

Jenny Allen

From: McLintock, Jack [REDACTED]
Sent: Wednesday, 20 November 2019 5:22 PM
To: [REDACTED]
Cc: McCarthy, Justine
Subject: RE: Investigation about Seven News, broadcast on Seven on 30 July 2019 and 31 July 2019 [SEC=UNCLASSIFIED]
Attachments: Attachment 1.pdf; Submissions.pdf

Dear [REDACTED]

Please find attached Seven's submissions in relation to this investigation.

Kind regards,

Jack McLintock

Corporate and Government Affairs

Seven West Media Limited

Media City | 8 Central Avenue | Eveleigh NSW 2015 Australia
Postal Address: PO Box 7077 | Alexandria NSW 2015 Australia
Telephone [REDACTED]
Email [REDACTED]



From: [REDACTED]
Sent: Friday, 15 November 2019 12:47 PM
To: McLintock, Jack
Cc: McCarthy, Justine
Subject: RE: Investigation about Seven News, broadcast on Seven on 30 July 2019 and 31 July 2019 [SEC=UNCLASSIFIED]

Dear Mr McLintock,

This is to confirm an extension for submissions in this matter to COB Wednesday 20 November 2019.

Kind regards,

[REDACTED]
Investigations and Compliance Officer
Content Investigations Section

Australian Communications and Media Authority

T + [REDACTED]
E [REDACTED]
www.acma.gov.au



communicating facilitating regulating

The ACMA acknowledges the traditional custodians of this land on which we meet, work and live. We recognise and respect their continuing connection to the land, waters and communities. We pay our respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.

From: McIntock, Jack [REDACTED]
Sent: Friday, 15 November 2019 12:12 PM
To: [REDACTED]
Cc: McCarthy, Justine [REDACTED]
Subject: RE: Investigation about Seven News, broadcast on Seven on 30 July 2019 and 31 July 2019
[SEC=UNCLASSIFIED]

Dear [REDACTED]

In order for Seven to fully and completely prepare submissions to the ACMA regarding the investigation referenced in your email below, Seven is seeking a two-day extension to the submissions deadline, to 5pm Wednesday 20 November 2019.

If this could please be confirmed by reply email, that would be much appreciated.

Please do not hesitate to contact me with any queries regarding this.

Kind regards,

Jack McIntock

Corporate and Government Affairs

Seven West Media Limited

Media City | 8 Central Avenue | Eveleigh NSW 2015 Australia

Postal Address: PO Box 7077 | Alexandria NSW 2015 Australia

Telephone [REDACTED]

Email [REDACTED]



SEVEN WEST MEDIA

From: [REDACTED]
Date: 4 November 2019 at 4:00:38 pm AEDT
To: "McCarthy, Justine" [REDACTED]
Subject: Investigation about Seven News, broadcast on Seven on 30 July 2019 and 31 July 2019
[SEC=UNCLASSIFIED]

ACMA reference: BI-535

Dear Ms McCarthy,

Investigation about *Seven News*, broadcast on Seven on 30 July 2019 and 31 July 2019

The Australian Communications and Media Authority (the ACMA) is investigating a complaint from Stephen Barclay about the above program.

A copy of the complaint made to the licensee is attached for your reference.

The complaint made to the ACMA further stated:

The Channel 7 broadcast on 30 July 2019 displayed two QBCC letters and which clearly identified two QBCC officer's names, both of which were not relevant to the broadcast. This was an unwanted and uninvited intrusion upon a person's private affairs. The broadcast of the officers' names without consent was not warranted. The officers' names are clearly identifiable from the broadcast and despite the assertions from Channel 7 the intrusion was 'fleeting' does not account for the pausing or recording of live television for later viewing. The key points to the broadcast could have been made and the public interest served without disclosing personal information. Further, the broadcast blurred the contents of the letters yet did not blur the names of the QBCC officer. The clear inference is that the names of the officers were somehow important to the story, which is not the case. The broadcast on 31 July 2019 centred on a complaint from a Mr Mark Agius. Mr Agius had pre-recorded an interview with the Channel 7 reporter at his residence in Townsville, yet during the QBCC Commissioner's interview with the same reporter on the afternoon of 31 July 2019 the reporter failed to mention the complaint of Mr Agius, nor were any questions put to the Commissioner about the complaint. The broadcast failed to mention that the QBCC had been in contact with Mr Agius on a number of occasions in relation to his complaint. Accordingly, there was no fair treatment or opportunity given to the Commissioner to express an opinion; the principle of gathering and presenting balanced information with due impartiality was disregarded;

The complaint raises issues concerning Channel Seven Brisbane Pty Limited's compliance with the Commercial Television Industry Code of Practice 2015 (revised 2018) (the Code), including, but not limited to:

- > 3.3.1 [accuracy]
- > 3.4.1 [impartiality]
- > 3.5.1 [privacy]

The ACMA is investigating this matter under the *Broadcasting Services Act 1992*.

