

Investigation report no. BI-650

Summary	
Broadcaster [service]	Australian Broadcasting Corporation [ABC]
Finding	No breach of Standard 2.2 [do not materially mislead]
Relevant code	ABC Code of Practice 2019 (the Code)
Program [description]	<i>ABC News</i> [news]
Date of broadcast	16 April 2022
Date finalised	16 January 2023
Type of service	National - television
Attachments	A – relevant provisions and the ACMA’s approach to assessing content

Background

In July 2022, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into a news report broadcast on *ABC News* (the **Report**) on 16 April 2022 by the Australian Broadcasting Corporation (the **ABC**).

The complaint was that the ABC presented factual content in a way that materially misled the audience, when it read out and highlighted only part of a tweet posted by the Liberal Party candidate for Warringah, Katherine Deves, in a news report about the 2022 federal election campaign.

The ACMA has investigated the ABC's compliance with Standard 2.2 [do not materially mislead] of the Code.

The program

ABC News is a 30-minute news program broadcast on weeknights from 7:00 pm. The program was viewed by the complainant in Melbourne.

The Report examined the progress of the Liberal and Labor campaigns for the 2022 federal election campaign, and canvassed issues encountered on both sides. Relevant to this investigation, the Report referred to the negative impact on the Liberal campaign of then-Prime Minister the Hon Scott Morrison MP's support for Ms Deves' candidature. The Report referred to Ms Deves' apology over social media posts containing allegedly offensive comments. The reporter cited a tweet from 16 January 2022 which had been deleted, and read out part of that tweet, which was highlighted on the screen.

In the Report, the ABC provided a visual of the full tweet on screen:

Half of all males with trans identities are sex offenders, compared with less than 20% for the rest of the male estate. That should tell you something.

but highlighted and narrated only the text 'Half of all males with trans identities are sex offenders'. This investigation has taken into account the complaints both to the ACMA and the ABC) and submissions from the ABC. Other sources are identified in this report where relevant.

Issue: Do not materially mislead

Relevant Code provision

Standard 2 Accuracy

[...]

2.2 Do not present factual content in a way that will materially mislead the audience. In some cases, this may require appropriate labels or other explanatory information.

In considering compliance with a Standard under the Code, the ACMA also takes account of the related Principles set out in the Code in respect of each Standard or set of Standards (relevant extracts at **Attachment A**).

Finding

The ABC did not breach Standard 2.2 of the Code.

Reasons

To assess compliance with Standard 2.2 of the Code, the ACMA has addressed the following questions:

- > Was the particular content complained about factual in character?
- > If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?

The considerations the ACMA uses in assessing whether or not broadcast material is factual are set out at **Attachment A**.

The complainant alleged that the ABC materially misled the audience by reading out and highlighting only part of a tweet by Ms Deves, the full version of which appeared on screen:

In their complaint to the ABC, the complainant submitted:

... its meaning is totally misrepresented. [Ms] Deves was tweeting as part of a larger conversation in which it would have been obvious that she was talking about trans-ID prisoners. The words "the male estate" should have given you some idea also. If you had done proper research into the issue, you would already be aware of this data from UK prisons. [...]

In their complaint to the ACMA, the complainant included:

The combination of the highlight, bolding and narration, was likely to mislead ABC viewers to thinking that Ms Deves was speaking about ALL trans-identified males, not just trans-identified male prisoners. [...]

The ABC responded to the complainant:

... the reporter made reasonable efforts to ensure that the material facts were accurate and presented in context in relation to the focus of the story, and that we do not consider that the reporter reading out the first part of the tweet and which was also highlighted on screen was materially misleading.

Was the particular content complained about factual in character?

As noted above, the Report examined the progress of the Liberal and Labor campaigns for the 2022 federal election campaign, and canvassed issues encountered on both sides. The ACMA considers that it included factual content.

If so, was that factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?

The Report was about the election campaigns of the Hon Anthony Albanese MP, leader of the Australian Labor Party, and then-PM the Hon Scott Morrison MP, and the problems they were facing during the 2022 federal election.

The reporter made remarks on the Labor campaign, referred to the difficult start to Mr Albanese's campaign and referred to a \$135 million health policy that was being criticised by the Government for not being costed by the Parliamentary Budget Office.

