

Investigation Report No. 3238

File No.	ACMA2014/663 ACMA2014/643
Licensee	TCN Channel Nine Pty Ltd General Television Corporation Pty Ltd NBN Limited
Call sign	TCN (Sydney) GTV (Melbourne) NBN (Newcastle)
Type of Service	Commercial Television
Name of Program	<i>A Current Affair</i>
Date of Broadcast	11 June 2014
Relevant Code	Clauses 1.9.6, 4.3.1, 4.3.2 and 4.3.10 of the Commercial Television Industry Code of Practice 2010
Date finalised	14 August 2015
Decision	Breach of clause 4.3.1 [factual accuracy] No breach of clause 1.9.6 [proscribed matter – religious vilification] No breach of clause 4.3.2 [create public panic] No breach of clause 4.3.10 [portray in a negative light]

The complaints

In July 2014, the Australian Communications and Media Authority (the ACMA) commenced an investigation into a segment of *A Current Affair* broadcast on 11 June 2014 by the licensees of TCN, GTV and NBN in Sydney, Melbourne and Newcastle respectively.

The ACMA received three complaints, variously alleging that the segment contained false and misleading statements, had the potential to cause public panic and amounted to religious vilification.

The segment has been investigated for compliance with clauses 1.9.6 [proscribed matter – religious vilification], 4.3.1 [present factual material accurately], 4.3.2 [create public panic], and 4.3.10 [portray in a negative light by placing gratuitous emphasis on religion] of the Commercial Television Industry Code of Practice 2010 (the Code).

The program

A Current Affair is a 30-minute current affairs program broadcast on weekdays at 7.00 pm on the Nine Network.

On 11 June 2014, the program included a segment that reported on Access Ministries, an inter-denominational Christian organisation which provides Special Religious Instruction (SRI) in Victorian public primary schools.¹ The segment included comments from:

- > two parents who withdrew their children from SRI classes (Parent 1 and Parent 2)
- > the principal of a primary school at which Access Ministries offers SRI classes (the Principal)
- > a retired Catholic priest
- > a spokesperson for Outreach and Church Ministries.

Footage showing an excerpt of a speech by the CEO of Access Ministries was also used.

A transcript of the segment is at **Attachment A**.

Access Ministries and the SRI program

Access Ministries has 12 nominating churches.² It is accredited by the Victorian Department of Education and Training (the Department) as a provider for the SRI program.

The *Education and Training Reform Act 2006 (Vic)* (the Act) provides that SRI can be delivered in a government school in accordance with section 2.2.11 of the Act. The Act defines 'special religious instruction' as:

[...] instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.

¹ http://www.accessministries.org.au/sitebuilder/about/knowledge/asset/files/6/core_values_document.pdf - accessed 9 December 2014.

² Its members are: Anglican Church, Australian Christian Churches, Baptist Union of Victoria, Christian Brethren Fellowships in Victoria, Christian Reformed Churches of Australia, CRC Churches International, Churches of Christ in Australia, Lutheran Church of Australia, Presbyterian Church of Australia, Salvation Army, Uniting Church in Australia, Wesleyan Methodist Church of Australia.

The Department's website indicates that [emphasis added]:

SRI is instruction in the specific religious beliefs and tenets of a religion, and is not to be confused with *general religious education* (GRE). GRE is education about religions (which may or may not include utilising representatives of a particular faith to explain the workings and belief structure of their religion), **whereas SRI programs are instruction in a particular religion and may include scriptural studies, and instruction in how to live and behave according to the tenets of the particular faith.**

The Department's website also notes that:

Each accredited provider prepares its own program materials for use during SRI. Given the religious nature of the content, the Department does not endorse such materials.

The Department's website also indicates that school principals are required to seek written advice from parents as to whether their child will participate in SRI and to ensure that parents are provided with information about the classes, including an overview of the program and how a parent may access relevant information about the program online.

The Department's website notes that education in government schools must be secular and must not promote any particular religious practice, denomination or sect, but this does not prevent the inclusion of GRE in the curriculum of a government school. It also notes, 'the only exception to secular education in government schools is SRI'.³

Assessment

This investigation is based on submissions from the complainants and from the Nine Network Australia (Nine) on behalf of the licensees and a copy of the broadcast provided to the ACMA by Nine. Other sources used have been identified where relevant.

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' viewer.

Australian courts have considered an 'ordinary reasonable' listener or viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person's general knowledge and experience of worldly affairs.⁴

The ACMA considers the natural, ordinary meaning of the language, context, tenor, tone, visual images and any inferences that may be drawn. In the case of factual material which is presented, the ACMA will also consider relevant omissions (if any).

Once the ACMA has applied this test to ascertain the meaning of the material that was broadcast, it then assesses compliance with the Code.

³ <http://www.education.vic.gov.au/school/principals/spag/curriculum/Pages/religious.aspx> - accessed 19 November 2014.

⁴ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.

Submissions

Submissions from the complainants are at **Attachment B**. Nine's submissions are at **Attachment C**.

Issue 1: Accuracy

Relevant code provision

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.

Finding

The licensees breached clause 4.3.1.

