

Investigation Report No. 2789

File No.	ACMA2012/492
Licensee	NBN Ltd
Station	NBN Coffs Harbour
Type of Service	Commercial television
Name of Program	<i>NBN News</i>
Date of Broadcast	19 January 2012
Relevant Code	<i>Commercial Television Industry Code of Practice 2010</i> Clauses 4.3.1, 1.5.2, 1.5.4 and 4.4.1.
Date Finalised	10 July 2012
Decision	Breach of clause 4.3.1 [accuracy] Breach of clause 4.4.1 [present news fairly and impartially]

The complaint

The complaint is that *NBN News*, broadcast on NBN on 19 January 2012, included a ‘factually incorrect and biased’ item about Mr Rob Oakeshott, Federal member for Lyne.

The complaint has been investigated in relation to clauses 4.3.1 and 4.4.1 of the *Commercial Television Industry Code of Practice 2010*.

The program

The item, which was entitled ‘Fatal Diversion’, was two minutes 42 seconds in duration. Following is a transcript:

PRESENTER

Good evening. *Nine News* has obtained damning evidence that the death of an 11-year-old boy in a crash at Urunga could have been prevented. Documents show that the Federal Government rejected advice to upgrade the dangerous section of the Pacific Highway in favour of road works in the electorate of key independent Rob Oakeshott.

REPORTER

These are the scenes that shocked the nation: A B-double truck in the wreckage of a holiday home. It had hit a ute and veered off a two-lane section of the Pacific Highway, killing the ute driver and Penrith boy [name].

BOY'S FATHER

They should do something before someone else has to die.

REPORTER

Nine News has now learned the Federal Government ignored advice to fix the notorious blackspot from experts both in the RTA and its own Department of Transport. State Roads Minister Duncan Gay told us that last October, well before the Urunga crash, ‘we made it clear that the New South Wales Government’s priority was the upgrade of the Nambucca to Urunga section. Unfortunately, the Federal Government chose another project in the electorate of independent Rob Oakeshott’. That upgrade project is the Oxley Highway. It has far less traffic, yet work is already underway. Local MP Andrew Fraser has campaigned for 20 years for the Urunga upgrade to four lanes.

ANDREW FRASER

Funding the Oxley Highway over and above the Pacific Highway, which Mr Oakeshott has been mouthing about for years, is the greatest act of political bastardry that I’ve seen in my time as local member.

REPORTER

The Prime Minister, seen here in Canberra with Mr Oakeshott this morning, needs the independent’s support to stay in government.

ANDREW FRASER

To actually play politics with a so-called independent in another electorate on the Pacific Highway which is taking lives is to me totally unacceptable.

REPORTER

Following the crash at Urunga, the New South Wales Government wrote again to the Federal Transport Department, urging the upgrade as a priority.

ANTHONY ALBANESE (FEDERAL MINISTER FOR INFRASTRUCTURE AND TRANSPORT)

I’ve made it very clear: I’m committed to full duplication of the Pacific Highway. I look forward to Mr Fraser supporting a 50-50 funding model.

PRESENTER

Let's go live to [reporter] at State Parliament. [Reporter's name], it seems the Federal Government has been shamed into action.

REPORTER

Yes, Pete, some good news. When *Nine News* spoke to Anthony Albanese, he said that the upgrade of the Urunga section of the Pacific Highway, tenders will be called within a fortnight. Work can begin now within months. What remains unanswered, though, is why Rob Oakeshott was so important. His pet project was delivered ahead of the Pacific Highway. The only possible answer is cheap politics, [presenter's name].

PRESENTER

OK, [reporter's name], thank you.

Ordinary reasonable viewer

In assessing content against a code of practice, 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 affairs.¹

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.

Assessment

This investigation is based on submissions from the complainant and the licensee and a copy of the broadcast provided to the ACMA by the licensee. Other sources used have been identified where relevant.

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

Issue 1: Accuracy

Relevant code clause

News and Current Affairs Programs

- 4.3 In broadcasting news and current affairs programs, licensees:
- 4.3.1 must broadcast factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program;
 - 4.3.1.1 An assessment of whether the factual material is accurate is to be determined in the context of the segment in its entirety.

Considerations generally applied by the ACMA in assessing whether material complained of was subject to, and/or compliant with, obligations in relation to factual accuracy are at Appendix 1 to this report.

