

Regulatory guide—No. 2

Purpose of an investigation under the *Broadcasting Services Act 1992*

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Overview

The Australian Communications and Media Authority issues regulatory guides to assist both industry and the community by:

- > giving practical guidance (for example, guidance about the ACMA's approach to a particular issue or describing the steps of a process)
- > describing the principles underlying the ACMA's approach in particular areas
- > explaining the ACMA's view on the interpretation of the law or its application to a regulated industry
- > explaining when and how the ACMA will exercise specific powers under the legislation it administers.

A regulatory guide does not constitute or replace legal advice on obligations under the relevant legislation.

1. Purpose of this guide

- 1.1 The *Broadcasting Services Act 1992* (the BSA) imposes an obligation on the ACMA to conduct investigations in certain instances as well as conferring a broad discretion to conduct 'own motion' investigations.
- 1.2 The purpose of this regulatory guide is to provide guidance to those who make a complaint to the ACMA or who may be asked to assist the ACMA in, or are the subject of, an investigation. It explains the nature and purpose of investigations undertaken by the ACMA under the BSA.
- 1.3 This guide does not constitute legal advice.
- 1.4 This guide should be read in conjunction with the [enforcement guidelines](#) issued by the ACMA under section 215 of the BSA.

2. When will an investigation be commenced?

- 2.1 Section 170 of the BSA confers a broad discretion on the ACMA to conduct investigations for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions (and related powers).
- 2.2 It follows that the ACMA may, on its own motion, commence an investigation under section 170 of the BSA if it considers that it is appropriate to do so. Whether an investigation will actually be commenced will turn on the specific circumstances.
- 2.3 In other instances, the ACMA's discretion is constrained. For example, sections 149 and 151 of the BSA provide that the ACMA, subject to specified exceptions (set out in subsection 149(2) and subsection 151(2)), must investigate certain types of complaints and section 171 provides that the Minister may direct the ACMA to conduct an investigation.

3. Purpose of an investigation

- 3.1 In summary, the purpose of an investigation is to enable the ACMA to:
 - > seek to establish the facts relevant to the issue in question
 - > form a view about the subject matter of the investigation
 - > determine what, if any, action should be taken.
- 3.2 In conducting its investigations, the ACMA may gather information, documents and other evidence from a range of sources. It may also seek responses to specified questions and/or ask for submissions on particular issues.
- 3.3 'Evidence' basically means information, documents and any other material that can be used to demonstrate the existence of a fact or the truth of something. In some instances, it is the absence of information, documents or other material that may provide 'evidence'. A person's view or opinion on a particular issue is not 'evidence'.
- 3.4 While the ACMA may ask for evidence on a voluntary basis it also has power to compel the production of evidence. For example, section 173 of the BSA provides that the ACMA may issue a notice requiring the production of documents and information. The ACMA may also issue a notice requiring a person to attend before a delegate of the ACMA to answer questions (as contemplated within sections 173 to 176 of the BSA). Failure to comply with a compulsory notice may have serious criminal or civil consequences (section 202).

4. Evidential standard

- 4.1 There is no 'onus of proof' or 'burden of proof' in investigations undertaken by the ACMA under the BSA. These are concepts which arise in judicial processes. Judicial processes are typically adversarial in nature. The courts have established rules and procedures, which include rules of evidence, that apply to their proceedings.
- 4.2 The ACMA is an administrative decision-maker. The investigations it conducts are inquisitorial in nature. The ACMA therefore inquires and obtains evidence, often from range of sources, for the purpose of its investigations.
- 4.3 In undertaking an investigation the ACMA seeks to gather relevant and logically probative evidence. Logically probative evidence is material that tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future relevant event.
- 4.4 As an administrative decision-maker, the ACMA is entitled to take into account material that, as a matter of reason, has probative value. What weight should be given to that material is a matter for the ACMA to determine.
- 4.5 Whether the evidence is of sufficient probative value to enable the ACMA to be reasonably satisfied about the issue in question is assessed by the ACMA in light of the facts and circumstances of the case, including the nature and gravity of the consequences of the finding in question.
- 4.6 If, of course, the outcome of the investigation results in civil or criminal proceedings being commenced (see the discussion below at **Outcome of an investigation**), the nature of the evidence presented must be sufficient to satisfy the relevant evidential burden in those proceedings. Who bears the evidentiary burden will also depend on, among other things, the nature of the proceedings and the relevant statutory provision/s in question. The burden may shift. For example, subsection 205PAA(3) of the BSA provides that a person wishing to rely on mistake of fact to avoid liability in civil penalty proceedings commenced by the ACMA under subsection 205G(1) bears an evidential burden in relation to that matter.

5. What to expect

- 5.1 The issues involved in an investigation vary, in seriousness and in complexity. It follows that the processes adopted by the ACMA must be flexible. What evidence is sought or needed will turn on the issues which are the subject of the investigation.
- 5.2 Where, for example, an investigation is commenced as a consequence of a complaint under a code of practice (section 148 of the BSA), the complainant will usually have provided the ACMA with a copy of correspondence to, and received from, the broadcaster. If they have not, the ACMA may write to the broadcaster requesting this correspondence as well as a copy of the relevant broadcast. In some instances, this evidence alone will be sufficient to enable the ACMA to form a view as to the substance of the complaint.
- 5.3 In other more complex investigations, the issues may require the ACMA to obtain evidence from a range of sources. The ACMA may seek responses to specified questions and/or ask for submissions on particular issues. As noted above, the ACMA may do so on a voluntary basis or it may issue a notice compelling the production of evidence.

6. Assisting the ACMA

- 6.1 The ACMA is required to complete its investigations within reasonable timeframes. As a consequence, the ACMA will specify a time within which a response to its inquiries is required.
- 6.2 The ACMA will make its decisions concerning an investigation based on the information and evidence before it.
- 6.3 The assistance you provide, whether as the subject of the investigation or as a person who may have relevant information and evidence, will enable the ACMA to make informed decisions in a timely manner. As noted above, in some circumstances the absence of evidence can also have probative value. It is important that interested parties provide any relevant evidence they have to the ACMA while the opportunity to do so exists. If deadlines for the provision of evidence or submissions pass, the ACMA is entitled, and may proceed, to make its decision without that evidence or those submissions.

7. Outcome of an investigation

- 7.1 Whether it is necessary or appropriate to take any enforcement action will turn on the facts and circumstances of the case.
- 7.2 The ACMA's compliance and enforcement approach is to take action that is commensurate with the seriousness of the conduct concerned which includes consideration of the nature and consequences of the conduct (section 5 of the BSA).
- 7.3 The ACMA's enforcement powers under the BSA include:
 - > giving an infringement notice, accepting an enforceable undertaking, giving a remedial direction, imposing, varying or revoking licence conditions, suspending or cancelling a licence—administrative action
 - > instituting civil proceedings to obtain injunctive relief, civil penalty orders, and orders to enforce compliance with an enforceable undertaking—civil action
 - > referral to the Commonwealth Director of Public Prosecutions for prosecution of an offence—criminal action.
- 7.4 Not all of these enforcement powers are available for every contravention of the BSA or subordinate instruments.

Reports on an investigation

- 7.5 Where an investigation has been commenced at the direction of the Minister for Broadband, Communications and the Digital Economy, the ACMA must prepare a report to the Minister on the investigation (subsection 178(1)). In all other instances, the preparation of a report is at the discretion of the ACMA (subsections 153(1) and 178(1)).
- 7.6 For investigations commenced as a consequence of receipt of complaints under sections 149 and 151 of the BSA, it is the ACMA's general practice to prepare a report on the investigation.
- 7.7 The power to publish a report on an investigation commenced at the direction of the Minister lies with the Minister. With other investigations, the decision to publish a report is, subject to subsection 179(3) and section 180 of the BSA, entirely a matter for the ACMA.
- 7.8 For investigations commenced by the ACMA under sections 149 and 151 of the BSA, it is also the ACMA's general practice to publish the reports prepared on the investigation.

- 7.9 Published reports are ordinarily available on the ACMA's website. For further information on complaint handling and broadcasting investigation reports see www.acma.gov.au.

Broadcasting investigations meta-principles – revised March 2013

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1. Ordinary reasonable listener/viewer

Note -

- this test was workshopped with Malcolm Long in the context of the Al Manar investigation of 2010 (Broadcasting Standards)
- it was confirmed that the test allows the ACMA to step into the shoes of the ordinary reasonable listener/viewer to ascertain as closely as possible the meaning conveyed by the broadcast material (rather than the consequences of that meaning).
- once the ACMA has ascertained the messages conveyed it is up to the ACMA to decide whether there has been a breach relying on its own knowledge, experience and resources – the regulatory questions are not decided from the perspective of the ordinary reasonable listener/viewer

In assessing content against the Code, the ACMA considers the meaning conveyed by the relevant material. This is assessed according to the understanding of an 'ordinary reasonable listener/viewer'.

Australian courts have considered an 'ordinary, reasonable reader (or listener to 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 affairs¹.

The ACMA asks, what would the 'ordinary reasonable listener/viewer' have understood this program to have conveyed? It considers the natural, ordinary meaning of the language, context, tenor, tone, inferences that may be drawn, and in the case of factual material, relevant omissions (if any).

Once this test has been applied to ascertain the meaning of the broadcast material, it is for the ACMA to determine whether the material has breached the Code.

In this case, the ACMA is satisfied the 'ordinary, reasonable listener/viewer' would have understood the [bulletin/program/segment/broadcast] to be about:

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

COMMERCIAL RADIO CODES OF PRACTICE

2. 1.1(a) – Proscribed matter - likely to incite, encourage or present for its own sake violence or brutality

Note -

Incitement -

- once the meaning of the material is established applying the ordinary reasonable listener/viewer test, it is necessary to determine whether it was likely in all the circumstances to have incited
- 'incite' is to be given its ordinary natural meaning
- Proof of intention to incite, or that anyone was in fact incited is not required
- In the recent NSW ADT matter of *Trad v Jones & Anor* (No 3) [2009] NSW ADT 318 (21 December 2009) pars 158- 178, the Tribunal noted the following on incitement:
 - The test - would the relevant 'public act' have had the effect of inciting in the sense of urging or promoting a hypothetical 'ordinary reasonable person' to experience one or more of the relevant reactions
 - The relevant conduct must have the capacity or tendency to incite others. It is not necessary to prove that any particular person was, in fact, so provoked
 - Conduct that merely conveys a person's hatred of, or serious contempt for, another person or a group is not of itself unlawful.
 - There must be something more than an expression of opinion, something that is positively stimulatory of that reaction in others
 - The circumstances in which the conduct took place are as important as what was said or done - in the particular case Jones was a high profile figure with influence, the relevant broadcast had a stimulatory effect in both directions – ideas were picked up from listeners, endorsed by him and fed back to listeners agitating and inflaming them, there were elements of urgency, anxiety, anger, aggression and contempt in his remarks, he endorsed views that Lebanese Muslims were a threat and vermin, he referred to police inaction and implied that populist action might be required.
- References to the approach in investigation report 1485 have been deleted as that approach has been reviewed.

The ACMA adopts the general approach set out below in applying clause 1.1(a) of the code.

Ordinary reasonable viewer/listener

[\[See above\]](#)

'Likely'

Clause 1.1(a) states that a licensee must not broadcast a program which is 'likely' to have an effect indicated in those clauses. The term 'likely' has been interpreted to convey the notion of a real and not remote possibility; something which is probable.²

'Incite' and 'encourage'

The issue raised by the complainant concerns incitement or encouragement of violence or brutality, rather than the presentation of violence or brutality for its own sake.

The *Macquarie Dictionary (fifth edition)* gives the following meanings for the words 'incite' and 'encourage':

incite

to urge on; stimulate or prompt to action.

encourage

1. to inspire with courage, spirit or confidence.
2. to stimulate by assistance, approval, etc.

Consequently, in deciding whether there has been a breach of clause 1.1(a) of the code, the ACMA has considered whether an ordinary reasonable viewer/listener would regard the program as likely to:

- urge on violence, stimulate violence, prompt a person to take violent action; or
- inspire a person inclined to violence with courage, spirit or confidence; or
- stimulate violence by assistance or approval.

In assessing the likely effect of the program, the ACMA will consider the likely effect of the program on the listener including persons with characteristics, experiences or other attributes beyond those of the core listener demographic.³

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² See the discussion in *Re Vulcan Australia Pty Ltd and Comptroller-General of Customs* (1994) 34 ALD 773 at 778–779.

³ ACMA adopted this approach in Investigation Report 1485.

3. 1.1(e) – Proscribed matter - likely to incite hatred against, or serious contempt for, or severe ridicule of, any person or group of persons because of age, ethnicity, nationality, race, gender, sexual preferences, religion, transgender status or disability.

Note -

February 2010 Codes:

- replaced 'is likely to or perpetuate hatred or vilify any person or group of persons' with is likely to incite hatred against, or serious contempt for, or severe ridicule of ' at code 1.1 (e), (consistent with the commercial Television Code).
 - The test was intended to align with the *Anti-Discrimination Act 1977 (NSW)* model for racial vilification which adopts a tri-partite approach requiring an objective assessment about the impact of the broadcast focusing on the audience, rather than the aggrieved person.
- provided for codes 1.1(e) and 1.2 to be interpreted according to the principles in case law that apply to the interpretation of corresponding legislation

Incitement

- once the meaning of the material is established applying the ordinary reasonable listener/viewer test, it is necessary to determine whether it was likely in all the circumstances to have incited
- 'incite' is to be given its ordinary natural meaning
- Proof of intention to incite, or that anyone was in fact incited is not required
- In the recent NSW ADT matter of *Trad v Jones & Anor* (No 3) [2009] NSW ADT 318 (21 December 2009) pars 158- 178, the Tribunal noted the following on incitement:
 - The test - would the relevant 'public act' have had the effect of inciting in the sense of urging or promoting a hypothetical 'ordinary reasonable person' to experience one or more of the relevant reactions
 - The relevant conduct must have the capacity or tendency to incite others. It is not necessary to prove that any particular person was, in fact, so provoked
 - Conduct that merely conveys a person's hatred of, or serious contempt for, another person or a group is not of itself unlawful.
 - There must be something more than an expression of opinion, something that is positively stimulatory of that reaction in others
 - The circumstances in which the conduct took place are as important as what was said or done - in the particular case Jones was a high profile figure with influence, the relevant broadcast had a stimulatory effect in both directions – ideas were picked up from listeners, endorsed by him and fed back to listeners agitating and inflaming them, there were elements of urgency, anxiety, anger, aggression and contempt in his remarks, he endorsed views that Lebanese Muslims were a threat and vermin, he referred to police inaction and implied that populist action might be required.
- References to the approach in investigation report 1485 have been deleted as that approach has been reviewed.

The ACMA adopts the general approach set out below in applying clause 1.3(e) of the code.

Ordinary reasonable viewer/listener

[\[See above\]](#)

‘Likely’

Clause 1.3(e) states that a licensee must not broadcast a program which is ‘likely’ to have an effect indicated in those clauses. The term ‘likely’ has been interpreted to convey the notion of a real and not remote possibility; something which is probable.⁴

‘Person or group’

Clause 1.3(e) of the code refers to the likelihood of incitement or perpetuation of hatred against, or vilification of, a ‘person or group’. The issue raised by the complainant concerns incitement or perpetuation of hatred against, or vilification, of [a person rather than a group] or [a group rather than a person].

Is likely to incite

Incitement can be achieved through comments made about a person or group; there is no requirement that those comments include a specific call to action against that person or group. There is no need to establish that there was a specific intention to vilify or to prove that anyone was actually incited⁵. However, the use of words that merely *convey* hatred towards a person, is not incitement. There must be something more than an expression of opinion, something that is positively stimulatory of that reaction in others⁶.

‘Hatred’ and ‘vilify’

The *Macquarie Dictionary* (fifth edition) includes the following definitions:

hatred

the feeling of someone who hates; intense dislike; detestation.

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⁴ See the discussion in *Re Vulcan Australia Pty Ltd and Comptroller-General of Customs* (1994) 34 ALD 773 at 778–779.

⁵ *Kazak v John Fairfax Publications Limited* [2000] NSWADT 77 at [23-29]

⁶ *Trad v Jones & anor.* (No.3) [2009] NSWADT 318 at [161]

4. 1.2 – Proscribed matter - Reasonably and in good faith

Note –

February 2010 Codes:

- expanded the good faith defence to apply to all proscribed matter at Code 1.1
- provided for codes 1.1(e) and 1.2 to be interpreted according to the principles in case law that apply to the interpretation of corresponding legislation

Clause 1.2 of the Code provides that nothing in clause 1.1 prevents a licensee from broadcasting a program if it is presented reasonably and in good faith for ‘academic, artistic (including comedy or satire), religious instruction, scientific or research purposes in the public interest, including discussion or debate about any act or matter’.

The concept of reasonableness, in relation to the broadcasting of a program of the kind referred to in clause 1.1 implies elements of rationality and proportionality.⁷ Matter will be presented ‘reasonably’ if it bears a rational relationship to the ‘public interest’ purpose of the broadcast.

The concept of ‘good faith’ in relation to the broadcasting of a program of the kind referred to in clause 1.1(e) implies both *subjective* and *objective* good faith.⁸ One way a person will act in good faith in the presentation of material is if ‘he or she is subjectively honest, and objectively viewed, has taken a conscientious approach’⁹ to minimise any harm likely to occur in the course of discussing a particular topic. Where material is presented in a manner which carelessly disregards or is wilfully blind to the potential for harm, good faith may be absent.¹⁰

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⁷ See for example, *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105; [2004] FCAFC 16; at [80] (French J).

⁸ See *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105; [2004] FCAFC 16; at [96] (French J), [141] (Carr J).

⁹ *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105; [2004] FCAFC 16; at [102] (French J).

¹⁰ *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105; [2004] FCAFC 16; at [102] (French J).

5. 1.3 – Program Content and Language - Generally accepted standards of decency

Note –

- The following principles are based on Investigation Report N0 2266 (The Kyle & Jackie O Show), but up-dated following amendments to the Codes (see Investigation Report no 2491).
- February 2010 Codes replaced 'having regard to the likely characteristics of the licensee's service' with 'having regard to the demographic characteristics of the audience of the relevant program'.

The 'purpose' of the Codes is 'to prevent the broadcast of programs which are unsuitable, having regard to prevailing community standards and attitudes'. Given this context, clause 1.3(a) of the Codes requires the delegate to consider the meaning of the phrase 'generally accepted standards of decency' in light of prevailing broad community standards.

In considering community standards, the delegate notes the objects of the *Broadcasting Services Act 1992* (the Act) include the promotion of the availability of a diverse range of radio services to audiences throughout Australia.¹¹ Another object is to encourage providers of broadcasting services to respect community standards in the provision of program material.¹²

The delegate appreciates that diverse audiences in Australia will not always have everyday tastes and standards in common and further, that material that may be regarded as indecent in one context may be acceptable in another. These issues are addressed in the Codes.

Clause 1.3(a) of the Codes further requires the delegate to have regard to the likely demographic characteristics of a subset of the broad community, being the audience of the relevant program.

The delegate applies the ordinary, English meaning to the term 'generally accepted standards of decency'.

The *Macquarie English Dictionary (5th Edition)* states:

Generally *adverb*: 1. with respect to the larger part, or for the most part.

2. usually; commonly; ordinarily.

Accepted *adjective*: customary; established; approved.

Standards *noun* 1. anything taken by general consent as a basis of comparison; an approved model.

Decency *noun* 1. the state or quality of being decent.

2. conformity to the recognised standards of propriety, good taste, modesty, etc.

3. something decent or proper.

Decent *adjective* 1. Fitting; appropriate.

2. conforming to recognised standards of propriety, good taste, modesty, etc., as in behaviour or speech.

¹¹ See section 3(1)(a) of the Act.

¹² See section 3(1)(h) of the Act.

The delegate considers that the term 'generally accepted standards of decency' refers to the current consensus of recognised present day standards of propriety as opposed, for example, to content that is generally considered indecent or coarse.