Reasons

The ACMA commonly analyses Code accuracy issues by asking the following questions:

- > What does the material convey to the ordinary reasonable viewer?
- > Was the material factual in character?
- > Was the (factual) material accurate?⁵

The considerations the ACMA generally uses in assessing whether broadcast material is factual in character are set out at **Attachment D**.

The ACMA has considered the complaints against the material broadcast in the segment. In doing so it has noted Nine's submission that the ACMA's findings should be based on an assessment of the actual content of the segment in its entirety, or the objective evidence, rather than assertions made by the complainants.

In its response to the complainants, Nine stated that 'much of the material presented was based on first-hand experience of parents, children and school principals [...]'. It submitted to the ACMA that the Reporter and interviewees used the language of opinion, it was readily identifiable as such and accurately presented.

Nine submitted to the ACMA that the segment sought to highlight to ordinary reasonable viewers that there were concerns about the nature of SRI provided by Access Ministries and cited the opening sequence, statements of parents and claims of the school Principal and the Reporter in support.

⁵ See figure 3 in [Investigations Concepts – Accuracy](#) report

Opening

The segment opened with the following question and statements:

Presenter: First, how much do you really know about what your children are being taught in school, especially when it comes to religious instruction?

[Reporter] joins us live. [Reporter], there's growing concern about the secretive methods of one organisation preaching in our classrooms. What have you discovered?

Reporter: Well [Presenter] they're paid millions of dollars by governments to deliver religious instruction in our state schools. Now, they're not meant to try and convert the kids, but critics say that's exactly what they're doing. They also stand accused of misleading parents and using secret codes to hide what they're really teaching our kids, and when the parents complain, this group calls in the lawyers. It's really quite extraordinary, let's take a look.

This opening sequence established that religious instruction, parental understanding of it, and the legitimacy of its provision by a particular provider (later revealed to be Access Ministries), were central to the segment. It also set the tenor and tone of the segment.

The impact of these opening statements and their interaction with the contextual material that followed is considered under five headings:

- a. Representations concerning religious instruction
- b. Representations concerning dishonesty and secretiveness
- c. Representations concerning funding
- d. Representations concerning permission to enter schools
- e. Representations concerning training

a. Representations concerning religious instruction

In essence, Complainant 1 and Complainant 3's claims are:

- > Statements in the segment that Access Ministries proselytise are false.
- > The broadcast portrayed that SRI should not teach children the basic tenets of the Christian religion, which is in fact permitted under SRI programs.
- > The underhand or subversive lessons reported in the segment actually covered the 'distinctive religious tenets and beliefs of Christianity' which is permitted.
- > The Principal said that material delivered by Access Ministries is not approved by the Department whereas the Department has accredited Access Ministries and has authorised an agreed syllabus.

The opening sequence

As noted above, the segment commenced with references to 'religious instruction' and potential lack of parental understanding.

Nine submitted that the opening made it clear that religious instruction and SRI are permitted, but that Access Ministries has been accused of attempting to convert children which it is not permitted to do. It further submitted that the segment did not convey that Access Ministries could not teach about a particular faith but questioned whether the activities of Access

Ministries went further, and whether parents would approve of the precise content and type of SRI provided by Access Ministries.

The opening statement was framed as a question, rather than a statement of incontestable fact. It referred to 'growing concern', anticipating contestable allegations. It continued, 'now they're not meant to try and convert the kids but *critics say* that's exactly what they're doing' and 'they also *stand accused* of misleading parents' (emphases added). This indicated that the statements were contestable and presented as allegations.

The ACMA considers that, through the distinct references to conversion and religious instruction, the ordinary reasonable viewer would have understood the opening sequence to mean that Access Ministries, which is authorised to provide religious instruction, has been accused of attempting to convert children, misleading parents and using secretive methods in the classroom.

The parents' statements

The proposition in the opening sequence was followed by statements from the Principal, and the Reporter, supported by interviews with two parents. The parents said, among other things (with emphases added):

- > 'They were overtly *evangelical* in their character, in their outlook.' (Parent 2)
- > 'Kids are coming home saying - Will you go to hell because you don't believe in God? Will our pets go to hell because animals don't have souls? Volunteers say things like, not to like Jews because Jews killed Jesus Christ, and that Muslims won't go to heaven because they worship a false God.' (Parent 1)
- > 'A lot of parents think their kids are being taught about many religions and that it's an education program, rather than an *instruction program where they're told what to believe.*' (Parent 1)
- > 'They are a deeply dishonest organisation. If parents really knew what was going on, they wouldn't sign their kids up for SRI.' (Parent 1)
- > 'There is no question that parents are gob-smacked when they find out that there's a *missionary* group running around handing out *evangelical* material to preps.' (Parent 2)
- > 'Access Ministries wants parents to believe that they are teaching about Christian tradition and how it connects to the values and traditions in Australia. And what they are actually doing is *missionary work* in the prep class. They are doing Sunday School on a Wednesday.' (Parent 2)
- > 'They tell our kids that Jesus is a real person that he can be your friend today.' (Parent 1)
- > 'They know that the average Mum and Dad wouldn't approve of what's going on in the classes.' (Parent 1)

Nine submitted that these statements were presented as the views or opinions of concerned parents. That is, the segment legitimately raised parental concerns that Access Ministries is making attempts to convert children or persuade children to adopt the beliefs of its specific strand of Christianity.