The following additional parts of the code are relevant to this assessment:

Compliance with Code

- 1.5 Licensees must seek to comply fully with the code, but a failure to comply will not be a breach of the code if that failure was due to:
- [...]
 - 1.5.2 reasonable reliance on information supplied by another person;
 - [...]
 - 1.5.4 an act or failure to act which, in all the circumstances, was clearly peripheral or incidental, and unlikely to offend or materially mislead viewers.

News and Current Affairs Programs

- 4.3.11 ...A failure to comply with the requirement in clause 4.3.1 to broadcast factual material accurately will not be taken to be a breach of the code if a correction, which is adequate and appropriate in all the circumstances, is made within 30 days of the licensee receiving a complaint or a complaint being referred to the ACMA (whichever is later).

Complainant's submissions

The complainant submitted:

I was under the impression the Oxley Highway upgrade was a fully funded NSW government project.

Licensee's initial submissions²

The licensee initially submitted that:

- while referring to the upgrades, 'the Oxley Highway' was used instead of the Oxley Highway to Kempsey section of the Pacific Highway; however
- the report was accurate, based on a NSW Government document³ and interviews from the NSW Roads Minister, Duncan Gay;
- the substance of the allegation, that a project in Mr Oakeshott's electorate of Lyne received priority funding over the Nambucca-Urunga section of the Pacific Highway, was accurate; and
- the licensee broadcast a second report on Pacific Highway funding the following evening, 20 January 2012, and 'to the extent that there were inaccuracies in the first report, these were corrected in the second report'.

The licensee provided to the ACMA a copy of the document referred to in the broadcast and its submissions (the Document). The Document comprises six unnumbered pages headed 'Discussion on project/s to include in forward Pacific Highway program'. The Document is undated; on internal evidence, it was prepared after 7 October 2011 and before 1 November 2011.

The Document indicates that:

- at a meeting between officers of the NSW Roads and Traffic Authority and the Federal Department of Infrastructure and Transport (DoIT) on 14 September 2011, it was decided that one more project in the Pacific Highway upgrade could be decided on at that stage;
- at the meeting, the Nambucca Heads to Urunga project was agreed as the preferred additional project to proceed to construction; and
- 'it is understood that, after a briefing by DoIT, the Federal Minister for Infrastructure and Transport indicated a preference to start construction of the Oxley Highway to Kempsey project'.

The licensee also provided a copy of the item 'Funding row', broadcast during *Channel Nine News* on 20 January 2012. A transcript is at Appendix 2.

Finding

The licensee breached clause 4.3.1 of the code.

² In response to the ACMA's Preliminary Report, the licensee accepted the ACMA's finding that the licensee had breached clause 4.3.1 of the code.

³ Both the broadcast and the licensee's submission referred to 'documents'. In response to a query from the ACMA, the licensee clarified that the material referred to is, in fact, six pages from a single document, the plural being used because it came to the licensee in the form of six separate PDFs.

Reasons

The ACMA notes that, after quoting Mr Gay as saying that the Federal Government had chosen 'another project' over the upgrade of the Nambucca-Urunga section of the Pacific Highway, the reporter continued:

REPORTER

That upgrade project is the Oxley Highway.

On the basis of the Document, this statement was inaccurate. What Minister Albanese 'chose', or favoured, in October 2011 was not an upgrade of the Oxley Highway (a regional highway which runs west from Port Macquarie to Tamworth and beyond), but a different section of the Pacific Highway itself, namely one starting at the point where the Oxley Highway crosses the Pacific Highway and going north to Kempsey (the Oxley-Kempsey section of the Pacific Highway).

In stating that the Federal Government had decided to divert funds from the Pacific Highway upgrade to the Oxley Highway upgrade, the licensee did not broadcast factual material accurately.

Further, the ACMA notes that the core inaccuracy in the broadcast, indicated above, caused associated inaccuracies in the surrounding information provided in the broadcast:

- The broadcast conveyed that the Federal Government had diverted funds from the Nambucca-Urunga section of the Pacific Highway to a road project involving 'far less traffic'. There is nothing in the Document (or to the ACMA's knowledge elsewhere) to indicate that the Oxley-Kempsey section of the Pacific Highway has 'far less traffic' than the Nambucca-Urunga section.
- The broadcast conveyed that work was, at 19 January 2012, 'already underway' on a project the Federal Government had chosen in preference to the Nambucca-Urunga upgrade. This was not the case: work had not, at that time, begun on the Oxley-Kempsey section of the Pacific Highway. (The broadcast showed vision of work on the Oxley Highway. This work had been underway since 2009, 100% funded, as the complainant notes, by the NSW Government alone.⁴)
- The broadcast stated that *Nine News* had 'evidence that the death of an 11-year-old boy in a crash at Urunga could have been prevented'. The program had no such evidence. The Document provides no evidence that, but for Minister Albanese's decision, work would have been completed, or even begun, on the upgrade of the Nambucca-Urunga section of the Pacific Highway. The Document merely stated that, if the Minister's decision were reversed, the tendering process for the Nambucca-Urunga section could begin on 18 November 2011. The fatal accident at Urunga took place on 8 January 2012.⁵ With the tendering process not scheduled to start, in any case, until 18 November 2011, there would not have been enough time for works to be completed, or even begun, by 8 January 2012.

⁴ RTA: 'Community Update', June 2009. RTA Publication 09.225.

⁵ Greg McLagan: 'Sleeping boy dies as truck ploughs into home', *Sydney Morning Herald*, 8 January 2012.

Clause 4.3.1.1 requires that the assessment of whether the factual material was accurate be determined in the context of the segment in its entirety. There is nothing in the item 'Fatal Diversion', considered in its entirety that would mean that this factual material was accurate. Ordinary, reasonable viewers would not have gained the impression that the reporter's reference to the Oxley Highway was, for example, a slip of the tongue, and that he must have meant a section of the Pacific Highway. On the contrary: there was a further explicit mention of the Oxley Highway by Mr Fraser ('Funding the Oxley Highway over and above the Pacific Highway ...') and the characteristics of the project chosen by the Federal Government (far less traffic, work underway), as presented in the broadcast, pertained to the Oxley Highway, not the Oxley-Kempsey section of the Pacific Highway. The proposition that the Federal Government, influenced by Rob Oakeshott, had diverted funds from the Pacific Highway to the Oxley Highway was, in effect, the principal thrust of the item in its entirety.

From the item as a whole, accordingly, ordinary reasonable viewers would have been left with the erroneous impressions that:

- the Federal Government had decided to divert funds from the Pacific Highway upgrade to the Oxley Highway upgrade;
- the licensee possessed documents showing this;
- the Federal Government had implemented this decision; and
- the fatal accident at Urunga could have been prevented if the Federal Government had made a different decision in late 2011.

The ACMA has therefore proceeded to consider the various defences, put forward by the licensee in its initial submissions, which would mean that the inaccuracies did not amount to a breach of the code:

- the report relied on information from the Document and the NSW Minister of Roads, Mr Gay;
- the substance of the report was accurate; and
- inaccuracies were corrected in a broadcast the following evening.

Reliance on information: According to the broadcast, the licensee had the Document in its possession on 19 January 2012. The information in the broadcast is at variance with the information provided by the Document. The inaccuracies in the broadcast therefore cannot be explained on the basis of reasonable reliance on 'information supplied by another person' under clause 1.5.2.

Accurate substance: The licensee appears to have considered that there was no breach of clause 4.3.1 because the Oxley-Kempsey section of the Pacific Highway is almost entirely located in Mr Oakeshott's electorate of Lyne,⁶ and it was therefore true to say, based on the Document, that the Federal Government, having agreed to prioritise the Nambucca-Urunga section of the Pacific Highway, had then chosen a project in Mr Oakeshott's electorate. However, the ACMA does not agree that this is sufficient to meet the requirements of clause 4.3.1. The Pacific Highway is a heavily-used national highway; the Oxley Highway is not. The Pacific Highway has been notorious for decades for its high accident rate; the Oxley Highway has not. It was therefore a significant, indeed an egregious, departure from the facts

⁶ The northern boundary of the electorate of Lyne is a little south of the city of Kempsey.

to say that the Federal Government had diverted funds away from the Pacific Highway *entirely*. It was also a significant departure from the facts to say that the Federal Government's chosen project was underway at the time of the Urunga accident.

Accordingly, the inaccuracies in the broadcast were likely to 'materially mislead' and as such cannot be absolved under clause 1.5.4.

Correction of errors: The licensee referred to the broadcast of 20 January as having 'corrected' the inaccuracies in the broadcast complained of. However, there was nothing in the second report to disabuse viewers of the erroneous impressions left by the broadcast the evening before. The broadcast of 20 January stated that the Federal Government had given priority to 'two projects in Rob Oakeshott's electorate', but did not say what these were. Viewers who had watched the program on 19 January were, therefore, still left with the impression that one of these projects was the Oxley Highway, and all the other associated erroneous impressions, detailed above.

