



CENTRE FOR MEDIA TRANSITION

Review of the Community Radio Broadcasting Codes of Practice

Submission to Community Broadcasting Association of Australia

21 Dec 2022

About the Centre for Media Transition

The Centre for Media Transition (CMT) was established in 2017 as an applied research unit based at the University of Technology Sydney (UTS). It is an interdisciplinary initiative of the Faculty of Arts and Social Sciences and the Faculty of Law, sitting at the intersection of media, journalism, technology, ethics, regulation, and business.

Working with industry, academia, government and others, the CMT aims to understand media transition and digital disruption, with a view to recommending legal reform and other measures that promote the public interest. In addition, the CMT aims to assist news media to adapt for a digital environment, including by identifying potentially sustainable business models, develop suitable ethical and regulatory frameworks for a fast-changing digital ecosystem, foster quality journalism, and develop a diverse media environment that embraces local/regional, international and transnational issues and debate.

This submission was prepared by:

- Dr Michael Davis, Research Fellow
- Dr Sacha Molitorisz, Senior Lecturer in Law
- Professor Derek Wilding, Co-Director
- Professor Monica Attard, Co-Director

CONTACT

Centre for Media Transition
University of Technology, Sydney
PO Box 123, Broadway NSW 2007

cmt@uts.edu.au
+61 2 9514 9669

cmt.uts.edu.au

Introduction

Thank you for the opportunity to make this submission to the review of the Community Radio Broadcasting Codes of Practice (the code). We limit our comments and recommendations to Code 5 (News and Journalistic Content) and, to a lesser extent, Code 4.3 (Privacy).

Code 5: News and Journalistic Content

The proposed Code 5 reads:

5.1 In broadcasting news and journalistic content we must:

- a) ensure factual material is presented accurately and impartially;
- b) source and present a diversity of voices and viewpoints with fairness;
- c) clearly distinguish factual material from analysis, commentary or opinion, comedy, satire, and any other kind of fictional entertainment content;
- d) not broadcast misinformation or disinformation;

Misinformation is verifiably false, misleading, or deceptive information that has the potential to cause serious harm to the community and/or individuals, including disinformation, which is misinformation created and/or broadcast with malicious intent.

- e) must not present material in a way that is likely to create public panic or cause serious distress to reasonable listeners;
- f) must provide correction or clarification of significant errors of material fact in a timely manner;
- g) must identify ourselves and our media organisation before proceeding with an interview for broadcast or publication.

General

To preface our specific remarks, we believe that Code 5 is, in a number of ways, superior to its counterpart in the Commercial Radio Code. In particular, the wording of key provisions (a), (b) and (c) is superior to equivalent provisions in the Commercial Code in their succinct promotion of accuracy, impartiality, diversity, fairness and the clear distinction of factual material from analysis, commentary, opinion, comedy, satire and fictional entertainment. It is also superior in not permitting a correction to neutralise a potential breach of accuracy provisions.

Conflicts of Interest

However, one significant omission from Code 5 is the absence of guidance regarding conflicts of interest. Admittedly, there are separate provisions regarding sponsorship contained in Code 9, which prescribes, 'We do not allow commercial considerations to undermine accuracy, fairness, or independence.' Further, 9.3 notes that Code 4 'also applies to sponsorship announcements', with 4.1(c) stipulating that, 'We will not ... promote or encourage harmful or excessive gambling'. However, conflicts of interest are broader than that, extending beyond sponsorship and commercial considerations to also encompass, say, the impact of personal relationships on broadcasts. Conflicts of interest are a key issue that ought to be made explicit in the code, given that such conflicts are not uncommon, particularly in community reporting and can have a significant impact on the relationship between a broadcaster and its audience. As such, the issue ought to be made explicit in Code 5, including to highlight the importance of the issue for both broadcasters and audiences. As an indicative example of such a provision, the Australian Press Council

prescribes in General Principle 8, 'Ensure that conflicts of interests are avoided or adequately disclosed, and that they do not influence published material.'

Recommendation 1: Code 5.1 should include an additional clause prescribing that conflicts of interest ought to be avoided or disclosed, and should not influence the content of broadcasts.

Impartiality

We agree with CBAA's decision to extend Code 5 to news and journalistic content rather than specific program types. However, as noted in ACMA's position paper, audiences expect news and journalistic content, considered broadly, to be impartial.¹ This does not mean that opinion and commentary have no place in journalism, nor even that equal weight should be given to different opinions. Instead it means that opinion and commentary should be reasonable and that coverage should follow the weight of evidence. The ABC Code of Practice describes following the weight of evidence as a 'hallmark of impartiality', and ACMA recommends it as a principle of best practice.² Similarly, though perhaps less usefully, principle 3 of the APC code states, 'Ensure that expressions of opinion are not based on significantly inaccurate factual material or omission of key facts.' In this context it might be useful to consider, in terms of journalistic best practice, the differences in the roles properly played by journalists and guest commentators in providing and subjecting different viewpoints to scrutiny.