The parents' statements were presented as their subjective accounts of how the SRI classes operate, or contestable allegations that Access Ministries is doing something in SRI classes that it should not be doing. They were presented as the allegations foreshadowed in the opening sequence rather than specific, unequivocal facts capable of independent verification.

As the parents' statements were presented as contestable personal accounts they could not, in the context of the entire segment, be considered as assertions of fact to which clause 4.3.1 Code obligations apply.

The statements of the Principal and the Reporter

The Principal, an authoritative figure in the segment, made a number of references to the type of instruction being provided by Access Ministries and attributed motives to Access Ministries' actions. These all directly or indirectly endorsed the parents' statements. They added weight to the claims that Access Ministries is attempting to convert children and that it misleads parents into believing that the program is not an instructional program in the tenets of Christianity but a more general education program about Christianity (provided by external providers), or GRE (usually provided through the school curriculum as discussed above).

The Principal's statements included:

- > 'Access Ministries is clearly grooming children.'
- > 'There's an increasing number of principals who believe Access Ministries is an unfit organisation to be in our schools.'
- > 'Principals in schools for many, many years have just tolerated this.'
- > 'They simply want to implant in the minds of very young children certain religious beliefs, and, for these children to accept it, unquestioningly, as fact.'
- > 'They believe our public schools are mission fields for creating disciples.'
- > 'Access Ministry [sic] describes its program as education. It's not education. They describe their instructors as teachers, and they're not teachers. They claim their material in Victoria at least is approved by the Education Department. It's not.'
- > 'I think when it comes to Access Ministries, honesty is in short supply.'

These statements captured the concerns of the Principal and, reportedly, other school principals.

The statements dealing with concerns as to what Access Ministries does in schools were statements of opinion, personal judgement or comments made on another person's account. They were not specific, unequivocal and capable of independent verification and not factual assertions to which clause 4.3.1 applies.

However, the statements concerning Access Ministries describing its program as education when it actually provides religious instruction and about the lack of Departmental approval of its material, were specific, unequivocal and capable of independent verification. The Principal was presented as having inside and expert knowledge of the operation of Access Ministries in the public school system. His statements also independently confirmed the parents' allegations that Access Ministries misleads parents as to the nature of the religious instruction it provides. These statements were presented as factual, therefore, the obligations at clause 4.3.1 apply.

Nine submitted that the claim by a complainant that Access Ministries' materials are approved by the Department is incorrect, as the Department's website states that accredited service providers prepare their own program materials and the Department does not endorse such materials. The ACMA accepts this submission. The Principal's statement that the material was not approved by the Department, was therefore accurate.

The accuracy of the balance of the Principal's statements (about the nature of the 'education' Access Ministries claims to provide) is considered below in conjunction with the Reporter's statements.

The Reporter's statements included:

- > 'After years of allowing Access Ministries into his primary school, [the Principal] decided to investigate exactly what went on when the volunteers turned his classes into churches.'
- > 'Rather than teaching about religion, the Access Ministries' volunteers were attempting to convert the children to its own brand of fundamentalist Christianity.'
- > 'Online, Access Ministries presents itself as a volunteer organisation that works with state education departments to provide religious education. But [the Principal] says the reality is very different.'
- > 'Instead [the Principal] says that Access Ministries has an unspoken agenda, to use our schools to convert our kids, to fundamentalism.'

In the context of the opening sequence, and use of words such as '[the Principal] decided' and 'the Principal says' the Reporter's above statements were presented as re-statements of the Principal's concerns and were not endorsed or corroborated by the Reporter. They were attributed to the Principal and not expressed as independent assertions.

The Reporter made the following further assertions:

- > 'They're ducking for cover. This is the fanatical religious group on Australian soil. And they're hiding for good reason. Their dirty tactics are fast becoming exposed. Hidden codes. Fear campaigns. Misleading parents.'
- > 'Tonight we lift the lid on this secretive fundamentalist group accused of cult-like behaviour.'

Although some of these statements included colourful language, to which clause 4.3.1 does not apply, they also included assertions that Access Ministries misleads parents and uses hidden codes to convert children (discussed below). The assertion that Access Ministries misleads parents was specific, unequivocal and capable of independent verification. It was an assertion of fact. In the context of the segment in its entirety it also separately reinforced or asserted the claims by the parents, and the factual assertion of the Principal, concerning Access Ministries misleading parents as to the nature of religious instruction it provides. This factual assertion became the foundation on which a critical element of the program was built.

In the Reporter's statements about the use of hidden codes and the role of the 'evangelical' group Outreach and Church Ministries (discussed below), he also repeated the assertion that Access Ministries delivers 'the kind of religious instruction' the Department describes as unacceptable and that it delivers fundamentalist messages, reinforcing the critical factual assertion.

The factual assertions by the Principal and the Reporter that Access Ministries misleads parents as to the nature of the religious instruction it provides are inaccurate. Although it was clear that some parents have concerns over the nature of lessons, the ACMA considers that the activities of Access Ministries cited by the parents and the Principal are consistent with instruction in Christian beliefs which is permitted in SRI classes. Further, it is clear from the Department's website that information about SRI must be made available to parents and there are no first-hand accounts from parents who were actually misled as to the nature of the instruction provided by Access Ministries.

