

Investigation report no. BI-610

| Summary | |
|--------------------|--|
| Licensee [service] | WIN Television QLD Pty Ltd [WIN] |
| Finding | Breach of subclause 3.4.1(a) [impartiality] |
| Relevant code | Commercial Television Industry Code of Practice 2015 (revised 2018) |
| Program [type] | <i>WIN News Townsville</i> [news] |
| Date of broadcast | 29 October 2020 |
| Date finalised | 20 April 2022 |
| Type of service | Commercial – television |
| Attachments | A – extracts from the Licensee’s submissions to the ACMA B – relevant provisions and the ACMA’s approach to assessing content |

Background

In July 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into a news report on *WIN News Townsville* (the **Report**).

The Report was broadcast on WIN by WIN Television QLD Pty Ltd (the **Licensee**) on 29 October 2020 and discussed regional television news services and the 'Save Our Voices' campaign.

The investigation was opened as a part of the ACMA's ongoing interest in impartiality in news programming.

The ACMA has investigated the Licensee's compliance with subclause 3.4.1(a) [impartiality] of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the **Code**).

Issue: Impartiality

Relevant Code provisions

Commercial Television Industry Code of Practice 2015 (revised 2018)

3. News and Current Affairs

3.4 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.

[...]

Finding

The Licensee breached subclause 3.4.1(a) of the Code.

Reasons

To assess compliance, the ACMA has addressed the following questions:

- > What was the meaning conveyed to the ordinary reasonable viewer?
- > 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. To that end, an indicator of an impartial news program is that it provides sufficient information for viewers to make up their own mind about the issues presented.

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, 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.

What was the meaning conveyed to the ordinary reasonable viewer?

The Report was approximately 3 minutes in duration and commenced with the studio presenter, positioned in front of a large 'Save Our Voices' graphic, who stated:

News services have long been considered the Fourth Estate, framing political issues and holding power brokers to account, but outdated media laws are jeopardising that vital role.

We hit the state election campaign trail to find out what Queensland MPs and political hopefuls think of local media's role in the election process and beyond.

The reporter then stated:

It's dominating our headlines; a state election race like no other, with local news serving as a key conduit between political aspirants and their audience.

The Report then introduced a range of positive opinions on the importance of local media from candidates in the Queensland state election, and other political figures and members of the public.

The Report included that local news was under threat, with the reporter stating:

... the 'one licence to a market' rule is risking the continued presence of local media; a substantial loss for those outside the state capital.

There were multiple references within the Report to regional media and the changing media landscape.

These included a statement from Dan Purdie, MP, Liberal National Party Member for Ninderry, that:

It's always been pivotal, and I have no doubt will continue to be pivotal, but it's a congested space now, with social media...

The Report also included a written statement from the Honourable Anastacia Palaszczuk, MP, Premier of Queensland, that:

As each new media has arrived there are predictions it will mean the death of another. That has proven not to be true. The only thing we know for certain about the media landscape is that it is uncertain. For now.

History teaches us, in this state, local people have always supported those who provide good local news. I have every confidence that's one thing that will never change.

A reporter voiceover accompanying images of Ms Palaszczuk stated:

Anastacia Palaszczuk says the advent of new competing mediums has spurred uncertainty but is confident local news will prevail.

The Premier adamant it's always important, not just in election cycles...

The Report also included references to the potential effect of digital disruption on media diversity, with a voiceover stating:

Mr Pitt [the Honourable Curtis Pitt, MP, Speaker and Member for Mulgrave] recognises digital disruption has made it hard for legislators to keep pace but says preserving diverse voices is vital.

Toward the end of the Report, there were multiple vox pops with 'voters', which included perspectives that local media was an important way of staying informed about local issues, a way to get 'every side of the story', and for many people the only way to stay informed because they 'don't want to get on the internet'.

At the conclusion of the Report, the 'Save Our Voices' logo was again prominently displayed with the URL address 'saveourvoices.com.au' and an accompanying voiceover:

...and to understand the issues and find out how you can help the future of your local media, visit saveourvoices.com.au.

