

Jenny Allen

From: [REDACTED]
Sent: Tuesday, 26 May 2020 10:13 AM
To: DL - Rochelle Zurnamer & Assistant
Cc: Jenny Allen
Subject: REQUESTING PERMISSION TO PUBLISH: BI-535 - further info on redactions [SEC=OFFICIAL]
Attachments: BI-535 - publication version - noting redactions.docx

Hi Rochelle,

Jenny mentioned you would like some more info on the redactions applied to this report.

I have marked up some comments about them in the attached, but as a summary:

- > The two QBCC officers that gave rise to the privacy breach are identified as employee x and employee Z, in line with the complainant's (QBCC's) request
- > The QBCC Commissioner is referred to as Commissioner, without the name
- > The reporter's name is also redacted, referred to as the reporter, in line with the licensee's request
- > All other names have been redacted, e.g. people featured in the news report are quoted with only the first letter of their surname
- > We have removed references in the submissions which identify the QBCC as the complainant

Hope this helps – please let me know if you have any further questions.

A copy of this email is in your virtual in-tray.

Thanks,

[REDACTED]

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Australian
Communications
and Media Authority

Investigation Report no. BI-535

Summary	
Broadcaster [Service]	Channel Seven Brisbane Pty Limited [Seven]
Finding	Breach of clause 3.5.1 [privacy] Breach of subclause 3.4.1(a) [present news fairly and impartially]
Relevant code	Commercial Television Industry Code of Practice 2015 (revised in 2018)
Broadcast	<i>Seven News Brisbane</i>
Dates of broadcast	30 and 31 July 2019
Date finalised	22 April 2020
Type of service	Commercial—television
Attachments	A - extracts of the complaint to the licensee B - extracts of the licensee's response to the complaint and submissions to the ACMA C - relevant Code provisions and ACMA investigation process

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Summary

In November 2019, the ACMA commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into two news reports, broadcast on 30 July 2019 (**Report 1**) and 31 July 2019 (**Report 2**) on *Seven News Brisbane*, about building complaints and the Queensland Building and Construction Commission (**QBCC**).

The complaint alleged that Report 1 contained material that breached the privacy of two officers of the QBCC. The ACMA has investigated Report 1 against clause 3.5.1 of the Commercial Television Industry Code of Practice 2015 (revised in 2018) (**the Code**).

The complaint also alleged that Report 2 lacked fairness and impartiality in the way it presented allegations about the QBCC's handling of a consumer complaint. The ACMA has investigated Report 2 against subclause 3.4.1(a) of the Code

Issue 1: Privacy

Finding

The ACMA's finding is that the licensee breached clause 3.5.1 of the Code.

Reasons

3.5.1 In broadcast ing a news Program or Current Affairs Program, a Licensee must not broadcast material relating to a person's personal or private affairs or which invades a person's privacy, unless:

- a) there is a public interest reason for the material to be broadcast; or
- b) the person has provided implicit or explicit consent for the material to be broadcast

In assessing compliance with clause 3.5.1, the ACMA is assisted by its *Privacy Guidelines for Broadcasters 2016*.¹

The ACMA generally considers the following questions:

- > Was a person identifiable from the broadcast material?
- > Did the broadcast material disclose personal information or intrude upon the person's seclusion in more than a fleeting way?

If the answer to both of these questions is yes, then there is a potential breach of the Code's privacy provisions.

The ACMA will then consider:

- > Was the person's consent obtained—or that of a parent or guardian?
- > Was the broadcast material available in the public domain?
- > Was the invasion of privacy in, and proportionate to, the public interest?

If the answer to any of these three questions is yes, then there may be no breach.

¹ <https://www.acma.gov.au/publications/2019-11/guide/privacy-guidelines-broadcasters>, accessed 19 December 2019.

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The complaint was that Report 1 contained images of two items of correspondence on which the names of two QBCC officers could be seen, which was 'unnecessary and not in the public interest'.

Was a person identifiable from the broadcast material?

The full name of a QBCC officer (employee X) and the full name, job title and signature of another QBCC officer (employee Z) were each clearly shown for approximately one second as part of close-up images of QBCC correspondence. Including the combination of employee X's and employee Z's names and the name of the organisation they work for means they were identifiable from the broadcast material.