As noted by the courts, the question of whether material is indecent, 'given the court must have regard to contemporary standards in a multicultural, partly secular and largely tolerant, if not permissive society, is not easy'.¹³ The courts have said that community standards will be those of the average person who can be summed up as moderate 'not given to thoughtless emotional reaction' nor 'given to pedantic analysis'.¹⁴

The ACMA considers that it follows from this analysis that the average listener recognises that standards of decency are not hard and fast, either over time or across all sections of the community. In particular, he or she may accept that some material he or she considers indecent would not be so judged by other sections of the community; and that, up to a point, those other groups have a right to have such material broadcast in programs to which they listen.

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¹³ *Pell v Council of Trustees of the National Gallery of Victoria* [1997] VSC 52.

¹⁴ *Mackinlay v Wiley* [1971] WAR 3 at 25.

COMMERICAL TELEVISION INDUSTRY CODE OF PRACTICE

6. 1.9.5 - Proscribed material - Cultural sensitivities

Note -

- As at end 2001, this clause has been investigated on 4 occasions since 2004. In two of these matters, it was noted the test to be applied was whether the program offended the ordinary reasonable member of the relevant group, using the test applied by the Federal Court in considering a complaint made under the Racial Discrimination Act, 1975 (Cth): *McLeod v Power [2003] FMCA 2*, described by Inquiry Commissioner Innes in Corunna as being the 'reasonable victim test'.
- The Racial Discrimination Act focuses on the on the impact of the perpetrator's public act on the person vilified. The question is whether the perpetrator's act was reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people, (and the act was done on the basis of race, colour or national or ethnic origin).
- By contrast, in broadcasting matters, the focus is on the impact on the audience - what the ordinary reasonable listener/viewer would have understood the material broadcast to have conveyed.
- As the ordinary reasonable listener/viewer test is applied throughout the Codes, to assess what the audience understood was being broadcast rather than the impact on a victim, the ordinary reasonable listener/viewer test (rather than the 'reasonable victim' test was applied in the most recent matter investigated under clause 1.8.5 of the TV Code - Investigation Report No. 2333 – Hey Hey it's Saturday - the Reunion, May 2010.

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7. **1.9.6 – Proscribed material - Provoke or perpetuate intense dislike, serious contempt or severe ridicule against a person or group of persons on the grounds of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference**

Note –

- elements are similar to 1.3 of the Radio Codes, but does not include ‘incite’
- The following application of the principles are taken from Investigation Report N0 2024 (*The AFL Footy Show*) - which dealt with ‘serious contempt’ and ‘severe ridicule’ but not ‘intense dislike’
- References have been updated to take in the reviewed *Commercial Television Code of Practice*, January 2010

Interpretation of clause [1.9.6¹⁵] of the Code

When a statute or code contains no definition, the ordinary English language meaning is used. The ACMA adopts the ordinary English language meanings of the word ‘provoke’ as relevantly set out in the *Macquarie Dictionary (Fifth Edition)*.

- Provoke** *verb* 2. to stir up, arouse or call forth;
3. to incite or stimulate (a person etc. to action)

Consequently, in deciding whether there has been a breach of clause [1.9.6] of the Code, the ACMA has considered whether an ordinary reasonable listener/viewer would regard the programs as ‘likely, in all the circumstances’ to stir up, arouse, or call forth or to incite or stimulate serious contempt or severe ridicule.

‘serious contempt’ and ‘severe ridicule’ [NB insert and consider ‘intense dislike’ if applicable]

The *Macquarie Dictionary (Fifth Edition)* includes the following relevant definitions:

serious *adjective* 5. weighty or important; 6. giving cause for apprehension; critical

contempt *noun* 1. the act of scorning or despising; 2. the feeling with which one regards anything considered mean, vile or worthless

severe *adj* 1. harsh, harshly extreme

ridicule *noun* 1. words or actions intended to excite contemptuous laughter at a person or thing; derision.

The meaning of the term ‘severe ridicule’ has been considered in a number of cases dealing with vilification on prohibited grounds, most notably in the context of homosexual vilification.

In relation to ‘ridicule’, the NSW Administrative Decisions Tribunal (ADT)¹⁶ said of the test in section 20C of the *NSW Anti-Discrimination Act (1977)* that the words should be given their ordinary dictionary meaning and then quoted the following from definitions set out in *Kazak v John Fairfax Publications*.¹⁷

‘ridicule’ means ‘subject to ridicule or mockery; make fun of, deride, laugh at’ (Oxford);
‘words or actions intended to excite contemptuous laughter at a person or thing; derision’ (Macquarie).

Use of the words, ‘serious’ and ‘severe’ indicate that the Code contemplates a very strong reaction and sets a high test for the prohibited behaviours.¹⁸ It is not sufficient that the behaviour induces a mild or even strong response or reaction.¹⁹

¹⁵ Equivalent to 1.8.6 of the previous code referred to in Investigation No 2024

¹⁶ *Burns v Dye* [2002] NSW ADT 32

¹⁷ NSW ADT at 40

In relation to the concept of 'severe' the New South Wales Administrative Decisions Tribunal said, in the case of *Burns v Laws*²⁰:

'severe' is a qualifier but there is no sharp dividing line between 'ridicule' and 'severe' ridicule. In any case where the issue arises, a value judgement must be made.

...

The ACMA notes in light of the definitions of 'ridicule' outlined earlier in this report, one of the key effects of the act of ridicule, in the *Macquarie Dictionary* definition is to excite 'contemptuous laughter'.

As set out above, while there is no sharp dividing line between the terms 'ridicule' and 'severe' ridicule, a value judgment must be made in each particular case.

The ACMA is satisfied that due to the circumstances present in this case, the severity element was present. The ACMA notes that there were an accumulation of cues, which when viewed together, served to move this segment from the arena of mere ridicule to 'severe ridicule' as required by the code.

A significant aspect of the humour attempted in the sketch relied on the fact that the cues used not only went to gender but had strongly sexualised overtones which increased the intensity of the gender-based ridicule.

SN chose to use a female mannequin dressed in lace lingerie as his prop.

SN's general demeanour in carrying the female mannequin on stage and then proceeding to 'dress' it (including mistakenly or otherwise using a boob-tube top as a short skirt) would have had the effect of ridiculing and belittling the Journalist.

Comments made including 'a women who can make a lisp hot is truly special' as read by SN from the editorial; 'You seen her? She's looking fantastic'; and 'I tell you what, she's a fair piece [the Journalist]' said whilst SN appraised the mannequin, would have also been considered by the ordinary reasonable viewer as treating the person with derision.

The act of using a staple gun to affix a photograph onto the individual's face would be considered by an ordinary reasonable viewer as a harsh, and aggressive gesture with a gratuitously contemptuous and objectifying quality.

Accordingly, the ACMA is satisfied that the cumulative impact of the above cues and components reaches the threshold of clause 1.8.6, and the actions of SN amounted to the provocation of 'severe ridicule' against the Journalist on the grounds of 'gender'.

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¹⁸ The definition of 'severe ridicule' is addressed in more detail at pages 13 and 14 of this investigation report.

¹⁹ The ACMA has set out this test before in relation to the consideration of these elements of the code. See for example, Investigation 1909 – 12 February 2009

²⁰ (No. 2) [2007] NSWADT 47

8. 1.10 – Proscribed material - Reasonably and in good faith

The term 'reasonable' (which includes "reasonably") is defined in the *Macquarie Dictionary (fifth edition)* as:

1. endowed with reason.
2. agreeable to reason or sound judgment

The term 'good faith' is defined in the *Macquarie Dictionary (fifth edition)* as 'honesty of purpose or sincerity of declaration'.

In order to satisfy the requirements under clauses 1.10.1 or 1.10.2 of the Code, it is therefore necessary that the broadcaster exercised both 'sound judgment' and 'honesty of purpose' when presenting the broadcast in the manner in which it did.

The ACMA considers that the program maker failed/did not fail to exercise 'sound judgment' and/or honesty of purpose' in the use of the broadcast.

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9. 4.3.1 – News and Current Affair programs - Factual accuracy

ACCURACY META-PRINCIPLES AS RECOMMENDED BY LSD FEBRUARY 2013

The considerations which the ACMA generally applies in assessing whether particular broadcast material is factual in character are set out at **Attachment**

...

Considerations which the ACMA has regard to in assessing whether or not broadcast material is factual in character

- The primary consideration is whether, according to the natural and ordinary meaning of the language used and the substantive nature of the message conveyed, the relevant material is presented as a statement of fact or as an expression of opinion.
 - In that regard, the relevant statement must be evaluated in its context , i.e. contextual indications from the rest of the broadcast (including tenor and tone) are relevant in assessing the meaning conveyed to the ordinary reasonable listener/viewer.
 - The use of language such as 'it seems to me', 'we consider/think/believe' tends to indicate that a statement is presented as an opinion. However, a common sense judgment is required as to how the substantive nature of the statement would be understood by the ordinary reasonable listener/viewer, and the form of words introducing the relevant statement is not conclusive.
- Inferences of a factual nature made from observed facts are usually still characterised as factual material (subject to context); to qualify as an opinion/viewpoint, an inference reasoned from observed facts would usually have to be presented as an inference of a judgmental or contestable kind.
- The identity of the person making the statement would not in and of itself determine whether the statement is factual material or opinion, i.e. it is not possible to conclude that because a statement was made by an interviewee, it was necessarily a statement of opinion rather than factual material.
- Statements in the nature of prediction as to future events would nearly always be characterised as statements of opinion.

FOR INCORPORATION IN THE BODY OF THE REPORT WHERE RELEVANT

- The assessment of factual accuracy is determined in the context of the segment as a whole.
- While the (broadcaster) is not required to present all factual material available to it, if the omission of some factual material means that the factual material actually broadcast is not presented accurately, this may amount to a breach of the obligation.
- In situations where witnesses (to an event or circumstance) give contradictory accounts and there is no objective way of verifying the material facts, the obligation for the reporter to present factual material accurately will ordinarily require that the competing assertions of fact be presented accurately as competing assertions.

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10. 4.3.1 1 – News and Current Affair programs - Fair representation of viewpoints

In determining whether or not a licensee has represented a viewpoint fairly (having regard to the circumstances at the time of preparing and broadcasting the program), the ACMA takes into account that the code does not require a licensee to present all material which it obtains. The overriding requirement is that the program, that is, whatever goes to air in its entirety, must represent viewpoints fairly. A program may omit material, but must not misrepresent a viewpoint in doing so.

Clause 4.3.1 of the code obliges the accurate presentation of factual material and the fair representation of viewpoints.

In relation to the latter element, it is noted that viewpoints were expressed in the segment by [XXXXXX]. The ACMA has not been provided with any information to suggest that these viewpoints were not fairly represented in the broadcast. Accordingly, an examination of the program's compliance with clause 4.3.1 insofar as it relates to the obligation to represent viewpoints fairly has not been pursued further.

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11. 4.3.5 - News and Current Affair programs - Privacy

Note -

- For privacy matters refer to the *Privacy Guidelines for Broadcasters 2005* – under review and due for completion in early 2011
- The Commercial Television Industry Code of Practice, January 2010 included a new clause 4.3.5.1 enabling use of material where consent has been obtained – and in the case of a child, where the consent of a parent or guardian has been obtained.

Relevant code of practice

Clause 4.3.5 of the Code states:

News and Current Affairs Programs

4.3 In broadcasting news and current affairs programs, licensees:

4.3.5 must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast;

The *Macquarie Dictionary (fifth edition)* provides the following definitions:

Personal: of or relating to a particular person; individual; private [...]

Private: relating to or affecting a particular person or a small group of persons; individual; personal [...]

Affairs: matters of interest or concern; particular doings or interests [...]

Privacy: the state of being private; retirement or seclusion [...]

Under review

Consideration has also been given to the ACMA's Privacy Guidelines for Broadcasters (2005 Edition) (the Guidelines). These Guidelines were developed to assist broadcasters in the interpretation of the scope of the privacy provisions within the Code and are not intended to be a binding instrument. The Guidelines describe material relating to a person's private affairs as follows:

As a general rule, the broadcast of private material occurs:

- *when the material relates to a person's private affairs so that its broadcast is likely to cause harm or distress to a reasonable person in the position of the individual and*
- *when an individual is identifiable from the material broadcast.*
- *'Material relating to a person's private affairs' can include material dealing with the health, personal relationships, financial affairs or private conduct of the individual [...]*
- *Information that is readily available to the public would generally not be considered to be material relating to a person's personal or private affairs.*
- *However, the broadcast of personal information, such as a person's address or other identifying details, may be considered private, even if such information has some limited public availability [...]*
- *Public interest in a story as a whole may not justify use of particular material that intrudes on the privacy of an individual. The broadcast of such material must contribute to the public's knowledge and understanding of the issues involved in the overall subject [...]*
- *Whether something is of public interest will depend on the circumstances including, for example, whether a matter is capable of affecting the people at large so that they might be legitimately interested in, or concerned about, what is going on [...]*

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12. 4.3.5 - News and Current Affair programs - Privacy children

Note -

- For privacy matters refer to the *Privacy Guidelines for Broadcasters 2005* – under review and due for completion in early 2011
- The Commercial Television Industry Code of Practice, January 2010 included a new clause 4.3.5.1 enabling use of material where consent has been obtained – and in the case of a child, where the consent of a parent or guardian has been obtained.

The primary obligation of licensees in regard to the privacy of individuals is at clause 4.3.5:

Licensees must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast.

Where consent, has not been obtained, the only circumstance in which a licensee may broadcast material which either relates to a person's personal or private affairs, or which invades an individual's privacy, is where there is an identifiable public interest reason for that material to be broadcast. Sub-clause 4.3.5.1, which concerns the broadcast of material about children, must be interpreted in the context of the primary, overarching obligation stated in 4.3.5.

Clause 4.3.5.1 states that:

for the purpose of this Clause 4.3.5 licensees must exercise special care before using material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child. The consent of a parent or guardian should be obtained before naming or visually identifying a child in a report on a criminal matter involving a child or a member of a child's immediate family, or a report which discloses sensitive information concerning the health or welfare of a child, unless there are exceptional circumstances or an identifiable public interest reason for not doing so.

The obligation imposed by clause 4.3.5.1 is to exercise special care when the material described in clause 4.3.5 relates to the personal or private affairs of a child. Clause 4.3.5.1 therefore imposes a higher standard in relation to the broadcast of material relating to a child's personal or private affairs, in recognition of the special vulnerability of children.

The content of the obligation to exercise special care regarding a child's personal or private affairs may vary depending on the circumstances.

The clause gives examples of what might constitute special care in two specific instances – the obtaining of parental consent to either name or visually identify a child where criminal conduct is involved or where the report discloses sensitive information concerning the health or welfare of a child. In neither case, however, is the obtaining of consent framed as mandatory. For that reason, whether or not parental consent has been obtained is a relevant factor but not a determinative factor, when assessing whether or not there has been a breach of clause 4.3.5; there must still be a public interest reason of sufficient strength to justify the broadcast of the particular material relating to the personal or private affairs of a child. That assessment must be informed by the requirement for a licensee to exercise special care, in the circumstances referred to in clause 4.3.5.1.

In considering whether the Licensee met the requirements of clause 4.3.5.1 the ACMA has considered the following:

- whether material was used that related to a child's personal or private affairs;
- whether the broadcast involved a report of a sensitive matter concerning a child; and
- if material was used that related to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning a child, whether special care was exercised; and if so,
- whether there was an identifiable public interest reason for that material relating to a child's personal or private affairs to be broadcast;

- whether the report dealt with a criminal matter involving a child or a member of a child's immediate family, or disclosed sensitive information concerning the health or welfare of a child; and if so,
- whether the consent of a parent or guardian has been obtained, or
- whether there were exceptional circumstances or an identifiable public interest reason not to do so.

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13. 4.4.1 – News and Current Affair programs - must present news fairly and impartially

Note –

- The following principles are taken from Investigation Report N0 1952 (*National News at Nine* - report on Sudanese violence)

The code imposes on commercial television licensees the requirement that news programs (as distinct from current affairs programs) be presented fairly *and* impartially.

The Macquarie Dictionary (Fourth Edition) relevantly defines the words, ‘fairly’ and ‘impartially’ as:

fairly

adverb

1. in a fair manner; justly; impartially.

fair

adjective

1. free from bias, dishonesty, or injustice: *a fair decision; a fair judge.*

justly

adverb

1. in a just manner; honestly; fairly.
2. in conformity to fact or rule; accurately.

impartial

adjective

not partial; unbiased; just.

partial

adjective

5. biased or prejudiced in favour of a person, group, side, etc

bias

noun

2. a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question.

From the dictionary definitions above, while it appears that the concepts of fairness and impartiality have some overlap, they are also distinct.

Both the Australian Broadcasting Authority (the ABA) and the ACMA have previously considered compliance with this provision of the code. In reviewing previous decisions in relation to the code under consideration in this context and the ABC code of practice²¹, it is apparent that there is relatively greater guidance on the concept of impartiality than on fairness.

In relation to fairness and impartiality, ABA Investigation 1262²² said that:

Matters that could lead to a consideration that material has been presented unfairly or partially may include an unfair selection of material from the range of material available, an undue emphasis on certain material, or the unfair juxtaposition of material taken out of context.

ABA Investigation 1262 went on to say, inter alia, that:

The ABA is of the view that, in this particular news broadcast, the omission of information regarding the complainant’s undertaking to review Mr G’s case creates an unfair presentation, overall, of the actions of the complainant in its handling of Mr G’s claim.

In relation to the concept of impartiality, the ACMA Investigation 1913²³ inter alia, said:

²¹ ABC Code of Practice March 2007

²² September 2003

²³ July 2008

Achieving impartiality requires a broadcaster to present content in a way which avoids conveying a prejudgement, or giving effect to the affectations or enmities of the presenter or reporter in respect of what is broadcast.

In essence, the ACMA took all of the complaints on fairness and impartiality as going to an underlying concern that the news report was unfairly biased against Sudanese (and to some extent African) people as a whole, and overplayed the role of ethnicity in its coverage of local troubles.

At the outset, the ACMA notes that under the Code it is legitimate for a licensee to investigate and report on matters of public interest and concern and this includes situations where this may raise negative – and indeed strongly negative – issues concerning a group of persons who share a particular national, ethnic origin or race. However, the ACMA considers that care in framing is important, particularly where a licensee makes strong claims in relation to potentially sensitive matters.

In this case, in summary, the ACMA considers that the program did not meet the requirements of clause 4.4.1. It gave undue emphasis to Sudanese (and to some extent African) people as a whole in connection with alleged acts of violence. The material used was an unfair selection, was unfairly juxtaposed, and created an unfair presentation, overall, of Sudanese as particularly prone to violence and crime as a group. There was no alternative view point which tested the appropriateness of this impression. In reaching this view, the ACMA had regard to the following matters:

...

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ABC CODE OF PRACTICE

14. 2.1 – Accuracy

Please refer to [9. 4.3.1 – News and Current Affair programs - Factual accuracy](#)

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15. 3.5 - News and Current affairs content - Balance [subject to review]

In determining whether or not material complained of was compliant with the ABC's obligation under clause 3.5, the ACMA generally has regard to the following considerations:

- Both balance and impartiality are about perspectives or viewpoints. They differ in that the requirement for balance essentially concerns the range and nature of the perspectives or viewpoints presented, whereas the requirement for impartiality essentially concerns how perspectives or viewpoints are treated.
- The code requirement for balance is taken to have been met if, as far as possible, principal relevant viewpoints on matters of importance are presented.
- The issue of what constitutes a 'principal relevant viewpoint' and a 'matter of importance' for purposes of clause 3.5 must be considered in relation to the scope and main thrust of the particular program.
- The code requires that balance be sought within a single program, while recognising that there may be circumstances where this is unlikely to be achieved.
- While presenting counter views in proximity assists to provide a clear understanding of the principal relevant viewpoints and points of difference, it is legitimate for a program exploring complex issues to present a range of views supporting a particular perspective before exploring the counter view.
- Imbalance may result from presenting as undisputed fact a matter of importance about which there is more than one perspective.

