS recruitment video. Here, the ACMA found:

The video excerpts were used within the editorial context of a news report on recruitment videos being produced by Islamic jihadists. The excerpts were not shown to gratuitously harm or to encourage viewers to join ISIS; rather, they were central to the story being presented and were shown for illustrative purposes.¹⁴⁷

See also [Investigation Report 2795 \(ABC News\)](#), where the ACMA reasoned the broadcast of the body of an alleged torture victim who had died was justified by its editorial context because it was in the public interest. Similarly, in [Investigation Report BI-229 \(ABC News\)](#), the ACMA found that the broadcast of sustained and sensitive footage ‘containing distressing visual material concerning the treatment of minors’ was justified by its role in establishing ‘the gravity of the situation’ covered in the news story.

That being said, the ACMA has also found that a clear editorial purpose is a nuanced concept and it does not automatically justify content that is likely to cause harm and

¹⁴³ [Investigation Report 1514 \(Triple J Breakfast Program\)](#), p. 4. This investigation was undertaken in 2005, using a previous version of the code. Relevantly clause 2.2 of the code required that coarse language not be gratuitous and be justified by context.

¹⁴⁴ [Investigation Report 2748 \(Tim Minchin vs The Sydney Symphony Orchestra\)](#), p. 3.

¹⁴⁵ [Investigation Report 2016 \(Breakfast with Red Symons\)](#), p. 6. This assessment predated the 2011 code; however, the intention regarding gratuitous content and context remains relevant.

¹⁴⁶ [Investigation Report BI-191 \(Veronica and Lewis\)](#), p. 6.

¹⁴⁷ [Investigation Report 3252 \(ABC News\)](#), p. 5.

offence. In [Investigation Report 3119 \(*The Hamster Decides*\)](#), the ACMA accepted the existence of a clear editorial purpose. Despite this, it made a breach finding (see section 5.4 for further discussion).

Relevant investigations



ACMA investigation reports [1514](#), [2748](#), [2752](#), [2724](#), [2016](#), [BI-191](#), [3252](#), [2795](#), [BI-229](#), [3119](#)

5.2.4. Does the editorial context justify the likely harm or offence?

Having stepped through the first three ‘assessing harm and offence’ questions, the ACMA will then consider the final question of whether the editorial context justified the harm and offence. In considering whether material is justified by its editorial context, the ACMA is required to have regard to the general framing and latitude of the ABC code provisions for offensive material. This requires careful judgement and the weighing-up of a number of interrelated factors.

The ACMA has found the process of asking a series of staged questions useful. Ultimately, however, in making the final decision it is necessary to take a holistic view. This means the nature and extent, or degree, of harm or offence caused by the content and any mitigating factors are weighed up in light of the editorial context.

In [Investigation Report 3119 \(*The Hamster Decides*\)](#), the ACMA weighed up a variety of factors pertaining to the relevant ABC standards and principles. The ACMA found:

There is no doubt that the ABC code is intended to give, and gives, ABC programs considerable latitude to offend general community standards. However Standard 7.1 calls for a balance to be struck.

[...] there is a boundary beyond which the broadcast of certain material would be unacceptable, and that a balancing act is involved in examining and, if necessary, weighing-up harm and offence against editorial context. The level or degree of harm or offence must be balanced against the weight or significance of the editorial context.¹⁴⁸

This careful balancing act is a nuanced process. There are no prescribed formulas for deciding whether content has crossed this ‘boundary’ line. The decision as to whether the context justifies the content usually relies on a number of interrelated considerations. What is right for one assessment may not be appropriate in another.

[Investigation Report 3272 \(*Law Report*\)](#) concerned the use of coarse language on radio, including the term ‘Fuck your Mother’. In weighing-up the relevant matters, and making a no-breach finding, the ACMA noted the language had the intrinsic capacity to be likely to cause offence. The coarse language was quoting alleged statements that were central to an accusation forming a substantial part of the report. The ACMA noted the context was serious reportage, was not used to gratuitously harm or offend and was used infrequently. The report was also targeted at a mature audience and was signposted to indicate it contained coarse language. A similar conclusion was reached in [Investigation Report BI-125 \(*Four Corners*\)](#).

For these reasons, the ACMA decided that, although the language had an intrinsic capacity to offend, in both of these cases, it was justified by the editorial context. On their own, each consideration is only useful when balanced against the weight of all other relevant considerations. Clearly, in another context, with a different audience, if used more frequently or with more intensity, or without signposting, the ACMA may

¹⁴⁸ [Investigation Report 3119 \(*The Hamster Decides*\)](#), p. 18.

come to a different conclusion. The weighing of these issues is discussed further in the case study at section 5.4.

Relevant investigations



ACMA investigation reports [3119](#), [3272](#), [BI-125](#)

5.3. Addressing other standards

5.3.1. Standard 7.2—Consumer warnings

Standard 7.2: Where content is likely to cause harm or offence, having regard to the context, make reasonable efforts to provide information about the nature of the content through the use of classification labels or other warnings or advice.