The ACMA considers the meaning conveyed to the ordinary reasonable viewer was that:

- > Local media is important to the community so they can get news that is relevant to them, for a diversity of voices to be heard, and at election times to hear about policies and issues that might affect them.
- > Local media is under threat by outdated laws, particularly the 'one licence to a market' rule.
- > The media landscape is becoming crowded because of digital companies.
- > Senior political figures are confident that there is always a place for local news, despite uncertainties raised by the changing media landscape.
- > There is a campaign called 'Save Our Voices' that the viewers were encouraged to become a part of to save their local media.

Did the broadcast present news fairly and impartially?

The Licensee submitted:

As evidenced by the comments of those interviewed for the segment, the concerns about the demise of local media in regional areas is widespread and virtually unanimous [...] no person interviewed spoke against the notion that local news sources were important and each freely volunteered their own concerns and views.

Politicians of all sides of the political spectrum as well as the vox pops sought from members of the public were unanimous in expressing concerns about reduced local media service in regional areas.

The Licensee further submitted:

It would be obvious to anyone viewing [WIN's] news program that they are watching WIN Television and that it was one of only two regional broadcasters covering local news at that time. The issue of diminishing local media voices was a matter of notoriety in the region, as indeed it is in so many regional areas.

[WIN] carries a virtually constant watermark disclosing its identity. The news service is the WIN News bulletin. The issue of diminishing local media voices had been raised in the past by all local media and everyone politically including the Federal Minister. Viewers were invited to visit a website with further information should they wish to have further information, which clearly indicated [WIN's] involvement in the Save our Voices campaign.

Further,

... To suggest that [WIN] should not have covered this important issue because it had some kind of 'interest' in the campaign is illogical and lacks rational basis. If that were so, television news bulletins could not cover company tax changes, jobkeeper, regional journalism grants, media law reform and many other matters of vital public interest.

The ACMA agrees that the ongoing viability of regional news content is newsworthy and an issue of public interest.

The ACMA also agrees that a critical examination of government policies and statements is an integral part of any news service, and that the audience of a news program would expect a degree of analysis and commentary in the course of reporting on issues of public interest.

The ACMA accepts that contextual factors in the broadcast, including that the Report was broadcast by a regional broadcaster, would have indicated to the viewer that the Licensee would likely have had a direct interest in the Save Our Voices campaign.

However, a disclosure of interest (whether implicit or explicit) does not discharge the Licensee's obligation under clause 3.4.1 of the Code to broadcast news reports that are impartial.

Under clause 3.4.3, current affairs programs are not required to be impartial and may take a particular stance on issues. The exception made for current affairs programs does not apply to a news report.

The different requirements under the Code for impartiality in news exist so that viewers can rely on news to provide fair and unbiased information. News content that audiences can trust is essential for effective participation in civil society.

The Licensee has submitted that the segment included a written statement by the Hon Anastacia Palaszczuk, MP, Premier of Queensland, 'which indicated some ambivalence towards legislative reform', and that there were no views opposing the proposition that regional news was important.

The ACMA acknowledges that the Code does not require a licensee to include every aspect of a person's viewpoint, nor for the licensee to allocate equal time to different points of view.

The ACMA's concern in this case is not with the topic reported on, nor the broadcaster's interest in it per se – the Code does not necessarily preclude a news broadcast dealing with matters in which the broadcaster has an interest. Concern arises under the Code, however,

where the broadcast, when dealing with such a topic, included a 'call to action' for the audience to get involved and advance a matter in which there were substantial private interests, including those of the licensee.

As a result, the report went beyond providing sufficient information for viewers to make up their own minds about a complex issue – i.e. how to achieve the ongoing viability of regional media and therefore provide access to diverse sources of news content for local audiences – to explicitly directing viewers to an advocacy group and suggesting they join that group's campaign. This does not amount to providing impartial news in accordance with the Code.

The licensee further submitted to the ACMA:

This requirement of providing sufficient information for viewers to make up their own minds has never, to this writer's knowledge, been interpreted to mean that a news broadcast must do no more than provide sufficient information for a viewer to make up their mind, as if to operate as some kind of maximum threshold of information that can be provided in a news story.

[...] If such a requirement exists, it should operate to ensure information is not omitted from news stories, not to prevent material being included that goes beyond sufficient information.