Next steps

The ACMA seeks the following information and material:

- > a recording of the broadcasts
- > submissions on compliance with the relevant provisions, should you wish to make any
- > any other relevant information the licensee may wish to provide at this time.

Please note that in accordance with its statutory duty to produce regulatory arrangements that are stable and predictable, the ACMA may publish relevant extracts from submissions in investigation reports. Other than in exceptional circumstances, or as required by law, only material which would be exempt from release under the *Freedom of Information Act 1982* (Cth) will be treated as confidential.

Timing

Please provide a copy of the broadcast by **5pm 11 November 2019**. Should you wish to provide written submissions on compliance, these should be supplied by **5pm 18 November 2019**. If the licensee does not wish to make any submissions in relation to this matter, please confirm this when the broadcast is provided or earlier if possible.

The ACMA may seek additional information and/or material as the investigation progresses.

Please note that giving false or misleading information to the ACMA in the course of an investigation is a serious offence. This includes information that may be misleading due to omission.

You may contact me on [REDACTED] if you have any queries.

Yours sincerely,

[REDACTED]
Investigations and Compliance Officer
Content Investigations Section

Australian Communications and Media Authority

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20 November 2019

██████████
Investigations and Compliance Officer
Content Investigations Sector
Australian Communications and Media Authority

Dear ██████████

ACMA investigation BI-535

We refer to your email of 4 November 2019 and thank the ACMA for the opportunity to provide submissions in relation to the complaint by Mr Stephen Barclay on behalf of the Queensland Building and Construction Commission (QBCC).

For the purpose of these submissions, Channel Seven Brisbane Pty Limited (**Seven**) adopts the contents of its letter to the QBCC dated 30 September 2019, a copy of which is included in the QBCC's complaint to the ACMA (**30 September Letter**).

In addition to the 30 September Letter, Seven wishes to make the following submissions.

30 July 2019 news story (Broadcast 1)

Although the QBCC appears to concede that the broadcast of the officers' names is fleeting it is argued that this does not take into account the ability to pause or record live television. The fact that it is technically possible to do so does not mean that it is reasonably likely viewers will do so. In circumstances where the names of the officers were not reported in the commentary and their personal conduct was not the subject of the report, it is unreasonable to assume that an ordinary viewer would be inclined to pause or record the footage in order to study the fleeting names in greater detail.

As stated in our 30 September Letter, the portrayal of ██████████ name is so blurred and unfocused that her name cannot be discerned with any certainty – unless a viewer already knew that the correct name was ██████████ it could just as easily be read as ██████████ or ██████████

The QBCC alleges that the fact that a portion of the letter containing ██████████ name has been blurred suggests that the officers' names are important to the story. Although such an allegation is not relevant to the question of compliance with the Code, Seven says that the section that was blurred contained ██████████ work contact details which, at such a close distance, would have been legible. Those details were blurred because Seven took the view that publishing ██████████ work contact details was not relevant to the story and would not have added to the public's understanding of the report. On the other hand, briefly showing the author of the letter adds legitimacy to the investigation of the report.

Seven emphasises that the letters were not confidential and had been signed by the officers in their capacity as representatives of the QBCC, not in their personal capacity. The only personal information disclosed by the Broadcast, if any, is the fact that persons with those names were, at some point, public servants at the QBCC – it is not clear from the report that they still work there. In the context of a critical report about the conduct of the QBCC officers

cannot reasonably expect that a fleeting broadcast of their names, as mere signatories of letters on behalf of a public entity, is an invasion of their privacy.

Further, each of the names are relatively common Australian names. Nor it is not clear in which branch of the QBCC the officers were associated with, as the Broadcast does not publish the office branch in which [REDACTED] is from and the signature block of the letter concerning [REDACTED] is blurry. Assuming that they both reside in or near [REDACTED], the surnames [REDACTED] and [REDACTED] feature many times in the White Pages in the area of [REDACTED] alone, and many hundreds of times throughout Queensland. Given that no other identifying information is provided about the two names, the appearance of the names does not amount to the disclosure of any relevant personal information. There is no suggestion in the complaint that the roles of either of those persons attracted any need for special confidentiality or that the persons' employment status with the QBCC was or is confidential.