There is also no clear material in the broadcast clarifying the nature of SRI or that instruction in the tenets of a religious faith, and what to believe, is permitted.

Nine submitted that the omission of clarifying material on the role and legitimacy of SRI in Victorian schools did not result in an inaccurate presentation of factual material and it was evident that Access Ministries was entitled to provide SRI. The ACMA does not accept this submission. In conjunction with the contestable claims that Access Ministries was converting children and the factual assertion that it was misleading parents as to the nature of its lessons, the ACMA considers that the omission of clarifying information about the nature of SRI was materially misleading.

The above matters conveyed to the viewer a proposition that Access Ministries was converting children and misleading parents as to the nature of its instruction in a particular religion, including instruction in how to live and behave according to the tenets of the particular faith. In fact, instruction in religious beliefs was what Access Ministries was both entitled and expected to do within the Victorian education system.

Accordingly, the licensees have breached clause 4.3.1 in relation to representations in the segment concerning the religious instruction provided by Access Ministries.

As previously noted by the ACMA, in current affairs programs licensees are entitled to take a strong editorial stance. It may well be that some parents have concerns about the nature of religious instruction being provided in the State school system. It is legitimate for programs such as *A Current Affair* to report on such concerns, even in a partial or tendentious manner and to suggest, for example, that government support for SRI may be an inappropriate use of public funds. That said, in any current affairs broadcast, appropriate care must be taken where factual material is involved.

In general, the mere failure to state, or omission of, certain facts will not automatically render a broadcast inaccurate. Also, a broadcaster is not obliged under the Code to reveal all factual matters that might have a bearing on a particular matter, or even to be fair in the presentation of factual matters. However, such omissions become problematic when, as in this case, a program presents a range of material that encourages the viewer to infer the opposite of what is the case on a key factual matter, while avoiding any pointer that might suggest a different view is possible.

The ACMA considers such matters carefully, and on a case by case basis.⁶ An ordinary reasonable viewer is unlikely to give much attention to matters that are merely hyperbolic,

⁶ See Investigation Reports 1922 and 1953 (*TEN News at Five* broadcast on Ten in 2007), 1943 (*Channel Seven News* broadcast on Seven in 2007), 1952 (*National Nine News* broadcast on Nine in 2007) and 2803 (*Sunday Night* broadcast by Seven in 2012).

impressionistic or incidental. By contrast, omissions are likely to be more germane to matters that recur throughout a program, and/or which go to central contentions being made by program presenters. Thus, context and materiality will usually be key considerations.

In this case, the licensees had no obligation to present in detail, or even in a balanced way, how religion is taught in the Victorian education system. However, it can be noted that, if the segment had included a direct discussion of the role of SRI in the Victorian education system, the identified problems with the broadcast might have been avoided.

b. Representations concerning dishonesty and secretiveness

Complainants 1 and 3 claimed that the segment inaccurately portrayed Access Ministries as dishonest and secretive in that its instructional methods include the use of hidden codes to teach Christian beliefs.

The complainants asserted that Access Ministries complies with all Department regulations and policies as applicable to the delivery of SRI.

Nine denied that the segment conveyed that it had presented that Access Ministries is dishonest as a factual matter. Rather it said that:

[The segment] conveyed the views of a number of parents and a Principal that the organisation is dishonest.

On the allegations about Access Ministries 'sneaking' its own coded material in the syllabus, Nine submitted to the ACMA that:

The Victorian Department of Education notes in their policy materials in relation to SRI and, given the religious nature of the content, the Department does not endorse such materials.

[...]

The [segment] also presented the viewpoints of some parents and a school principal that they are concerned that the lesson material used by Access Ministries in SRI lessons is not suitable for children as children may not be able to distinguish between Christian tenets and beliefs on the one hand and what is presented in the materials as the absolute or literal truth on the other. The [segment] showed some examples to give context to their concerns, including materials featuring "brain games" and codes that children must crack to reveal hidden messages [...].

Nine further submitted that whether or not the use of hidden codes demonstrates secrecy and dishonesty is a matter of opinion, is a subjective matter and not an assertion of fact and it is open to the viewer to agree or disagree that the use of puzzles is misleading. Nine also submitted that if these were factual assertions, there is no evidentiary basis for finding that their use is a common teaching method and that the messages revealed are mainstream tenets of the Christian faith.

As indicated above, the opening sequence set the tenor of the segment and included the Reporter's critical assertion about Access Ministries' methods:

They also stand accused of misleading parents and using secretive methods to hide what they're really teaching our kids, and when the parents complain, this group calls in the lawyers. It's really quite extraordinary.

A scene followed in which the Reporter is shown unsuccessfully trying to contact Access Ministries, interspersed with comments from Parent 1:

They're a very secretive organisation. They won't answer questions.

This opening sequence established that secretiveness and dishonesty were key factors that would be presented in the segment.

Interviewee statements followed which alleged that Access Ministries is dishonest and is misleading parents. For example:

- > 'They are a deeply dishonest organisation. If parents really knew what was going on, they wouldn't sign their kids up for SRI.' (Parent 1)
- > 'I think when it comes to Access Ministries, honesty is in short supply.' (Principal)

Such interviewee statements were of themselves, subjective rather than factual. The Principal's statement was prefaced with 'I think'. Parent 1's statement was hypothetical or an expression of personal judgement. The statements were presented as the subjective and contestable views of the interviewees, based on their own observations and feedback from children attending the classes.