The ACMA disagrees with this interpretation. The ACMA is not claiming only a certain amount of information may be given in a news report. Rather, the concern is with the nature of certain types of information presented in news reports.

In this case, the ACMA does not consider that asking viewers to get involved in an issue in which the broadcaster has a substantial interest, by joining a petition which advocates for changes to laws to support that interest, was an impartial presentation of information on those laws or even on the reform of those laws.

The licensee also further submitted:

Moreover, previous decisions, and the ACMA's own guidance regarding clause 3.4.1, have not ever suggested that including a "call to action" in a news story could result in a breach of clause 3.4.1. [...] calls to action are frequently included in news stories where the public might be interested in participating directly in a campaign. Examples include the bushfire relief appeals, the Red Cross Christmas appeal, encouraging attendance at local community events and fundraising for members of the community in need. The ACMA's finding suggests that such calls to action could be in breach of clause 3.4.1, resulting in important messages not reaching the Licensee's community, and in that context is very concerning to our client.

The ACMA acknowledges that, in appropriate circumstances, the news can provide an important service to viewers in providing vital information in a timely manner about disasters and how to contribute to repair and recovery efforts, and about community events.

A licensee should consider whether the information being given out in a 'call to action' promotes a clear public interest, what the 'call to action' is and how it relates to that public interest and, critically, whether or not the 'call to action' provides support or advantage in a substantial way to private interests, including those of the broadcaster.

Under clause 3.4.2 of the Code, impartiality does not preclude a critical examination of, or comment on, an issue as part of a fair report on a matter of public interest.

In this case, what should have, and could have, been an impartial news report about the viability of regional media included a call to action, inserted by the Licensee, that exhorted viewers to take action in support of particular reforms in which the Licensee had a direct interest.

This cannot be said to constitute the presentation of news 'fairly and impartially' and in a manner that allowed viewers to reach informed views of their own on the issues raised in the Report.

Accordingly, the Licensee breached subclause 3.4.1(a) of the Code.

Attachment A

Extracts of licensee's submissions

Extracts of licensee submission to the ACMA dated 25 August 2021:

[...] The Save Our Voices website which viewers were invited to visit hosts an interview with the Federal Communications Minister Paul Fletcher in which he acknowledges and asserts his 'heated agreement' that 'regional media faces very serious challenges and we need a plan to deal with that'. There is consensus in the communities served by [WIN] on the need for local media voices and that legislative reform is necessary to prevent further degradation in service to regional communities. Supporting this, a Department of Communications-commissioned report [...] published in October 2019 recommended that reform of media ownership laws was necessary to preserve local media presence in those communities. In that regard, the presentation of the perspectives included in the Broadcast followed the weight of the evidence.

As evidenced by the comments of those interviewed for the segment, the concerns about the demise of local media in regional areas is widespread and virtually unanimous. We are instructed that no person interviewed spoke against the notion that local news sources were important and each freely volunteered their own concerns and views. Politicians of all sides of the political spectrum as well as the vox pops sought from members of the public were unanimous in expressing concerns about reduced local media service in regional areas.

Consistent with its obligations under licence condition 7(2)(a), [WIN] has always sought to inform the communities it serves with news stories relevant to them. Given the broad consensus on this issue, the story was an important one for the licensee's local community. Notwithstanding the broad consensus, [WIN] did give lengthy visual and audio attention in the Broadcast to the written statement of Premier Palaszczuk which indicated some ambivalence towards legislative reform.

You have raised the issue of [WIN] providing viewers with the opportunity to obtain further information from the Save Our Voices website. The website hosts interviews with a variety of commentators including the Federal Communications Minister referred to earlier. Pointing viewers to a website where more information can be obtained about a particular issue is something which happens whenever issues of concern to the community are discussed and there is a relevant website that viewers may access. No doubt due to the broad consensus on this issue, [WIN] is not aware of any website with an alternative viewpoint to which it could have pointed the audience.

[...] the news item was prepared with meticulous care to canvass a variety of views and was sub-edited by an exceptionally experienced news director. The story was of genuine news value as it canvassed the attitudes of candidates contesting the state election on the issue of media reform, a matter that, given the consensus of views referred to above, is clearly of vital importance to the communities served by [WIN]. That no contrary view was able to be obtained was not due to any lack of partiality, but rather due to the broad community consensus on the issue.