Commented [REDACTED]: This is the de-identifying format requested by the QBCC

Did the broadcast material disclose personal information or intrude upon the person's seclusion in more than a fleeting way?

The Office of the Australian Information Commissioner lists an 'individual's name, signature, address, telephone number, date of birth, medical records, bank account details, employment details and commentary or opinion about a person' as examples of personal information.² The ACMA considers that despite appearing on official correspondence prepared as part of their employment responsibilities, the broadcast of employee X's and employee Z's personal information constituted an invasion of their privacy. The licensee has submitted that the names were only displayed briefly and in a fleeting manner, and that therefore no invasion of privacy occurred. The ACMA does not agree with this argument, noting the manner and style of presentation described above.

As consent was not obtained and there is no indication that the personal information relating to the two QBCC officers concerned was available in the public domain, the remaining question to be considered is whether there was a public interest reason for the material to be broadcast.

Was the invasion of privacy in, and proportionate to, the public interest?

The licensee submitted that 'information regarding the conduct and actions [sic] the public servants involved in the administration of the QBCC can reasonably be considered a public interest issue'. While the ACMA agrees with this, it is also possible to report on the conduct and actions of public servants without disclosing the names of individual officers. The disclosure of the names of individual officers would generally only be in the public interest where the identity of the officers is relevant to the report. That was not the case here as there was nothing to suggest that the officers referred to were personally responsible for the actions taken by the QBCC, or that they had engaged in misconduct in relation to the matters canvassed.

The licensee submitted that 'any visibility of the officers' names merely serves to highlight the formality of the communications and is incidental to the main story.' The ACMA does not accept this argument, and notes that the visibility of the QBCC letterhead alone would have communicated the official nature of the correspondence.

As the ACMA is of the view that there was no public interest justification for disclosing the QBCC officers' names and employment details, the ACMA's finding is that the licensee breached clause 3.5.1 of the Code in relation to the broadcast of Report 1.

² <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-b-key-concepts/#personal-information> accessed 19 December 2019.

Issue 2: Impartiality

Finding

The ACMA's finding is that the licensee breached subclause 3.4.1(a) of the Code.

Reasons

3.4.1 In broadcasting a news Program, a Licensee must:

- a) present news fairly and impartially;

[...]

3.4.2 Nothing in this Section 3 requires a Licensee to allocate equal time to different points of view, or to include every aspect of a person's viewpoint, nor does it preclude a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest.

What was the meaning conveyed to the ordinary reasonable viewer?

Report 2 opened with the newsreader providing statistics indicating the QBCC did not cancel many builder's licences due to 'dodgy work'. A homeowner [Mr A] then showed the reporter a number of examples of the construction of his house that were presented as defective. The accompanying visuals included Mr A pointing to a metal rod protruding along the side of a wooden beam (shown from more than one angle), a loosely attached joist and an unsecured nut. The reporter stated in voice-over that:

[Mr A] 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.

The report included opinions from several commentators that the 'system' wasn't working and concluded with a brief interview with the QBCC Commissioner, who was asked by the reporter about 'the QBCC's longest running case, a seven-year battle', and whether this indicated the 'QBCC is not doing its job properly'. The Commissioner disagreed, responding that the QBCC was looking to provide support to the homeowners, identified as [Mr and Mrs M] (Mrs M featured in Report 1).

The ACMA considers an ordinary reasonable viewer would have understood from the broadcast that:

- > the QBCC was not effectively regulating 'dodgy' builders
- > the QBCC complaints handling process had not adequately addressed Mr A's complaint, with QBCC inspectors incorrectly approving the defective work presented in the Report
- > the QBCC Commissioner commented on a seven-year dispute that involved different property owners to Mr A.

Did the broadcast present news fairly and impartially?

Subclause 3.4.1(a) requires news to be presented fairly and impartially. The impartiality requirement means that news must be presented in such a way that one side of an issue is not unduly favoured over another, and that the program does not show prejudice or bias against a particular side.

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Achieving fairness and impartiality requires a broadcaster to present material in a way which avoids conveying a prejudgement or giving effect to the preferences of the reporter or presenter, who play key roles in setting the tone of the report, through their style and choice of language.