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16. ABC - 4.1 - impartiality

In determining whether or not material complained of is compliant with the ABC's obligations under standard 4.1 of the Code, the ACMA generally has regard to the following considerations:

- The meaning conveyed by the relevant material is assessed according to what an ordinary reasonable viewer (as to which, see pages 2-3 of this report) would have understood the program concerned to have conveyed.
- Achieving impartiality requires a broadcaster to present content in a way which avoids conveying a prejudgement, or giving effect to the affections or enmities of the presenter or reporter in respect of what is broadcast. In this regard:
 - The ACMA applies the ordinary English meaning of the word 'impartial' in interpreting the Code. The *Macquarie Dictionary* (Fifth Edition)²⁴ defines 'impartial' as: 'not partial; unbiased; just'. It defines 'partial' to include: 'biased or prejudiced in favour of a person, group, side, etc., as in a controversy'. 'Bias' is defined as: 'a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question'.
 - The ACMA considers that a helpful explanation of the ordinary English usage of the term 'bias' is set out by Hayne J in *Minister for Immigration and Multicultural Affairs v Jia Legend*²⁵ as follows:

'Bias' is used to indicate some preponderating disposition or tendency, a 'propensity; predisposition towards; predilection; prejudice'.²⁶ It may be occasioned by interest in the outcome, by affection or enmity, or, as was said to be the case here, by prejudgement. Whatever its cause, the result that is asserted or feared is a deviation from the true course of decision-making, for bias is 'anything which turns a man to a particular course, or gives the direction to his measures'.
- The relevant provision requires the ABC to 'gather and present news and information with due impartiality'. Inclusion of the word 'due' indicates an element of flexibility depending on the particular context: for example, the gathering and presentation of factual information for a news bulletin may be materially different from an interview of a political figure, where challenging questions are ordinarily appropriate.
- A program 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 themes of the program, any editorial comment, the overall presentation of the story and the circumstances in which the program was prepared and broadcast.
- Presenters and reporters can play a key role in setting the tone of a program through their style and choice of language. The manner in which a report is presented or reported can influence the conclusions that an ordinary reasonable listener would draw from a broadcast.
- The nature of current affairs reporting requires reporters and presenters to be questioning, and at times sceptical, in their analysis of important issues. However, while probing and challenging questions may be used to explore an issue, programs must demonstrate a willingness to include alternative perspectives without prejudgement.

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²⁴ Online edition at <http://www.macquariedictionary.com.au>

²⁵ (2001) 205 CLR 507 at 563 [183] Gleeson CJ and Gummow J at 538 [100] agreeing.

²⁶ *Oxford English Dictionary* (Second Edition), meaning 3(a).

Broadcasting Investigations: How to Guides



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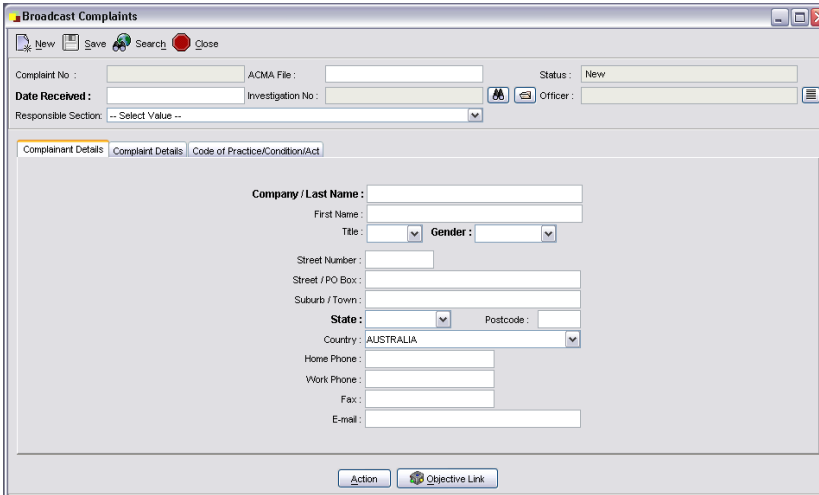
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Chapter 1: Handling written complaints and enquiries

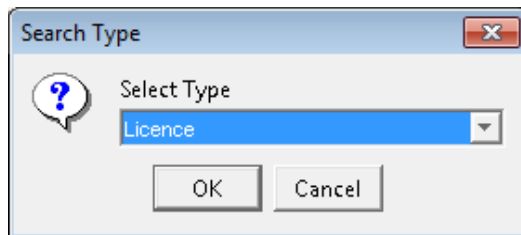
1. Be aware of KPI	<p>The Key Performance Indicator (KPI) for responses to written complaints and enquiries is 7 working days. The KPI for telephone enquiries is 2 days.</p>
2. Receive complaint	<p>Check the Broadcasting inbox and the mail tray at least twice daily.</p>
3. Triage complaint	<p>Delete spam.</p> <p>Forward a complaint for a different section of the ACMA to the relevant section, copying in the Triage EL1. See ‘Internal ACMA contact list’</p>
4. Register complaint on AIMS	<p>Go to Investigations > Broadcast Complaints > New.</p>  <p><u>‘Complainant Details’ tab:</u></p> <p>Enter as much detail as you can. Field names in bold indicate mandatory fields.</p> <p><u>‘Complaint Details’ tab:</u></p> <p>An entry in either ‘Complaint Subject’ or ‘Complaint Description’ is mandatory. ‘Complaint Description’ entries can be cut-and-pasted from an email complaint. Be sure to note any complaint-handling concern (eg no response from licensee, not told to put complaint in writing when rang to complain).</p> <p>Click ‘Save’ after you have put entries in all mandatory fields. A unique number will appear in the ‘Complaint No’ field.</p> <p>‘Program Name’ and ‘Program Type’ fields:</p> <ul style="list-style-type: none"> Click on the binoculars icon (‘Program Title Lookup’) beside the ‘Program Name’ field at ‘Complaints Details’ tab. This will take you to a ‘Search Browser’ in the ‘Common’ module. Locate the relevant program.

- The name you select will appear in the 'Program Name' field in the complaint record and the 'Program Type' field will populate automatically.
- Click 'Update' to save your entry.
- If the program is not there, enter it in the 'Common' module first. To do this:
 - Go to 'Common' on the AIMS menu bar.
 - Pick 'Programs' from the dropdown list.
 - Enter the program name.
 - Choose the relevant 'Type' from the dropdown list.
 - Click on 'Save' and exit.
- Go to the 'Complaints Details' tab again in the entry for the complaint, click on the 'Program Title Lookup' icon, enter the program name or part of it, and select the program. Click 'Update' to save your entry.

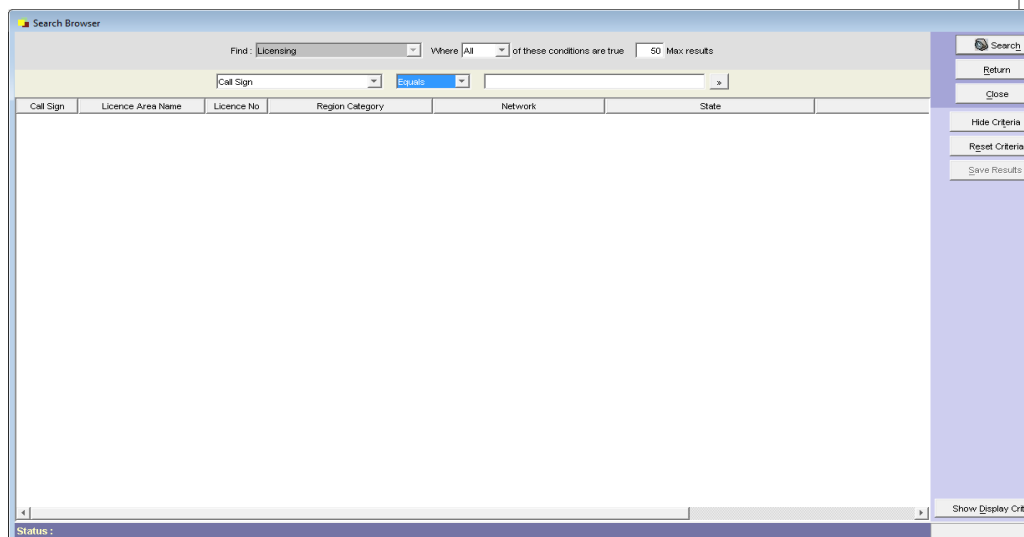
'Code of Practice/Condition/Act tab:

'Broadcaster' field:

- Click on the binoculars icon ('Licence lookup') beside the 'Broadcaster' field.
- A dialogue box, 'Search Type', will appear. Pick 'Licence' if the complaint is about a commercial or subscription broadcasting station. Pick 'Class & National Broadcasting Service' if the complaint is about the ABC, SBS or a narrowcaster.



- This will take you to a 'Search Browser' in the 'Licensing' module. Locate the relevant broadcaster.

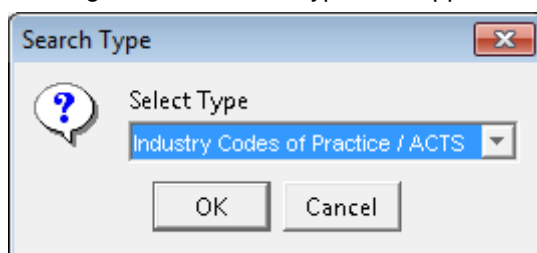


- For commercial radio stations, a 'Call sign' or 'On Air ID' search may be the best one. For commercial TV stations, a 'Network' search may be the best one. For the ABC, search with values 'Category' (National Broadcasting), 'Type' and 'State'.

Click 'Update' to save your entry.

'Related Code of Practice/Condition/Act(s) field:

- Click on 'Add'.
- A dialogue box, 'Search Type', will appear. Pick the relevant option.





- This will take you to a 'Search Browser' in the 'Common' module. Locate the relevant provision.
- Click 'Update' to save your entry.
- Repeat if the complaint raises more than one issue.

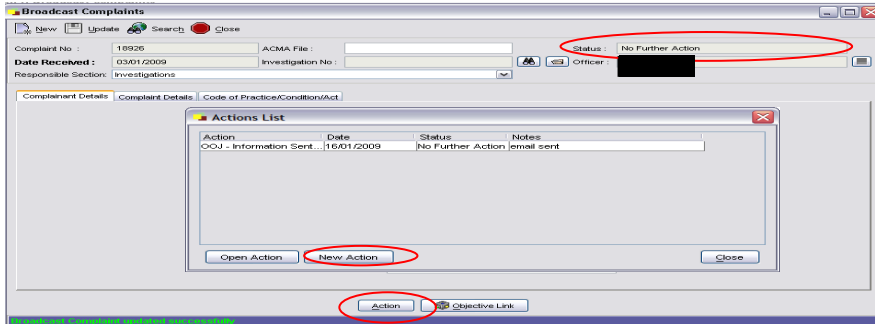
5. Save complaint on TRIM

Complaints are stored on TRIM in a monthly complaints file. The file number comprises ACMA + year/ + month, eg the file for complaints received in January 2013 is ACMA2013/1.

The naming formula for a complaint is:

[AIMS complaint number] – [Complainant's surname] – complaint/enquiry

	<p>Example:</p> <p>17689 – [REDACTED] – complaint</p> <p><u>Email complaint with attachments (from a complainant):</u> Save the email. See TRIM 6.2 Cheat Sheet – Registering an E-Mail.</p> <p><u>Email complaint without attachments:</u> Not usually saved to TRIM at this stage. (Once the response is sent, the complaint-and-response chain is saved as a single document.)</p> <p><u>Email from ICTServiceDesk with pdf attachment:</u> This is an email from mailroom staff, attaching a scan of a hardcopy document which they will be delivering later in the day. Save the attachment only. See TRIM 6.2 Cheat Sheet – Registering an E-Mail.</p>
<p>6. Submit response outline to EL1</p>	<p>Forward complaint to Triage EL1 with a dot-point outline of proposed response and/or request for guidance in responding. EL1 responds by email and will indicate if s/he wants to see the draft response.</p> <div>  <p>If the complaint appears to meet s147, 148 or 150 of the BSA, discuss with the Triage EL1. See How-to Guide: Opening an investigation. If a response to a complainant involves a complex consideration of whether the complaint meets s147, 148 or 150 before deciding that it is not one for investigation, the EL1 signs the response (and usually composes it as well).</p> </div>
<p>7. Prepare and send response</p>	<p>Go to the 'Standard Response Templates Letters/Emails for Complaints Handling' subfolder located on TRIM:</p> <p> ACMA2009/2462-7</p> <p>Choose an appropriate template.</p> <p><u>Straightforward email responses:</u></p> <p>Open the complaint message in the Broadcasting inbox; hit 'Reply'; copy and paste template text into the reply space; tailor to the individual circumstances; and send.</p> <p><u>Straightforward mail responses:</u></p> <p>Create document and save in the TRIM complaint file. Naming formula is:</p> <p>[AIMS complaint number] – [Complainant's surname] – response</p> <p>Tailor text appropriately. Print, sign and send.</p> <p><u>Responses requiring EL clearance:</u></p> <p>Create document and save in the TRIM complaint file. Naming formula as above.</p> <p>Forward the draft to the Triage EL1 as a TRIM record reference. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p> <p>Once cleared, send response as for straightforward responses, above.</p> <p><u>Responses that require internal consultation (eg legal advice, Investigations Review Committee (IRC) discussion or input from another section):</u></p> <p>Create a subfolder on TRIM. To do this, see TRIM 6.2 Cheat Sheet – Creating Subfolders. Naming formula is:</p> <p>[AIMS complaint number] – [Complainant's surname] – [Call sign]</p> <p>Save (or move) the complaint into the subfolder. For moving a document on TRIM, see TRIM 6.2 Cheat Sheet – Moving a Document to a Different File.</p>

	<p>Prepare and send a holding response.</p> <p>Print out correspondence and place on a paper file, using a manila tube-clip folder. Place a label on the cover. A paper file cover template can be found here:</p> <p>Go to the Opening Matters Table. Add a deep purple row with details of what consultation is underway and when a response is expected.</p> <p>For requests for legal advice, see How-to Guide: Requesting legal assistance.</p> <p>Responses that require more information from the complainant: Same as above, except that a request for information/clarification is sent rather than a holding response.</p> <p>Signing of correspondence: Letters should be signed with an individual signature. Emails can be signed with the 'Broadcasting Investigations Section' signature block.</p>
8. Update TRIM	<p>Email responses: Save email chain containing the complaint and the response as a single document. Naming formula is:</p> <p style="text-align: center;">[AIMS complaint number] – [Complainant's surname] – Complaint & response</p> <p style="text-align: center;">Example:</p> <p style="text-align: center;">17689 – [REDACTED] – complaint & response</p> <p>Letter responses: Make the document final once it is sent. See TRIM 6.2 Cheat Sheet – Finalising a Document.</p> <p>If a letter response has been signed by an Executive Manager or above, scan the signed letter and save as a pdf. To do this, email the scan to yourself and save the email attachment.</p>
9. Update AIMS	<p>Go AIMS> Investigations > Broadcast Complaints > Actions</p> <p><u>Where substantive response has been sent:</u> Enter action to bring the status on Screen 1 to 'No further action'.</p>  <p>Actions that produce this result are:</p> <ul style="list-style-type: none"> All actions beginning OOJ [Out Of Jurisdiction] WJ [Within Jurisdiction] – to First Complain to Broadcaster <p>The 'Notes' field is mandatory. The entry can be brief, eg 'Email sent'.</p> <p><u>Where holding response or request for information/clarification has been sent:</u></p> <p>Enter action to bring the status on Screen 1 to 'Pending'.</p> <p>Actions that produce this result include:</p>

- WJ – Acknowledgement Sent
- WJ – Clarification Sought from Complainant

10. Store/shred paper

Once a substantive response has been sent:

- Shred print-outs of email complaints
- Store complaints received by mail in the white plastic 'Complaints' folder and shred after 6 months.

EXTRA STEP FOR COMPLEX COMPLAINTS/ENQUIRIES

11. Complete responses to complex complaints

Save all further records in the subfolder as they are generated.

Make file notes and prepare memos as required. See [How-to Guide – Making a file note](#) and [How-to Guide – Preparing a memo](#).

Update the [Opening Matters Table](#) for each new stage.

When ready, prepare and send a substantive response.

Save on TRIM as per Step 9.


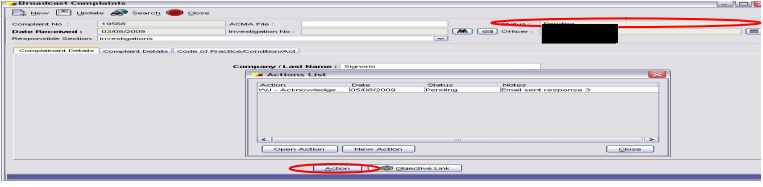
Add action on AIMS to bring status to 'No further action' (see Step 10).

On the Opening Matters Table, change row colour to mid-purple and note: 'Destroy/finalise [date a month on]'.

A month later, if there have been no further developments:

- place any hardcopy material (eg a complaint received by mail) in the white plastic 'Complaints' folder
- delete the row from the Opening Matters Table.