The ABC's *Guidance Note: Harm and Offence* includes additional advice:

Television staff should be cognisant of the fact that classification is not the sole determinant of warnings and viewer advice, and should not be relied on as such. There are aspects of television content that may warrant guidance but do not fall into the classifiable elements covered in the Associated Standard on Television Program Classification. Examples include strobe lighting effects, traditional butchery practices, or the fact that a gaming program for children may review games that are classified PG.¹⁴⁹

In [Investigation Report 3119 \(*The Hamster Decides*\)](#), the ACMA found the warnings provided were appropriate:

Given the nature of the content, the subject of the complaints, and its brief duration, the ACMA considers that the messages conveyed by the classification symbol, the consumer advice and accompanying text and voice-over were reasonable efforts to provide information about the nature of the content.¹⁵⁰

In [Investigation Report 2724 \(Q&A\)](#), the ACMA considered the introduction to the live broadcast would have served to highlight that the discussion would cover matters appropriate for a mature audience:

By indicating that the program was live and included topics such as sex, mental disorders and political ideology it is reasonable to expect that a viewer would be aware that the discussion would concern matters appropriate for a mature audience within a 9.30 pm timeslot. Standard 7.2 does not require the ABC to provide classification labels, particularly as the program is exempt from classification, and therefore there was no requirement for the ABC to provide consumer advice regarding coarse language. Further, in the context of a live-to-air panel discussion, it would not be feasible for the broadcaster to provide specific warnings in a comprehensive manner.¹⁵¹

Similarly, in [Investigation Report BI-324 \(*The Mix*\)](#) the ACMA found the consumer advice combined with dialogue flagging the potentially offensive nature of the upcoming content provided clear signposting.

¹⁴⁹ ABC, *Guidance Note: Harm and Offence*, issued 29 July 2014, p. 8.

¹⁵⁰ [Investigation Report 3119 \(*The Hamster Decides*\)](#), pp. 10–11.

¹⁵¹ [Investigation Report 2724 \(Q&A\)](#), p. 5.

In [Investigation Report 2252 \(Sunday Story\)](#), the ACMA found that although the use of coarse language was justified by the editorial context, the broadcast was in breach of the code because it failed to include a warning about the coarse language.¹⁵²

On the other hand, in [Investigation Report 2839 \(6JJJ\)](#), the ACMA concluded there was no need to provide a warning under Standard 7.2 as the relevant content was not likely to cause harm or offence.

A related provision can be found under Standard 8 of the ABC code, 'Children and young people'. It states:

Take particular care to minimise risks of exposure to unsuitable content or inappropriate contact by peers or strangers.

In [Investigation Report 3314 \(Degrassi: The Next Generation\)](#), the ACMA found the content did not breach this provision because the program was preceded by the PG classification symbol and included on-screen text and voiceover warnings that parental guidance was recommended for viewers under 15 years. Noting, however, that the program dealt with thematic material at the upper limit of what is acceptable within the PG classification (implied rape and self-harm), the ACMA recommended:

... the provision of more specific or detailed consumer warnings would have better equipped parents and guardians to make informed viewing decisions regarding children in their care, particularly those aged younger than the intended audience.¹⁵³

5.3.2. Standard 7.3—Classification

Standard 7.3: Ensure all domestic television programs – with the exception of news, current affairs and sporting events – are classified and scheduled for broadcast in accordance with the ABC's Associated Standard on Television Program Classification.

The application of the ABC's *Associated Standard on Television Program Classification* is substantially the same as the application of the classification provisions contained in other broadcasting codes. Classification is addressed at Chapter 3 of this paper. See also the case study at section 5.4 for an example of applying the classification standard and the harm and offence standard to the same content.

5.3.3. Standard 7.4—Inadvertent or unexpected actions in live content

Standard 7.4: If inadvertent or unexpected actions, audio or images in live content are likely to cause harm or offence, take appropriate steps to mitigate.

In [Investigation Report 2693 \(Tom and Alex\)](#), the ACMA considered content that contained sexual innuendo and references to young children. The comments were made by guests on the show and were unexpected. In making a no-breach finding, the ACMA noted the presenters took steps to mitigate the content, because the:

... program presenters laugh at the comments but challenge them by stating, 'Filth! Trash! Disgusting!' The program presenters also stop the interview and

¹⁵² This assessment relied on the 2007 version of the ABC code. The harm and offence provisions in this code differ to those in the 2011 code. The 2007 clauses, however, relevantly provide that language used 'for no other purpose but to offend is not acceptable' (clause 2.1) and include a requirement for consumer warnings where content is likely to 'disturb or offend some of the audience' (clause 2.3).

¹⁵³ [Investigation Report 3314 \(Degrassi: The Next Generation\)](#), p. 14.

state, 'I have just turned off your mikes, we are going to settle down. We're going to play a song'.¹⁵⁴

In [Investigation Report BI-122 \(Q&A\)](#), the ACMA found that an offensive twitter handle inadvertently displayed during a live broadcast was not sufficient to breach the Code. The ACMA considered that the ABC had taken appropriate steps to mitigate the offence by issuing an apology the following day and by removing the offensive material from repeat broadcasts.

Relevant investigations



ACMA investigation reports [3119](#), [2724](#), [2252](#), [2839](#), [3314](#), [2693](#), [BI-122](#), [BI-324](#)

5.4. Case study— Applying the harm and offence standard and the classification standard to the same content

[Investigation Report 3119 \(*The Hamster Decides*\)](#) provides a useful case study for the interoperation of the classification and harm and offence provisions. The relevant standards under consideration were:

- > Standard 7.1: harm and offence—must be justified by editorial context
- > Standard 7.2: harm and offence—labels, warnings or advice
- > Standard 7.3: harm and offence—classification and scheduling.

At the conclusion of the assessment, the ACMA found a breach of Standard 7.1 but no breach of standards 7.2 and 7.3.

5.4.1. Brief description of the content

The Hamster Decides is a satirical program. On 11 September 2013, an episode of the program focused on the 2013 federal election. The relevant material was a joke about the fact that a journalist and commentator had questioned the ABC's funding shortly after the Coalition won the election. In the segment, the presenters agree with the journalist's comments, with one of them stating '... this is a network that broadcasts images of the journalist strangling a dog while having sex with it'. The visuals cut to a still image of an adult male figure with his pants down squatting behind a dog. The male's arms are stretched around the animal's neck. Through image manipulation, an image of the journalist's head has been added onto the male's body. At the end of the segment, the presenters indicate how 'juvenile' the content is, and reiterate with mock outrage that the ABC 'has got to be cut'.