Issue 2: Fairness and impartiality

Relevant code clause

News and Current Affairs Programs

4.4 In broadcasting news programs (including news flashes), licensees:

4.4.1 must present news fairly and impartially.

Considerations generally applied by the ACMA in assessing whether material complained of was compliant with obligations in relation to impartiality are at Appendix 3 to this report.

Complainant's submissions

The complainant submitted that the reporter for the item had used the program to 'make a political attack' against Mr Oakeshott; the item was 'a blatant political ad by the Nationals'; and no air time had been provided for Mr Oakeshott to give his response to 'these very serious allegations'.

Licensee's initial submissions⁷

The licensee initially submitted:

At no time in the reports [ie the reports of 19 and 20 January 2012] was any suggestion made that Mr Oakeshott acted inappropriately. The reports clearly indicate that Mr Oakeshott was not the decision maker responsible for the funding decision. Mr Oakeshott ... provided a statement to Nine ahead of the second broadcast which was included in the second broadcast. Additionally, Minister Albanese was provided the opportunity to comment on the reports and his denial of the substance of the reports was included in the second broadcast.

⁷ In response to the ACMA's Preliminary Report, the licensee accepted the ACMA's finding that the licensee had breached clause 4.4.1 of the code.

Further information from the licensee

In response to requests from the ACMA, the licensee provided the following further information:

- *Channel Nine News* did not seek comment from Mr Oakeshott before the broadcast of 19 January 2012; and
- *Channel Nine News* did not tell Minister Albanese on 19 January 2012 that it was going to run a story that he had diverted funds to the Oxley Highway – it told him that *Channel Nine News* was going to run a story saying that the government had prioritised road upgrades in Mr Oakeshott's electorate over the upgrade of the Nambucca-Urunga section of the Pacific Highway.

Further submission from the licensee

The ACMA put to the licensee that Mr Oakeshott, in a letter to the licensee dated 23 January 2012 which he copied to the ACMA, had given the following account of his communications with the licensee in the immediate aftermath of the broadcast of 19 January 2012:

The day after the story went to air I asked my office to contact the head of the newsroom. They tried to do so, but were told they could speak with [the reporter]. They directly said no to this offer and asked again to speak to the head of the newsroom. An hour later, [the reporter] returns the call. I speak to him directly and ask him who his boss is and what their number is. I follow this up with a phone call to a [name], who personally indicates to me that she will have someone ring me back to discuss the concerns raised. No-one has rung back, and [the reporter] used our short phone call in his follow-up news story, indicating I don't want to be interviewed on air.

This is more than an incorrect story. It is a casual and cavalier approach to news gathering.⁸

The licensee responded:

Nine maintains that its submission was accurate. Rob Oakeshott confirms he spoke to [the reporter]. [The reporter] maintains that the conversation was brief and that the information provided by Mr Oakeshott to [the reporter] during that call was accurately relayed in the second report.

(On 7 February 2012, Mr Oakeshott gave a 'personal explanation' to Federal Parliament, claiming to have been 'misrepresented' in the broadcast of 19 January. The explanation included:

There is absolutely no federal money that has gone to the Oxley Highway upgrade and logically, therefore, there is absolutely no possibility of the diversion of funds for political favours even if we all wished it. This is an outrageous slur. It is inexcusable that it has been done on the back of the death of an 11-year-old boy.)

Finding

The licensee breached clause 4.4.1 of the code.

⁸ Mr Oakeshott did not refer his complaint on to the ACMA.

Reasons

The code imposes on commercial television licensees the requirement that news programs (as distinct from current affairs programs) be presented fairly *and* impartially (emphasis added by the ACMA). The *Macquarie Dictionary* (5th edition) relevantly defines 'fair' and 'impartial' as:

fair: free from bias, dishonesty, or injustice

impartial: not partial; unbiased; just.

The Macquarie Dictionary relevantly defines 'partial' and 'bias' as:

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

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

Although it appears that the concepts of fairness and impartiality have some overlap, they are also distinct. In assessing compliance with the obligations to present news impartially, the ACMA takes a range of factors into account, as indicated in Appendix 3.