Chapter 2: Opening an investigation

<p>1. Decide to present case for opening an investigation</p>	<p>Normally, a complaint will only proceed to investigation if the complainant has met s 147, 148 or 150 of the BSA. Examine the complaint with this in mind.</p>
<p>2. Register or update complaint on AIMS</p>	<p>Check AIMS to see if the complainant has already been in contact with the ACMA about his or her complaint. To do this, go AIMS > Investigations > Broadcast Complaints > Search > 'Company/Last Name'</p> <p>If there is no previous correspondence from the complainant about this particular complaint, register as a new complaint. To do this, see How-to Guide: Handling written complaints and enquiries.</p>
<p>3. Create TRIM subfolder</p>	<p>Create a subfolder in the TRIM monthly complaints file. To do this, see TRIM 6.2 Cheat Sheet – Creating Subfolders.</p> <p>Save all correspondence to date in the subfolder.</p>
<p>4. Create paper file</p>	<p>Print out all correspondence in the TRIM subfolder.</p> <p>Place it on a paper file, using a manila tube clip folder.</p> <p>Place a label on the cover. A paper file cover template can be found here.</p>
<p>5. Prepare and send holding response</p>	<p>Prepare and send a response to the complainant advising them that the matters they have raised are under consideration and they will be contacted again in due course.</p> <p>'Holding response' templates can be found here.</p> <p>If the complaint was received by post, choose the letter template. If by email, choose the email template.</p> <p> Holding responses do not need to be approved by EL1 and can be signed by the admin officer.</p> <p><u>Update AIMS:</u> Go AIMS> Investigation > Broadcast Complaints > Actions</p> <p>Select 'WJ [Within jurisdiction] – acknowledgement sent'. 'Status' on Screen 1 will change to 'Pending'.</p> 
<p>6. Place on Opening Matters table</p>	<p>Open the Opening Matters Table at ED12/99356. Add a row in yellow and enter details, including the date to the officer who will preparing the New Investigation Brief (NIB). (If the complaint was previously a purple row in the Table, delete that row,)</p>

<div>7. Prepare a New Investigation Brief (NIB)</div>	<div>Open the New Investigation Brief Template (NIB), create a document from the template and save it in the complaint subfolder.</div> <div><u>'Substance of complaint' field:</u> Follow the guidelines below to ensure that all investigation descriptions are similar and suitable for publication in a wide range of reports that are distributed to external sources.</div> <div><table><tr><th>Do</th><th>Don't</th></tr><tr><td><div><div>➤ Does use telegraphic style (ie omission of 'a' and 'the' where possible)</div><div>➤ Does include every WJ issue identified to be investigated.</div><div>➤ Can use key terms used by the complainant.</div><div>➤ Does give enough information to distinguish the complaint from other complaints about the same program on the same code clauses (eg by alluding to the general topic of the story).</div></div></td><td><div><div>➤ Doesn't include the station name, program name or the date of broadcast.</div><div>➤ Doesn't identify anybody who isn't identified in the investigation report.</div><div>➤ Doesn't identify anything (eg a school, a business) which won't be identified in the investigation report. (This can be added in the 'Comments' field below.)</div><div>➤ Doesn't include OOJ (out of jurisdiction) matters.</div><div>➤ Doesn't include words made redundant by the fact that the heading is 'Substance of complaint', eg 'Complainant concerned that ...'; 'Complainant alleged that ...' 'Allegation that ...' 'Complaint that ...'.</div></div></td></tr></table><div>EXAMPLES</div><div><table><tr><th>Call sign</th><th>Program</th><th>Substance of complaint</th></tr><tr><td>NBN</td><td><i>NBN News</i></td><td>Lack of captioning on 4/2/09.</td></tr><tr><td>TCN</td><td><i>A Current Affair</i></td><td>Personal and private information about a child in a story about truancy.</td></tr><tr><td>GTV</td><td><i>Footy Show</i></td><td>Denigration of women.</td></tr><tr><td>QTQ</td><td><i>A Current Affair</i></td><td>Telephone conversation recorded and broadcast without consent. False information. Conversation edited out of context. Response to complaint did not address issues or advise complainant of referral to the ACMA.</td></tr></table><div><u>Network record searches:</u> See <i>How-to Guide: Running a COGNOS report on a broadcaster's record</i> in ACMA2009/2462-2.</div></div></div>	Do	Don't	<div><div>➤ Does use telegraphic style (ie omission of 'a' and 'the' where possible)</div><div>➤ Does include every WJ issue identified to be investigated.</div><div>➤ Can use key terms used by the complainant.</div><div>➤ Does give enough information to distinguish the complaint from other complaints about the same program on the same code clauses (eg by alluding to the general topic of the story).</div></div>	<div><div>➤ Doesn't include the station name, program name or the date of broadcast.</div><div>➤ Doesn't identify anybody who isn't identified in the investigation report.</div><div>➤ Doesn't identify anything (eg a school, a business) which won't be identified in the investigation report. (This can be added in the 'Comments' field below.)</div><div>➤ Doesn't include OOJ (out of jurisdiction) matters.</div><div>➤ Doesn't include words made redundant by the fact that the heading is 'Substance of complaint', eg 'Complainant concerned that ...'; 'Complainant alleged that ...' 'Allegation that ...' 'Complaint that ...'.</div></div>	Call sign	Program	Substance of complaint	NBN	<i>NBN News</i>	Lack of captioning on 4/2/09.	TCN	<i>A Current Affair</i>	Personal and private information about a child in a story about truancy.	GTV	<i>Footy Show</i>	Denigration of women.	QTQ	<i>A Current Affair</i>	Telephone conversation recorded and broadcast without consent. False information. Conversation edited out of context. Response to complaint did not address issues or advise complainant of referral to the ACMA.
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<div>8. Present the draft NIB for Section Manager clearance</div>	<div>Print out the draft NIB. Attach it to the outside of the paper file. Place the paper file in the red NIB folder. Give to Section Manager.</div> <div>Update entry in the Opening Matters Table.</div>																			
<div>9. Present NIB to Executive Manager for signature</div>	<div>Send cleared NIB to EM by email as a TRIM Record Reference.</div> <div>Update entry in the Opening Matters Table.</div>																			
<div>10. Receive signed NIB</div>	<div>The signed NIB will usually be sent as a scanned pdf attachment to an email. Store this on TRIM in the complaint subfolder.</div> <div>To do this, see TRIM 6.2 Cheat Sheet – Registering an E-Mail.</div> <div>Update entry in the Opening Matters Table.</div>																			

11. Request TRIM investigation file

Go to http://act01nctp01/forms/file_request_form.asp

Or go Intranet > TRIM file request.

Fill in the 'File Request Form':

Level of Service: Choose 'Urgent (within 3 HOURS)'

Type of Request: Choose 'Electronic File'

Top Level – Function – Mandatory: Choose 'COMPLIANCE & ENFORCEMENT'

Second Level – Activity – Mandatory: Choose 'Investigation'.

Third Level – Subject – Mandatory (Free Text): Naming formula:

[Code of practice/Licence condition] – [Type of service] – [Call sign] – [Program] – [Complainant]

Scroll to the bottom of the form and click 'Submit'.

This sends the request to the ICT Service Desk.

12. Move complaint correspondence into investigation file

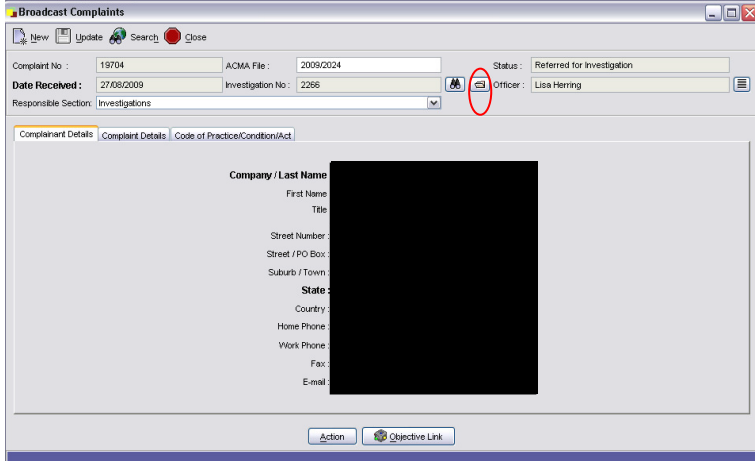
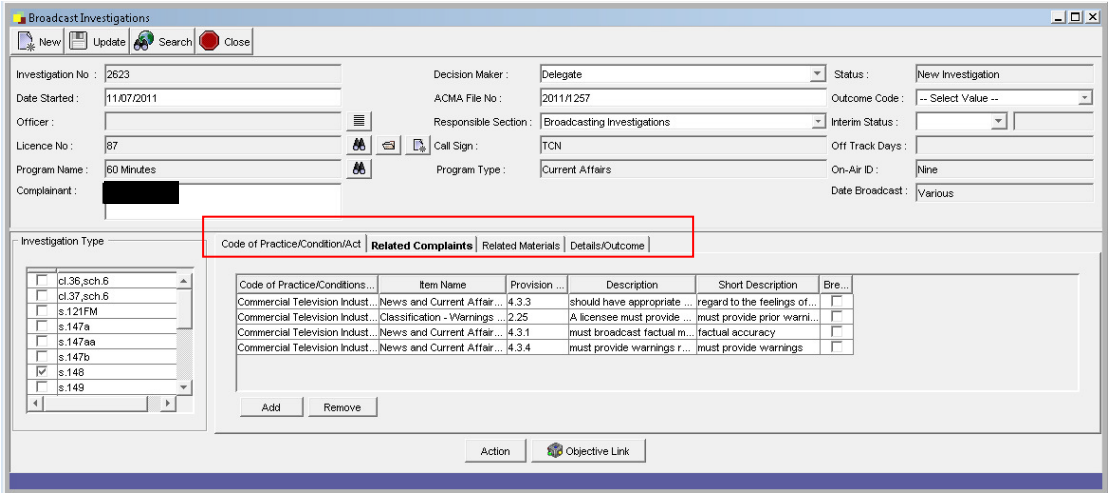
Once the ICT Service Desk has created the TRIM file and sent you the link:


- Create a subfolder in the TRIM investigation file and entitle it 'Complaint documents'.
- Move documents in the complaint subfolder into this subfolder. See [TRIM 6.2 Cheat Sheet – Moving a Document to a Different File..](#)
- Alternately-house the documents back into the complaint subfolder using the 'alternately within' function on TRIM. See [TRIM 6.2 Cheat Sheet – Placing a Document into More Than One File.](#)

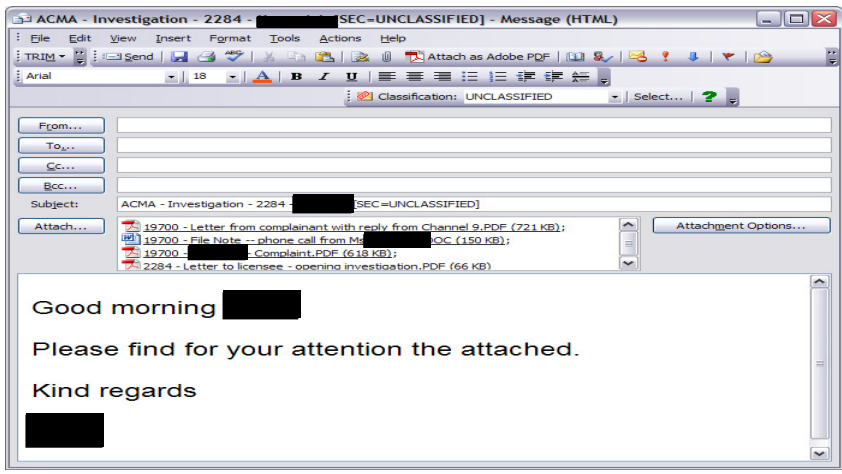
13. Check and update AIMS entries in complaint

Go to Investigations > Broadcast complaints > (the complaint number)

Check that AIMS entries (for eg 'complaint subject' and 'program') correspond with the entries in the signed NIB.

<p>module</p>	<p>Enter new action 'WJ – Referred for Investigation' with the date the NIB was signed. (Note: 'Status' on Screen 1 will change to 'Referred for investigation'.)</p>
<p>14. Create AIMS record in Broadcasting Investigations module</p>	<p>Click on the folder icon next to the 'Investigation No.' field in the record in the 'Broadcasting Complaints' module.</p>  <p>This takes you to the Broadcasting Investigations module and creates a record with a unique number.</p> <p>Some fields will automatically populate from the Broadcasting Complaints module.</p> <p>For the others:</p> <p><u>Investigation Type</u>: Consult the NIB for appropriate selection.</p> <p><u>Decision Maker</u>: Consult the NIB for appropriate selection.</p> <p><u>Responsible Section</u>: Choose 'Broadcasting Investigations'</p> <p><u>Code of Practice/Condition/Act</u>: Ensure that entries coincide with provisions identified in the NIB.</p> <p><u>Related Materials</u>: In the rare case that there are any physical records (eg a CD, a magazine) in the material for the investigation to date, click 'Add' to create a row and enter details:</p> <p><u>Description (at Details/Outcome tab)</u>: Enter text from 'Substance of complaint' field in the NIB.</p>  <p>Click 'Update' to save your entries (VERY IMPORTANT STEP!!).</p>
<p>15. Update TRIM</p>	<p>Add the AIMS investigation number to the title of the TRIM file. See TRIM 6.2 Cheat Sheet –</p>

& paper file	<p>Amending Document Details.</p> <p>Write the AIMS investigation number on the cover of the paper file.</p>
16. Prepare opening letters	<p>Go to the 'Opening Letter Templates' subfolder located on TRIM:</p> <p style="text-align: center;"> ACMA2009/2462-8</p> <p>Choose appropriate templates, create draft documents and save them in the TRIM investigation file.</p> <p>Refer to the NIB to determine which templates to choose, what the licensee is to be asked for/advised and what the complainant is to be advised.</p> <p>For code complaints, the licensee is sent a copy of the complaint received from the complainant. In some cases, associated documentation is sent as well (eg additional information from the complainant). Refer to the complaint documents subfolder to determine whether the letter should say a copy of the complaint is enclosed, or a copy of the complaint and associated documentation.</p> <p>Opening letters must be signed by an EL1 or above. Send drafts to EL1 (or above) as TRIM Record References for signature. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p>
17. Save opening letters on TRIM	<p>Scan signed letters, email them to yourself and save in the investigation TRIM file, appropriately titled. See TRIM 6.2 Cheat Sheet – Registering an E-Mail.</p>
18. Send signed opening letter to complainant	<p>Send the signed letter to the complainant, observing the following:</p> <ul style="list-style-type: none"> • If the complainant complained via letter the opening letter will usually be sent via post. • If the complainant complained via email the opening letter will usually be sent as an attachment to an email: <ul style="list-style-type: none"> ◦ Attach the letter as an electronic document, <i>not</i> as a TRIM Record Reference). ◦ The email message itself can be brief, eg 'Dear [complainant], Please see attached. Yours sincerely [officer]'. ◦ After sending, save the email on the investigation TRIM file.
19. Send signed opening letter (and any enclosures) to licensee	<p>Send the signed letter to the licensee observing the following steps:</p> <ul style="list-style-type: none"> • Email is the preferred mode for sending. Email addresses for most licensee representatives are in the AIMS 'Contact Management' module. <ul style="list-style-type: none"> ◦ Open AIMS ◦ Click on 'Contact Management' module ◦ Choose 'Person' ◦ Choose 'Search' ◦ Search for the representative with values 'Given Names' and 'Surname' <p>Email addresses for the broadcaster representative may also be obtained from the broadcaster's response to the complainant in the case of code complaints.</p> • For code complaints, attach complaint and, if appropriate, associated documentation as well. (Send attachments as electronic documents, not as TRIM record references.)

	<ul style="list-style-type: none"> The formula for the email subject heading is: ACMA – Investigation – [AIMS number] – [complainant] Include a brief email message, see example below:  <ul style="list-style-type: none"> After sending, save the email to the investigation TRIM file, appropriately re-titled.
20. Update AIMS	<p>Once both opening letters have been sent:</p> <ul style="list-style-type: none"> Enter the date the opening letters were sent to both the complainant and licensee in the 'Date Started' field on Screen 1 Click 'Update' to save your entry Enter the following actions: <ul style="list-style-type: none"> 'Refer to Executive Manager for Prioritisation' (enter date NIB was sent to EM) 'Open Investigation' (Enter date the NIB was signed and the delegate) 'Complainant advised of investigation starting' 'Broadcast Recording requested from Broadcaster', 'Comments and Recording Requested from Broadcaster' or 'Comments Requested from Broadcaster' depending on what was asked for in the opening letter. In the notes field enter the next-step information 'Awaiting Broadcast' and in the Next Step Date enter the dates the comment/recording is due.
21. Update Opening Matters Table	<p>Enter date opening letters were sent and date response due.</p> <p>Change colour of row from yellow to pink.</p> <p>When the investigation is allocated to a case officer, remove row from Opening Matters Table.</p>

EXTRA STEPS IF ALLOCATION IS DELAYED

22. Deal with responses to opening correspondence	<p>Save any responses to opening correspondence into the TRIM investigation file.</p> <p>Record any telephone conversations as a file note. See How-to Guide: Making a file note.</p> <p>Refer requests for extensions of time to the Section Manager.</p> <p>Refer any other queries to the Triage EL1.</p>
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<p>23. Record broadcast and/or comments receipt in AIMS and TRIM and Opening Matters Table</p>	<p>If broadcast and/or comments arrive before file is allocated to a case officer:</p> <p><u>CD/DVD of broadcast:</u></p> <p>Attach CD/DVD to the paper file.</p> <p>Record details on AIMS under the 'Related Materials' tab.</p> <p>Enter action 'Broadcast Recording Received from Broadcaster' and note the date received.</p> <p>See if the CD/DVD case has a label on it with a number starting with the prefix 'PR'. If it does, this means that mailroom staff have already registered it on TRIM as a physical record and have most likely stored it in the monthly complaints file. Move it into the TRIM investigation file. See TRIM 6.2 Cheat Sheet – Moving a Document to a Different File.</p> <p>If the CD/DVD has not been given a PR number it needs to be given one. See TRIM 6.2 Cheat Sheet – Registering a Physical Document.</p> <p><u>Electronic record of broadcast:</u></p> <p>Save email with the broadcast attached into the TRIM investigation file (using 'Catalogue').</p> <p>Save the copy of broadcast into the TRIM investigation file too (using 'Catalogue Attachment(s) Only').</p> <p>On AIMS, enter action 'Broadcast Recording Received from Broadcaster' and note the date received.</p> <p><u>Comments:</u></p> <p>Save comments in the investigation TRIM file and place the hardcopy (if any) on the paper file.</p> <p>On AIMS, enter the action 'Comments received from broadcaster' and note the date received.</p>
<p>24. Record broadcast and/or comments receipt on Opening Matters Table</p>	<p>Update table and change colour of row from pink to blue.</p>

Chapter 3: Conducting an investigation – basics

INITIAL ACTIONS

1. Be aware of KPI

The Key Performance Indicator (KPI) for completion of an investigation is 6 months. That is, an investigation with an AIMS 'Date started' of 1/4/10 must have a final report signed on or before 1/10/10 to meet the KPI.

2. Update AIMS at allocation

The AIMS database is used to record essential information about every investigation. AIMS data is used for weekly, monthly and ad-hoc reporting. It is important for it to be accurate and up-to-date.

Once the investigation has been allocated, attach the case officer's name to the investigation on AIMS.

To do this, go to AIMS> Investigations> Broadcast Investigations

Search – select: Investigation Number = [investigation number]

Open the investigation > click on the icon next to the 'Officer' field:

Locate the name of the case officer and click on 'Select'.

Hit 'Update' on return to Screen 1, otherwise the information entered will not 'take'.

Then enter the action 'Allocated to officer':

On Screen 1, click on 'Action' at the bottom of the screen.

Broadcast Investigations

Investigation No : 2597
 Date Started : 30/05/2011
 Officer : [Redacted]
 Licence No : 4099
 Program Name : Alan Jones
 Complainant : [Redacted]

Decision Maker : Delegate
 ACMA File No : 2011/1024
 Responsible Section : Broadcasting Investigations
 Call Sign : 2GB
 Program Type : Talkback - Breakfast (Radio)

Status : Investigation in Progress
 Outcome Code : -- Select Value --
 Interim Status :
 Off Track Days :
 On-Air ID : 2GB
 Date Broadcast : 15/03/2011

Investigation Type

- ☐ cl.36.sch.6
- ☐ cl.37.sch.6
- ☐ s.121FM
- ☐ s.147a
- ☐ s.147aa
- ☐ s.147b
- ☒ s.148
- ☐ s.149

Code of Practice/Condition/Act

Code of Practice/Conditions...	Item Name	Provision ...	Description	Short Description	Bre...
Commercial Radio Australia ...	Code 5: Complaints - Adv...	5.5	Written complaints must b...	respond in writing in 30 ...	<input type="checkbox"/>
Commercial Radio Australia ...	Code 2: News and Curre...	2.3(b)	reasonable efforts are m...	present significant view...	<input type="checkbox"/>
Commercial Radio Australia ...	Code 2: News and Curre...	2.2(a)	factual material is reason...	accuracy of factual mat...	<input type="checkbox"/>

Add Remove

Action Objective Link

The 'Actions List' dialogue box will appear. Click on 'New Action'.

Actions List

Action	Date	Status	Notes
Add a Note	29/01/2009	No Change	Opening Letter sent to Licensee 29/0...
Add a Note	29/01/2009	No Change	Opening Letter sent to Ms [Redacted] 29/...
Allocated to Officer	09/02/2009	Investigation in ...	GWV
Add a Note	09/02/2009	No Change	Req submission from licensee
Comments Received...	06/03/2009	New investigation	Letter dated 3/3/09
Allocated to Officer	12/03/2009	Investigation in ...	FM

Open Action New Action Close

Select 'Allocated to officer' from the pick list and enter text in the 'Notes' field. (The 'Notes' section is mandatory for this action.)

Action

Action : Allocated to Officer

Date : 13/03/2009

Notes : Awaiting broadcast due on 20/03/09

Complete Cancel

Hit 'Complete'. The 'Status' field on Screen 1 will change from 'New Investigation' to 'Investigation in Progress'.

3. Review material available at allocation

Check the contents of the paper file against the contents of the TRIM investigation file to date. If there are relevant documents which are in the paper file but not on TRIM, save them into the TRIM investigation file. If there are documents on TRIM which are not in the paper file, print them out if you think you will need to refer to them.



Note: The TRIM investigation file is the official record of the investigation and is the most accurate source of information. The paper file is only a temporary aid for the conduct of the investigation and will be destroyed 8 weeks after the completion of the investigation.