5.4.2. Assessment and findings

In this report, the ACMA made some observations about the interoperation of individual standards within the ABC's overall harm and offence framework:

The ACMA considers that a fundamental audience safeguard is provided by Standard 7.3, which requires the classification of programs in accordance with the ABC's Associated Standard on Television Program Classification. All free-to-air broadcasters have similar classification requirements.

The classification standards do not, in their terms, require consideration of concepts such as harm or offence.

¹⁵⁴ [Investigation Report 2693 \(*Tom and Alex*\)](#), p. 3.

Standard 7.3 is given practical operational effect as a safeguard mainly through two mechanisms. First, there are time zone requirements set out in the Additional Standard. Secondly, Standard 7.2 requires adequate 'signposting' of potentially higher impact material by classification labels and other messages.

In addition to this widely used approach, the ABC has also adopted Standard 7.1, a broadly expressed additional standard addressing harm and offence that goes beyond the classification and signposting requirements.

The ABC's overall framework, therefore, contemplates circumstances in which program material might not exceed the classification thresholds contemplated by Standard 7.3 (regarding its degree of explicitness or intensity and the broader framework of the program), and that might be adequately 'signposted' to a level that meets Standard 7.2, but still might be likely to cause harm or offence requiring justification by the editorial context.¹⁵⁵

In addressing the same content against the three standards, the ACMA found it necessary to firstly consider classification and warnings under standards 7.3 and 7.2. The ACMA then considered the same content against the additional requirements of Standard 7.1.

5.4.3. Standard 7.3

The ACMA first considered whether the content was appropriately classified as MA15+, under the ABC's *Associated Standard: Television Program Classification* (classification guidelines). The relevant considerations were themes, language and a mature perspective. The ACMA found no breach of Standard 7.3.

Themes

At the MA15+ level, the treatment of themes with a high degree of intensity should not be gratuitous. The ACMA considered the prevalent theme was one of political satire and commentary using a fast-paced comedic treatment. Within this broad theme, a thematic device was the visual of a man squatting behind a dog. The ACMA considered:

... that the depiction of a social and legal taboo with the inclusion of the text 'Dog Fucker' labelling a named and pictured individual, combined with accompanying verbal references, creates a high degree of intensity.¹⁵⁶

Accordingly, the ACMA considered whether the content was gratuitous. It found the image in the joke drew on matters being covered in the program and used irony to make a point relating to the ABC's purpose and funding that was not gratuitous within the specific comedic and satirical context of the program. The ACMA also considered the explicitness of the image and found that although it was intended to imply bestiality, it was nevertheless a stylised image and was unlikely to be seen as realistic.

Language

At the MA15+ level, the ABC code allows for coarse language to be used, but very strong, aggressive or detailed coarse language should not be gratuitous. The program contained two instances of very strong coarse language—the first syllable of the word 'country' (so that it sounded like 'cunt') and 'dog fucker'. In both instances, the ACMA found the references were brief, and not considered aggressive or detailed.

The ACMA found the reference to 'cunt' appeared to be an unintended slip of the tongue spoken during an ABC election night broadcast and its inclusion was justified within a segment commenting on election night coverage. The ACMA found the use of

¹⁵⁵ [Investigation Report 3119 \(The Hamster Decides\)](#), pp. 7–8.

¹⁵⁶ *ibid*, p. 9.

'dog fucker' was not gratuitous, given the apparent comedic intent and accompanying image.

Mature perspective

The ABC code provides that material within the MA15+ classification deals with issues or contains depictions that require a more mature perspective. Although not a classifiable element, the ACMA found the reference provided guidance for how the classifiable elements may be assessed, noting that the visuals with high intensity and strong coarse language required a mature perspective.

5.4.4. Standard 7.2

The ACMA then considered whether the content included appropriate warnings, noting the broadcast included a classification symbol as well as onscreen and spoken consumer advice. The ACMA's finding was that reasonable efforts were made to provide warnings and there was no breach of Standard 7.2.

5.4.5. Standard 7.1

Finally, the ACMA considered if the material was likely to cause harm or offence and, if so, was that likely harm or offence justified by the editorial context?

The relevant considerations included the strong language used, implied bestiality and a personalised attack on a critic of the ABC. The ACMA considered the content was highly likely to cause harm or offence. Several of the factors the ACMA considered have some resonance with the classifiable elements. Under the overall harm and offence framework, however, the ACMA was required to consider the content within a broader set of circumstances than those contemplated under the ABC's Classification Guidelines.

To do so, the ACMA worked through the staged approach that was outlined in the 'assessing harm and offence' questions listed in section 5.2. At the conclusion of this assessment, the ACMA found a breach of Standard 7.1.

1. Does the material have the intrinsic capacity to be likely to cause harm or offence?

The ACMA considered the image depicting implied bestiality and the use of very strong coarse language in a personalised attack on a critic of the ABC was reasonably likely to cause a high intrinsic level of harm or offence.

2. What factors are there moderating any harm or offence?

The ACMA considered the nature of the content, such as the extremity of the joke and signposting that appeared as the in-joke set-up. The ACMA considered these went some way to moderating the intrinsic offensiveness of the material, noting, however:

... the extent to which these factors mitigate the offensiveness of the segment depends, in the ACMA's view, on the extent to which a viewer would have understood and appreciated the joke. A viewer who did not understand or had a limited appreciation of the joke is likely to have found it deeply offensive because of its conceptual intensity and strong language, even if they understood from cues that the material was not intended to be real. Indeed, even members of the audience who understood the joke may still have found the images or ideas offensive to a degree that they were inappropriate to be shown on free-to-air television.¹⁵⁷

The ACMA concluded that, notwithstanding the mitigating factors in relation to the presentation of the image, the material was likely to offend.

