

Complaint and Investigation Assessment (CIA)

COMPLAINT AND/OR BROADCAST DETAILS

Complainant Name	ACMA Complaint ID	Date Complaint received by ACMA	
	BM-12586	22 August 2023	

Broadcaster or licensee	Australian Broadcasting Corporation
Station ID or name	8121801 ABC TV ABC
Type of service	National Broadcasting
Program or service title	<i>Foreign Correspondent</i>
Date of broadcast	10 August 2023
Relevant provision/s of BSA, standard or code	ABC Code of Practice 2023 (the ABC Code) Standard 4 [Impartiality]
Complaint or matter description	Allegation that the program, which considered Indian Government influence in 'Bollywood' was politically biased and lacked impartiality
Relevant breaches by the licensee/ network/broadcaster in last 12 months	N/A
Comments	
<ul style="list-style-type: none">> A copy of the complaint to the ACMA can be found in CRM at BM-12586.> A copy of the Licensee's response to the complainant can be found here.> A copy of the ABC Code is here.> A copy of the broadcast was located on the ABC website here.> The ACMA notes the requirements of the ABC Code regarding 'dealing with participants' set out in Standard 5 [Fair and honest dealing] of the ABC Code. The ACMA also acknowledges the complainant's concern that part of an interview with a participant (Vivek Agnihotri) appeared to be broadcast despite the interviewee's request (made during the broadcast) to not include the discussion. However, noting that the complaint was not received by the interviewee themselves, the ACMA considers that it was not necessary to assess the broadcast's compliance with Standard 5 of the ABC Code.	

RISK RATING & DECISION MAKER LEVEL FOR INVESTIGATION

The ACMA has established a system of risk oversight and management by virtue of the MI on Risk Management and the *ACMA Risk Management Guide*. The risks assessed in this CIA are operations level risks associated with the investigations undertaken by the Content Safeguards Branch. Once identified, risks and consequences will generally be reduced by the use of integrated, everyday controls.

Low to medium risk decisions will generally be made under delegation. High risk matters will generally be considered by the Authority. Extreme risk matters will always be considered by the Authority. The risk level will be determined by completing the below table with reference to the risk level matrix at **Attachment B**. The level of risk may change in the course of an investigation and the level of decision-maker changed accordingly.

Risk category and key examples	Key risk and consequence	Current Controls	Likelihood	Consequence
Compliance , e.g. the matter: <ul style="list-style-type: none"> - is of significant public interest - may impact on the community at large - may be novel and/or have precedent value - may concern systemic non-compliance - may involve formal enforcement action - may raise concerns about the adequacy of the relevant code or involve policy considerations. 	Decision and subsequent actions not adequately informed by Authority views / Level of compliance and safeguards not adequate and/or consistent	<p>The ACMA will make decisions in accordance with the Codes and BSA.</p> <p>Authority oversight of investigation outcomes and delegated decisions enables monitoring of the effectiveness and relevance of a code.</p> <p>Work with industry to develop regulatory and non-regulatory responses to audience concerns and complaints.</p>	Very Unlikely	Minor
Stakeholder management , e.g. the matter has, or may: <ul style="list-style-type: none"> - develop, strong community, political, media or industry sensitivity - involve a wider context and/or broader environmental considerations. 	Stakeholder expectations not met and/or not managed at appropriate level / Reduced confidence in ACMA and/or legislative framework	<p>Work with industry to develop a culture of broadcasting code and act compliance and reduce costs of compliance over time.</p> <p>Educate citizens, proactively via published decisions, social media and website information.</p> <p>Quality assurance monitoring of complaints processing and CSC interaction including adherence to ACMA customer service charter and complaints handling manual.</p>	Unlikely	Minor

Given the above, the risk level is **Low** and it is anticipated that the decision maker will be:

- ☐ **A delegate**, where the power is delegated in the *Instrument of Delegation*; or
☐ **The Authority**; or
☒ **Not applicable** (for matters that will not be investigated).

DECISION WHETHER TO INVESTIGATE MATTER

I, being the appropriately delegated officer of the Australian Communications and Media Authority, noting the information provided under 'comments' above, the public interest considerations at **Attachment A** and the following factors:

- > Standard 4.1 of the ABC Code states: '[g]ather and present news and information with due impartiality'.
- > Standard 4.5 of the ABC Code states: '[d]o not unduly favour one perspective over another'.
- > The principles accompanying the ABC Code state that 'impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented'. Further, assessing the impartiality due in given circumstances, requires consideration in context of all relevant factors.
- > The ACMA acknowledges that the program broadcast a number of perspectives that indicated that the Indian Government unduly intervened in the Indian film industry, such as those of Professor Bhasker and actor Mohammed Zeeshan Ayyub. However, the ACMA also notes that the program broadcast an interview with Vivek Agnihotri, and comments from Sumeet Nagdev, who provided alternative perspectives that films are successful in Bollywood independent of government influence.
- > Further, the ACMA notes the program's statement that efforts were made to obtain a comment from Anurag Thakur, the Minister of Information and Broadcasting but the program received no response.

> Noting that under the ABC Code, impartiality 'does not require that every perspective receives equal time, nor that every facet of every argument is presented', the program appeared to provide an adequate range of perspectives so that the broadcast met the requirements of the impartiality provisions of the ABC Code.

> While we acknowledge the complainant's preference for the program to have included additional contextual information, such as, information regarding the treatment of non-Muslims in Pakistan, this information did not appear necessary in order for the broadcast to meet the requirements of the ABC Code, noting the focus of the program was to consider whether there has been undue government influence in the Indian Film industry.