4. Monitor receipt of material from broadcaster

In the opening letter to the broadcaster, the broadcaster will usually have been asked for a copy of the broadcast and/or comments by a certain date. If the material requested has not arrived by the due date, follow up with the broadcaster. Contact details for most broadcaster representatives are in the AIMS 'Contact Management' module.

- Open AIMS
- Click on 'Contact Management' module
- Choose 'Person'
- Choose 'Search'
- Search for the representative with values 'Given Names' and 'Surname'

The telephone number for the broadcaster representative may also be obtained from the broadcaster's response to the complainant in the case of code complaints.

Refer any request for an extension of time to the EL2 Clearance Manager for the investigation.



The EL2 Clearance Manager will be either the Section Manager (SM) or the Project Manager. When the investigation is allocated to a case officer, it is also decided who will be the Clearance Manager. This is indicated on the Weekly Report Excel spreadsheet.

5. Receive and record materials received from broadcaster

Store broadcaster's response to the opening letter in the TRIM investigation file.

CD/DVD of broadcast:

Attach CD/DVD to the paper file.

Record details on AIMS under the 'Related Materials' tab:

Broadcast Investigations

Investigation No : 2577
 Date Started : 15/04/2011
 Officer : [Redacted]
 Licence No : 109
 Program Name : Today Tonight
 Complainant : [Redacted]

Decision Maker : Delegate
 ACMA File No : 2011/0818
 Responsible Section : Broadcasting Investigations
 Call Sign : BTQ
 Program Type : Current Affairs

Status : New Investigation
 Outcome Code : -- Select Value --
 Interim Status :
 Off Track Days :
 On-Air ID : Seven
 Date Broadcast : 19/01/2011

Investigation Type
 Code of Practice/Condition/Act
 Related Complaints
 Related Materials
 Details/Outcome


Complaint No	Service Type	Date Received
21114	Commercial TV	05/04/2011

Add Remove Open

Action Objective Link

Enter action 'Broadcast Recording Received from Broadcaster' and note the date received.

See if the CD/DVD case has a label on it with a number starting with the prefix 'PR'. If it does, this means that mailroom staff have already registered it on TRIM as a physical record and have most likely stored it in the monthly complaints file. Move it

	<p>into the TRIM investigation file. See TRIM 6.2 Cheat Sheet – Moving a Document to a Different File.</p> <p>If the CD/DVD has not been given a PR number it needs to be given one. See TRIM 6.2 Cheat Sheet – Registering a Physical Document.</p> <p><u>Electronic record of broadcast:</u></p> <p>Save email with the broadcast attached into the TRIM investigation file (using 'Catalogue').</p> <p>Save the copy of broadcast into the TRIM investigation file too (using 'Catalogue Attachment(s) Only').</p> <p><u>Comments:</u></p> <p>Save comments in the investigation TRIM file and place the hardcopy (if any) on the paper file.</p> <p>If the broadcaster is unable to provide a copy of the broadcast (eg because the broadcast took place a long time previously), consideration will be given to purchasing a copy of the broadcast from the organisation Media Monitors:</p> <ul style="list-style-type: none"> • Secure approval from SM. • Email the Media Section and ask them to get a quote from Media Monitors. Be as specific as possible about the material you require. • Once the quotation is received, present it to SM for approval. • If approved, email Media Section to go ahead with the purchase.
6. Assess situation	<p>A few investigations are concluded without findings. Typical situations leading to a 'concluded' investigation are where:</p> <ul style="list-style-type: none"> • the complainant withdraws the complaint; or • the ACMA's jurisdiction to investigate becomes the subject of legal proceedings. <p>See separate How-to Guide: Conducting an investigation – concluded investigations.</p>
7. Hold 'WIM' meeting	<p>The purpose of the 'WIM' meeting (also called the 'EL' meeting for historical reasons) is to canvass colleagues' views on the investigation issues. These meetings include all case officers and ELs in the section.</p> <p>Enter details of your proposed meeting on Share Point and send an email to all potential attendees, attaching any material you want them to watch/listen to/read in preparation for the meeting.</p> <p> Admin staff can assist in making copies of CDs/DVDs, converting a CD/DVD to electronic form, and making edited versions of material on CD, DVD or electronic file. Allow 3 working days for this.</p> <p>Take notes at the meeting.</p>

THROUGHOUT THE INVESTIGATION

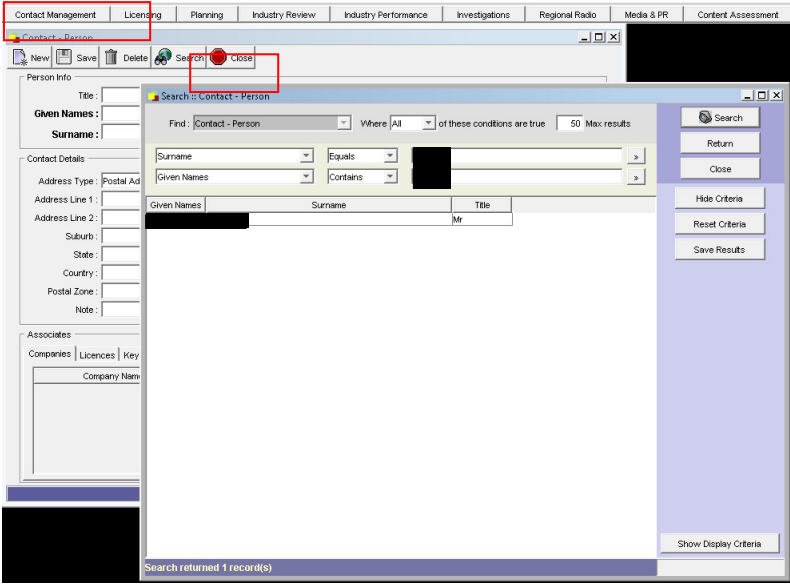
8. Continue storing records in the investigation file	<p>The TRIM file is the official record for the investigation and should contain all (and only) documents relevant to the investigation.</p> <p>Scan hardcopy documents, email them to yourself and save in the TRIM investigation</p>
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	<p>file, appropriately titled. See TRIM 6.2 Cheat Sheet – Registering an E-Mail.</p> <p>Register CDs/DVDs and large documents such as a magazine or book as physical records on TRIM. (After the investigation they will be sent to Records for storage.)</p> <p>File-note any discussions and conversations, especially conversations with the broadcaster or the complainant. See How-to Guide: Making a file note.</p>
9. Update Weekly Report	<p>Make entries for the investigations allocated to you in the Excel spreadsheet 'BIS – Weekly OIRC Report – INV – [date]'.</p> <p>Admin staff will send you a link to the report on Monday and ask you to update it by a certain time and date later in the week, usually noon on Thursday. The cells to update will normally be:</p> <ul style="list-style-type: none"> • Current Status/Outcome • Next Step • Next Step Date <p>Keep language as standardised as possible in the 'Current Status' and 'Next Step' fields. These are some standard wordings:</p> <ul style="list-style-type: none"> ☞ Awaiting broadcast/comments (due x/x/x) ☞ Allocation ☞ Request addit material - licensee (due x/x/x) ☞ Request addit material - complainant (due x/x/x) ☞ Statement of issues - comp/licensee (due x/x/x) ☞ Review Material ☞ EL meeting ☞ Draft report ☞ Draft report to supervisor ☞ Draft report to Sect Mgr ☞ Draft report to EM ☞ Draft report to GM ☞ ACMA ☞ Incorp Supervisor/Sect Mgr/EM/GM/ACMA comments ☞ Report to licensee for proc fairness (due x/x/x)
10. Update AIMS	<p>Update AIMS if changes are made in the course of the investigation to:</p> <ul style="list-style-type: none"> • the code clauses identified as relevant at investigation opening • the licensee under investigation. <p>It is important for AIMS data to be accurate as it is the basis for weekly, monthly and ad-hoc reports.</p>
11. Send regular status updates to complainant	<p>Send a letter/email to the complainant every 3 months while the investigation is current, advising them that the investigation is still in progress.</p> <p>'Three-month status update to complainant' templates can be found here.</p> <p>If the complainant complained via letter, the status update will usually be sent via post. Make the Word document final after you send it. See TRIM 6.2 Cheat Sheet – Finalising a Document.</p> <p>If the complainant complained via email, the status update will usually be sent by email. After sending, save the email on the TRIM investigation file, appropriately titled. See</p>


	<i>TRIM 6.2 Cheat Sheet – Registering an E-Mail.</i> (Save the email.)
12. Do all other steps necessary	<p>Some other things you may need to do in the course of an investigation are:</p> <ul style="list-style-type: none"> • <u>Request legal advice or report clearance.</u> See How-to Guide: Requesting legal assistance • <u>Conduct a COGNOS search</u> (eg for investigations that dealt with the same provisions). See How-to Guide: Running a COGNOS report on a broadcaster's record • <u>Prepare an Authority paper:</u> see How-to Guide: Preparing an Authority paper <p>For further steps in a non-breach investigation, see How-to Guide: Conducting an Investigation – non-breach</p> <p>For further steps in a breach investigation, see How-to Guide: Conducting an Investigation – breach</p>




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Chapter 3: Conducting an investigation – breach

<p>1. Perform basics</p>	<p>See How-to Guide: Conducting an investigation – basics</p>
<p>2. Prepare, send and consider Statement of Issues if necessary</p>	<p>A preliminary breach finding is not reached without giving the licensee an opportunity to make submissions. A Statement of Issues is sent to a licensee where:</p> <ul style="list-style-type: none"> • a breach finding is being considered and • the licensee was not asked for comments on compliance when the investigation was opened. <p>A statement of issues can also be sent where further comment and/or information is needed on a specific matter.</p> <p>Any Statement of Issues should contain:</p> <ul style="list-style-type: none"> • a date the response is due • a warning re false or misleading information and • the case officer's telephone contact number. <p>A 'Statement of Issues Template' is located here.</p> <p>Send the Statement of Issues to the broadcaster by email if possible. Contact details for most broadcaster representatives are in the AIMS 'Contact Management' module:</p> <ul style="list-style-type: none"> • Open AIMS • Click on 'Contact Management' module • Choose 'Person' • Choose 'Search' • Search for the representative with values 'Given Names' and 'Surname'.  <p>Contact details for the broadcaster representative can also be obtained from previous correspondence eg the opening letter.</p>



	<p>Monitor receipt of the broadcaster's response. Refer any request for an extension of time to the EL2 Clearance Manager for the investigation.</p> <p> The EL2 Clearance Manager will be either the Section Manager (SM) or the Project Manager. When the investigation is allocated to a case officer, it is also decided who will be the Clearance Manager. This is indicated on the Weekly Report Excel spreadsheet.</p>
3. Prepare a draft preliminary investigation report	<p>For reasons of procedural fairness, broadcasters are provided with an opportunity to comment on preliminary breach findings before an investigation is finalised. Thus a preliminary report is prepared in the first instance. The draft of this report typically goes through several layers of internal clearance before being sent to the broadcaster for comment.</p> <p>To begin preparing a draft preliminary investigation report:</p> <ul style="list-style-type: none"> • Open the '(Preliminary) Investigation Report' Template • Delete 'Investigation conclusion' and 'Decision' paragraphs • Check the meta-principles document. • If a set of meta-principles for the issue under investigation exists, copy and paste it into the draft preliminary report. • Customise the header and footer. To do this: <ul style="list-style-type: none"> ○ Go to the 'Insert' bar ○ Click on 'Header' ○ Click on 'Edit header' ○ Add a date after 'DRAFT' on the header of both Page 1 and Page 2 ○ Scroll to the bottom of Page 1 and customise the footer ○ Do the same on Page 2 ○ Click on 'Close header and footer'. <p>In drafting the report, de-identify individuals and organisations as much as possible, as breach reports are usually published.</p> <p> Public figures (eg politicians) do not normally have to be de-identified.</p>
4. Have the draft preliminary investigation report cleared	<p>Consult the New Investigation Brief (NIB) to check the consideration level for the investigation.</p> <p>Present the draft preliminary report to all relevant layers for clearance, incorporating into the draft any changes necessary on the basis of comments received. The first layer for APS6 case officers (and below) will be your immediate supervisor.</p> <p>If the consideration level for the investigation is EM/GM, the draft report will need to be cleared by at least the EM. Presentation of the report to the EM may be accompanied by a covering memo. If using a memo, See How-to Guide: Preparing a memo</p> <p>If the consideration level for the investigation is the ACMA, the draft preliminary investigation report must be cleared by the Authority. Presentation of the report will be accompanied by an Authority Paper. See How-to Guide: Preparing an</p>


	<i>Authority Paper</i>
5. Finalise preliminary investigation report	<p>Once cleared, remove 'Draft [date]' from page headers by pressing the 'Backspace' key and remove the 'Draft' diagonal watermark from Page 2 (and following pages) by clicking on the text on Page 2 and pressing the 'Delete' key. (See instructions at Step 3.)</p> <p> 'Confidential' is kept in the header for a Preliminary Report.</p> <p>Make the document final. See TRIM 6.2 Cheat Sheet – Finalising a Document.</p>
6. ProcFairness	<p>Preliminary reports are sent to the broadcaster with a covering letter inviting them to comment for procedural fairness purposes. Normally two additional functions are performed by the covering letter accompanying a preliminary investigation report:</p> <ul style="list-style-type: none"> • comments are sought on action that the broadcaster intends to take to remedy the contravention in the event the preliminary view does not change; and • comments pursuant to s180 of the BSA are sought on publication of the final report. (It is assumed that publication of a breach report is likely to adversely affect the broadcaster's interests.) <p>Letter and email templates ('ProcFairness + s180 to licensee for prelim report').</p> <p>Preliminary Investigation reports that are being sent externally need to contain a heading on each page 'Confidential - Not for publication'.</p>
7. Send preliminary investigation report to broadcaster	Email is the preferred mode of communication with broadcasters. Attach the report as an electronic document, not a TRIM record reference.
8. Monitor response	<p>If the broadcaster does not respond by the date due, you may proceed to finalise the report.</p> <p>Refer any request for an extension of time to the EL2 clearance officer.</p>
9. Prepare a draft final report	<p>Open the Preliminary Report and save as the Final Report.</p> <p>Delete 'Confidential' from the headers on Pages 1 and 2, following instructions as for the diagonal watermark (see Step 5).</p> <p>Add 'Draft' to the header on Page 1.</p> <p>Delete 'Preliminary' from the document heading.</p> <p>Change 'Summary of preliminary view' to 'Investigation conclusion'.</p> <p>Change 'Preliminary view' to 'Finding'.</p> <p>Remove any references to 'preliminary view' in report text body.</p> <p>Add 'Decision' paragraph from the '(Preliminary) Investigation Report Template'.</p> <p>Insert the appropriate name in the 'Decision' paragraph, in accordance with the consideration level established in the NIB (or subsequently).</p> <p>Amend report in light of the licensee's response (if any). Discuss the response with supervisor/manager beforehand if necessary, eg if the broadcaster has</p>

	raised strong arguments against the preliminary breach view.
10. Have the draft final investigation report cleared	<p>The draft final report must go through the same clearance levels as the draft preliminary report (see Step 4).</p> <p>For delegate decisions, present a covering memo (which can take the form of an email) with the draft which includes:</p> <ul style="list-style-type: none"> • a summary of the broadcaster's comments re publication (if any) and your recommendation on publication (see Step 11 below); and • a summary of the action proposed by the broadcaster to remedy the breach (if any) and your recommendation with regard to it (eg whether you consider it should be agreed to; and whether, if agreed to, you think it should be monitored) (see Step 12 below). <p>If using a Word memo rather than an email, see How-to Guide: Preparing a Memo.</p> <p>For ACMA decisions, include these in the Authority paper.</p>
11. Make a recommendation re publication	<p>Include a recommendation re publication in a covering memo to the draft report. The memo should include a summary of the licensee's submission under s180 (if any).</p> <p>For an ACMA-level decision, include the recommendation re publication in the draft Authority paper.</p> <p> If the broadcaster has not provided any comments on publication, it can usually be taken that the broadcaster does not object to publication.</p> <p>In some cases, s180 comments are sought, or sought again, after the report is finalised. This will take longer than 2 weeks. See 'Complications', below, for an important step meanwhile.</p> <p> Only an EL2 or above has the delegation to make a decision on publication.</p> <p>The covering memo or email will also include a recommendation about compliance/enforcement action for the breach (see Step 10 below).</p>
12. Make a recommendation re compliance/enforcement action	<p>Include a recommendation re compliance/enforcement action in the covering memo to the draft report (see Steps 8 & 9 above). The memo should include a summary of the action proposed by the broadcaster; your opinion as to whether this should be agreed to or not; and if agreed to whether the execution of the action should be monitored (eg by requiring the broadcaster to report on or present evidence of completion.)</p> <p> Compliance/enforcement action of some kind should be taken after <i>every</i> breach. Minimally, this takes the form of agreement to remedial measures proposed by the broadcaster.</p> <p>In formulating your recommendation as to whether a broadcaster's proposal should be agreed to, have regard to the broadcaster's recent breach history for that particular clause/licence condition. The NIB contains the history as it stood at the time the investigation was opened. However, you will need to do another COGNOS search now, as the situation may have changed in the meantime. See How-to Guide: Running a COGNOS report on a broadcaster's record.</p>

	<p>If your recommendation is agreement to the measures proposed by the broadcaster, use abbreviated language in your summary, so that it can be easily transposed to the 'Description' field at the 'Create Compliance and Enforcement' button on AIMS. See AIMS entries for recent breach reports for examples.</p> <p>In practice, only an EL2 or above makes a decision about compliance/enforcement action.</p> <p>If the broadcaster has not provided any proposal, or if the broadcaster's proposal is not agreed to, further steps must be undertaken after the report is finalised. See 'Complications', below.</p>
13. Prepare final version of report for signature	<p>Once the draft report is cleared, remove 'Draft' from page headers.</p> <p>Ensure that the 'Decision' paragraph appears on a single page.</p> <p>Provide to delegate or Authority Secretary for signature, as applicable.</p>
14. Record decision	<p>Once the report is signed:</p> <ul style="list-style-type: none"> On AIMS: <ul style="list-style-type: none"> enter the action 'Final Report Determined by Delegate' pick 'Breach' from the list at the 'Outcome Code' field. (Click 'Update' once you've done this or the entry will not 'take'.) tick the relevant breach box/es at the 'Code of Practice/Condition/Act' tab (Again, click 'Update' once you've done this) On 'BIS-main tab' in the BIS-Weekly OIRC Report spreadsheet, colour the row yellow, enter 'Finalised [date]' and delete any entry in the 'Next step' column
15. Obtain and save acceptance of compliance/enforcement action	<p>If the broadcaster's proposal for compliance/enforcement action is agreed to, an EL2 should indicate acceptance, usually in one of the same ways as for the publication decision (see above).</p> <p>Naming formula is:</p> <p>[AIMS investigation number] – Compliance/enforcement action – agreement</p>
16. Communicate the decision	<p>See How-to Guide: Communicating a decision.</p>