A news report that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether a breach of the Code has occurred will depend on the theme of the news report, the range of perspectives that were presented or sought to be presented in relation to that theme, the overall presentation of the report and the circumstances in which the report was prepared and broadcast.

When a news report investigates and reports on matters of public interest and concern, care in framing is important. A news report that is not presented fairly or impartially may include:

- > an unfair selection of material from the range of material available
- > an undue emphasis on certain material
- > the unfair juxtaposition of material out of context.

The complainant alleged that Report 2 was not fair or impartial because it presented several examples of defective building work as having been passed by the QBCC, when the work shown had not been inspected by the QBCC. The complainant also alleged that Report 2 failed to include the QBCC's perspective on the allegations relating to Mr A's home and did not give the Commissioner the opportunity to respond to them.

The licensee submitted, about the alleged building defects:

The subject of the report was [Mr A's] dissatisfaction with the QBCC's finding that the rectified defects were "satisfactory". The actual substance of [Mr A's] complaint and internal review was not reported on. To the extent that [Mr A's] interview referred to items that were not the subject of the QBCC review, the correctness of the reporting that [Mr A] 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 not have been reasonable to expect Seven to know that [Mr A] 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 licensee submitted that it did not raise Mr A's allegations with the QBCC Commissioner because, prior to the interview, it had been informed by a QBCC media officer that the Commissioner could not go on the record in relation to specific cases because of privacy concerns.

The context of the report was a critical review of the QBCC's regulation of the building industry. The building defects on Mr A's property were presented as a case study of the QBCC's failure to effectively regulate. In addition to 'Mr A's own perspective', conveyed by Mr A in his own words, the allegations relating to Mr A's property were presented in a specific and unequivocal manner as the reporter's independent view. The reporter's assertion was that the building work was 'not up to code but deemed satisfactory by the Queensland Building and Construction Commission's inspectors'. In this context, the ACMA considers there was an obligation on the licensee to present Mr A's allegations fairly, and this required attempting to confirm or contextualise the substance and range of the allegations. Ordinarily this would involve including comment from the QBCC in the news report. However, in this case, the licensee has submitted it was unable to obtain any comment from the QBCC and

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this prevented it from being 'in a position to confirm or refute' Mr A's allegations. Noting in the news report that there had been an attempt by the licensee to obtain comment, including the reasons why it was refused, would have helped to avoid presenting allegations as uncontested facts.

The ACMA acknowledges that the report provided the QBCC an opportunity to disagree with the assertion that it was not 'doing its job properly'. However, this was in relation to another matter involving Mr and Mrs M (the latter of whom appeared in Report 1) and did not address the serious allegations made by Mr A that the building regulator had approved defective building.

The licensee submitted that it did not check the allegations relating to Mr A's property and it did not have the requisite knowledge to assess the defects. The ACMA considers that the licensee should have specifically sought comment from the QBCC about the defects on Mr A's property, as it did in relation to Mr and Mrs M's property. This course of action was taken in the specific case of Mr and Mrs M's seven-year dispute, which is seen when the QBCC Commissioner comments on their matter in Report 2.

Considering the matters discussed above, the ACMA's finding is that the licensee did not present news fairly in relation to the broadcast of Report 2 and therefore breached subclause 3.4.1(a) of the Code.

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Attachment A

Extracts of the complaint to the Licensee dated 28 August 2019:

[...]

30 July news story

In the broadcast of the 30 July news story, two QBCC letters are shown on camera. The name of the relevant QBCC officer is clearly visible on each letter. The officers' names were not relevant to the 30 July news story and airing the names of those officers in connection with a consumer complaint is considered unnecessary and not in the public interest.

[...]

It is considered that the publication of officers' names in the 30 July news story was in breach of section 3.5.1 of the Code.

[...]

31 July news story

On the afternoon of Wednesday 31 July 2019, the Commissioner of the QBCC [...] was interviewed by [Reporter] for approximately 30 minutes at the QBCC's offices. At no point during the interview did [Reporter] mention a defective works matter pertaining to Mr [A], nor did [Reporter] ask any questions relating to that case. Yet, the 31 July news story contained a detailed pre-recorded interview with Mr [A] at his residence in Townsville concerning complaints as to defective work and the response of the QBCC.

Commented [REDACTED]: Name removed

Commented [REDACTED]: Name removed

The 31 July news story opened with an on-site interview with Mr [A] identifying defective building work allegedly ignored by the QBCC.