Given the above factors, the ACMA decide that the matter:

☐ will be investigated under the *Broadcasting Services Act 1992* s151 giving rise to the investigation; or

☒ will not be investigated.



Date: __16__ / __01__ / __2024__

Acting Manager
Content Investigations Section

The ACMA's discretion to investigate matters

The ACMA has a broad discretion to commence an investigation into broadcasting and datacasting matters.¹ It can do so upon receipt of a complaint², on its own initiative³ or at the direction of the Minister⁴. The scope is also a matter for the ACMA's discretion.

The ACMA's primary consideration is whether it is in the public interest having regard to the subject matter, and the purpose of the BSA.⁵ Importantly, each matter must be considered on its merits. A consideration of the public interest in any given case may be informed by a range of factors, including one or more of the considerations noted below.

Public interest considerations
Complaints process (where relevant): <ul style="list-style-type: none"> > Has the matter been raised with the broadcaster/licensee under the co-regulatory complaints process? > If a matter has not been raised under applicable co-regulatory processes, why not? > Is the complaint vexatious, frivolous and/or not made in good faith?
Timing: <ul style="list-style-type: none"> > How long ago did the broadcast or issue occur (e.g. was it more than a year ago)? > Are there extenuating circumstances to explain any delay in making the complaint? > Are there matters suggesting an early intervention may deliver a better outcome?
Community concern: <ul style="list-style-type: none"> > Has the matter raised genuine or widespread community concerns? > Does the matter potentially affect the community at large, and if so, how does or could it affect others?
Significance: <ul style="list-style-type: none"> > What is the nature and seriousness of the issues raised? > Does the matter concern a possible or likely breach of legislative provisions? > Does the matter raise matters of substance rather than issues of a trivial or technical nature? > Is an issue of principle or precedent raised? > Does the matter raise potential aspects of the regulatory framework (e.g. codes) that should be considered as a matter of priority?
Systemic issues: <ul style="list-style-type: none"> > Is the ACMA aware of matters that may indicate a potential systemic issue or pattern of conduct? > Is the alleged misconduct potentially ongoing? > Has a similar issue been investigated recently? Was a breach or no breach finding involved?
Compliance history: <ul style="list-style-type: none"> > Has the broadcaster/licensee been the subject of breach findings in relation to similar matters? > Is intervention by the ACMA warranted because the conduct suggests a poor compliance culture or that previous regulatory intervention was ineffective?
Other avenues for redress and/or proceedings in train: <ul style="list-style-type: none"> > Are there other avenues for redress (taking into account the complainant's capacity to pursue them)? > Is the matter the subject of current legal, administrative or regulatory proceedings that may be complicated or compromised by opening an investigation at this time?
Efficiency and effectiveness: <ul style="list-style-type: none"> > Would the resources used in an investigation be proportionate to the public interest matters involved? > Would an investigation disproportionately divert resources from other priority matters? > Has the broadcaster/licensee responded conscientiously to the complainant (if relevant)? > Has the broadcaster/licensee done anything to address the issues raised by a complaint?

¹ The ACMA may conduct investigations for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions and related powers under s170 of the BSA.

² Where it is 'desirable to do so', the ACMA may investigate a complaint made under s147, 148, 150 & clause 36 of Schedule 6 to the BSA.

³ The ACMA may investigate any kind of complaint or part of a complaint, or without a complaint, under s170 of the BSA.

⁴ Section 171 of the BSA.

⁵ The objects of the BSA (s3), the regulatory policy (s4) and the ACMA's role (s5) are particularly relevant.

Using the ACMA's risk matrix⁶

The level of risk, or risk rating, is calculated by combining the consequence and likelihood ratings. For any risk, there may be a number of different consequence/likelihood scenarios. Within each category there may be multiple scenarios ranging from "minor but likely" to "catastrophic but very unlikely".

It is important to rate what is the realistic worst-case scenario, and which is the worst-case level of risk considering both consequences and likelihood. In these instances, it may be appropriate to rate the same consequence category more than once. Where there are multiple ratings for a risk, the highest combination of consequence/likelihood is taken as the level of risk.

Once you have evaluated the likelihood and consequence, each risk should be plotted against the ACMA's risk matrix to determine its overall risk rating.

	Insignificant	Minor	Moderate	Major	Catastrophic
Very Likely	Medium	High	High	Extreme	Extreme
Likely	Medium	Medium	High	High	Extreme
Possible	Low	Medium	Medium	High	High
Unlikely	Low	Low	Medium	Medium	High
Very Unlikely	Low	Low	Low	Medium	Medium

The ACMA uses the following definitions to evaluate risk against our acceptable level of risk tolerance:

Extreme	The risk is well above tolerable limits and must be further treated to reduce it to the lowest level practicable. Quarterly or monthly monitoring is required if the risk is accepted.
High	The risk is above tolerable limits, and further treatment is required to reduce the risk to the lowest level practicable. Quarterly monitoring is required if the risk is accepted.
Medium	The risk is tolerable, but should be reduced if practical. The risk should be monitored through routine operational and management practices.
Low	The risk is acceptable and no further treatment is required.

⁶ See further the ACMA's *Management Instruction for Risk and the Risk Management Guide*, available at: http://intranet.internal.govt.nz/media/Files/SP/Lists/SP2013_FFB_ACMA_Guides/ACMA_Risk_management_Guide.pdf.pdf