Chapter 3: Conducting an investigation – non-breach

1. Perform basics	See How-to Guide: Conducting an investigation – basics
2. Choose format: report or outcome letter	<p>Non-breach investigations can be written up as either a report or an outcome letter. Most investigations will be written up as reports. If you choose this format, go to Step 3.</p> <p>The outcome-letter format is rarely used. It is chosen in cases where, for example:</p> <ul style="list-style-type: none"> the alleged broadcast could not be located and therefore could not be assessed by us; or the complaint is far-fetched (bordering on the frivolous) and/or only marginally related to a code of practice, licence condition or provision of the BSA. <p>If you choose this format, go to Step 10.</p>
3. Prepare a draft investigation report	<p>Open the (Preliminary) Investigation Report' Template.</p> <p>Save to the investigation file and:</p> <ul style="list-style-type: none"> Delete 'Preliminary' from the document heading. <ul style="list-style-type: none">  Normally, a preliminary report is only prepared where a breach finding is being considered. Choose the appropriate 'Decision' paragraph (Delegate or ACMA) and delete the other. <p>In practice, it is rare for a non-breach investigation to be an ACMA decision. This Guide assumes a Delegate decision.</p> Consult the New Investigation Brief (NIB) to see whether the delegate has to be the Executive Manager (EM) or can be lower (an EL2 or EL1). Insert the appropriate name in the 'Decision' paragraph. Check the meta-principles document. If a set of meta-principles for the issue under investigation exists, copy and paste it into the draft report. Discuss with supervisor whether the report is to be published. (Most reports are published.) Make an in-principle decision (which can be reversed later if necessary) on publication. <ul style="list-style-type: none">  This involves considering whether the publication would or would be likely to adversely affect the interests of a person, eg the complainant. (As a non-breach report, it would generally be unlikely to adversely affect the interests of the licensee under investigation.) Customise the header and footer. To do this: <ul style="list-style-type: none"> Go to the 'Insert' bar Click on 'Header' Click on 'Edit header' Add a date after 'DRAFT' on the header of both Page 1 and Page 2

	<ul style="list-style-type: none"> ○ Scroll to the bottom of Page 1 and customise the footer ○ Do the same on Page 2 ○ If the report is, at this stage, one for publication, delete 'Confidential' from the header of both Page 1 and Page 2: <ul style="list-style-type: none"> ▪ Click on 'Confidential' ▪ Press 'Delete' key ○ Click on 'Close header and footer'. <p>When drafting, de-identify as much as possible in order to facilitate publication.</p> <p>If the report is – at this stage – not for publication, leave 'Confidential' in the page headers. De-identification is not necessary.</p>
4. Have the draft investigation report cleared and present publication recommendation	<p>Present the draft report to supervisor for clearance. Present a recommendation regarding publication at the same time (in covering memo or email).</p> <p>If using a covering memo, See How-to Guide: Preparing a memo.</p> <p>Incorporate into the draft report any changes necessary on the basis of the supervisor's comments.</p> <p> A draft investigation report will typically go through more than one layer of clearance.</p>
5. Prepare final version of report for signature	<p>Once cleared, remove 'Draft [date]' from page headers by pressing the 'Backspace' key and remove the 'Draft' diagonal watermark from Page 2 (and following pages) by clicking on the text on Page 2 and pressing the 'Delete' key. (See instructions at Step 3.)</p> <p>Ensure that the 'Decision' paragraph appears on a single page.</p> <p>Provide to delegate for signature.</p>
6. Update AIMS	<p>Once the report is signed:</p> <ul style="list-style-type: none"> • On AIMS, enter the action 'Final Report Determined by Delegate' and pick 'Non Breach' from the list at the 'Outcome Code' field. (Click 'Update' once you've done this or the entry will not 'take'.) • On the Weekly Report Excel spreadsheet, colour the row yellow, enter 'Finalised [date]' and delete any entry in the 'Next step' column
7. Record decision	<p>Once the report is signed:</p> <ul style="list-style-type: none"> • On AIMS, enter the action 'Final Report Determined by Delegate' and pick 'Non Breach' from the list at the 'Outcome Code' field. (Click 'Update' once you've done this or the entry will not 'take'.) • On 'BIS-main tab' in the BIS-Weekly OIRC Report spreadsheet, colour the row yellow, enter 'Finalised [date]' and delete any entry in the 'Next step' column
8. Communicate the decision	<p>See How-to Guide: Communicating a decision.</p>

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Chapter 3: Outcome letter: Conducting the investigation and communicating the decision

1. Draft letter	<p>Obtain agreement from supervisor to write up the investigation as an outcome letter.</p> <p>Open the 'Outcome Letter' Template.</p> <p>Prepare a draft letter. The signatory must be a delegate (ie EL1 or above), and if the Consideration Level established in the NIB is EM, the EM will be the signatory.</p> <p>Have the draft letter cleared by the requisite clearance layers.</p> <p> An Outcome Letter is, by definition, not for publication and it is not necessary to obtain a separate publication decision.</p> <p>Prepare a final version of the letter for signature by deleting 'Draft' from the document header. To do this:</p> <ul style="list-style-type: none"> • Go to the 'Insert' tab • Click on 'Header' • Click on 'Edit header' • Delete text • Click on 'Close header and footer'
2. Update AIMS and Weekly Report	<p>Once the letter is signed,</p> <ul style="list-style-type: none"> • On AIMS, enter the action 'Final Report Determined by Delegate' and pick 'Non Breach' from the list at the 'Outcome Code' field. (Click 'Update' once you've done this or the entry will not 'take'.) • On 'BIS-main tab' in the BIS-Weekly OIRC Report spreadsheet, colour the row yellow, enter 'Finalised [date]' and delete any entry in the 'Next step' column
3. Communicate outcome	<p>If the complainant complained via letter, send the outcome letter via post. Make the Word document final after you send it. See TRIM 6.2 Cheat Sheet – Finalising a Document.</p> <p>If the complainant complained via email, send the outcome letter as an attachment to an email. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p> <p>After sending, save the email to the TRIM investigation file. See TRIM 6.2 Cheat Sheet – Registering an E-Mail. (Register the email.)</p> <p>Send the broadcaster a copy of the outcome letter. Send by email if possible. Details for many broadcasters are in the <i>Broadcasting Industry contacts list</i>, ACMA2009/2462-2.</p>
4. Update AIMS	<p>Once both parties have been notified, enter action 'Investigation completed' on AIMS.</p>
5. Close investigation	<p>See How-to Guide: Closing an investigation (Chapter 5).</p>

	<p>This should be started as soon as possible after the parties have been notified. Because there is no report and hence no publication of a report, you will need to change the AIMS entry in 'Description' at the 'Details/Outcome tab to make it non-specific. (See Chapter 5 for more.)</p>
6. Refer on any request for reconsideration or review	<p>See How-to Guide: Handling a request for review.</p>
7. Report outcome for fortnightly Delegations Report	<p>This is a report presented to the Authority at each meeting as a standard item.</p> <p>If the report was signed by a delegate (ie not the Authority), an admin officer will send you an email with a link to the draft Report for the fortnight during which the report was signed.</p> <p>Fill in the details for the investigation.</p> <p>Advise the admin officer when you have done so.</p>

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Chapter 3: Concluded investigations—conducting the investigation and communicating the decision


<div>1. Concluded investigations</div>	<div>Very rarely, an investigation is concluded without any finding being made or any report being prepared. Typical situations are:</div> <div><ul style="list-style-type: none">the complainant withdraws the complaint;on consideration, it is found that the ACMA does not have jurisdiction to investigate the complaint; orthe ACMA's jurisdiction to investigate becomes the subject of legal proceedings.</div>																																																																																								
<div>2. Store record of decision to conclude on TRIM</div>	<div>The decision to conclude should be made by an EL1 or above.</div> <div>The record of the decision to conclude can take the form of an email or a file note.</div>																																																																																								
<div>3. Send notification of conclusion to complainant and broadcaster</div>	<div>There is no template for notification-of-conclusion letters.</div> <div>For ideas on content, peruse notification-of-conclusion letters for recent concluded investigations. Find some by doing an Investigations module search on AIMS with the search criteria 'Outcome Code' = 'concluded' and 'Date Finalised' > a date a year or so in the past:</div> <div><div><div><div>Search :: Broadcast Investigation</div><div><div>Find: Broadcast Investigation</div><div>Where All</div><div>of these conditions are true</div><div>50 Max results</div></div><div><div>Outcome Code</div><div>Equals</div><div>concluded</div></div><div><div>Date Finalised</div><div>>=</div><div>30/06/2010</div></div></div><table><tr><th>Call Sign</th><th>Date Broad...</th><th>Date Started</th><th>Date Finalised</th><th>Investigatio...</th><th>Program Name</th><th>ABA File No</th><th></th></tr><tr><td>2GB</td><td>28/02/2010</td><td>22/12/2009</td><td>07/09/2010</td><td>2328</td><td>Ray Hadley</td><td>2009/2558</td><td>False accusations a</td></tr><tr><td></td><td></td><td>12/05/2010</td><td>15/02/2011</td><td>2414</td><td>Dateline</td><td>2010/0111</td><td>Inaccurate material i</td></tr><tr><td>ABQ</td><td>24/06/2010</td><td>23/07/2010</td><td>27/07/2010</td><td>2451</td><td>Armstrong and Miller Show</td><td>2010/01523</td><td>Sexist humour in a s</td></tr><tr><td>2CBA</td><td></td><td>27/10/2010</td><td>17/12/2010</td><td>2510</td><td></td><td>2010/2158</td><td>Complainant alleges</td></tr><tr><td>SAS</td><td>16/10/2010</td><td>24/11/2010</td><td>17/12/2010</td><td>2527</td><td>Cover Me</td><td>2010/2300</td><td>Complainant alleges</td></tr><tr><td>SAS</td><td>20/10/2010</td><td>24/11/2010</td><td>17/12/2010</td><td>2528</td><td>The Corporate Ladder</td><td>2010/2300</td><td>Complainant alleges</td></tr><tr><td></td><td>06/12/2010</td><td>16/12/2010</td><td>04/02/2011</td><td>2531</td><td>Degrassi: The Next Generation</td><td>2010/2423</td><td>Complaint about inap</td></tr><tr><td>SAS</td><td>04/12/2010</td><td>21/12/2010</td><td>19/01/2011</td><td>2536</td><td>Shame, Shame, Shame</td><td>2010/2460</td><td>Complaint about bro</td></tr><tr><td>2GB</td><td>14/02/2011</td><td>28/03/2011</td><td>27/05/2011</td><td>2567</td><td>Afternoons with Chris Smith</td><td>2011/0602</td><td>Offensive quiz abou</td></tr><tr><td>ADS</td><td></td><td>30/03/2011</td><td>19/04/2011</td><td>2563</td><td>Talkin' 'Bout Your Generation</td><td>2011/0617</td><td>Channel 10 Broadca</td></tr></table><div>Search returned 10 record(s)</div></div></div> <div><div>If the complainant complained via letter, send the notification of conclusion via post. Make the Word document final after you send it. See TRIM 6.2 Cheat Sheet – Finalising a Document.</div><div>If the complainant complained via email, send the notification of conclusion as an attachment to an email. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</div><div>After sending, save the email to the TRIM investigation file. See TRIM 6.2 Cheat Sheet – Registering an E-Mail. (Register the email.)</div><div>Send the notification of conclusion to the broadcaster by email If possible. Contact details for many broadcasters are in the <i>Broadcasting Industry contacts</i></div></div>	Call Sign	Date Broad...	Date Started	Date Finalised	Investigatio...	Program Name	ABA File No		2GB	28/02/2010	22/12/2009	07/09/2010	2328	Ray Hadley	2009/2558	False accusations a			12/05/2010	15/02/2011	2414	Dateline	2010/0111	Inaccurate material i	ABQ	24/06/2010	23/07/2010	27/07/2010	2451	Armstrong and Miller Show	2010/01523	Sexist humour in a s	2CBA		27/10/2010	17/12/2010	2510		2010/2158	Complainant alleges	SAS	16/10/2010	24/11/2010	17/12/2010	2527	Cover Me	2010/2300	Complainant alleges	SAS	20/10/2010	24/11/2010	17/12/2010	2528	The Corporate Ladder	2010/2300	Complainant alleges		06/12/2010	16/12/2010	04/02/2011	2531	Degrassi: The Next Generation	2010/2423	Complaint about inap	SAS	04/12/2010	21/12/2010	19/01/2011	2536	Shame, Shame, Shame	2010/2460	Complaint about bro	2GB	14/02/2011	28/03/2011	27/05/2011	2567	Afternoons with Chris Smith	2011/0602	Offensive quiz abou	ADS		30/03/2011	19/04/2011	2563	Talkin' 'Bout Your Generation	2011/0617	Channel 10 Broadca
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ADS		30/03/2011	19/04/2011	2563	Talkin' 'Bout Your Generation	2011/0617	Channel 10 Broadca																																																																																		




	<i>list</i> , ACMA2009/2462-2. Contact details for the broadcaster representative can also be obtained from previous correspondence eg the opening letter.
4. Update AIMS	<p>Enter the action 'Investigation Concluded'.</p> <p>In the 'Notes' field for the action, enter the reason for concluding the investigation (eg 'Complainant withdrew complaint').</p> <p>On Screen 1, pick 'Concluded' from the list at 'Outcome Code' field. (Click 'Update' once you've done this or the entry will not 'take'.)</p>
5. Update Weekly Report	<p>On 'BIS-main tab' in the 'BIS-Weekly OIRC spreadsheet, colour the row yellow. Enter 'Concluded [date]'.</p> <p>Delete any entry in the 'Next step' column.</p>
8. Update AIMS	Once both parties have been notified, enter action 'Investigation completed' on AIMS.
9. Close investigation	<p>See How-to Guide: Closing an investigation (Chapter 5).</p> <p>This should be started as soon as possible after the parties have been notified.</p>
10. Refer on any request for reconsideration or review	See How-to Guide: Handling a request for review .

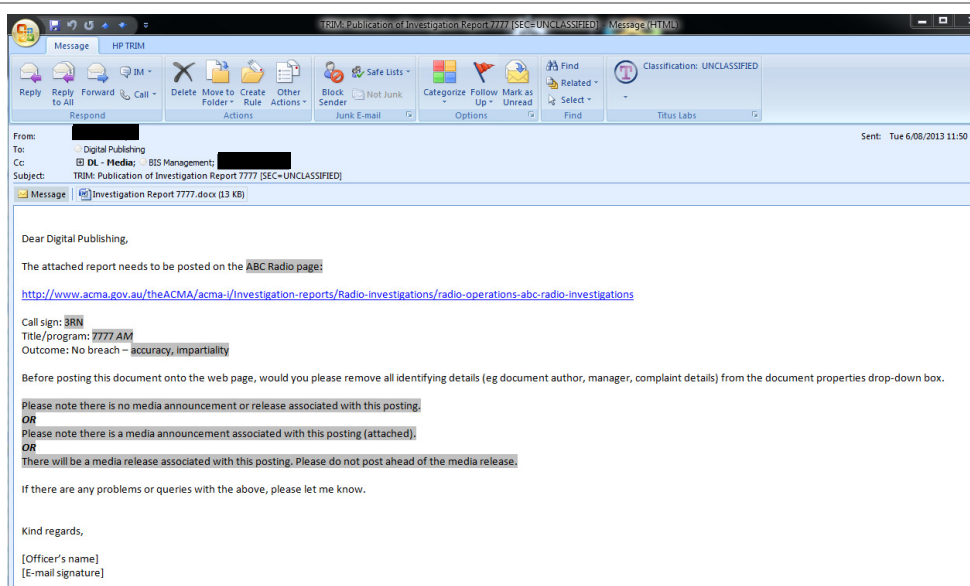
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Chapter 4: Communicating the decision (breach and non-breach reports)

1. Communicating a decision	<p>Communicating a decision for breach and non-breach reports involves the following:</p> <ul style="list-style-type: none"> • Clearance through EM and GM via IRC • Letters of notification to the complainant and the licensee, attaching a copy of the investigation report • Publication of the report on the ACMA website • A media release or web announcement (normally only for breach decisions).
2. Store an electronic copy of the signed investigation report	<p>Scan the signed report and save it to the TRIM investigation file.</p> <ul style="list-style-type: none"> • Naming formula is: [AIMS investigation number] – Final Report – Signed <p> If the original signed report is double-sided, ensure the scan is too!</p>
3. Obtain a publication decision from an EL2	<p>Turn your mind to the requirements in section 180 of the BSA.</p> <p>If you consider there is no need to offer any party an opportunity, or any further opportunity, to comment under s180, make a publication recommendation and send to an EL2. (If you consider there is a need to provide such an opportunity, see additional instructions under ‘Complications’ below.)</p> <p>When the EL2 makes a publication decision, save it on file, entitled ‘publication decision – yes’ or ‘publication decision – no’.</p> <p>Save the EL2’s publication decision on file.</p> <p>Update the ‘BIS-post-signature+compliance’ spreadsheet in the BIS-Weekly OIRC Report to reflect that a publication decision has been made.</p>
4. Monitor ‘green light’ for publication from the Investigations Review Committee (IRC)	<p>In most cases, the decision is ‘yes’ to publication. Once an EL2 has made a decision to publish, the matter will be discussed at the IRC (meeting held usually every Friday). After the meeting, the EL2 advises which publication course can proceed and any necessary steps required.</p> <p> The reporting officer prepares IRC paperwork weekly and the publication decisions are included in the media agenda as part of the weekly package. The reporting officer adds to the agenda any investigations that have received a positive EL2 publication decision that week.</p> <p>Save the ‘green light’ notification on file.</p> <p>If you have not received a ‘green light’ notification within 2 weeks of an EL2 decision to publish a standard non-breach report, make enquiries with the reporting officer to ensure the case has not fallen between the cracks. (In the case of a breach report, the green light will not be given until decisions have been taken about, for example, whether there is to be a media release; the text of the release; and its timing.)</p>
5. Prepare a publication version	<p>ACMA decisions (ie decisions made by the Authority, signed by Authority members and stamped with the common seal) are published just as they are.</p>


<p>of the report</p>	<p>Delegate decisions, however, are modified for publication. The decision page/ paragraph is removed (including delegate's signature) and details are added to the front page summary box. Other changes may also be required (usually for the sake of de-identifying third parties), although ideally de-identification issues should be resolved before the report is signed (see How-to Guide: Conducting an investigation – breach).</p> <p>To prepare a publication version of a delegate decision report:</p> <ul style="list-style-type: none"> • Save a copy of report, title it: Report [number] publication version. • Remove the decision paragraph (last paragraph of the report), including the Delegate's name. • Go to the front page of the report and add two additional rows to the summary box and include the headings 'Date Finalised' and 'Decision'. See below for an example: <p>Investigation Report No. 1952</p> <table border="1"> <tr> <td>File number</td><td>ACMA2008/1254</td></tr> <tr> <td>Licensee</td><td>General Television Corporation Pty Ltd</td></tr> <tr> <td>Station</td><td>GTV Melbourne</td></tr> <tr> <td>Type of service</td><td>Commercial television broadcasting</td></tr> <tr> <td>Name of program</td><td><i>National Nine News</i></td></tr> <tr> <td>Date of broadcast</td><td>8 October 2008</td></tr> <tr> <td>Relevant code provisions</td><td>Clauses 4.3.1, 4.3.11 and 4.4.1 of the <i>Commercial Television Industry Code of Practice 2004</i></td></tr> <tr> <td>Date finalised</td><td>12 January 2009</td></tr> <tr> <td>Decision</td><td>Breach of clause 4.3.1 (factual accuracy) No breach of clause 4.3.11 (correction of errors of fact) Breach of clause 4.4.1 (present news fairly and impartially)</td></tr> </table> <ul style="list-style-type: none"> • Delete the heading 'Investigation conclusion' and the text that accompanies it. • Make any other changes which the publication decision-maker has indicated should be made. • Make the document final. <p>This 'publication version' of the report is used for publication on the ACMA website. A PDF version of the same document is also used for distribution to the licensee/broadcaster and complainant.</p>	File number	ACMA2008/1254	Licensee	General Television Corporation Pty Ltd	Station	GTV Melbourne	Type of service	Commercial television broadcasting	Name of program	<i>National Nine News</i>	Date of broadcast	8 October 2008	Relevant code provisions	Clauses 4.3.1, 4.3.11 and 4.4.1 of the <i>Commercial Television Industry Code of Practice 2004</i>	Date finalised	12 January 2009	Decision	Breach of clause 4.3.1 (factual accuracy) No breach of clause 4.3.11 (correction of errors of fact) Breach of clause 4.4.1 (present news fairly and impartially)
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Date of broadcast	8 October 2008																		
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Date finalised	12 January 2009																		
Decision	Breach of clause 4.3.1 (factual accuracy) No breach of clause 4.3.11 (correction of errors of fact) Breach of clause 4.4.1 (present news fairly and impartially)																		
<p>6. Prepare notification-of-outcome letters to broadcaster and complainant</p>	<p>'Outcome to Broadcaster' and 'Outcome to Complainant' letter templates are stored on TRIM:</p> <p> ACMA2009/2462-9</p> <p>Choose an appropriate template.</p> <p>Within the template, modify the standard paragraphs to suit the case. For example, for breach reports include what enforcement/compliance action has been agreed to, and monitoring arrangements if relevant.</p> <p>Email is the preferred mode of communication with broadcasters. Contact details for many broadcasters are in the <i>Broadcasting Industry contacts list</i>,</p>																		