The close up of the QBCC letterhead (at 00:39) was to emphasise the fact that the letter is a formal communication from the QBCC, and any reasonable viewer who noticed the officer's name would understand that the point of its inclusion is to highlight the fact that it is a formal QBCC letter. Given that the officers' names are not mentioned in the commentary and their personal conduct (either in a private or work setting) is not in question any visibility of the officers' names merely serves to highlight the formality of the communications and is incidental to the main story.

For the reasons given above and in its 30 September Letter Seven submits there has been no invasion of privacy and it has complied with clause 3.5.1 of the Code.

31 July 2019 news story (Broadcast 2)

A copy of the transcript of Broadcast 2 is included at Attachment 1 for the ACMA's convenience.

The QBCC alleges that Broadcast 2 is not accurate, fair or impartial for a variety of reasons.

In their complaint the QBCC say that Seven should have put "the allegation" to the QBCC and the Commissioner prior to airing of Broadcast 2. From the context of the complaint Seven understands "the allegation" to mean the allegation that the QBCC ignored some defective work. It is not reported that Mr Agius believed that the QBCC ignored defects; rather, it is reported that Mr Agius was unhappy with the QBCC's finding that the repaired defects were "satisfactory". The QBCC would have been aware of this when it was contacted by Seven about the Agius case. In any event, as stated in the 30 September Letter, Seven was informed by the QBCC's media officer that Mr Bassett would be unable to go on the record in relation to the Agius case and so it would have been fruitless to put the report to the Commissioner prior to air. Further detail about the extensive steps taken by Seven to investigate the story and interview the QBCC matter are set out in the 30 September Letter.

The QBCC alleges that it is not clear that Mr Bassett is not commenting on the Agius case or Mr Mander's comments. Seven submits that it is perfectly clear that Mr Bassett is commenting on a different case – his comments are introduced by the words, *"Something the Commissioner's denied, today commenting on what could be the QBCC's longest running case, a 7 year battle"*. From the context of Broadcast 2 it is clear that the Agius case is not the longest running case or a 7 year battle. Mr Bassett then says, *"We are looking at every single option, legal option, that is available to us to provide support to [REDACTED]"*. Immediately following this statement is footage of Ms [REDACTED] in her home surrounded by paperwork. No reasonable viewer would understand Mr Bassett to be commenting on the Agius case.

The QBCC also alleges that Broadcast 2 implies that the QBCC “ignored” Mr Agius’ complaint where in fact the QBCC had referred Mr Agius to other complaint avenues. Contrary to the QBCC’s allegation Broadcast 2 accurately set out what review steps had been taken; namely, that Mr Agius made a complaint to the QBCC; then sought an internal review; the QBCC subsequently made a finding; and then referred Mr Agius to the Queensland Civil and Administrative Tribunal:

Georgie Chumbley: Mark complained to the Queensland Building and Construction Commission, the builder was issued a direction to rectify, this is what he left. Still not up to code, but deemed satisfactory by the Queensland Building and Construction Commission’s inspectors and internal review process.

Mark Agius: Their answer is, well you can go look at it in QCAT.

The fact that this information is partially presented by a disgruntled complainant does not take away from the accuracy or fairness of the reporting, particularly where there is no requirement for a news broadcast to include every aspect of a person’s viewpoint (clause 3.4.2 of the Code).

The complaint states that, had the allegations been put to the QBCC prior to the airing of Broadcast 2, the QBCC would have informed Seven that Mr Agius’ own engineer attended the inspection of the residence. It is clear that the QBCC inspector must have agreed with Mr Agius’ engineer that the residence contained defects because the QBCC subsequently issued the builder with a direction to rectify. The fact that Mr Agius’ engineer was present does not alter the accuracy or fairness of the reporting in this regard.

The complaint further states that Broadcast 2 appears to identify complaint items additional to those identified by Mr Agius’ engineer and which were not the subject of the internal review. However, this misconstrues the report. The subject of the report was Mr Agius’ dissatisfaction with the QBCC’s finding that the rectified defects were “satisfactory”. The actual substance of Mr Agius’ complaint and internal review was not reported on. To the extent that Mr Agius’ interview referred to items that were not the subject of the QBCC review, the correctness of the reporting that Mr Agius was unhappy with the QBCC’s decision is not affected and, accordingly, there was no obligation on Seven to put these matters to the QBCC.