¹⁵⁷ *ibid*, p. 13.

3. *What is the editorial context?*

The ACMA also carefully considered the editorial context, including the nature of the program, the target audience, signposting and editorial purpose. In this assessment, the ACMA found there was clear editorial purpose:

The ACMA accepts that political satire is a provocative and often sophisticated genre with a long history of presenting social taboos in exaggerated form, often as a central conceit, to make political points. Another contextual purpose was to make an elaborate joke, with trademark *Chaser* irony and shock value, with links to other themes in the program.¹⁵⁸

The ACMA's consideration of the nature of the program, the target audience and signposting required the careful balancing and weighing-up of a set of related factors.

The ACMA noted the *Chaser* programs have a reputation for a particular kind of comedic and satirical content that includes pushing boundaries and inviting controversy. Arguably, the target audience would also expect this kind of content. Here, the ACMA noted the requirement in the ABC's principles to consider the interests of the target audience while also taking into account community standards:

... while the potential reactions of a target audience may be strongly influential in considering whether offensive material is justified by its editorial context, they cannot be the only factor.¹⁵⁹

The ACMA also considered the context for robust political debate and accepted the ABC's submission that programs like the *Hamster Decides* form:

... part of a broader culture of political debate in Australia, which has historically contemplated robust descriptions of participants in such discourse. The ACMA also accepts that programs that have a reputation for political satire may be permitted greater scope for the use of robust material.¹⁶⁰

The ACMA noted, however, that the context of political satire and robust debate does not mean that anything is permissible in the context of a free-to-air broadcast. Each situation requires careful assessment of the specific material and the editorial context in which it appears.

The ACMA also weighed up the use of signposting in the program. It considered there was some signposting, such as cues and a set-up leading to the joke, that some in the audience would have understood. The ABC also broadcast the program in an MA15+ timeslot and provided warnings that the content was rated for a mature adult audience. The ACMA noted, however, that the presence of adequate signposting would not of itself mean that the direction in the ABC principles about taking into account community standards could be ignored.

4. *Does the editorial context justify the likely harm or offence?*

Although the ACMA considered there was clear editorial purpose, on a careful weighing-up of the degree of harm or offence against the significance of the editorial context, the ACMA found a breach of Standard 7.1:

While the strategy of using an extreme, likely to be offensive, and disproportionate image to make a humorous point was, from the producer's viewpoint, important to the joke, it was also inherently risky. That risk is that the likely level of offence cannot be justified by the editorial context, even having regard to contextual matters such as the

¹⁵⁸ *ibid*, p. 16.

¹⁵⁹ *ibid*, p. 15.

¹⁶⁰ *ibid*, p. 14.

existence of editorial purpose, the nature of the target audience and signposting. So the disproportionality, central to the joke, is also a central ingredient to that risk.

There is no doubt that the ABC code is intended to give, and gives, ABC programs considerable latitude to offend general community standards. However Standard 7.1 calls for a balance to be struck.

In its submission, the ABC accepts that there is a boundary beyond which the broadcast of certain material would be unacceptable, and that a balancing act is involved in examining and, if necessary, weighing-up harm and offence against editorial context. The level or degree of harm or offence must be balanced against the weight or significance of the editorial context.¹⁶¹

The ACMA found that Standard 7.1 creates a 'line', beyond which material cannot be broadcast if it is not justified by editorial context. In this case, the ACMA considered the relevant material crossed that line because the level of likely offence was high and not justified by the editorial context. In particular, the ACMA concluded that the level of offence was high because of the strong image, directed towards an identified critic of the ABC, with the potential to be both immediately offensive as well as risking leaving a lasting impression with viewers.

Relevant investigations



ACMA Investigation Report [3119](#)

¹⁶¹ *ibid*, p. 18.

6. Commentary— shifting community standards

Community standards change over time. So, too, associated code provisions operate to reflect such shifts. For example, community attitudes to racism, women, disabled people, religion and sexual preference are some areas where community attitudes and expectations continue to change. What was offensive in the past may no longer be considered offensive; conversely, what was tolerated a generation ago may be considered offensive or distressing by today's community standards. The nature of community standards poses a challenge for broadcast regulation, particularly when the relevant standards are in flux.

In this paper, use of language has been selected as a case study to illustrate how community standards shift over time. In the past few years, the interpretation of language provisions in the various codes has been changing. This reflects associated changes in community views and expectations in this regard.

6.1. Changes to the ABC code

This change is evident in the ABC code, where express restrictions on the use of language have gradually been removed from the codes. In the current code, language is covered by classification and the general harm and offence provision at 7.1. Relevantly, the principles now state:

Coarse language, disturbing images or unconventional situations may form a legitimate part of reportage, debate, documentaries or a humorous, satirical, dramatic or other artistic work.

In previous versions of the ABC code, the provision was more expansive; for example, the 2008 code included:

2.5 Language. Variations of language favoured by different groups of Australians are valid and have their place in ABC content. On occasions, the language of one group may be distasteful to another. Use of such language is permitted provided it is not used gratuitously and can be justified in the context of, for example, news, current affairs, fiction, documentary, dramatization, comedy or song lyrics.

In its submissions to the ACMA, the ABC has noted and relied on this shift in the community's attitude to language. In [Investigation Report 2839 \(6JJJ\)](#), regarding a presenter saying 'shit' twice in an interview, the ABC submitted:

Language, as with all things, has evolved over time and what might have been considered swearing or offensive 10 or more years ago, is now part of everyday speech. Shit is one of those words that is now more acceptable in society and increasingly part of everyday speech, especially with the target demographic for triple j which is 18–24 year olds. They are generally not as offended by language but having said that we are very mindful of not offending to any extent a large degree of our audience.¹⁶²

¹⁶² [Investigation Report 2839 \(6JJJ\)](#), p. 3.