	<p>ACMA2009/2462-2. Contact details for the broadcaster representative can also be obtained from previous correspondence eg the opening letter.</p> <p>For complainants, email will usually be the mode of communication if the complainant complained via email. If the complainant complained via letter, the notification of outcome will usually be sent via post.</p> <p> If you do not wish to sign the notification of outcome letter/s yourself, ask an EL2 to do so.</p> <p> In the case of a breach report, the complainant is usually not notified of the outcome, or sent a copy of the report, until after the report is published on the website. See further details under 'Complications', below.</p>
7. Send notification-of-outcome letter/s	<p>Send both letters out as soon as possible after you are notified of the IRC's green light, and proceed to the posting of the report on the website (see below).</p> <p>Where the decision has been made by the Authority, the parties receive the investigation report showing the decision page and the Authority seal.</p> <p>In the case of a delegate decision, the parties receive a PDF version of the 'publication version' of the investigation report, ie without the delegate's signature and decision page.</p> <p> To make a PDF version of the report, open the Word document, select 'Print', select 'CutePDFWriter' as your printer, and save as a new document.</p> <p>(Please note that if publication is accompanied by a media release or web announcement, the complainant is not normally notified of the outcome until after the media release is issued/web announcement is posted. See further details under 'Complications', below.</p>
8. Send report to Digital Publishing	<p>Open the 'Email to Digital Publishing' Template on TRIM in ACMA2009/2462-3.</p> <p>Copy and paste the text into an email addressed to Digital Publishing, and copied to DL-Media, BIS Management and the BIS Reporting Officer.</p> <p>Tailor for the specific report: <u>URL for webpage where report is to be published:</u> Locate through: http://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-investigation-reports</p> <p><u>Investigation issues for 'Outcome' line:</u> Use 'Decision' entries from Page 1 of the report and previous 'Outcome' entries on the report publication webpages as a guide.</p> <p><u>Instructions line:</u> Choose the appropriate line for the circumstances. See an example below:</p>

	 <p>Be sure to attach the publication version of the report (Word version for Delegate decisions without signature and decision page, pdf (signed) version for ACMA decisions). To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p>
9. Update AIMS	<p>Once both parties have been notified, enter the action 'Investigation completed' on AIMS.</p>
10. Extra steps for media release or web announcement	<p>Give the broadcaster notice that a media release or web announcement is imminent. (The timing of a media release or web announcement is determined by the Media Section, often in consultation with the Chair.)</p> <p>If the broadcaster comes back with any issues, notify Media and Digital Publishing immediately, asking them to hold off publishing the media release or web announcement until these can be resolved.</p> <p>Save all correspondence in the TRIM investigation file.</p> <p>The complainant is not notified until after the media release is issued/web announcement is posted. However, the complainant should be notified as soon as possible thereafter. The complainant should be sent a copy of the release/web announcement as well.</p>
11. Update AIMS	<p>Once both parties have been notified of the outcome, enter 'Investigation completed' on AIMS.</p>
12. Close the investigation	<p>See How-to Guide: Closing an investigation (Chapter 5).</p> <p>This should be started as soon as possible after the parties have been notified.</p>
13. Refer on any request for reconsideration or review	<p>See How-to Guide: Handling a request for review.</p>
14. Report outcome for fortnightly	<p>This is a report presented to the Authority at each meeting as a standard item.</p> <p>If the report was signed by a delegate (ie not the Authority), an admin officer will</p>

Delegations Report	<p>send you an email with a link to the draft Report for the fortnight during which the report was signed.</p> <p>Fill in the details for the investigation.</p> <p>Advise the admin officer when you have done so.</p>
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COMPLICATIONS


<p>Complications typically occur to the sequence outlined above for one or more of the following reasons:</p> <ul style="list-style-type: none"> • The final report differs substantially from the preliminary report – in this case s180 comments on publication must be again sought from the licensee on the final report. • s180 comments must be sought on the final report from person/s other than the licensee (eg the complainant and/or third parties). • The licensee did not provide a remedial action proposal in its response to the preliminary report – proposals will be sought again after finalisation of the report (or a proposal will be made to the licensee). • The licensee's proposal for remedial action is not agreed to – negotiations on acceptable measures will take place. • A media release or web announcement is to be issued. 	
15. Delay notification to complainant	<p>Except where s180 comments are sought from the complainant, the complainant will usually not be sent a copy of the report, or notification of the outcome, until complications such as those listed above are resolved.</p> <p>(Where a report is sent to a complainant for s180 comment, it is headed 'Confidential'. s180 letter templates are stored at</p> <p> ACMA2009/2462-9)</p>
16. Update case at 'BIS-post-signature+ compliance' tab	<p>Update the tab every week until the outstanding complications have been resolved.</p>
17. Save post-decision documentation on TRIM	<p>This includes relevant internal deliberations as well as external correspondence.</p>
18. Record satisfactory completion of ongoing compliance/enforcement action	<p>Where compliance/enforcement action takes place over a period of time, obtain a record from EL2 or above when this action is satisfactorily completed. This can take the form of an internal email exchange or an annotated memo, which is then scanned to the TRIM file.</p> <p>Naming formula is:</p> <p>[AIMS investigation number] -- Compliance/enforcement action -- completion</p>
19. Media release	<p>Media releases accompany the publication of most breach reports.</p> <p>Case officers usually draft the initial text and there are several levels of internal clearance, for both the text and timing.</p>

	<p>Broadcasters are given advance notice of the media release, and complainants are not notified of the outcome of the investigation until after (ideally immediately after) the release is issued.</p> <p>A Q&A may need to be prepared in conjunction with the media release (see separate entry).</p>
20. Web announcement	<p>A web announcement is shorter than a media release and has a lower internal clearance level. It is simply posted on the website, unlike a media release which is also distributed to media outlets.</p> <p>In terms of notifying the broadcaster and the complainant, procedures are the same as for a media release.</p>
21. Questions & Answers (Q&A)	<p>A Q&A may be required where:</p> <ul style="list-style-type: none"> • There has been a breach finding • The matter has been considered by the Authority • The investigation finding is on a matter of public interest e.g. political commentary, or a controversial issue such as climate change. • The subject matter of the investigation touches on an issue that has been the subject of a previous media release or announcement. <p>Store the Q&A on TRIM in the investigation file. Store a copy at ACMA2011/2012.</p>

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Chapter 5: Closing an investigation

1. Closing an investigation	<p>The following procedures apply once both the complainant and the broadcast have been notified of the outcome of an investigation.</p> <p>Closure actions should be started as soon as possible after the parties have been notified.</p>
2. Send physical records to Sydney Records	<p>Locate any physical records (most typically, broadcast DVD/CDs) related to the investigation.</p> <p>Send these to Sydney Records.</p> <p>At the 'Related Materials' tab on AIMS, note that the material has been sent to Sydney Records, and the date sent.</p> <p>If in Melbourne, and the DVD has stayed in Sydney throughout the investigation, liaise with the reporting officer to accomplish this step.</p>
22. Place hard copy of report in white plastic folder	<p>This folder is kept at the reporting officer's work station.</p> <p>If in Melbourne, send to Sydney through the internal mail.</p> <p>(Hard copies are kept for 12 months and then shredded.)</p>
3. Tidy the TRIM file	<p>Check that all the relevant documents in the paper file have been stored into the TRIM investigation file.</p> <p>Re-title 'Delete' any redundant documents or documents that are not part of the permanent record for the investigation. To do this, see TRIM 6.2 Cheat Sheet – Amending Document Details</p> <p>Send an email to the ICT Service Desk listing the record numbers for such documents and requesting deletion.</p> <p><i>Note: Only ICT Service Desk has access to delete documents from TRIM.</i></p>
4. Store extra copies of final report in ACMA20XX/17	<p>Each year a file is created to store together extra copies of all final reports signed in that year. The number of the file is the year/17, eg the file for 2013 is ACMA2013/17. There is a subfolder for each of the broadcasting industry sectors (eg ABC, commercial television).</p> <p>Each report is saved in ACMA20XX/17 in 2 versions: the pdf signed version and the Word version (this is stored so that case officers can copy-and-paste for other reports).</p> <p>The naming formula for the copies of reports saved to ACMA20XX/17 is:</p> <p>[AIMS investigation number] – Final report – [Call sign] – [Complainant's surname]</p> <p>Example:</p> <p>2237 – Final report – ABS – [REDACTED]</p> <p><i>It is important to adhere strictly to this naming formula, so that BIS team members can find any report by doing a title word on TRIM on the words 'final report' plus any one of the other 3 elements.</i></p> <p>The naming formula for outcome letters is:</p>

	<p>[AIMS investigation number] – Outcome letter – [Call sign] – [Complainant's surname]</p> <p>Example:</p> <p>2188 – Outcome letter – TVW – [REDACTED]</p>
5. Store any ACMA papers	ACMA papers should be stored not only in the investigation file but also in ACMA2009/2464.
6. Store any legal advices	Legal advices should be stored not only in the investigation file but also in an appropriate subfolder in ACMA2008/2558. (If there appears to be no appropriate subfolder, create one. Advices are also be stored in more than one subfolder. Use <i>alternatively-within</i> to do this.)
7. Store any Q&As	Q&As should be stored not only in the investigation file but also in ACMA2011/2012.
8. Declare documents final	<p>To make a document final, see <i>TRIM 6.2 Cheat Sheet – Finalising a Document</i>, ED10/68353 in ACMA2009/2462-10.</p> <p>To finalise a lot of documents simultaneously:</p> <ul style="list-style-type: none"> • go Ctrl + A to tag all • untag those records you do not want to make final (eg the checklist document itself, the file itself, and possibly some subfolders) • click on the 'Make final' icon on the toolbar and • choose 'All Tagged Rows' in the 'Make Final' dialogue box. <p> You may get a message saying 'Access denied' for some of the documents – this means that they have already been finalised and is not a problem.</p>
9. Update AIMS – 'Description' field	<p>The entry in the 'Description' field at the 'Details/Outcome' tab should coincide with the entry at 'Substance of complaint' in the NIB.</p> <p>Update if issues have been added, or deleted, in the course of the investigation.</p> <p>There is a style protocol for this entry, which ensures that the entry in the Quarterly Report and the Appendix to the Annual Report does not contain extraneous or inappropriate text. See 'Substance of complaint' for NIBs in ACMA2009/2462-5.</p> <p><u>Outcome letters and reports which are not being published</u>: Remove specifics from the text, eg .</p> <p><i>Change</i> 'Item about hotel incident logging was inaccurate and unfair' <i>to</i> 'Item was inaccurate and unfair'.</p> <p><i>Change</i> 'Invasion of child's privacy in item about a trial' <i>to</i> 'Invasion of child's privacy'.</p>
10. Update AIMS -- 'Create Compliance and Enforcement' button	<p>This only applies to breach investigations.</p> <p>Click on the 'Create Compliance and Enforcement' button at the 'Details/Outcome' tab and click 'Add' to create a row.</p> <p><u>'EA ID' field</u>: Will automatically populate with a unique enforcement action number.</p> <p><u>'Action Type' field</u>: Choose appropriate action from the picklist -- eg 'Agreed measures'.</p>

'Description' field: Enter an abbreviated description of the remedial measures.



The 'Description' field takes a maximum of 50 characters.

'Period From' and 'Period To' fields: Enter the date of the EL2 remedial action record.

'Compliance' field: Place a tick in the box to indicate compliance completed.

11. Start filling in the closure checklist

The Investigation Closure Checklist is used as a record that the file was closed and correct procedures followed. Start filling it in as soon as possible after the above steps.

Open the ['Investigation Closure Checklist'](#) template.

This checklist lists the items that need to be completed in order to close an investigation. The list is divided into three sections:

- AIMS Broadcast Complaints module
- AIMS Broadcast Investigation module
- TRIM


Open the checklist and save a copy on the investigation TRIM investigation file.

Go through each item. Select 'Y' into the column once checked/completed. Select 'N/A' into the column if the action is not relevant to the investigation.

AIMS entries:

Check in particular that:

- entries in the 'Code of Practice/Conditions/Act' column at the 'Code of Practice/Condition/Act' tab are correct, ie that they coincide with the information in the 'Relevant code' or 'Relevant legislation' field on Page 1 of the Investigation Report
- entries in the 'Short Description' column at the 'Code of Practice/Condition/Act' tab are correct, ie that they coincide with the issue investigated (For example, possibilities for clause 7.11 of the *Commercial Television Industry Code of Practice 2010* are 'no response' and 'response not substantive'. Check to see which of the two was

	<p>investigated.)</p> <ul style="list-style-type: none"> • Relevant breach box/es is/are ticked • 'Breach' is entered in 'Outcome Code' field <p><u>TRIM entries:</u></p> <p>If after enquiry it turns out that material (eg a DVD or the signed paper report) cannot be located, record this in the checklist ('DVD not found as at XX/XX/XX'). However make this a last resort.</p> <p>If there are multiple complainants, add extra columns eg in the AIMS Broadcast Complaints section of the checklist.</p> <p>If there are multiple investigations (eg a concluded investigation and a subsequent s170 one), add extra columns eg in the AIMS Broadcast Investigations module and the TRIM sections of the checklist.</p> <p>Leave the last row of the checklist blank (see below).</p>
<p>12. Consign the record</p>	<p>The investigation record is consigned 8 weeks after the last action performed for the investigation. (For standard non-breach investigations, this will be when the parties are notified and the report published.)</p> <p>To consign the record:</p> <ul style="list-style-type: none"> • Shred the contents of the paper file • Open the checklist and enter 'Y' in the final row • Make the checklist document final • On AIMS enter the action 'Checklist Completed'. The status of the investigation will change to 'Record Consigned' – this should be the final status. • Send an email to the ICT Service Desk, with the link to the Investigation TRIM file, and ask for the file to be closed. (Once the file has been closed no new documents are able to be saved into the file, though all documents are still able to be viewed. If there is a need to save any new documents, contact the ICT Service Desk and ask them to re-open the file.) • Place the manila folder back in the stack for recycling so it can be used for a new investigation. (If in Melbourne, send the manila folder back to Sydney.) <p> All 'Consign the record' actions should be performed on the same day.</p>

Chapter 6: Handling a request for a review

1. Requests for reconsideration/review	There is no formal right of appeal against an ACMA decision in relation to a complaint made under s 147, 148 or 150 of the BSA. However BIS conducts an informal reconsideration process if a complainant raises concerns or objections.
2. Receive request	Save the request to the TRIM investigation file.
3. Acknowledge request	Open the template Acknowledgement of request for reconsideration .
4. Refer request	Requests for reconsideration are handled by the Project Manager EL2 (PM). Give the paper file to the EL2.
5. Send 3-monthly updates	This will normally be done by the EL2. Open the Request for reconsideration – 3-month update template.
6. Prepare and send substantive response	<p>The response will normally take the form of a letter to the complainant. Start with any letter template in ACMA2009/2462-9 and tailor for the purpose.</p> <p>Usual procedure is to have the letter signed by an officer at least one level above the delegate who signed the investigation report.</p> <p>If the request for reconsideration/review was made via letter, the response will normally be sent by post. If the request was made via email, the response will usually be sent as an attachment to an email. Send the attachment as an electronic document, not a TRIM record reference. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p> <p>If the response is sent by post, make the Microsoft Word document final after it is sent. To do this, see TRIM 6.2 Cheat – Finalising a Document.</p>
7. Complete closure	See 'Closing an investigation' (Chapter 5).

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Chapter 7: Running a Cognos report on a broadcaster's record

1. COGNOS

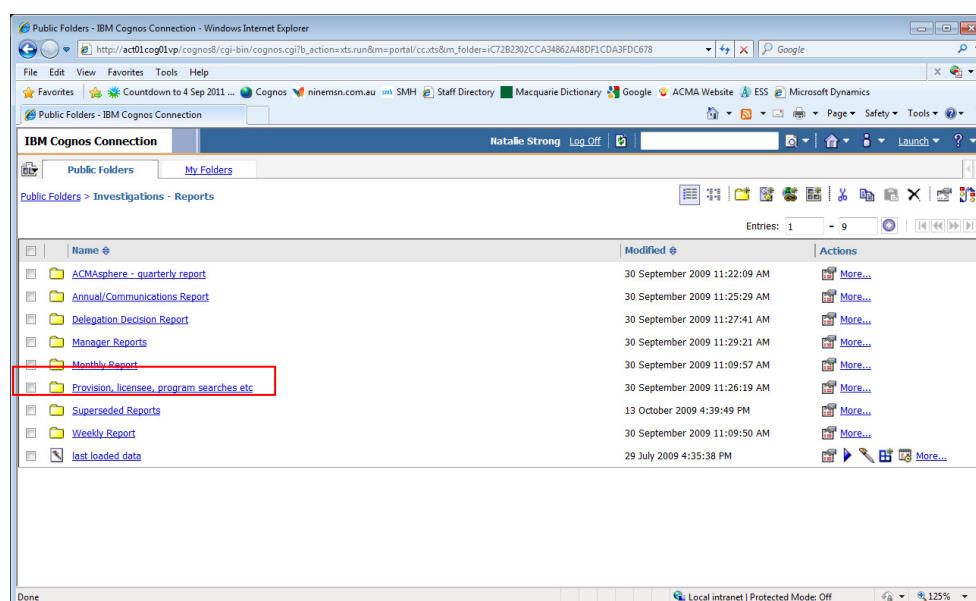
COGNOS is a reporting tool which enables reports to be run on data stored on AIMS. This Guide shows how to run a report on investigations for a particular network/licensee/program against particular code provisions or licence conditions. These reports are needed for New Investigation Briefs (NIBs) (see [How-to Guide: Opening an investigation](#)) and memos accompanying a draft final breach report (see [How-to Guide: Conducting an investigation – breach](#)).

2. Access COGNOS

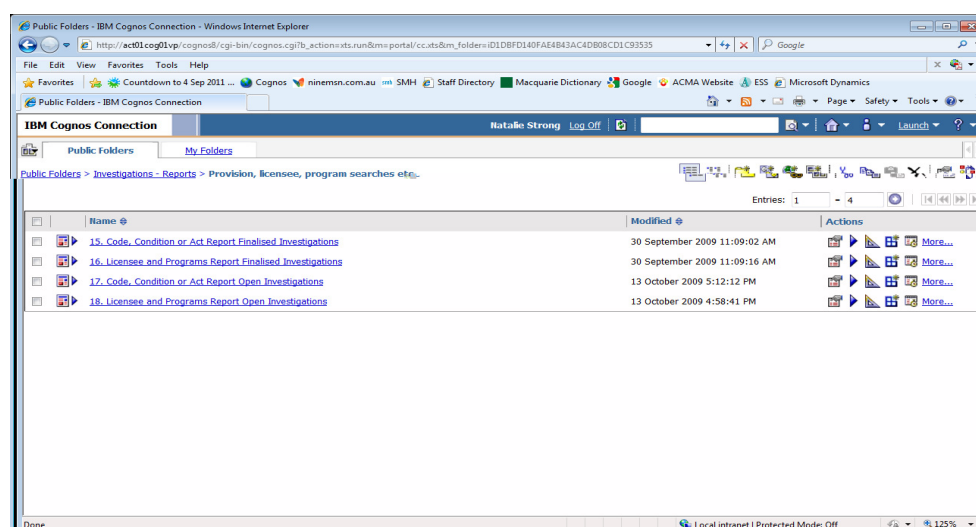
Open [COGNOS](#)

Scroll through to '[Investigations – Reports](#)'

You will be presented with a list of 9 titles. Click on 'Provision, licensee, program searches etc' (6th on list).