Had the allegation been put to the QBCC or the Commissioner prior to the airing of the 31 July news story, the Seven Network could have been informed that a QBCC inspector attended [Mr A's] residence with Mr [A]'s engineer and inspected the items referred to by the engineer at that inspection. A direction to rectify was issued as a result of the inspection in relation to the items that Mr [A]'s engineer had identified during the inspection. Those particular items were then considered rectified. Mr [A] lodged an internal review application with the QBCC which did not contain reference to any of the items shown in the 31 July news story. The 31 July news story appears to identify complaint items additional to those identified by Mr [A]'s engineer on site.

Additionally, QBCC officers had been in recent contact with Mr [A], on 16 and 25 July 2019, in relation to complaint avenues he could pursue, contrary to the implications in the 31 July news story that the QBCC had ignored Mr [A]'s concerns.

There was a clear opportunity for your reporter to put questions or comment to the Commissioner for his response during the interview on 31 July 2019, to allow the opportunity for the QBCC to respond to the allegations by Mr [A]. In addition, the QBCC's Principal Manager, Media and Government Relations specifically asked [Reporter] on 31 July 2019, and prior, whether there were any other matters she wished to raise during the interview with the Commissioner other than the [M] case, and [Reporter] did not respond.

By failing to allow the Commissioner or the QBCC the opportunity to respond to the [A] case prior to the 31 July news story being broadcast, [...] the 31 July news story was not presented fairly and impartially as required by the Code.

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[...]

Further, the 31 July news story shows the interview with Mr [A], then an interview with [Mr M], followed by an interview with [the] QBCC Commissioner. The comments by [the Commissioner] are in relation to questioning by [Reporter] on the [M] case. However, it is not clear in the 31 July news story that [the Commissioner] is commenting on a matter that is different to the [A] case, or Mr [M's] comments.

[...]

It is alleged that the Seven Network has breach[ed] the Code in respect of the 30 July news story and the 31 July news story as follows:

- (a) by failing to give the QBCC or the Commissioner the opportunity to respond to the allegations aired in the 31 July news story concerning Mr [A], the Seven Network has failed to present the news fairly and impartially;

[...]

- (b) by broadcasting the names of individual officers in the 30 July news story, the Seven Network invaded a person's privacy without consent and in a manner that is not in the public interest. [...]

Extracts of the complaint to the ACMA dated 11 October 2019:

[...]

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 [un]wanted and uninvited intrusion upon a person's private affairs. The broadcast of the officers' names without consent was not warranted. The officers' name[s] 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 [A]. Mr [A] 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 [...] the reporter failed to mention the complaint of Mr [A], 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 [A] on a number of occasions in relation to his complaint. [...]

Extract of further submission from the complainant to the ACMA, dated 15 January 2020:

[...]

The 31 July 2019 Channel 7 news story opened with an on-site interview with Mr [A] identifying alleged defective building work which he said was ignored by the QBCC. Specifically from that story it appears that Mr [A] is indicating the following defects which are time stamped. An explanation on why they are additional items not presented to QBCC is provided after the defect:

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- Joists fixing under the house (00:29; 00:38) - The joist which appears to come out of the joist hanger was not part of the complaint form and therefore not inspected by the QBCC.
- Loose attachment (nut being loose) (00:49) - Was not mentioned in the complaint but may form part of the complaint regarding inadequate fixings. This was determined by the QBCC that no defect was evident. A structural engineer approved the joist fixing.
- Cyclone rod penetrating under joists blocking (00:36; 00:48; 00:54) - Not mentioned as part of Mr [A]'s complaint and therefore not inspected.
- Nailing of external cladding (not visible) - This was a complaint item from Mr [A] and a direction to rectify was given to the builder. QBCC determined the builder had rectified the defect.
- Plumbing penetration from floor (00:55) – This was not mentioned by Mr [A] in his complaint to the QBCC and therefore not inspected.
- The joist blocking in various locations (00:54) – This was not mentioned by Mr [A] in his complaint to the QBCC and therefore not inspected.
- Site drainage under dwelling (00:59) - This was a complaint item from Mr [A] and a direction to rectify was given to the builder. QBCC determined the builder had rectified the defect.