The ACMA accepted that although some listeners would be offended by the use of 'shit', it agreed with the ABC that:

... language of this sort would not likely cause offence to the station's usual target audience.¹⁶³

Similarly, in [Investigation Report 2673 \(*Judith Lucy's Spiritual Journey*\)](#), the target audience was relevant. The presenter used 'arsehole' and 'fuck' while 'reading' to a group of young children. The ACMA noted the segment was filmed in two sections that were later edited together, so the child actors were never exposed to the language in the making of the program. The ACMA also noted the audience for the program was adult and concluded the coarse language was justified because:

... the adult audience who viewed the episode broadcast ... would likely be aware of [the presenter's] presentation style, humour, and use of coarse language.¹⁶⁴

This also applies to song lyrics. [Investigation Report 2700 \(*Lunch Triple J*\)](#) related to a song with lyrics that referred to 'gang bangs' and anal sex. The ACMA found the lyrics did not breach the harm and offence provisions, noting:

Given the popularity of [the album] with Australian listening audiences and in particular Triple J's listening audience, the ACMA considers that it is likely that Triple J listeners would have been familiar with [the artist's] lyrical style, which often contains coarse language as a legitimate part of [the artist's] musical work.¹⁶⁵

This does not mean that all coarse language is acceptable. In [Investigation Report 1514 \(*Triple J Breakfast Program*\)](#), the term 'cum guzzling slut' was used during a discussion between two presenters to describe a celebrity. The ABC conceded that:

... the use of the term 'cum guzzling slut' was inappropriate and gratuitous and that it breached clause 2.2 of the Code.¹⁶⁶

Although this assessment was undertaken in 2005, relevantly clause 2.2 of the previous code required that coarse language not be gratuitous and that it be justified by context.

6.2. Language on television

The television codes establish a scale for the use of coarse language that is permissible at each classification. This usually ranges from very mild coarse language, in programs classified G in certain circumstance to very coarse language in programs classified MA, when justified by context.

Recent assessments demonstrate how some factors may mitigate the use of coarse language on television. In [Investigation Report 3103 \(*Funny As: Steve Coogan*\)](#), the ACMA found that the use of 'cunt' was not in breach of the MA15+ classification guidelines as its use was central to the humour of the comedian's song. The use of the word served as a sharp and crudely humorous contrast to the type of language and lyrics typically found in the British musical genre, which the song was parodying.

¹⁶³ *ibid*, p. 5.

¹⁶⁴ [Investigation Report 2673 \(*Judith Lucy's Spiritual Journey*\)](#), p. 5.

¹⁶⁵ [Investigation Report 2700 \(*Lunch Triple J*\)](#), p. 5.

¹⁶⁶ [Investigation Report 1514 \(*Triple J Breakfast Program*\)](#), p. 4.

In another comedy context, the ACMA considered the use of ‘fuck’ and ‘cunt’ depicted in skywriting in [Investigation Report 2810 \(*The Hamster Wheel*\)](#). The program was classified MA15+ and was preceded by consumer advice that the program contained coarse language. The ACMA found:

... the program’s strong comedic tone and context mitigates the impact of the coarse language. Various techniques are used, for example, the bleeping of words and sky writing, for humorous effect. There is only one example of coarse language that exceeds the impact of ‘fuck’ language within the program, however as it is a written reference this lessens its impact. Therefore, the coarse language used within the program is not considered to be ‘very strong’ for the purposes of the Code.¹⁶⁷

However, if strong language is not justified by context, is used aggressively, or is overly frequent or impactful, then it is likely not to be appropriate for television broadcasts. In [Investigation Report 2021 \(*Kitchen Nightmares—Secret Garden*\)](#), the ACMA found the episode breached the M classification guidelines for language as it contained two instances of very coarse language (‘cunt’), several instances of aggressive coarse language (including the use of ‘cunt’ in a forceful and vigorous tone and manner) and frequent use of coarse language that was not particularly important to the storyline or program context.

Similarly, in [Investigation Report 2070 \(*Ramsay’s Kitchen Nightmares—Dillons*\)](#), the ACMA found the episode was incorrectly classified M as it contained frequent coarse language (including 43 uses of ‘fuck’) that was not particularly important to the storyline or program context.

6.3. Colloquialisms

The ACMA is also mindful of the changing use of colloquial terms. In [Investigation Report 3041 \(*The Drum*\)](#), a panellist used the term ‘schizophrenic’ to refer to ‘deranged voters’. While the ACMA found the comment was insensitive and careless, overall the finding was that the phrase did not breach the harm and offence provisions:

... the ACMA also notes that the term has a non-medical and colloquial usage, which has not yet been phased out of popular usage. It accepts the ABC’s submission that the term was used in a vernacular and imprecise sense. The panellist’s point could have been made without the use of the term ‘schizophrenic’, but having regard to the context of the program, being a discussion of the then Prime Minister’s popularity with voters rather than a discussion of mental illness, the ACMA also accepts that the term was used to make a point about voters on the fringe, and was not made to gratuitously harm people with a mental illness. The ACMA considers that the audience would have been aware that the term was used in an informal or slang sense and was not directed at people suffering from schizophrenia.¹⁶⁸

For other examples of colloquialisms, see [Investigation Report 3074 \(*You’re Skitting Me*\)](#) for the use of ‘ranga’, [Investigation Report 2838 \(*Media Watch*\)](#) for the use of ‘kicked in the goolies’ and [Investigation Report BI-352 \(*Hard Quiz*\)](#) for the use of ‘rooting’.

¹⁶⁷ [Investigation Report 2810 \(*The Hamster Wheel*\)](#), p. 6.