You will be presented with a list of 4 possible searches.



Pick the one you want.



'Code, Condition or Act' reports allow for more specific searches than 'Licensee and Programs' reports. This Guide assumes a 'Code, Condition

3. Enter prompts

or Act' report.

'Start Date':

'Finalised Investigations' report: Enter the *finalisation* date of the oldest investigations you are interested in. For example, if you are running a report on, say, 10/5/11, and are interested in investigations finalised over the preceding year, enter 10/5/10 at 'Start Date'. Note: Aims data is from 2004 only

'Open Investigations' report: Enter the *commencement* date of the oldest investigations you are interested in. For example, if you are running a report on 10/5/11, and are interested in all investigations open at that date, enter a date at least 6 months previously.

'Findings':

Select 'All' for an 'Open Investigations' report.

'Codes, Conditions or Acts':

Keywords: Enter the number of the first code clause/licence condition you are interested in.

Results: More than one row of 'Results' may appear in the window. Select more rather than less if you are unsure which result/s are the ones you want.

Once you have selected your 'Results', click 'Insert'. Your selection/s will appear in the **Choices** window.

If you need a report on more than one code clause/licence condition, enter the 2nd code clause/licence condition at **Keywords**, and repeat the process.


Continue until you have all the 'Code, Conditions or Acts' prompts you need.

Go to bottom of screen and click on

'To Select: Call Sign/Licensee/Network/Program'.



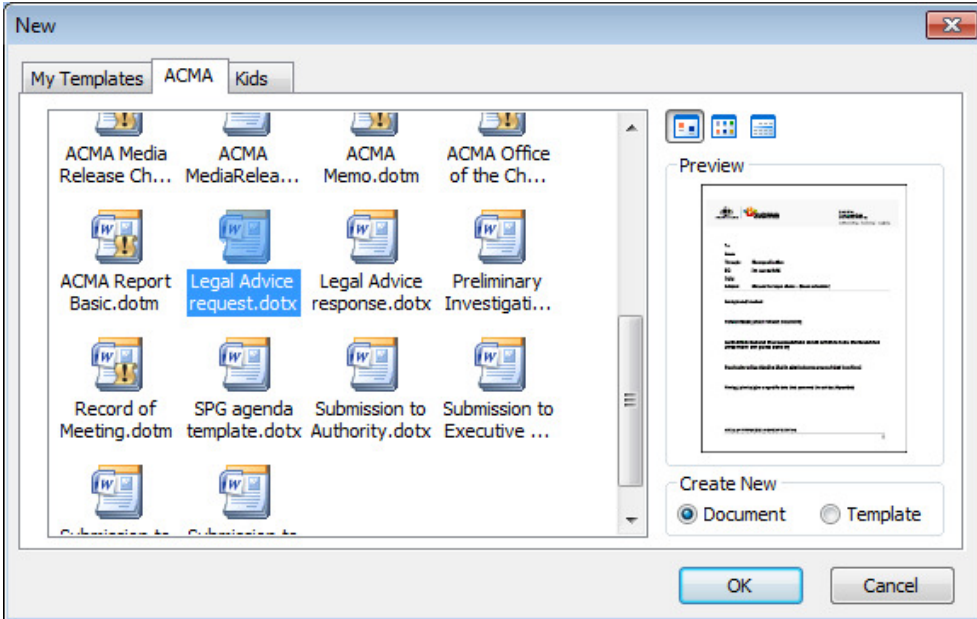

This will take you to Screen 2.



Enter your keyword/s in one or more of the 4 sections ('Call sign', 'Network', 'Licensee' and 'Program Name').

	<p> The default option for Keywords in all 4 sections is 'Starts with any of these keywords'. Click on 'Options' in the relevant section to see the range of options and change to eg 'Contains any of these keywords' if necessary.</p> <p>Once you have made your choice/s, go to the bottom of the screen and click on 'Finish'.</p>
4. Print and/or save the report	<p>A pdf document will display.</p> <p>Print through Ctrl + P.</p> <p>As the document is a pdf, it cannot be saved directly to a TRIM file. To save to a TRIM file:</p> <ul style="list-style-type: none"> • Save to Desktop (or any other available location) through Shift + Ctrl + S. • Drag to the TRIM file or subfolder where you want to store it.

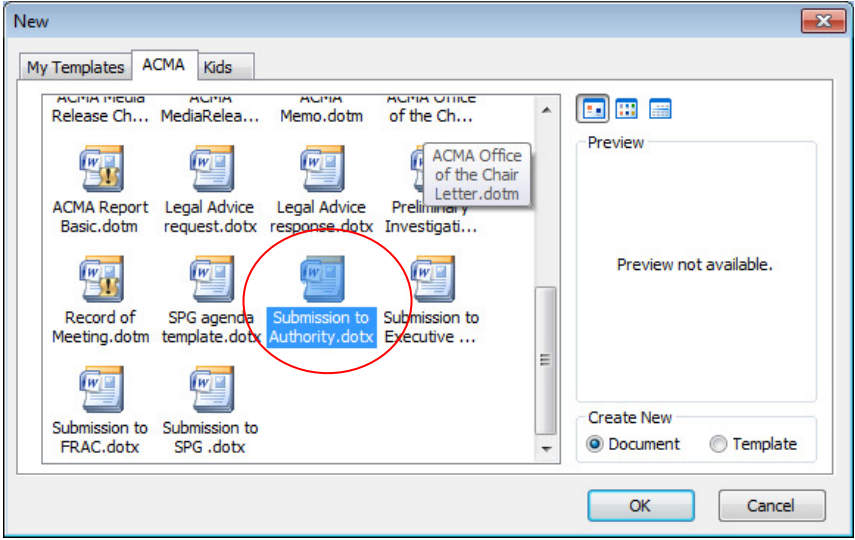
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Chapter 7: Requesting legal assistance

1. When to request legal assistance	<p>BIS staff ask for assistance from the Legal Services Division (LSD) when we need eg</p> <ul style="list-style-type: none"> • advice on interpretation of sections of the BSA or clauses of a code of practice or • clearance of Authority Papers or complex reports.
2. Obtain approval to request	<p>If you think you require legal assistance, discuss with supervisor/EL2 and obtain their approval before drafting the request.</p> <p>Responses to previous BIS requests for legal assistance are stored at:</p> <p style="text-align: center;"> ACMA2008/2558</p> <p>Consult this file to see whether there are any relevant advices already obtained.</p> <p> In practice, it is often the EL2 who suggests obtaining legal assistance.</p>
3. Access legal advice request template	<p>Prepare a request using a template available from Microsoft Word.</p> <p>To access the template, open Microsoft Word > Office button (multi-coloured icon on upper left hand of screen) > New > My templates > ACMA tab > 'Legal Advice request'.</p>  <p> Once you have opened the template once, it will thereafter appear in the Recently Used Templates field when you go Microsoft Word > Office button > New</p>
4. Draft request	<p>Save the document to the appropriate TRIM file/subfolder.</p>

	<p>Please note:</p> <ul style="list-style-type: none"> • <u>To</u>: Address to 'Legal Assistance Requests' • <u>CC</u>: Enter name of the LSD team manager responsible for BIS matters (currently [REDACTED]) • <u>Relevant facts</u>: Name documents as they are named on TRIM and provide the TRIM record numbers. • <u>Practical or policy objective</u>: Possible wordings include: 'To ensure legally sound response to [complainant's name]'s complaint and others similar'; 'To ensure that the [process] is done in accordance with legislative requirements'; 'To ensure that the Authority has sufficient information to make a decision regarding [x]'. • <u>Timing/priority</u>: Normal time is 2 weeks (10 working days)
5. Obtain clearance of request	Obtain clearance from a BIS EL2 before sending the request to LSD.
6. Send request	<p>Send by email to Legal Assistance Requests, cc LSD Team Manager, the BIS EL2 and your supervisor (if applicable).</p> <p>Send attachments to the request as TRIM record references, not electronic documents. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail.</p>
7. Monitor request	<p>Advise the BIS Section Manager (SM) if a response to the request has not been received by the due date.</p> <p>The SM will follow up with LSD.</p>
8. Save response	<p>Save response to the relevant TRIM file once received.</p> <p>If the response takes the form of a draft (rather than a final) advice, ask for and obtain a final advice.</p> <p> Query the draft legal advice if something is unclear. The advice will be made final once your queries, if any, are resolved.</p>
9. Store response in ACMA2008/2558	<p>As well as saving the final advice in the file or subfolder for the particular case you are dealing with, store it, in addition, in an appropriate subfolder in:</p> <p style="text-align: center;"> ACMA2008/2558</p> <p>The advice can be alternately-housed in another subfolder or subfolders of the file if appropriate. For how to do this, see TRIM 6.2 Cheat Sheet – Placing a Document into More Than One File.</p>

Chapter 7: Preparing an authority paper

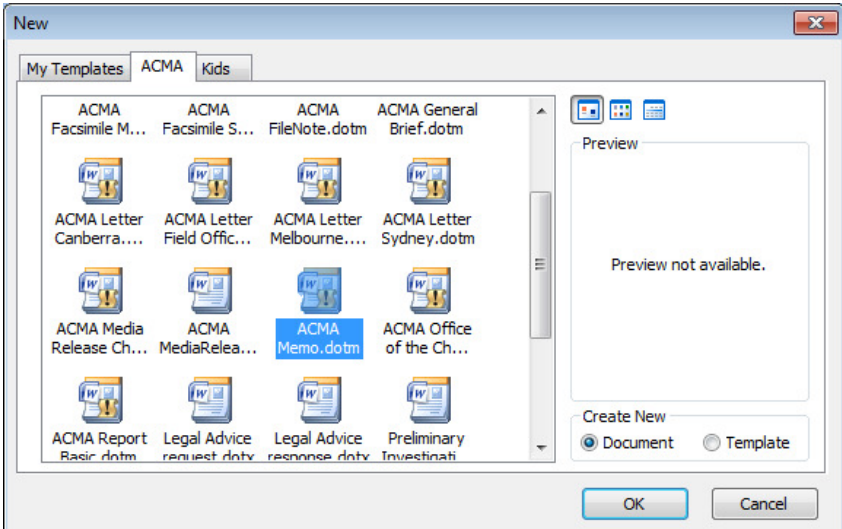
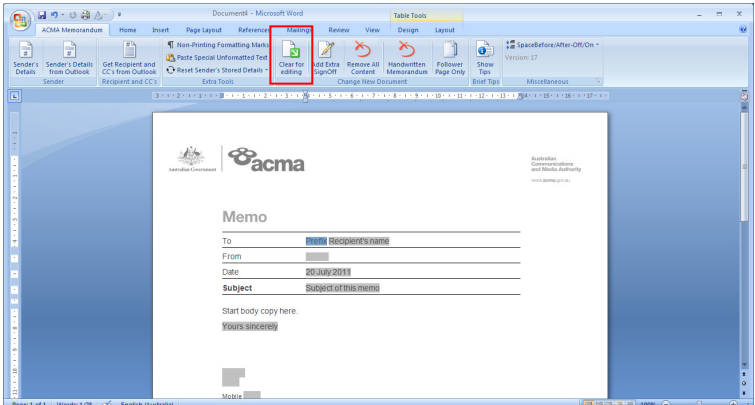
<p>1. Authority Papers</p>	<p>Papers are sent to the Authority for high-profile investigations and major projects (eg a code review).</p> <p>In most cases, the decision to take a matter to the Authority is decided by the Section Manager (SM) and/or Executive Manager (EM).</p>
<p>2. Time the Paper</p>	<p>Establish what Authority meeting the Paper will be presented at, taking into account that:</p> <ul style="list-style-type: none"> Papers must be lodged with the Authority Secretariat by COB Wednesday the week before the meeting and prior to lodgement, papers must be cleared up to General Manager (GM) level and by the Legal Services Division (LSD). <p>Use the ACMA meeting planner on the intranet to establish a realistic date:</p> <p>Home > About the ACMA > Authority > Schedule of meetings > [current year] meeting planner</p> <p>The dates when the ACMA Authority meets are highlighted in blue in the planner. The dates for lodgement of Papers for Authority meetings are highlighted in yellow.</p>
<p>3. Create a subfolder in the TRIM file</p>	<p>Create a subfolder in the TRIM investigation or project file, to store all Authority meeting-related documents, for ease of access. See <i>TRIM 6.2 Cheat Sheet – Creating Subfolders</i>, ED10/68570 in ACMA2009/2462-10.</p> <p>Naming formula for the subfolder:</p> <p>[Investigation number] - Authority Paper - [date of meeting]</p>
<p>4. Prepare draft Authority Paper</p>	<p>Prepare the draft Authority Paper using a template available from Microsoft Word.</p> <p>To access the template, open Microsoft Word > Office button (multi-coloured icon on upper left hand of screen) > New > My templates > ACMA tab > 'Submission to Authority'.</p> 

	<p>Save the document in the Authority meeting subfolder in the TRIM file.</p> <p>Follow the instructions within the template and modify where necessary to suit the topic of the paper. Refer to previous BIS Authority papers for possible wording. These are stored at:</p> <p style="text-align: center;"> ACMA2009/2464</p> <p><u>Maximum length</u>: 4 pages (plus 2 additional pages made of tables, charts or diagrams if necessary).</p> <p><u>Authority risk level</u>: 'Green' for an investigation as a general rule.</p> <p><u>Regulatory impact analysis</u>: Choose Option 1 for an investigation as a general rule. For major projects, an RIA may be necessary. Form and instructions are on the intranet:</p> <p style="text-align: center;">Home > Regulatory Analysis</p>
5. Have 9 copies made of broadcast	<p>If the Paper relates to an investigation, copies of the broadcast will be provided to Authority members.</p> <p>To avoid unnecessary delay, ask the admin team to make 9 copies of the broadcast at this stage. Allow 3 days for completion.</p> <p>8 will be sent to the Authority Secretariat with the Authority Paper and those attending the meeting will take 1 with them in case Authority Members want to view again during the meeting.</p>
6. Have Paper cleared	<p>Have the paper cleared by all relevant layers within the CCC Division by LSD. (See <i>How-to Guide: Requesting legal assistance</i>, in ACMA2009/2462-2.)</p> <p>Incorporate any changes if necessary.</p> <p>Save all internal correspondence and comments and the final copy of the Authority Paper in the Authority meeting subfolder in the TRIM investigation or project file.</p>
7. Submit Authority Paper + any attachments	<p>Once the Authority paper and attachments have been cleared by management and LSD, send them through to Authority Secretariat, who will distribute to the Authority members.</p> <p>Items to send through include:</p> <ul style="list-style-type: none"> the Authority Paper – send this as a TRIM record reference, not an electronic document. To do this, see TRIM Cheat Sheet – Attaching a TRIM document to an e-mail. any additional attachments, such as the complaint correspondence, licensee submissions or preliminary investigation report etc 8 copies of the broadcast (if applicable) for Authority members to view prior to the meeting. <p>Save the email sent to the Authority Secretariat in the Authority Meeting subfolder in the TRIM investigation file as a record of submission.</p>
8. Alternately-house subfolder in ACMA2009/2464	<p>After the submission has been sent to the Authority Secretariat, alternately-house the Authority Paper subfolder in the Authority Papers TRIM file:</p> <p style="text-align: center;"> ACMA2009/2464</p> <p>This is to provide easy access to all previous Authority Papers submitted by BIS.</p> <p>For instructions on alternately-housing a subfolder, see TRIM 6.2 Cheat Sheet –</p>

	<p><i>Placing a Document into More Than One File.</i></p> <p>Naming formulas for the alternately-housed subfolders are:</p> <p>For papers related to an investigation: [Year] – [AIMS Inv number] – [call sign] – [program] – [complainant] – [date of the Authority meeting the paper was presented at] – TRIM Ref: [TRIM number]</p> <p>For papers related to a project: [Year] – [project title] - [date of the Authority meeting the paper was presented at] – TRIM Ref: [TRIM number]</p>
<p>9. Obtain minute of item</p>	<p>After the meeting, ask Authority Secretariat for a minute of the Authority decision in respect of your item.</p> <p>Save to the TRIM file.</p>

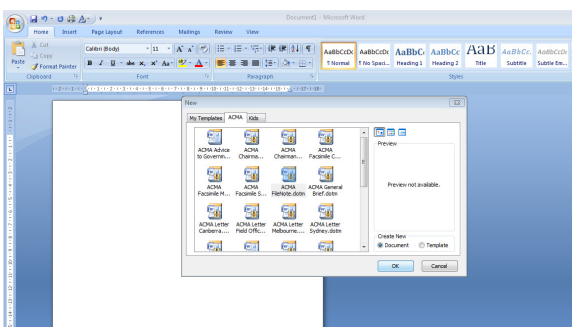
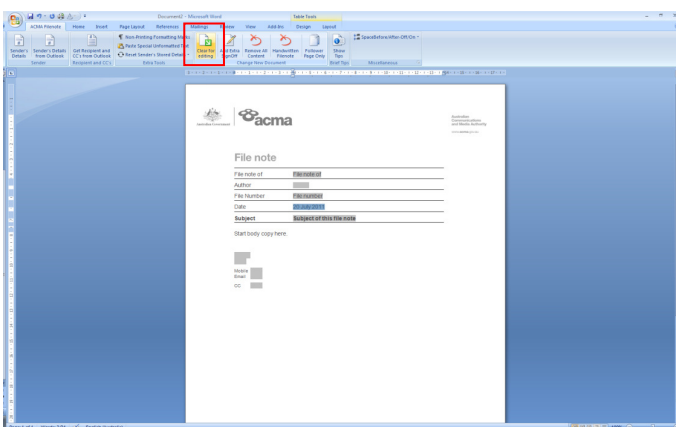
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Chapter 7: Preparing a memo

<p>1. Memos</p>	<p>Memos are used internally for formal presentation of information/ recommendations from one level to another.</p> <p>In BIS their main use is for presentation of recommendation of publication and compliance/enforcement action in the final stages of an investigation. (See How-to Guide: Conducting an investigation – non-breach and How-to Guide: Conducting an investigation – breach)</p>
<p>2. Access memo template</p>	<p>Prepare a memo using a template available from Microsoft Word.</p> <p>To access the template, open Microsoft Word > Office button (multi-coloured icon on upper left hand of screen) > New > My templates > ACMA tab > 'ACMA Memo'.</p>  <p>Once you have opened the template once, it will thereafter appear in the 'Recently Used Templates' field when you go Microsoft Word > Office button > New</p>
<p>3. Save and tailor</p>	<p>Save the document to the appropriate TRIM file/subfolder.</p> <p>The 'ACMA Memorandum' tab will be displaying on the toolbar. Click 'Clear for editing'.</p> 

	<p>Change toolbar tab to 'Home'.</p> <p>Enter your text and save your changes!</p>
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Chapter 7: Making a file note

<p>1. File notes</p>	<p>File notes are used to record information relevant to an investigation/project which has been obtained in other than written form.</p> <p>In BIS their main uses are for recording:</p> <ul style="list-style-type: none"> information from telephone conversations (eg with a broadcaster or complainant) internal decisions communicated verbally (eg from an Investigations Review Committee (IRC) meeting) listening notes, where a transcript of a CD/DVD is not being made.
<p>2. Access file note template</p>	<p>Prepare a memo using a template available from Microsoft Word.</p> <p>To access the template, open Microsoft Word > Office button (multi-coloured icon on upper left hand of screen) > New > My templates > ACMA tab > 'ACMA FileNote'.</p>  <p>Once you have opened the template once, it will thereafter appear in the Recently Used Templates field when you go Microsoft Word > Office button > New</p>
<p>3. Save and tailor</p>	<p>Save the document to the appropriate TRIM file/subfolder.</p> <p>The 'ACMA Filenote' tab will be displaying on the toolbar. Click 'Clear for editing'.</p>  <p>Change toolbar tab to 'Home'.</p> <p>Enter your text and save your changes!</p>