

Investigation report no. BI-611

Summary	
Licensee [service]	Prime Television (Southern) Pty. Limited [Prime7]
Finding	Breach of subclause 3.4.1(a) [impartiality]
Relevant code	Commercial Television Industry Code of Practice 2015 (revised 2018)
Program [type]	<i>Prime7 News Wagga</i> [news]
Date of broadcast	5 November 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 *Prime7 News Wagga* (the **Report**).

The Report was broadcast on Prime7 by Prime Television (Southern) Pty. Limited (the **Licensee**) on 5 November 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 2 mins 30 seconds in duration and consisted of the studio presenter, positioned in front of a large 'Save Our Voices' graphic, introducing the report by stating:

The Federal Government is tonight remaining tight-lipped about media reform that might save local voices. Regional media companies including Prime are fighting outdated regulations that threaten the industry, but in Wagga today, the Communications Minister had little to offer...

The reporter then introduced a number of excerpts of a press conference with the Hon Paul Fletcher, MP, who was, at the time of broadcast, Minister for Communications, Cyber Safety and the Arts (the **Minister for Communications**), interspersed with information advising viewers that regional media companies were involved in the campaign 'Save Our Voices', and stating that the need for reform was due to high-speed broadband allowing 'tech giants' into regional areas.

The Report included statements that, without reform, 'it won't be long before newsrooms crumble and the community's voice is silenced'.

As the reporter signed off, the URL address 'www.saveourvoices.com.au' was displayed in large letters. At the conclusion of the Report, the studio presenter stated:

Tonight, we are asking you to join the fight to save our voices, go to the change.org website to register your vote to keep regional media alive; we need your help.

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

- > Regional media was under threat from outdated laws.
- > The laws are no longer fit for purpose because the advent of fast internet services has allowed streaming services and large tech companies to access regional markets, regardless of existing laws and without the costs of establishing a regional presence or developing local content.

- > Regional media companies, including Prime, were in the midst of a campaign called 'Save Our Voices' which sought reform to media laws.
- > The Federal Government's \$50 million funding for regional media was due to run out in May 2021, and there was no legislation in parliament for reform.
- > The Federal Government has announced a \$700 million investment into regional broadband, but there were no assurances given for ongoing support for regional media.
- > The Minister for Communications had been reticent to speak about the issue.
- > Regional media is very important for the community and political accountability.
- > Without reforms regional media will fail, and community voices will be silenced.
- > Viewers were needed to help keep regional media alive by signing an online petition and encouraged to sign that petition.

Did the broadcast present news fairly and impartially?

The Licensee submitted:

Clause 3.4.2 of the Code provides that there is no requirement for a news program 'to include every aspect of a person's viewpoint'. Whilst the Report appears to indicate a position supporting the dismantling of outdated media laws, this was balanced by the inclusion of statements from the Communications Minister indicating the Federal Government's current position on regional media reform.

Further:

Prime submits that although the Report presented a perspective that is supportive of regional media companies and its viewers this does not mean the Report was inherently partial. In our view the Report should be judged from the perspective of the viewer. The Report covered a public interest matter, particularly relevant to Prime regional viewers [...].

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.

Under clause 3.4.3, current affairs programs are not required to be impartial and may take a particular stance on issues. However, that exception 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 programs to provide fair and unbiased information. News that audiences can trust to be impartial is essential for effective participation in civil society.

The licensee has submitted that the inclusion of the Minister's statements in the Report provided a balance to its position 'supporting the dismantling of outdated media laws'. The ACMA acknowledges that the Minister's statements provided an additional viewpoint on the issue, however this did not remedy the core concern with impartiality in the broadcast.

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 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.

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.

The Licensee further submitted:

...the brief comments by Prime's news presenter at the end of the Report was clearly commentary and distinguishable from factual material presented in the news report. This is permitted under clause 3.1.4(b) of the Code. The comments were not a reflection of the presenter's own personal affections or enmities; rather, his commentary provided viewers the opportunity to make up their own minds on the presented information and the issues raised in the Report.

The ACMA considers that the issue is not whether the comments at the end of the Report were clearly distinguishable from reporting on factual material, but whether the use of a news service to encourage viewers to sign a petition, in this instance, one which was promoting the interests of the licensee, was news presented 'fairly and impartially'. The Code obligation in subclause 3.4.1(a) to present news fairly and impartially applies to all news content – factual material and any commentary and analysis.