Under the code, it is legitimate for a licensee to investigate and report on matters of public interest, and this includes situations where this may raise negative – and indeed strongly negative – issues involving the actions of Government Ministers and/or other politicians. However, the ACMA considers that care in framing is important, particularly where a licensee makes strong claims with political ramifications, and where the licensee touches on sensitive issues such as a fatal accident.

In this case, the ACMA's view is that the item did not meet the fairness and impartiality requirements of clause 4.4.1.

The item was unfair to Minister Albanese, in that it asserted that he had done something which he had not done, ie diverted funds from the Pacific Highway to the Oxley Highway. It was also unfair to Mr Oakeshott, in that it strongly suggested that he had influenced Minister Albanese to make such a decision.

The item contained the editorial comment that the Urunga fatality 'could have been prevented'; Mr Fraser's view that 'funding the Oxley Highway over and above the Pacific Highway' was an act of 'political bastardry'; and the reporter's view that 'the only possible answer' to why this had happened was 'cheap politics'. The item did not contain any contrasting view to these opinions.

Nor was one sought. There was a viewpoint from Minister Albanese in the item:

MINISTER ALBANESE

I've made it very clear: I'm committed to full duplication of the Pacific Highway. I look forward to Mr Fraser supporting a 50-50 funding model.

However, the Minister was not provided with an opportunity to comment on the principal thrust of the item, namely that he had diverted funds to the Oxley Highway. Mr Oakeshott was not provided with an opportunity to comment at all. If such opportunities had been offered, a contrasting view as to the nature and reasons for the Minister's decision could have been included in the program (and an egregious inaccuracy might well have been avoided).

The licensee initially submitted, in effect, that its compliance with clause 4.4.1 should be assessed in conjunction with the broadcast the following evening. The ACMA has consistently interpreted the relevant requirements for fairness and impartiality as imposing an obligation on licensees in relation to *individual* programs. However, the ACMA also recognises that there may be circumstances where the editorial treatment specifically provides sufficient overt linkage to other material previously broadcast to suggest that it is open to consider coverage over time.⁹

This was, potentially, one such case, given that:

- the time period involved was very short (just two days, 19-20 January 2012);
- there was overt linkage between the two broadcasts, with the second one beginning: ‘Last night we brought you ...’; and
- the material in both broadcasts was specifically focused on a single issue, namely the Federal Government’s prioritisation of NSW road works.

The ACMA therefore considered whether the broadcast of 20 January served to redress the unfairness in the broadcast of 19 January. The ACMA considers that it did not:

- As already noted, the broadcast of 20 January did not correct the core inaccuracy of the 19 January broadcast. It still left viewers with the unfair impressions generated by that broadcast in relation to the actions of Minister Albanese and Mr Oakeshott.
- Statements by Minister Albanese were included in the second broadcast; however there was no viewpoint from him on the principal thrust of the broadcast on 19 January 2012. Nor, in the ACMA’s view, was he provided with an opportunity to provide one. Indeed, the second broadcast showed the reporter shouting over the Minister as the latter, at a press conference, attempted to elaborate on his criticism of the 19 January broadcast:

ANTHONY ALBANESE

Lack of attention to detail was put into this story.¹⁰

REPORTER

With respect, Minister, if you’re going to criticise *Nine News* –

ANTHONY ALBANESE

No, no –

REPORTER

If you’re going to criticise *Nine News*, will I get a chance to ask you a question, too, about this?

- As regards Mr Oakeshott, the second broadcast contained a summary, in the reporter’s words, of a statement from Mr Oakeshott and an account of his attitude:

REPORTER

The federal independent didn’t want to be interviewed today, but says he has done nothing wrong: his job is to lobby for projects in *his* electorate.

⁹ See, in this respect, Investigation report 1952 (GTV) and Investigation Reports 1922 and 1953 (ATV).

¹⁰ The ACMA asked the licensee what the Minister said at the press conference before this statement. The licensee did not respond.

However, there was no viewpoint from Mr Oakeshott on the principal thrust of the broadcast of 19 January 2012. Further, the ACMA does not accept that he was provided with an opportunity to provide one. What Mr Oakeshott rejected was not an offer of interview but the appropriateness of the reporter as an interlocutor for reception of a complaint he wished to make about the broadcast of 19 January.

Accordingly, the licensee did not present news fairly and impartially in the broadcast of 19 January 2012, and the matter was not redressed by the broadcast the following evening.