Similarly, some of the Reporter's assertions about Access Ministries' dishonesty or secretiveness were done by direct reference to the interviewee's contestable accounts by using language such as 'stand accused of' and 'she discovered'. Such material is also not factual for the purpose of the Code.

However, the Reporter's assertions that Access Ministries uses 'secret' and 'hidden' codes to reveal 'fundamentalist messages' were made not only with reference to the allegations of the parents but also to the factual assertions of the Reporter. He stated:

They're ducking for cover. This is the fanatical religious group on Australian soil. And they're hiding for good reason. Their dirty tactics are fast becoming exposed. Hidden codes. Fear campaigns. Misleading parents.

As discussed above, these statements included colourful language to which clause 4.3.1 does not apply. They also included assertions that Access Ministries misleads parents (discussed above) and uses hidden codes to convert children. The assertion that Access Ministries uses hidden codes to convert children is specific, unequivocal and capable of independent verification. It is, therefore, factual.

As indicated above, instruction in a particular religion (including instruction in how to live and behave in accordance with the tenets of a particular faith) is allowed in Victorian public schools under the Act. Further, it is widely recognised that giving children word puzzles to solve with answers that reinforce what is being taught, is a frequently used teaching method. This is a matter of common knowledge. The answers to the word puzzles, which appear in accompanying visuals, appear to be messages about mainstream tenets of the Christian faith (for example—'Jesus is alive! He can be our friend today!') that are permitted in the delivery of SRI.

Information about the nature of SRI is readily available to parents and they have a choice as to their child's participation in SRI in public schools. In the absence of evidence that parents have actually been misled, the assertion that presenting word puzzles as 'hidden codes' demonstrates the secrecy and dishonesty of Access Ministries, is inaccurate. Accordingly, the licensees breached clause 4.3.1 in relation to representations in the segment concerning Access Ministries' alleged dishonesty and secretiveness.

c. Representations concerning funding

Complainant 3 submitted that the statement that Access Ministries receives \$21 million funding from the Victorian Government for SRI is 'false'. According to this complainant:

State funding for SRI runs from July to June the following year. For the 2013-14 financial year, \$135,000 was received to be used in providing SRI in Victorian Government schools (no money was received from the Federal Government).

Nine has submitted to the ACMA that the relevant statement was accurate on the basis of information obtained from the following two sources:

Information provided on the Access Ministries website located at URL <http://www.accessministries.org.au/news/id/26>, which states in relation to school chaplaincy programs that "[f]unding from the Commonwealth is currently \$5.3 m per year and this goes towards salaries, administration and supervision" and for SRI programs, \$135,000 per year. The above figures equates to total government funding to Access Ministries of over \$21 million in the last four years.

An article by Konrad Marshall in The Age published online on 7 March 2014 located at URL <http://www.theage.com.au/victoria/pressure-builds-on-states-religious-instruction-educator-20140306-34aar.html>, which specifically states "*Financial statements from Access Ministries, the organization that also delivers 81 per cent of religious instruction in primary schools show that it received almost \$20 million in government grants between 2009 and 2012*" and "*Access Ministries chief executive [...] said the organisation expected to make a small surplus in 2013 - a year in which it received an additional \$4.1 million from state and federal governments*". Therefore, according to this article, Access Ministries received well over \$21 million in the last five years.

The relevant statement and footage (in bold) is:

Reporter: Week after week thousands of states around the country offer special religious instruction classes, also known as SRI. These classes are run by a number of tax-payer funded groups, including Access Ministries. **It receives millions of dollars [\$21 million captioned in the broadcast] from our state and federal governments.** But a backlash is brewing about the tactics Access Ministries employ once they're in front of our kids.

This is specific, unequivocal and capable of independent verification. It is a factual assertion.

The statement made by the Reporter and accompanying footage did not specify a period of time in which the \$21 million in state and federal government funding was received. However, in regard to other aspects of this statement, it would have been clear to the ordinary reasonable viewer that this figure related to funding provided by both state and federal governments and that the funding applied to the organisation generally (Access Ministries), as opposed to being a specific reference to state government funding for SRI classes in Victoria.

It is clear that Access Ministries receives 'millions of dollars' in funding as stated by the Reporter. Nine has argued that the figure of \$21 million accompanying the Reporter's statement is also correct on the basis of the total figures reported by the above sources that amount to about \$21 million.

In reference to the first source, Nine has applied a period of four years to reach a calculation that is close to \$21 million (the total figure on the basis of those provided by Access Ministries

over four years is \$21.6 million).

The second source has stated that Access Ministries received \$20 million over a three year period (2009 to 2012). In noting the additional funding it received in 2013 (\$4.1 million), Nine has argued that the figure is well over \$21 million 'in the last five years'.

Given that funding is commonly provided over a period of several years, the figure of \$21 million does not appear to be inaccurate as it is supported by the figures quoted in the above sources.

On this basis, the ACMA finds that the licensees did not breach clause 4.3.1 in relation to representations in the segment concerning funding.

d. Representations concerning permission to enter schools

Complainant 3 submitted that the statement that Access Ministries enters school without permission is 'false'.