The effect of the story was that the QBCC had ignored the complaint of Mr [A]. Following the Channel 7 news story of 30 July, Channel 7 approached the Commissioner of the QBCC for a story. No mention of Mr [A]'s case was made to the Commissioner, nor was he advised that the story to run on 31 July 2019 focused on alleged defective work ignored by the QBCC. Had the Commissioner been advised of that, he would have been in a position to respond accordingly and rebut the assertions made by Mr [A] (as seen in the above dot-points) and to be properly briefed on the subject matter.

[...] a generalised response could have been provided that all items identified in a home-owner's complaint form are inspected for defects and where identified, builders may be directed to rectify those defects. It is clear that the majority of items presented in the news story were not subject of Mr [A]'s complaint or had been rectified [...]

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Attachment B

Extract from the licensee response to the complainant dated 30 September 2019:

Thank you for taking the time to contact the Seven Network to express the views of the [complainant] on two 7NEWS Brisbane reports, broadcast on 30 July 2019 (Broadcast 1) and 31 July 2019 (Broadcast 2).

You have raised concerns that in your view private information was disclosed during Broadcast 1, and that Broadcast 2 was [...] unfair and biased.

[...]

Both Broadcast 1 and Broadcast 2 were 7NEWS Brisbane reports on the Queensland Building and Construction Commission (the QBCC). Broadcast 1 predominantly reported on the experiences of a Mrs [M] in her dealings with the QBCC in relation to her residence. Broadcast 2 predominantly reported on the experiences of Mr [A] in his dealings with the QBCC, along with a brief interview with the Commissioner of the QBCC [...]. Each broadcast will be dealt with in turn.

Broadcast 1 - Privacy

[...]

Broadcast 1 contained a fleeting appearance of two names. The first name, '[employee X]', is shown towards the top of a document from the QBCC. Alongside the name is the word 'Contact.'. The name is visible for approximately one and a half seconds, with the name out of focus and not discernible for some of that time.

Approximately 13 seconds later, the name '[employee Z]' is briefly visible for approximately one and a half seconds, along with the job title [...]. The name and job title are visible at the bottom of a letter from the QBCC. The name and job title were both in small type and were not static on the screen, as the shot of the letter panned upwards.

In the ACMA's Privacy Guidelines for Broadcasters, the following is provided:

When investigating the alleged breach of a code privacy provision, the ACMA will consider the elements of a breach:

- > Was a person identifiable from the broadcast material?*
- > Did the broadcast material disclose personal information, or intrude upon the person's seclusion in more than a fleeting way?*

Seven is of the view that while [employee X] and [employee Z] were identifiable as public servants employed by the QBCC, the broadcast of this information was no more than fleeting, that is their names were visible for only a short and brief time, and as such was not an invasion of their privacy.

Additionally, Seven is of the view that the broadcast was in the public interest. In the ACMA's Privacy Guidelines for Broadcasters, the following is provided:

Public interest issues include:

- > government and public administration*

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The QBCC, as Queensland's building and construction regulator, is a function of the Queensland government and administers the regulatory framework of building and construction in Queensland. As such, information regarding the conduct and actions the public servants involved in the administration of the QBCC can reasonably be considered a public interest issue, particularly when the matters broadcast directly relate to actions by public servants in the course of them performing their roles in the administration of the QBCC.

For these reasons, Seven is confident that the 7NEWS Brisbane broadcast of 30 July 2019 only broadcast personally identifiable material in a fleeting way, and that fleeting broadcast of material was in the public interest. Therefore, Broadcast 1 was in accordance with clause 3.5.1 of the Code. Seven also notes that as a courtesy, Broadcast 1 and Broadcast 2, in which some of the material from Broadcast 1 was re-broadcast, have been removed from online platforms.

Commented [REDACTED]: Please note – I found one further instance on YouTube, which has now also been removed

Broadcast 2 - Impartiality

[...]

It is claimed that the interview with the QBCC Commissioner is not contextualised properly, misrepresenting his viewpoints. It is also claimed that more information could have been readily ascertained through the interview, in time for Broadcast 2 to go to air.

In preparing the report in question, the reporter responsible made considerable efforts to investigate the story and interview the QBCC matter. On 30 July 2019 at 12.01 pm, a written request for an interview with the Commissioner was filed with a QBCC media officer, who advised shortly thereafter that the interview would not be able to take place until the following day.