Appendix 1

Considerations which the ACMA has regard to in assessing compliance with the Commercial Television Industry Code of Practice (accuracy of factual material)

- The assessment of factual accuracy is determined in the context of the segment in its entirety.
- The meaning conveyed by the relevant statement is assessed according to what an 'ordinary, reasonable listener/viewer' would have understood the program to have conveyed.
- The ACMA must assess whether the relevant statement would have been understood by the ordinary reasonable listener/viewer as a statement of fact or an expression of opinion.
- 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.
- While licensees are not required to present all factual material available to them, if the omission of some factual material means that the factual material actually broadcast is not presented accurately, that would amount to a breach of the clause.
- 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 is to present factual material accurately will ordinarily require that the competing assertions of fact be presented accurately as competing assertions.
- 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.

Appendix 2:

Transcript of item 'Funding row' broadcast on NBN on 20/1/12

Note: Shading below shows audio accompanying the display on screen of a page of the Document on which the text 'Sancrox Road interchange, west of Port Macquarie'.

PRESENTER

Well, last night we brought you allegations that the Federal Government had prioritised road works in the electorate of Rob Oakeshott over the upgrade of the Pacific Highway blackspot at Urunga. Today there were fresh developments. Let's go live to [reporter] at State Parliament. [Reporter's name], first of all, what can you tell us on this?

REPORTER

Well, [presenter's name], these are the RTA documents that show the Federal Government ignored its own expert advice, and the advice of the RTA, in regard to the Urunga upgrade. And to make it worse, the tender process should have begun last year, but instead two projects in Rob Oakeshott's electorate took priority.

REPORTER

The Federal Government is trying to re-write history about its funding for the Pacific Highway in the wake of this horrible double fatality. The Transport Minister decided to shoot the messenger.

ANTHONY ALBANESE (at press conference)

Lack of attention to detail was put into this story.

REPORTER (at press conference)

With respect, Minister, if you're going to criticise *Nine News* –

ANTHONY ALBANESE

No, no –

REPORTER

If you're going to criticise *Nine News*, will I get a chance to ask you a question, too, about this?

ANTHONY ALBANESE

Certainly.

REPORTER

Does Federal Labor favour Rob Oakeshott when it comes to road projects? Yes or no, Minister? A yes or no answer would be great.

REPORTER

Mr Albanese has a right to be sensitive. This RTA document from last year proves that **the Federal Department of Infrastructure and Transport agreed** that 'the Nambucca Heads to Urunga project was the preferred additional project because it would clearly provide the greatest benefits in terms of crash reduction'. But despite having significantly fewer accidents, two projects favoured by Rob Oakeshott ended up with the Federal Government's money. The federal independent didn't want to be interviewed today, but says he has done nothing wrong: his job is to lobby for projects in *his* electorate.

REPORTER (at press conference)

Minister, isn't it sad that the upgrades that you have announced last night have only occurred after an eleven-year-old boy died?

ANTHONY ALBANESE (at press conference)

It is indeed a tragedy that anyone – that anyone – loses their life on a road. Each and every person is one too many. There has been no political decisions whatsoever done on the highway.

REPORTER

[Reporter's name]

Appendix 3

Considerations which the ACMA has regard to in assessing compliance with the Commercial Television Industry Code of Practice (impartiality)

- Achieving impartiality requires a broadcaster to present content in a way which avoids conveying a prejudgment, 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) 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'.¹¹ 'Bias' is defined as: 'a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question'.¹²
 - 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 Legeng*¹³ as follows:

'Bias' is used to indicate some preponderating disposition or tendency, a 'propensity; predisposition towards; predilection; prejudice'.¹⁴ It may be occasioned by interest in the outcome, by affection or enmity, or, as was said to be the case here, by prejudgment. Whatever its cause, the result that is asserted or feared is a deviation from the true course of decision-making, for bias is 'any thing which turns a man to a particular course, or gives the direction to his measures'.
- A program that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether a breach of clause 4.4.1 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 viewer/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 prejudgment.
- A perspective may be quite reasonably favoured if all the evidence supports it; it is only where the favouring is undue in some way that the code is breached.
- A perspective may be 'unduly' favoured in a variety of ways, including editing, juxtaposition of material, editorial comment or reporter's comments.

¹¹ Meaning 5.

¹² Meaning 2.

¹³ (2001) 205 CLR 507 at 563 [183] Gleeson CJ and Gummow J at 538 [100] agreeing.

¹⁴ *Oxford English Dictionary* (Second Edition), meaning 3(a).