Nine submitted to the ACMA that the segment did not make such a statement.

The segment did not include a statement that Access Ministries enters schools without permission. However, the segment did contain the following statement about Outreach and Church Ministries:

Reporter: Outreach and Church Ministries was banned from all Victorian schools back in 2013, because for years prior they had been coming into our schools without permission and delivering the kind of religious instruction that the Department of Education described as completely unacceptable.

As noted above, in the context of the segment in its entirety, it would have been clear to the ordinary reasonable viewer that Access Ministries is authorised to enter schools and deliver SRI classes.

Access Ministries and Outreach and Church Ministries are separate entities. This may not have been clear to some viewers in the early stages of the segment, given that the Presenter and Reporter's opening statements were followed with a statement from an Outreach and Church Ministries spokesperson:

Outreach and Church Ministries spokesperson: "We are the Evangelists [laughs]. I am the missing link".

This material would not have aided the viewer's understanding that Access Ministries and Outreach and Church Ministries are two separate organisations.

However, any confusion the viewer may have had about the association between these two organisations would have been clarified in the context of the segment in its entirety. For example, it was noted by the Reporter that Outreach and Church Ministries is a 'self-described evangelical' group that provides training to Access Ministries' instructor volunteers, conveying that it is a different entity.

The ordinary reasonable viewer would have also understood that while some parents have concerns about the teaching materials and the manner in which Access Ministries provides SRI classes, it is accredited by state and federal governments to provide these classes in state schools.

The ACMA is satisfied that the segment adequately differentiated between the two organisations and did not assert that Access Ministries has entered schools without permission.

On this basis, the ACMA finds that the licensees did not breach clause 4.3.1 in relation to representations in the segment concerning Access Ministries' permission to enter schools.

The assertion that Outreach and Church Ministries has been banned from all Victorian schools has not been disputed or raised as an issue by any of the complainants. Accordingly, this matter has not been pursued.

e. Representations concerning training

Complainant 3 submitted to Nine that statements that Access Ministries' volunteers receive only six to eight hours training and that it accredits Outreach and Church Ministries are 'false'. According to this complainant:

Access Ministries' volunteer instructors receive 2 days initial accreditation training, followed by one term of supervised classroom instruction. They also participate in ongoing Professional Development in order to retain their accreditation and enhance their teaching skills.

Access Ministries does not accredit OAC [Outreach and Church Ministries].

Nine submitted that:

[...] this information was sourced from the Access Website page located at URL <http://www.accessministries.org.au/events/category/cre-training>, providing information about a volunteer's training. It appears to Nine that the information on this page has changed since the date it was first accessed by the reporter, and Nine does not have a copy of the page as it appeared at the time of broadcast. However, even according to the information currently on the page, volunteers must attend two training sessions, Part 1 and Part 2. Each session runs for 5 hours with breaks for morning tea and lunch. Total training time is therefore up to 10 hours, which without breaks, Nine maintains amounts to approximately 6-8 hours of actual training.

[...] Nine denies that the Report conveyed that Access Ministries accredits OAC [Outreach and Church Ministries]. The Report actually stated that OAC Ministries provides training to Access Ministries volunteers, which Nine maintains was accurate having regard to the circumstances at the time of preparing and broadcasting the Report [...]

The relevant statement is:

Reporter: And here is where Access Ministries' tactics become even more concerning. For a start, their volunteers only receive between 6 to 8 hours of training before entering our schools, and that training is conducted by a self-described evangelical group called Outreach and Church Ministries. [...]

This statement was specific, unequivocal and capable of independent verification. It is factual material.

Information on the Access Ministries website indicates that volunteers receive an initial two days training followed by supervised classroom instruction and ongoing professional development.⁷ However, given the two accreditation training sessions would amount to

⁷ <http://www.accessministries.org.au/creteachers/become-a-christian-sri-instructor> - accessed 19 November 2014.

approximately six to eight hours of actual training over the two days, there is sufficient basis for the claim made in the segment. There does not appear to be any dispute from the complainant that a volunteer SRI instructor is then allowed to enter the classroom as an instructor. While the volunteers may initially be supervised in their first placement and undergo ongoing professional development, the omission of this information does not render the Reporter's statement inaccurate.

The segment does not include a specific statement that Access Ministries accredits Outreach and Church Ministries. While the above statement conveys that there may be some kind of association between the two organisations in terms of the SRI instructor training, it does not assert that Access Ministries has accredited Outreach and Church Ministries. It is understood that Access Ministries is authorised to accredit individuals (and not organisations) to deliver SRI.

On this basis the ACMA finds that the licensees did not breach clause 4.3.1 in relation to representations in the segment concerning training.

Remaining material

The complaints also raised concerns about the segment's failure to explain the basis of SRI participation and that the program was biased.

SRI Participation

Complainant 2 submitted that the program failed to mention that 'parents have to opt in to the [SRI] program rather than opt out, so they have freedom of choice to be involved or not'.

Complainant 1 submitted that:

children are only ever included where their enrolment records show their religion to be that of the SRI/SRE class, and where the parents have not chosen to "opt-out" of the class.