[...]

Extracts of further licensee submission to the ACMA dated 28 September 2021:

[...] you indicate in your letter (for the first time) that the impartiality concern does not relate to balance in the broadcast, but rather [WIN's] 'interest' in the Save our Voices campaign. The provisions of clause 3.4.1 of the Code do not address or contemplate the coverage of news stories in which the licensee has an 'interest'. As a corporation operating in Australia, any number of news stories it covers affect its commercial interests. Having such an interest does

not, and should not, reflect on the licensee's compliance with Code 3.4.1 or trigger an investigation by the ACMA each time such a story is broadcast. This is particularly so where there has been no 'external' complaint received.

I am not aware of one ACMA investigation under Code 3.4.1 that has been conducted on that basis, but it may be that this is because many previous ACMA decisions are not publicly available for review on its website. Certainly nothing analogous to your concern is mentioned in the ACMA's Investigations Concepts report titled "Fairness, impartiality and viewpoints". Nor does the ACMA typically mention anything of the kind in the investigation reports that are available.

In that regard, I note the ACMA is required not to make unreasonable decisions in accordance with the principles of administrative law. Given the lack of a complainant and the shifting focus of the investigation to date towards an unprecedented (at least, on the documents available to us) interpretation of Code 3.4.1, [WIN] has significant concerns in that regard.

It is ironic that [WIN] has been subjected to this ongoing correspondence with the ACMA, ultimately necessitating the cost of our engagement, in relation to a news story about the pressures on regional publishers arising from technologies which are not subject to the same rules or scrutiny by the ACMA.

Nevertheless, in relation to the concern you have raised regarding [WIN's] 'interest' in the Save our Voices campaign, I make the following comments.

It would be obvious to anyone viewing [WIN's] news program that they are watching WIN Television and that it was one of only two regional broadcasters covering local news at that time. The issue of diminishing local media voices was a matter of notoriety in the region, as indeed it is in so many regional areas.

[WIN] carries a virtually constant watermark disclosing its identity. The news service is the WIN News bulletin. The issue of diminishing local media voices had been raised in the past by all local media and everyone politically including the Federal Minister. Viewers were invited to visit a website with further information should they wish to have further information, which clearly indicated [WIN's] involvement in the Save our Voices campaign.

As evidenced by those interviewed for the segment, the concerns about the demise of local media in regional areas are widespread and virtually unanimous. No person interviewed spoke against the notion that local news sources were important and each freely volunteered their own concerns and views. Of course those approached were largely people with a genuine concern for regional issues and democracy generally but even the vox pops sought from normal members of the public were unanimous in expressing concerns. The concern relates to all sections of the media as there is hardly a region in Queensland where newspapers have not been cut back, placed online or shut down, some after more than a century of publishing. This renders television news coverage even more vital as a reliable source. No alternative view was available and none was therefore ignored. The limited and somewhat equivocal thoughts of the Premier were presented as this was the closest example of a differing view available.

[WIN] has always sought to ensure that it presents news of interest and relevance to the communities it serves. This item is but one example of a vast range of such issues of importance it has addressed over the years. It is obliged to serve those communities pursuant to its licence and moral obligations and needs to do so to survive as a relevant provider of information to sometimes sparse and distant viewing areas. To suggest that [WIN] should not have covered this important issue because it had some kind of 'interest' in the campaign is illogical and lacks rational basis. If that were so, television news bulletins could not cover

company tax changes, jobkeeper, regional journalism grants, media law reform and many other matters of vital public interest.

In conclusion, [WIN] is satisfied that it complied with Code 3.4.1 and, in doing so, brought to the attention of its audience an important news item with appropriate balance and fairness. If such an item were treated as 'partial' then there would be an enormous fetter created on every licensee. They would effectively be unable to cover any matter of importance that might have any impact, incidental or otherwise, upon broadcasters. [...]

Extracts of further licensee submission to the ACMA dated 20 December 2021:

[...] The ACMA's breach finding is surprising, to say the least.