Moreover, it would have not have been reasonable to expect Seven to know that Mr Agius had shown the film crew items that were not subject of his complaint. Even if Seven had obtained a copy of the complaint or had knowledge of the specific items complained of, without a solid understanding of construction the Seven crew could not have been expected to know that the items shown to them during filming were not items subject of the complaint. Seven would, therefore, also not have been in a position to bring this to the QBCC’s attention for comment prior to air.

The QBCC takes issue with the statistics that are reported in Broadcast 2. The report opens with the sentence, “*Seven News can tonight reveal 99.5% of cancelled builders licences were over financial issues. Queensland’s construction watchdog only cancelled 3 licenses for dodgy work last year*”.

In addition to the quotes from the *Hansard* transcript of the Transport and Public Works Committee Estimates Hearing on 30 July 2019 (**Estimates Hearing**) (which are set out in the 30 September Letter) Seven relied on the QBCC Annual Reports from 2016-2017 and 2017-

2018 which are available on the QBCC website at <https://www.qbcc.qld.gov.au/qbcc-annual-report-2016-2017> and <https://www.qbcc.qld.gov.au/qbcc-annual-report-2017-2018>.¹

In both of the Annual Reports the “Licence Suspensions and Cancellations” sections state the reasons for suspension/cancellation of licences, which are:

- involvement in a financial failure;
- involvement in a second financial failure; and
- insolvent trading or other serious risk.

In light of section 48(1)(i) of the *Queensland Building and Construction Commission Act 1991* (Qld), which sets out the grounds for suspending or cancelling a licence, the phrase “financial failure” can reasonably be construed to refer to a situation where licence fees are owing to the QBCC. In each of the 2017 and 2018 financial years, the predominant reason for suspension or cancellation was “involvement in a financial failure” (241 of 256 cancellations, or 94%; and 224 of 244 cancellations, or 91%).

At the time of Broadcast 2, the annual report for 2018-2019 was not available. However, the *Hansard* transcript of the Estimates Hearing reports that there had been a total of 14,623 licences cancelled from approximately 24 February 2017 to 24 July 2019; and that in the 2019 financial year four licences had been cancelled for excess demerit points and three cancelled for defective work. In light of the high proportion of licences that had been suspended or cancelled due to financial failure in 2016 and 2017, and taking into account the Estimates Hearing statistics, it was reasonably open to Seven to report that 99.5% of licences had been cancelled due to “financial issues”.

The QBCC claims that the cancellation figures are misleading and that the true number of cancellations was 12,065 with 7,506 of those cancellations due to unpaid fees. Broadcast 2 states “*in two years the QBCC has cancelled more than 14,000 builder’s licences, most for unpaid fees. Just three last year were cancelled for defective work*”. Seven submits that it was reasonably open to it to rely on the statistics given by Minister Mick de Brenni at the Estimates Hearing; namely, that 14,236 licences had been cancelled in the last two financial years – particularly so in light of clause 1.14(b) of the Code which states that “...a Licensee will not be in breach of the Code if the non-compliance ...was due to ... reasonable reliance by the Licensee on information supplied by another person.” In any event, the actual figures provided by the QBCC in its complaint amount to 62% of licences being cancelled due to unpaid fees, which can still accurately be described as “*most*”. Therefore, it cannot be said that this reporting is inaccurate or misrepresented or that Seven has breached clause 3.3.

The QBCC also seems to take issue with the visual on-screen representations regarding the above figures. Although the words “14,623 unpaid fees” appear together on screen, when viewed in context with the commentary it can be reasonably understood that the figure “14,623” is to emphasise the total number of cancellations; and the subsequent appearance of the words “unpaid fees” is to reinforce the commentary that most of the 14,623 cancellations were due to unpaid fees. This is further emphasised by the slight pause after the reporter says “most”. No reasonable viewer would be misled by these visuals. For further context, see the screenshots below:

¹ See page 46 of the 2016-2017 Annual Report; and pages 25-26 of the 2017-2018 Annual Report.