On this point, the licensees submitted to the ACMA that:

[We] understand that at the time of preparation and broadcast of the [segment], the Victorian Education Department's consent form required parents who did not want their child attending SRI classes to indicate this on the form by ticking an opt-out box. [We] understand that this position has changed since broadcast and now parents are only required to provide a consent form if they want their children to attend SRI classes.

In the segment the Reporter stated that Parent 1 had 'opted her daughter out of religious instruction' and that Parent 2 had 'opted his two daughters out of special religious instruction'.

The ACMA considers that this was factual material, as it was specific, unequivocal and capable of independent verification.

There appear to be differing views among the complainants as to how SRI participation should be categorised (as an opt-in or opt-out program). It is understood that changes have been made to the consent form for SRI classes as a result of a Ministerial direction in May 2014. These changes came into effect in July 2014 and the updated consent form requires parents to indicate if they want their child to participate in SRI and must include information on

how parents can access the SRI materials, the name of the instructor and their religious affiliations.⁸

However, in respect of statements made by the Reporter and the interviewees, the segment would have conveyed to an ordinary reasonable viewer that parents have a choice as to whether or not their child participates in the SRI program, a meaning that is accurate. Apart from the Reporter's statements conveying that parents have an element of choice, Parent 1 commented that parents 'sign their kids up for SRI'.

On this basis, the ACMA finds that the licensees did not breach clause 4.3.1 in relation to the Reporter's statements that the parents had opted to withdraw their children from SRI classes.

Bias

Complainant 2 also submitted that the segment was biased as the views of the disgruntled parents and the Principal were not balanced by the views of 'the many principals who are happy to have [Access Ministries] in their schools' and 'the hundreds of parents who are glad to have the help and support that [Access Ministries] offers to their children'.

Complainant 1 and Complainant 2 also considered that the segment should not have included the views of the retired Catholic priest as he is 'hardly an authority on the issue' and is not 'an adequate source of information on the Christian faith'. Complainant 2 considered this to be an example of bias and unfair reporting.

While there is a requirement under the Code that news programs are presented fairly and impartially, there is no such requirement under the Code in relation to current affairs programs. Under the Code, current affairs programs are not required to be balanced or impartial. Accordingly, complaints asserting lack of balance and bias have not been pursued in this investigation.

Issue 2: Proscribed material

Relevant code provision

1.9 A licensee may not broadcast a program, program promotion, station identification or community service announcement which is likely, in all the circumstances, to:

1.9.6 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.

Finding

The licensees did not breach clause 1.9.6 of the Code.

Reasons

Complainant 1 submitted that the segment was 'nothing short of "Christian bashing" and religious vilification'.

⁸ <http://www.education.vic.gov.au/about/department/legislation/Pages/sri.aspx> - accessed 3 February 2015.

Nine submitted that:

[It] denies that it provoked or perpetuated dislike, contempt or ridicule against any person or group of persons on any of the specified grounds (let alone meet [sic] the high benchmark set by the Code and ACMA) [...]

The ACMA's general approach to the interpretation of clause 1.9.6 of the Code is set out in **Attachment E**.

In determining whether the licensee has breached clause 1.9.6, consideration must be given to:

- > identification of the relevant person or group of persons and the relevant ground
- > whether or not the broadcast was likely to provoke or perpetuate intense dislike, serious contempt or severe ridicule against the relevant individual or group on that ground.

The relevant person or group of persons and the relevant ground

Given that Access Ministries is a Christian organisation that delivers SRI classes through volunteer instructors, the relevant group of persons for the purposes of clause 1.9.6 is persons working or volunteering for Access Ministries.

As the segment focused on Access Ministries' approach to teaching the Christian faith, the applicable ground is religion.

Provoke or perpetuate

The ACMA must consider whether the ordinary reasonable viewer would have been urged, stimulated or encouraged by the content to share or maintain feelings of dislike, contempt or ridicule (on grounds of religion) in relation to members of the organisation.

Incitement or provocation can be achieved through comments made about a person or group and there is no requirement for those comments to include a specific call to action. Similarly, there is no need to prove actual incitement or the intention to incite.⁹

The question is whether the segment broadcast had the *capacity* or *tendency* to provoke or incite others, in the sense of urging or promoting the audience to experience intense dislike, serious contempt or severe ridicule. Conduct that merely conveys a person's dislike, contempt or ridicule will not be enough to necessarily incite or provoke those same feelings in the audience.

There must be something more than an expression of opinion, something that is positively stimulatory of that reaction in others.¹⁰

In general, the segment was critical of Access Ministries. It included a range of critical descriptions, including references to it being a 'fanatical religious group', 'a fundamentalist group' and 'overtly evangelical in their character'. While the segment placed some focus on these aspects of a religious group, it was primarily concerned with whether parents are being

⁹ *Kazak v John Fairfax Publications* [2000] NSWADT 77 at [23-29].

¹⁰ *Trad v Jones & anor* (No 3) [2009] NSWADT 318 at [61].

misled as to nature of religious instruction that Access Ministries provides, as opposed to being critical of the Christian faith.

Further, the requisite element of provocation was absent from the segment. There was no engagement with the audience urging, stirring up or stimulating it to share feelings of dislike, contempt or ridicule on the ground of religion or on any other basis.