¹⁶⁸ [Investigation Report 3041 \(*The Drum*\)](#), p. 7.

Some blasphemous remarks are now in common usage as colloquialisms. For example:

- > In [Investigation Report 3021 \(Promotion for Shaun Micallef's Mad as Hell\)](#), the ACMA noted that while the term 'Jesus Christ on a bike' was offensive to the complainant, it was commonly used as a colloquialism and was justified by the editorial context.
- > In [Investigation Report 3069 \(The Checkout\)](#), the ACMA considered the phrase 'for Christ's sake', noting it was a commonly used colloquialism:

Use of the term is consistent with current language usage as an exclamation indicating indignation. The *Macquarie Dictionary Online* defines 'for Christ's sake' as 'an exclamation of despair, annoyance, etc'.¹⁶⁹
- > Similarly, [Investigation Report 2945 \(Redfern Now, Warehouse Comedy Festival, Alan Carr: Chatty Man\)](#) considered the phrases 'for God's sake', 'Oh God', 'Jesus', 'Oh my God' and 'Oh God' in comedy and drama contexts. Given the terms are commonly used as colloquialisms, the ACMA considered they would be unlikely to cause offence to a broad audience, notwithstanding the offence caused to the individual complainants.

Changing attitudes to language are also reflected in the treatment of blasphemy in certain circumstances. In [Investigation Report 2739 \(The Slap—Manolis\)](#), the ACMA found the use of the phrase 'God is a cocksucker' did not condone or encourage prejudice against Christians. In the fictional narrative context, the language conveyed the anger and frustration of the Manolis character:

Taking into account the contexts in which the comment was made, the ACMA considers that an ordinary, reasonable viewer would have understood that it was made as a form of exasperation to reflect Manolis' state of mind. While the comment may have offended some viewers, the ACMA does not consider that it communicated any stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice against Christians. In this regard, it is noted that the comment did not urge or inflame viewers to form an unfavourable opinion or feeling towards Christians or Christianity.¹⁷⁰

Relevant investigations



ACMA investigation reports [2839](#), [2673](#), [2700](#), [1514](#), [3103](#), [2810](#), [2021](#), [2070](#), [3041](#), [3074](#), [2838](#), [3021](#), [3069](#), [2945](#), [2739](#), [BI-352](#)

¹⁶⁹ [Investigation Report 3069 \(The Checkout\)](#), p. 4.

¹⁷⁰ [Investigation Report 2739 \(The Slap—Manolis\)](#), p. 6.

More information

Copies of the broadcasting codes

- > Download the codes at 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.
- > Television investigations—www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Television-investigations/television-operations-investigations.

General

- > Go to www.acma.gov.au.
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- > View us on www.youtube.com/user/acmadotgov.

Contact

- > Website—www.acma.gov.au.
- > Email us at broadcasting@acma.gov.au.

Appendix A

Code objectives relevant to community standards

Table 3: Relevant code objectives

Code	Provision
ABC Code of Practice 2011 (revised in 2016)	<p>7. Harm and offence</p> <p>The ABC potentially reaches the whole community, so it must take into account community standards. The ABC must also be able to provide content for specific target audiences whose standards may differ from generally held community attitudes.</p> <p>From the ABC Guidance Note: Harm and Offence, July 2014</p> <p>Community standards</p> <p>Community attitudes change across time and contexts. Things that were deeply objectionable twenty years ago may well be quite acceptable today. This can also work in reverse, as changing attitudes towards sexist or homophobic language attest. As well, things that cause considerable offence in one context can cause little offence in another.</p> <p>It can be difficult to know what current community standards actually are, as there's little empirical data to rely on. [...]</p> <p>Beyond formal research, our best gauge of community standards is our audience. We engage directly with viewers, listeners and users on air and online, including through social media. They give us constant feedback, including complaints, and this can help us to determine what is and isn't likely to upset them in the future.</p>
SBS Codes of Practice 2014 (revised March 2016)	<p>Foreword to the code</p> <p>SBS has a responsibility to ensure its policies keep pace with Australia's converging media landscape and to maintain the highest standards of broadcasting excellence, integrity and editorial independence across all platforms. As such, the SBS Codes of Practice have been developed over time to respond to shifts in audience needs and demands, and community standards, and to better meet changes in the media sector.</p>
Commercial Television Industry Code of Practice 2015	<p>Section 1: Application and Commencement</p> <p>1.1.3 The Code is intended to regulate the broadcast content of commercial free-to-air television according to current community standards, and to assist viewers in making informed choices about their television viewing.</p>
Subscription Broadcast Television Codes of Practice 2013	<p>7. Definitions</p> <p>"Codes" are rules, developed and endorsed by the subscription television broadcasting industry, formulated to reflect community standards in program content and presentation...</p>
Community Television Broadcasting Codes of Practice 2011	<p>Code 3: General Programming Principles</p> <p>Purpose: Code 3 is intended to ensure that licensees broadcast programs responsibly, in keeping with prevailing community standards and all applicable legislation. It includes provisions intended to help and encourage licensees to understand and be responsive to community concerns regarding matters such as cultural diversity, the portrayal of Aboriginal and Torres Strait Islander people, privacy and the welfare of children.</p>

Code	Provision
Community Radio Broadcasting Codes of Practice 2008	<p>Code 3: General programming</p> <p>3.2 We will attempt to avoid censorship where possible. However, in our programming decisions we will consider our community interest, context, degree of explicitness, the possibility of alarming the listener, the potential for distress or shock, prevailing Indigenous laws or community standards and the social importance of the broadcast.</p>