Following further back-and-forth between the media officer and the reporter, the interview was scheduled for 3.45 pm on 31 July, with this timing confirmed only 29 minutes prior to the interview taking place. The reporter had advised the media officer that 3.45 pm was the latest possible time an interview could take place, as the story it would feature in was scheduled to run that evening in the 6.00 pm bulletin. The interview ultimately commenced at approximately 4.00 pm and lasted half an hour, resulting in a very compressed window of time for the completion of the report for broadcast.

Concurrent to negotiating with the QBCC media officer for the interview with the Commissioner, the reporter was investigating the details of Mr [A]'s case amongst others. In the process of doing so, the reporter was informed by the same QBCC media officer that the Commissioner could not go on the record in relation to specific matters due to privacy concerns. The reporter was told prior to the interview that the Commissioner could only comment generally. As such, questions about Mr [A]'s matter were not put to the Commissioner.

In the broadcast of the interview with the Commissioner, the only question shown that was related to a specific matter was when the Commissioner was asked if a matter continuing for seven years was a sign that the QBCC was not doing its job properly, which he denied. There was no manipulation of the interview with the Commissioner which may have caused his viewpoints to be misrepresented.

There is a clear distinction between Mr [A]'s case and the Commissioner's comments, with his answer being tied directly into footage of Mrs M, which is supported by the Commissioner identifying [...] Mr and Mrs [M] in his comments. Therefore, Seven is of the view that the Commissioner's comments were not misrepresented, and that they were presented accurately and fairly during Broadcast 2.

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[...]

A news broadcast is not precluded from critical examination of a particular issue or controversy, as per clause 3.4.2 of the Code. Seven is of the view that Broadcast 2 was a fair examination of an issue, in this case the issue of regulations applicable to housing in Queensland and the enforcement of those regulations.

The reportage during the broadcast was supported by footage of houses affected by the regulatory issues, interviews with residents of affected house who spoke to the issues being examined, and figures on the volume of licence cancellations [...]. As such, the critical examination featured during Broadcast 2 was fair and impartial, being comprehensively supported by factual material.

Clause 3.4.2 of the Code also provides that there is no requirement for a news broadcast to include every aspect of a person's viewpoint. The extracts of the interview that were featured in Broadcast 2 were a fair and accurate reflection of the views of the QBCC Commissioner, clearly and accurately demonstrating the views of the Commissioner and that they differed from those put throughout the rest of the report.

[...]

Extract from licensee submission to the ACMA dated 20 November 2019:

30 July 2019 news story (Broadcast 1)

Although the [complainant] 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.

Commented [REDACTED]: Not naming QBCC as complainant

As stated in our 30 September Letter, the portrayal of [employee Z's] 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 "[employee Z]", it could just as easily be read as [...] or [...].

The [complainant] alleges that the fact that a portion of the letter containing [employee X's] 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 [employee X's] work contact details which, at such a close distance, would have been legible. Those details were blurred because Seven took the view that publishing [employee X's] 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

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publish the office branch in which [employee X] is from and the signature block of the letter concerning [employee Z] is blurry. Assuming that they both reside in or near [...], the surnames [X] and [Z] feature many times in the White Pages in the area of [...] 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)

[...]

[The complainant states] 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 A believed that the QBCC ignored defects; rather, it is reported that Mr [A] 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 A case. In any event, as stated in the 30 September Letter, Seven was informed by the QBCC's media officer that [the Commissioner] would be unable to go on the record in relation to the [A] 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 [complainant] alleges that it is not clear that [the Commissioner] is not commenting on the [A] case or [Mr M's] comments. Seven submits that it is perfectly clear that [the Commissioner] 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 [A] case is not the longest running case or a 7 year battle. [the Commissioner] then says, "We are looking at every single option, legal option, that is available to us to provide support to Mr and Mrs [M]". Immediately following this statement is footage of Ms M in her home surrounded by paperwork. No reasonable viewer would understand [the Commissioner] to be commenting on the [A] case.

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

[Reporter]: Mark complained to the Queensland Building and Construction Commission, the builder was issued a direction to rectify, this is what he left. Still not

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up to code, but deemed satisfactory by the Queensland Building and Construction Commission's inspectors and internal review process.