In this case, the ACMA considers the Report functioned as a vehicle to draw attention to, and to promote, the 'Save Our Voices' campaign. The presenter's call to action at the end of the Report went beyond statements that might constitute a 'critical examination' of, or form part of a 'fair report' on, an issue 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 6 August 2021:

[...] The ACMA has requested comments from Prime in relation to its compliance with the *Commercial Television Industry Code of Practice (Code)*, particularly with clause 3.4 (Impartiality). We note the ACMA has a copy of the Report.

Prime's comments on its compliance with the Code are set out below.

The Code requires that news programs must be presented fairly and impartially. This does not extend to requiring news programs to allocate equal time to different points of view, or to include every aspect of a person's viewpoint.

The Report highlighted the Federal Government's decision to promote a \$700 million investment into regional broadband despite its existing funding for regional media expiring in May 2021. The Report drew special attention to the Federal Government's refusal to provide any timelines for regional media support and explained to viewers that regional media companies have united to campaign for a media reform. It further reported that the media reform sought to dismantle existing laws that were made outdated by the existence of broadband in regional licence areas.

Clause 3.4.2 of the Code provides that there is no requirement for a news program 'to include every aspect of a person's viewpoint'. Whilst the Report appears to indicate a position supporting the dismantling of outdated media laws, this was balanced by the inclusion of statements from the Communications Minister indicating the Federal Government's current position on regional media reform. The extracts of the press conference that featured in the Report were a fair and accurate reflection of the views of the Communications Minister, clearly and accurately demonstrating the current view of the Federal Government.

Clause 3.4.2 of the Code also empowers broadcasters to undertake 'a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest'. Prime submits that the issue covered in the Report was firmly in the public interest as it dealt with the present issues affecting regional media and thereby viewers and audiences of regional media.

The Report's critical examination of the requirement for a regional media reform was objectively presented as part of a fair report on this public interest matter. Further, as highlighted above, comments from both the Communications Minister on behalf of the Federal Government and a regional media reform advocate supported the Report, as they provided their perspective on the present issue.

Lastly, the brief comments by Prime's news presenter at the end of the Report was clearly commentary and distinguishable from factual material presented in the news report. This is permitted under clause 3.1.4(b) of the Code. The comments were not a reflection of the presenter's own personal affections or enmities; rather, his commentary provided viewers the opportunity to make up their own minds on the presented information and the issues raised in the Report.

Accordingly, Prime is of the view that the Report complied with the impartiality requirements of the Code. Prime submits that although the Report presented a perspective that is supportive of regional media companies and its viewers this does not mean the Report was inherently partial. In our view the Report should be judged from the perspective of the

viewer. The Report covered a public interest matter, particularly relevant to Prime regional viewers, and we submit it was reported fairly and accurately based on the information ascertainable at the time. The overall presentation of the Report was objectively presented in a fair and neutral manner.

[...]

Extracts of further Licensee submission to the ACMA dated 24 December 2021:

[...]

We note that the ACMA's preliminary findings is that Prime's broadcast of the *PRIME7 News Wagga* report on 5 November 2020 (**News Story**) breached subclause 3.4.1(a) (impartiality) of the Commercial Television Industry Code of Practice (**Code**).

Prime's comments on the Report

Prime agrees with the ACMA's comments that 'the ongoing viability of regional news content is newsworthy and an issue of public interest'. Our News Story aimed to deal with the present issues affecting regional media and thereby viewers of and audiences of regional media.

It is disappointing the ACMA does not consider the brief comments made by Prime's news presenter at the end of the News Story to be permissible under subclause 3.4.1(b). As noted in our earlier submission of 6 August 2021, it is Prime's view that the comments were not a reflection of the presenter's own personal affections or enmities; rather, his commentary provided viewers the opportunity to make up their own minds on the information presented and the issues raised in the News Story.

Although the News Story presented a perspective that was supportive of regional media companies and its viewers, and contained brief commentary by Prime's news presenter, we maintain that this does not mean the News Story was inherently partial. We respectfully submit that the overall presentation of the News Story was objectively presented in a fair and neutral manner.

[...]

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.