Classification provisions

Table 4: Relevant provisions in broadcasting codes

Code	Provision
ABC Code of Practice 2011 (revised in 2016)	<p>Standard 7 Harm and offence</p> <p>7.3 Ensure all domestic television programs – with the exception of news, current affairs and sporting events – are classified and scheduled for broadcast in accordance with the ABC’s Associated Standard on Television Program Classification.</p> <p>From the Associated Standard: Television Program classification,</p> <p>Principles: The ABC applies the classifications listed below to the broadcast of all its domestic television programs with the exception of news, current affairs and sporting events. The ABC classifications are adapted from the Guidelines for the Classification of Films and Computer Games issued by the Classification Board made under the <i>Classification (Publications, Films and Computer Games) Act 1995</i>.</p> <p>The guiding principle in the application of the following classifications is context. What is inappropriate and unacceptable in one context may be appropriate and acceptable in another. Factors to be taken into account include: the artistic or educational merit of the production, the purpose of a sequence, the tone, the camera work, the intensity and relevance of the material, the treatment, and the intended audience.</p>
SBS Codes of Practice 2014 (revised March 2016)	<p>4 Television Classification</p> <p>4.1 Introduction SBS applies the classifications below to all programs and program promotions broadcast on SBS Television, with the exception of news and current affairs, sport programs and general information.</p> <p>The SBS system of television program classification is adapted from the ‘Guidelines for the Classification of Films and Computer Games’ made under the <i>Classification (Publications, Films and Computer Games) Act 1995</i>.</p> <p>The guiding principle in the application of the following classifications is context. What is inappropriate and unacceptable in one context may be appropriate and acceptable in another. Factors to be taken into account include: the artistic or educational merit of the production, the purpose of a sequence, the tone, the camera work, the intensity and relevance of the material, the treatment, and the intended audience.</p> <p>SBS believes that the integrity of programs is best retained if programs are broadcast unaltered. However, SBS will schedule programs or, if necessary, modify them in accordance with the SBS classification</p>

Code	Provision
	<p>categories (see 4.6) to ensure that they are suitable for broadcast, or for broadcast at particular times.</p> <p>SBS's classification system gives special attention to culture, levels of violence, sex and nudity, and use of language.</p>
<p>Commercial Television Industry Code of Practice 2015</p>	<p>2. Classification and Proscribed Material</p> <p>2.1 Classification – General rules</p> <p>2.1.1 Subject to the exceptions in section 2.3, all Programs and non-Program material (including Program Promotions) must be:</p> <p>a) classified in accordance with the criteria set out at Appendix 1; and</p> <p>b) broadcast in accordance with the classification zones set out at section 2.2.</p> <p>[...]</p> <p>2.3 Exceptions</p> <p>2.3.1 Films must be classified by applying the classification system provided for by the <i>Classification (Publications, Films and Computer Games) Act 1995</i>.</p> <p><i>Note: Films may be modified by a Licensee to ensure they are suitable for broadcast, or for broadcast at particular times.</i></p> <p>[...]</p> <p>2.3.3 News Programs (including news flashes and news updates), Current Affairs Programs and Sports Programs and Program Promotions for news, Current Affairs or Sports Programs do not require classification and may be shown at any time, however a Licensee will exercise care in selecting material for broadcast, having regard to:</p> <p>a) the likely audience of the Program or Program Promotion; and</p> <p>b) any identifiable public interest reason for presenting the Program or Program Promotion.</p> <p>[...]</p> <p>8. Interpretation</p> <p>[...]</p> <p>Current Affairs Program means a Program focusing on social, economic or political issues of current relevance to the community.</p> <p>[...]</p> <p>Film means any feature film, documentary or short film that has had first release in Australia through public exhibition (including cinematic release) or sale/hire and which has been classified by the Classification Board.</p> <p>[...]</p> <p>Program means material the primary purpose of which is to entertain, educate or inform an audience and excludes matter such as Commercials, Community Service Announcements, Station ID and Program Promotions and all other matter set out in sections 5.1 and 5.2. Program includes a film.</p> <p>Program promotion means material broadcast by a Licensee within a program break or between programs which is designed to promote or draw attention to a program on the Licensee's broadcasting services and includes reference to the date and time of the Program which is being promoted.</p>

Code	Provision
	<p>[...]</p> <p>Sports Program means a Program predominantly consisting of:</p> <ul style="list-style-type: none"> a) coverage of a sporting event (whether live, replay or highlights); b) sporting commentary, analysis, interviews and news; c) presentations/awards and ceremonies associated with a sporting event; <p>but does not include comedy or light entertainment/variety programs with a sports theme or association.</p>
<p>Subscription Broadcast Television Codes of Practice 2013</p>	<p>4. Program Classification Code</p> <p>Licensees will classify films and drama programs (and from the date that is one year after the Codes are registered by the ACMA, documentaries and reality television programs) applying the program classification system contained in the Guidelines for the Classification of Films ('Guidelines') which appear below (relevant extract—The Categories). Classifications, together with appropriate consumer advice, will be provided to ensure adequate warning regarding program content as set out in clauses 3.3 and 3.4.</p> <p>Licensees will use their best endeavours to ensure that, where other programs are classified they will carry only classification symbols (identified below in the Classification Categories). This classification will have particular regard to the protection of children and will take into account relevant aspects of the Guidelines.</p> <p>For the avoidance of doubt, clauses 3.1 and 3.3 do not apply in respect of documentaries and reality programs until the date that is one year after the Codes are registered by the ACMA.</p> <p>3.1 Program Classifications</p> <p>Licensees will apply relevant aspects of the Guidelines to all films, drama programs, documentaries and reality television programs. The full text of the Guidelines can be found at Attachment B to these Codes.</p> <p>The Guidelines are a tool for classifying films, drama programs, documentaries and reality television programs. They help explain the different classification categories, and the scope and limits of material suitable for each category.</p> <p>Classification decisions are to give effect, as far as possible, to the following principles:</p> <ul style="list-style-type: none"> (a) adults should be able to read, hear and see what they want; (b) minors should be protected from material likely to harm or disturb them; (c) everyone should be protected from exposure to unsolicited material that they find offensive; (d) the need to take into account community concerns about: <ul style="list-style-type: none"> (i) depictions that condone or incite violence, particularly sexual violence; and (ii) the portrayal of persons in a demeaning manner.