Mark [A]: 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 [A]'s own engineer attended the inspection of the residence. It is clear that the QBCC inspector must have agreed with Mr [A]'s engineer that the residence contained defects because the QBCC subsequently issued the builder with a direction to rectify. The fact that Mr [A]'s 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 [A]'s engineer and which were not the subject of the internal review. However, this misconstrues the report. The subject of the report was Mr [A]'s dissatisfaction with the QBCC's finding that the rectified defects were "satisfactory". The actual substance of Mr [A]'s complaint and internal review was not reported on. To the extent that Mr [A]'s interview referred to items that were not the subject of the QBCC review, the correctness of the reporting that Mr A 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 not have been reasonable to expect Seven to know that Mr [A] 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.

[...]

Extract from licensee submission to the ACMA dated 16 April 2020:

[...]

Fairness and Impartiality

The Code requires that news programs must be presented fairly and impartially. However, as the ACMA has noted in its preliminary investigation report, a program that presents a perspective that is opposed by a particular person or group is not inherently partial.

The ACMA appears to have based its preliminary decision that the report breached clause 3.4.1(a) of the Code primarily on the basis that Seven did not put to the QBCC the specific details of Mr A's allegations. However:

- the allegations made by Mr A were clearly presented as a representation of Mr A's own perspective. The Code is clear that there is no obligation to present all viewpoints on a matter or to allocate equal time to differing views;
- Seven's reporter was specifically told by QBCC that they would not comment on the specifics of any particular case due to privacy restrictions.

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While we acknowledge that “unfair selection of material from the range of material available” could be an indicator of impartiality, in the present circumstances there was no material available in relation to QBCCs position regarding the allegations of Mr A – and the reason such material was not available was because QBCC had indicated they were unwilling to comment.

In these circumstances we believe it would be entirely unfair and unjust for the ACMA to then hold that failing to include a point of view that QBCC was unwilling to provide was evidence of bias in the report. If this standard were to be applied to all news reports then Governments, institutions and powerful individuals could easily avoid media scrutiny in relation to their conduct by refusing to comment on allegations and then accusing the media of bias for failing to include their perspective.

We entirely accept the QBCCs position that it was not in a position to comment and no negative inference was drawn from that in the relevant report. Therefore, we believe the report was presented fairly.

Further, we note that the requirement in the Code is to “present” news fairly and impartially and therefore, in our view, the report should be judged from the perspective of the viewer. The language, style and tone of the program was neutral and was not subject to any commercial arrangement, predisposition or enmities of the presenter or the network.

We note that clause 3.2.1 of the Code specified that compliance with section 3 must be assessed taking into account the facts known or readily ascertainable at the time of preparing and broadcasting the relevant program. [The complainant] has now brought to the networks attention its view that Mr A’s allegations regarding building defects were not all raised in the complaint to the QBCC (which we are not in a position to confirm or refute). However, there is no suggestion that this was known to the broadcaster or the reporter at the time the program went to air, or that Mr A was misrepresented or manipulated in any way.

For these reasons, we believe the ACMA’s preliminary view that the broadcast breached clause 3.4.1(a) of the Code should be reversed.

Attachment C

Relevant Code provisions

Fairness and impartiality

- 3.4.1 In broadcasting a news Program, a Licensee must:
- a) present news fairly and impartially;
 - b) clearly distinguish the reporting of factual material from commentary and analysis.
- 3.4.2 Nothing in this Section 3 requires a Licensee to allocate equal time to different points of view, or to include every aspect of a person's viewpoint, nor does it preclude a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest.

Privacy

- 3.5.1 In broadcasting a news Program or Current Affairs Program, a Licensee must not broadcast material relating to a person's personal or private affairs or which invades a person's privacy, unless:
- c) there is a public interest reason for the material to be broadcast; or
 - d) the person has provided implicit or explicit consent for the material to be broadcast

The ACMA's process for assessing compliance

The ordinary reasonable viewer

When assessing content, the ACMA considers the meaning conveyed by the material that is the subject of the complaint, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an 'ordinary reasonable' listener or viewer.

Australian courts have considered an 'ordinary reasonable' listener or viewer 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.³

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Code.

³ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.