The reporter then commented on the Liberal Party campaign, indicating that Mr Morrison's campaign had been negatively impacted over his support for Ms Deves' candidature in Warringah. The reporter noted that Ms Deves had issued a second apology about a tweet she had previously posted, but then deleted, stating:

In a now deleted social media post from January [2022], [Ms Deves] claimed half of all males with trans identities are sex offenders. After also comparing her anti-trans comments to the resistance against the Nazi's. For now, the coalition is standing by her.

The ACMA considers that the editorial context of the Report was to cover the setbacks and issues faced on both sides of the election campaign. In this context, the information about the tweet was presented as an example of how Mr Morrison, in terms used in the Report, was 'feeling the heat' and that 'a controversial captain's pick' was causing problems for his campaign because the candidate had posted comments that people found offensive and for which the candidate had publicly apologised.

The ACMA considers that the focus of the relevant section of the Report was the impact of the tweet and subsequent apology on Mr Morrison's campaign rather than on the content of the tweet itself or its representation. In this context, viewers were not misled when they were provided with the particular material that had caused offence, that prompted the apology and resulted in Ms Deves deleting the post, and was thereby a controversy that was causing problems for Mr Morrison's campaign.

The Report as a whole was about problems for both the Liberal and Labor election campaigns. Within this context, the ACMA does not consider that the audience was materially misled when it was provided with information about the source of one controversy that was causing difficulties for the Liberal campaign.

Accordingly, the ABC did not breach Standard 2.2 of the Code.

Attachment A

Relevant standards under the ABC Code of Practice 2019

Standard 2 Accuracy

Principles:

The ABC has a statutory duty to ensure that the gathering and presentation of news and information is accurate according to the recognised standards of objective journalism. Credibility depends heavily on factual accuracy. Types of fact-based content include news and analysis of current events, documentaries, factual dramas and lifestyle programs. The ABC requires that reasonable efforts must be made to ensure accuracy in all fact-based content. The ABC gauges those efforts by reference to:

- the type, subject and nature of the content;
- the likely audience expectations of the content;
- the likely impact of reliance by the audience on the accuracy of the content; and
- the circumstances in which the content was made and presented.

The ABC accuracy standard applies to assertions of fact, not expressions of opinion. An opinion being a value judgment or a conclusion, cannot be found to be accurate or inaccurate in the way facts can. The accuracy standard requires that opinions be conveyed accurately, in the sense that quotes should be accurate and any editing should not distort the meaning of the opinion expressed.

The efforts reasonably required to ensure accuracy will depend on the circumstances. Sources with relevant expertise may be relied on more heavily than those without. Eyewitness testimony usually carries more weight than second-hand accounts. The passage of time or the inaccessibility of locations or sources can affect the standard of verification reasonably required.

The ABC should make reasonable efforts, appropriate in the context, to signal to audiences gradations in accuracy, for example by querying interviewees, qualifying bald assertions, supplementing the partly right and correcting the plainly wrong.

Standards:

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

2.2 Do not present factual content in a way that will materially mislead the audience. In some cases, this may require appropriate labels or other explanatory information.

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, 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.¹

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

ACMA considerations for determining factual content:

- > In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
- > The ACMA will have regard to all contextual indications (including subject, language, tenor and tone and inferences that may be drawn) in making its assessment.
- > The ACMA will first look to the natural and ordinary meaning of the language used.
- > Factual material will usually be specific, unequivocal and capable of independent verification.
- > The use of language such as 'it seems to me' or 'we consider/think/believe' will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common sense judgement is required and the form of words introducing the relevant content is not conclusive.
- > Statements in the nature of predictions as to future events will rarely be characterised as factual material.
- > Statements containing argumentative and exaggerated language or hyperbole will usually indicate a subjective opinion and will rarely be characterised as factual material.
- > The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
- > Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
- > Where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.²
- > Sources with expertise may be relied on more heavily than those without, in determining whether material is factual, but this will depend on:
 - > whether the statements are merely corroborative of 'lay' accounts given by other interviewees
 - > the qualifications of the expert
 - > whether their statements are described as opinion
 - > whether their statements concern past or future events³
 - > whether they are simply comments made on another person's account of events or a separate assertion about matters within their expertise.

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

² See Investigation 2712 (*Today Tonight* broadcast on Seven on 25 July 2011); Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority [2014] FCA 667.

³ See Investigation 3066 (*Four Corners* broadcast on ABC on 23 July 2012) and Investigation 2961 (*The Alan Jones Breakfast Show* broadcast on 2GB on 19 October 2012).