Code	Provision
Community Television Broadcasting Codes of Practice 2011	<p>Code 4: Classification of Programs</p> <p>4.1 In broadcasting programs, licensees will ensure that all material broadcast is appropriately classified according to the provisions of the Classification Guidelines.</p> <p>4.2 Clause 4.1 does not apply to news and current affairs programs, magazine and opinion programs, news updates and news and current affairs promotions, community information material and broadcasts of sporting events, provided licensees exercise care in selecting and scheduling material for broadcast.</p> <p>4.3 Licensees will broadcast audio and/or visual information at the commencement of a program to advise viewers of a program's classification. For example, "The following program has been classified PG - parental guidance is recommended for young viewers".</p> <p>"Classification Guidelines" means the Guidelines for the Classification of Films and Computer Games, as amended from time to time, and are incorporated into this Code by reference.</p>

Decency provisions

Table 5: Relevant provisions in broadcasting codes

Code	Provision
Commercial Radio Codes of Practice 2017	<p>2.2 Program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant program.</p> <p>2.3 Licensees must not broadcast audio of actual sexual acts.</p> <p>2.4 Licensees must not broadcast a feature program which has an explicit sexual theme as its core component unless it is broadcast between 7.00 pm and 6.00 am and an appropriate warning is made prior to commencement of the program and at hourly intervals during broadcast of the program.</p> <p>2.5 Nothing in [...] 2.4 prevents a Licensee from broadcasting a Program of the kind or kinds referred to in those provisions if the material is presented:</p> <p style="padding-left: 40px;">2.5.1 reasonably and in good faith for academic, artistic (including comedy or satire), religious instruction, scientific or research purposes, or discussion or debate about any act or matter in the public interest; or</p> <p style="padding-left: 40px;">2.5.2 in the course of a broadcast of a fair report of, or fair comment on, a matter of public interest.</p>
Community Radio Broadcasting Codes of Practice 2008	<p>Code 3: General programming</p> <p>3.2 We will attempt to avoid censorship where possible. However, in our programming decisions we will consider our community interest, context, degree of explicitness, the possibility of alarming the listener, the potential for distress or shock, prevailing Indigenous laws or community standards and the social importance of the broadcast.</p>

Harm and offence provisions

Table 6: Relevant provisions in broadcasting codes

Code	Provision
<p>ABC Code of Practice 2011 (revised in 2016)</p>	<p>IV Principles and Standards</p> <p>1. Interpretation</p> <p>In this Code, the Standards must be interpreted and applied in accordance with the Principles applying in each Section. From time to time, the ABC publishes Guidance Notes which do not in themselves impose obligations on the ABC, but which may be relevant in interpreting and applying the Code.</p> <p>The Standards in Parts IV and V are to be interpreted and applied with due regard for the nature of the content under consideration in particular cases. The ABC is conscious that its dual obligations – for accountability and for high quality – can in practice interact in complex ways. It can be a sign of strength not weakness that journalism enrages or art shocks. The Standards are to be applied in ways that maintain independence and integrity, preserve trust and do not unduly constrain journalistic enquiry or artistic expression.</p> <p>[...]</p> <p>7. Harm and offence</p> <p>Principles: The ABC broadcasts comprehensive and innovative content that aims to inform, entertain and educate diverse audiences. Innovation involves a willingness to take risks, invent and experiment with new ideas. This can result in challenging content which may offend some of the audience some of the time. But it also contributes to diversity of content in the media and to fulfilling the ABC’s function to encourage and promote the musical, dramatic and other performing arts. The ABC acknowledges that a public broadcaster should never gratuitously harm or offend and accordingly any content which is likely to harm or offend must have a clear editorial purpose.</p> <p>The ABC potentially reaches the whole community, so it must take into account community standards. The ABC must also be able to provide content for specific target audiences whose standards may differ from generally held community attitudes. Applying the harm and offence standard requires careful judgement. Context is an important consideration. What may be inappropriate and unacceptable in one context may be appropriate and acceptable in another. Coarse language, disturbing images or unconventional situations may form a legitimate part of reportage, debate, documentaries or a humorous, satirical, dramatic or other artistic work. Consideration of the nature of the target audience for particular content is part of assessing harm and offence in context, as is any signposting that equips audiences to make informed choices about what they see, hear or read.</p> <p>Standards:</p> <p>7.1 Content that is likely to cause harm or offence must be justified by the editorial context.</p> <p>7.2 Where content is likely to cause harm or offence, having regard to the context, make reasonable efforts to provide information about the nature of the content through the use of classification labels or other warnings or advice.</p>

Code	Provision
7.3	Ensure all domestic television programs – with the exception of news, current affairs and sporting events – are classified and scheduled for broadcast in accordance with the ABC’s Associated Standard on Television Program Classification.
7.4	If inadvertent or unexpected actions, audio or images in live content are likely to cause harm or offence, take appropriate steps to mitigate.
7.5	The reporting or depiction of violence, tragedy or trauma must be handled with extreme sensitivity. Avoid causing undue distress to victims, witnesses or bereaved relatives. Be sensitive to significant cultural practices when depicting or reporting on recently deceased persons.
7.6	Where there is editorial justification for content which may lead to dangerous imitation or exacerbate serious threats to individual or public health, safety or welfare, take appropriate steps to mitigate those risks, particularly by taking care with how content is expressed or presented.
7.7	Avoid the unjustified use of stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice.