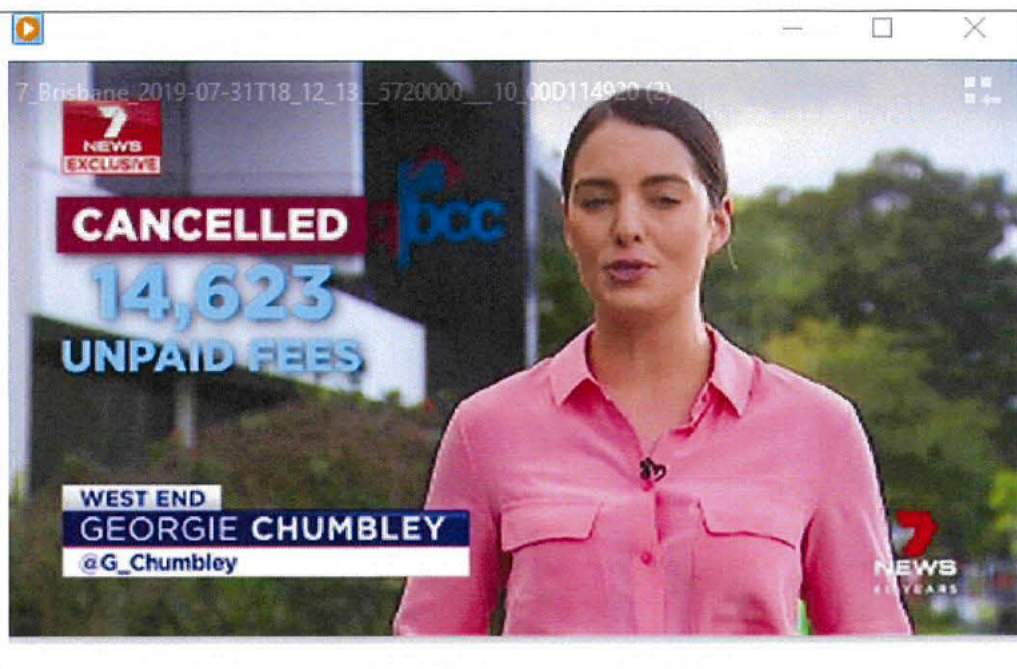
In two years the QBCC has cancelled ...



...fourteen thousand builders licences...



...most
[pause]
for unpaid
fees



For these reasons Broadcast 2 clearly complies with clauses 3.31 and 3.41.

Other comments

As advised in its 30 September Letter as a courtesy to QBCC Seven has removed each of the Broadcasts from its social media platforms.

The Broadcasts critically examined the conduct of a public regulator against the background of complainants who presented their personal views and experiences with the QBCC. The reporting had been thoroughly investigated and supported by statistics and Seven had taken all reasonable steps to obtain the QBCC's comment where necessary.

If you require any further information in relation to this matter, please contact me. My direct line is [REDACTED].

Yours sincerely

Justine McCarthy
Head of Regulatory and Government Affairs

Attachment 1: Transcript – Seven News – Builders Licence

1	Newsreader	Seven News can tonight reveal 99.5% of cancelled builders
2		licences were over financial issues. Queensland's construction
3		watch dog only cancelled 3 licences for dodgy work last year, while
4		some home owners are forced into expensive legal battles.
5	Georgie Chumbley	Mark Agius's dream home has given him nothing but nightmare.
6	Mark Agius	The building may be beautiful on the outside but it's absolutely
7		rotten at the core.
8	Georgie Chumbley	In cyclone country, Mount Louisa, Townsville, the builder botched,
9		rigged safety standards.
10	Mark Agius	You'll see the webbing's actually been destroyed with the cyclone
11		right as it comes through. This one here is so far to the edge that
12		it's actually stripped out.
13	Georgie Chumbley	Mark complained to the Queensland Building and Construction
14		Commission, the builder was issued a direction to rectify, this is
15		what he left. Still not up to code, but deemed satisfactory by the
16		Queensland Building and Construction Commission's inspectors
17		and internal review process.
18	Mark Aguis	Their answer is, well you can go look at it in QCAT.
19	Georgie Chumbley	It's already cost him \$87,000.
20	Ben Schefe	I don't know what the perfect system is, but it's clearly not working
21		what's happening now right now.

22 Georgie Chumbley In two years, the QBCC has cancelled more than 14,000 builder's
 23 licences, most for unpaid fees, just 3 were cancelled last year for
 24 defective work.

25 Tim Mander It would seem that the Labour government is more interested in
 26 collecting builders registration fees, then wiping out dodgy builders.

27 Georgie Chumbley Something the commissioner's denied, today commenting on what
 28 could be the QBCC's longest running case, a 7 year battle.

29 Do you think that is a sign that the QBCC is not doing its job
 30 properly?

31 Brett Bassett No I don't.

32 Georgie Chumbley Brett Bassett insists they are working towards a solution.

33 Brett Bassett We are looking at every single option, legal option that is available
 34 to us, to provide support to [REDACTED].

35 Georgie Chumbley As she and countless other home owners remain in limbo.

36 Georgie Chumbley, Seven News.