To acknowledge the importance of context, it may be useful to follow ACMA's suggested wording 'with due impartiality'.³ This allows assessment of impartiality to take into account such factors as the nature of the program, the intended audience, and the contentiousness of the material.

Recommendation 2: We suggest that rather than being limited to factual material, clause 5.1(a) should be extended to account for the audience expectation of 'due impartiality' in news and journalistic content considered broadly.

Misinformation

ACMA noted in *What audiences want* that the media plays a critical role in disseminating accurate and authoritative information, and conversely, that 'there is significant potential harm that can be caused by the news media through the unintentional amplification of misinformation'.⁴

ACMA then sets out several best-practice approaches. Apart from ensuring that news and journalistic content are accurate and presented with due impartiality, these include:

- Content providers should prevent the amplification or spread of misinformation and disinformation.
- Particular care should be taken when reporting on contentious or controversial matters where facts may be contested and not settled. Reporting in these instances should follow the evidence available at that point in time, including principal relevant perspectives.

We commend CBAA for including provision 5.1(d) on misinformation in the draft code revisions, particularly in relation not only to news programs but to news and journalistic content. In our view, however, the wording of 5.1(d) could be improved.

¹ Australian Communications and Media Authority. (2022). [What audiences want – Audience expectations for content safeguards](#), pp. 11–12.

² Australian Communications and Media Authority. (2022). [What audiences want – Audience expectations for content safeguards](#), p. 12.

³ Australian Communications and Media Authority. (2022). [What audiences want – Audience expectations for content safeguards](#), p. 12.

⁴ Australian Communications and Media Authority. (2022). [What audiences want – Audience expectations for content safeguards](#), p. 12.

We note that the ACMA recommendation is for broadcasters to *prevent the amplification or spread* of misinformation and disinformation. Part of this is, to be sure, not broadcasting false, misleading or deceptive information. But in the case of news and journalistic content, this is already largely covered by the requirement for accuracy in 5.1(a). More importantly, misinformation and disinformation can also be amplified and spread through reporting that is not itself false, misleading or deceptive. For example, reporting on misinformation narratives circulating on social media can amplify those narratives. As ACMA has noted, research shows that ‘news media can direct considerable attention to falsehoods and help these conversations find a much wider audience, particularly where a story involves a celebrity or public figure.’⁵ This is partly why ACMA recommends that particular care be taken when covering contentious or controversial matters.

Recommendation 3: We suggest that 5.1(d) be reworded to incorporate the need to take care to avoid amplifying or spreading misinformation and when reporting on contentious or controversial matters.

The wording of ‘take care to’ is important here, given the difficulty in establishing what counts as misinformation, particularly when reporting on contentious or controversial matters. In our view it is more important, and more feasible, to focus on good practice than on whether the broadcasting or amplification of misinformation is achieved in every case. In addition, detailed guidance on best practice should be developed and provided to community broadcasters to help them navigate this relatively novel problem.

Content as broadcast vs newsgathering practice

This raises a more general problem, also found in several other broadcasting codes of practice, namely that the scope of the provisions in Code 5 covers only the *content* that is broadcast and not the *practices* that lead to the broadcasting of that content. The effect is that newsgathering and production practices are not subject to independent oversight.⁶ This is, for example, what led to the ACMA being unable to investigate Nine’s conduct in preparing the *60 Minutes* program on the alleged abduction of Sally Faulkner’s children.

This point also applies to Code 4.3, Privacy. While the broadcasting of material that relates to a person’s personal or private affairs can be considered an invasion of privacy, the process of gathering that material can also be considered an invasion of privacy. Thus, paragraph 11 of the MEAA code states, ‘Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.’ While paragraph 6.1 of the ABC Code of Practice states, ‘Any infringement of privacy in programmes, or *in connection with obtaining material included in programmes*, must be warranted’ (emphasis added).

Recommendation 4: In our view the code would be improved by including newsgathering and other journalistic practices within the scope of codes 5 and 4.3

⁵ Australian Communications and Media Authority. (2021). [Report to government on the adequacy of digital platforms’ disinformation and news quality measures](#), p. 26.

⁶ See Wilding D. (2016, May 30). [‘The scandal of 60 Minutes: no broadcasting standards, no investigation’](#). *The Conversation*.