Save our Voices was not "a campaign to promote the interests of the broadcaster"

The Preliminary Investigation Report states that the Report became a "campaign tool to promote the interests of the broadcaster". The Licensee does not agree that the Save Our Voices Campaign was a campaign to benefit it. The campaign sought to ensure regional media could remain viable and serve their local communities with local information. While this would benefit the Licensee in that the campaign would support the ongoing viability of regional media including the Licensee, as the ACMA has accepted, it was obvious to viewers that the Licensee as a regional broadcaster had an interest in this issue.

No failure to canvass other options

The Preliminary Investigation Report also says that the Report conveyed to the viewer that the campaign was the only real option and failed to discuss "any other measures being taken". The Licensee is not aware of any other measures that were being taken or proposed to address the issue, to which viewers could have been pointed. Please let us know if you consider that some other option (other than the status quo, covered by Premier Palaszczuk's contribution) was available that was not canvassed by the story. If ACMA considers that there were other practical and sensible options available to our client to deal with such an important regional issue, you might be good enough to advise of those which ACMA considers useful and acceptable.

"Sufficient Information" Test new and wrongly applied

The ACMA has accepted that no breach arose from the way the topic was reported on, or from our client's own interest in the topic, but rather from the fact that it included a "call to action" for the viewer. The Preliminary Investigation Report suggests that the inclusion of the "call to action" went beyond providing sufficient material for a viewer to make up his or her mind in relation to the topic (which we presume derives from wording in Investigation Report 2239).

Recent ACMA decisions on clause 3.4.1(a) do not include the sentence in the Preliminary Investigation Report that refers to the "sufficient information test" on which this finding is based (see e.g. 81- 535, 81-52 5, 81- 521 and 81-346).

This requirement of providing sufficient information for viewers to make up their own minds has never, to this writer's knowledge, been interpreted to mean that a news broadcast must do no more than provide sufficient information for a viewer to make up their mind, as if to operate as some kind of maximum threshold of information that can be provided in a news story. To the contrary, this historically has been relied on where vital information was missing from a news story such that the coverage could not be said to have been fairly presented. Investigation Report 2239 is no longer publicly available for reference, but the excerpt provided in the ACMA's Investigation Concepts paper clearly supports this interpretation as

the correct interpretation. If such a requirement exists, it should operate to ensure information is not omitted from news stories, not to prevent material being included that goes beyond sufficient information.

Moreover, previous decisions, and the ACMA's own guidance regarding clause 3.4.1, have not ever suggested that including a "call to action" in a news story could result in a breach of clause 3.4.1. As mentioned in my previous letter, calls to action are frequently included in news stories where the public might be interested in participating directly in a campaign. Examples include the bushfire relief appeals, the Red Cross Christmas appeal, encouraging attendance at local community events and fundraising for members of the community in need. The ACMA's finding suggests that such calls to action could be in breach of clause 3.4.1, resulting in important messages not reaching the Licensee's community, and in that context is very concerning to our client.

Next steps

It follows that the Licensee is disappointed by the draft preliminary breach finding and respectfully requests ACMA to reconsider the breach finding.

If the outcome of the reconsideration remains a breach finding, the Licensee is also perplexed as to how it should approach important public interest campaigns that may directly or indirectly affect it in future. Perhaps the ACMA could provide guidance as to when a "call to action" will be acceptable to include in a news story, to assist the Licensee and the industry in understanding how to avoid future breaches. [...]

Relevant provisions

Commercial Television Industry Code of Practice 2015 (revised 2018)

3. News and Current Affairs

3.1 Scope and Interpretation

- 3.1.1 Except where otherwise indicated, this section applies to news Programs (including news flashes and updates) and Current Affairs Programs.
- 3.1.2 Compliance with this Section 3 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:
- a) the facts known, or readily ascertainable, at that time;
 - b) the context of the segment (or Program Promotion) in its entirety; and
 - c) the time pressures associated with the preparation and broadcast of such programming

[...]

3.4 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.

3.4.3 Current Affairs Programs are not required to be impartial and may take a particular stance on issues.

The ACMA's approach to assessing content

When assessing content, the ACMA considers the meaning conveyed by the material, 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' viewer.

Australian courts have considered an 'ordinary reasonable' 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.¹

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

¹ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.