Intense dislike, serious contempt or severe ridicule

In any event, the clause establishes a high threshold for proscribed material, in that the content of the broadcast must be *likely, in all the circumstances*, to provoke or perpetuate *intense* dislike, *serious* contempt or *severe* ridicule (emphases added). The inclusion of the adjectives 'serious', 'intense' and 'severe' contemplates a very strong reaction to the prohibited behaviours. It is not sufficient that the broadcast induce a mild or even strong response.¹¹

The segment was critical of Access Ministries and its approach to religious instruction, and used some colourful language. The language used in this case primarily concerned the organisation's alleged dishonest, secretive and inappropriate teaching tactics, and not religious beliefs.

While it also included some language touching on the nature of its religious beliefs, such as 'fundamentalist' and 'evangelical', the language used in the segment was not sufficiently strong, extreme or vehement to arouse the strength of feeling contemplated at clause 1.9.6.

Although the material may have been capable of provoking or perpetuating negative feelings in some viewers towards Access Ministries on the basis of its alleged misleading of parents and its teaching practices, this is not a relevant ground for a breach under the Code. To the extent that any negative feelings might have been aroused on the basis of religion, the references to the organisation being 'secretive' and using 'tactics' to 'convert' children are not considered to have reached the high threshold test of inciting *intense* dislike, *serious* contempt or *severe* ridicule of the organisation on the grounds of religion.

Accordingly, the licensees did not breach clause 1.9.6 of the Code.

Issue 3: Public panic

Relevant code provision

4.3 In broadcasting news and current affairs programs, licensees:

4.3.2 must not present material in a manner that creates public panic.

Finding

The licensees did not breach clause 4.3.2 of the Code.

Reasons

Complainant 1 submitted that the segment:

¹¹ The ACMA has set out this test before in relation to the consideration of these elements of the code. See for example, Investigation 1909 (*Today Tonight* broadcast on Seven in 2007).

[...] had the real potential to cause public panic by portraying the Christian religious instructors and material as presenting information that should not have been presented to the children [...]

Nine submitted that:

The Segment sought to inform parents that SRI classes may not necessarily always be providing the type of religious instruction to their children that they authorised. Nine believes that ordinary reasonable viewers who became concerned after viewing the Segment may have done their own investigations and research into this matter, rather than panic.

The intention of clause 4.3.2 is to prevent licensees from presenting material that would have the result of causing relatively widespread fear in the general community. The language of clause 4.3.2 is such that, for a breach to have occurred, it must be demonstrated that the broadcast actually had the effect of causing panic within the community.

It is noted that the Presenter's and Reporter's opening and closing remarks would have suggested to parents that they should have some concerns with what their children are being taught in school by Access Ministries. For example:

Presenter: First, how much do you really know about what your children are being taught in school, especially when it comes to religious instruction?

[...]

Reporter: Well [Presenter] they're paid millions of dollars by governments to deliver religious instruction in our state schools. Now, they're not meant to try and convert the kids, but critics say that's exactly what they're doing. They also stand accused of misleading parents and using secret codes to hide what they're really teaching our kids, and when the parents complain, this group calls in the lawyers. It's really quite extraordinary, let's take a look.

[...]

Presenter: It's more than a little bit alarming, and if you're worried about what is being taught at your children's school, please let us know. [...]

As indicated above, the segment was critical of Access Ministries and its approach to religious instruction, and used some colourful language, including references to Access Ministries being a 'fanatical religious group', 'a fundamentalist group' and 'overtly evangelical in their character'. While the segment may have actively encouraged viewers to be concerned about their children's exposure to SRI provided by Access Ministries, there is no evidence that the broadcast caused fear in the general community. It therefore did not meet the high threshold of 'public panic' envisaged by the Code.

Accordingly, the licensees did not breach clause 4.3.2 of the Code.

Issue 4: Portray in negative light

Relevant code provision

4.3 In broadcasting news and current affairs programs, licensees:

- 4.3.10** must not portray any person or group of persons in a negative light by placing gratuitous emphasis on [...] religion. Nevertheless, where it is in the public interest, licensees may report events and broadcast comments in which such matters are raised.

Finding

The licensees did not breach clause 4.3.10 of the Code.

Reasons

Complainant 1 submitted that:

The story placed great negative emphasis on Access Ministries, its volunteer instructors, and Christian groups in general, based solely on the religion of the group and people, and the fact that they were teaching those religious beliefs in accordance with their obligations to the Department of Education.

Complainant 3 submitted that the segment:

[...] vilified the reputation and intent of Access Ministries and its Christian volunteer workers.

Nine submitted that:

Nine also denies that the Report portrayed any person or group of persons in a negative light by placing gratuitous emphasis on their religion.

In any event, we believe the public interest exceptions in clauses [...] 4.3.10 are relevant as the Report presented a fair report of the informed viewpoints of concerned parents, a principal and [the Priest] on a topic of clear public interest – public education in state schools.

Clause 4.3.10 establishes a two-part test to determine whether material broadcast is in breach. First, it must be established that the licensee portrayed a person or group of persons in a negative light by placing gratuitous emphasis on, in this instance, religion. If this is established, then the next question is whether the broadcast of that content was in the public interest.

The test in clause 4.3.10 is an objective test under which the material is judged from the perspective of an ordinary reasonable viewer.

In applying the first part of the test in clause 4.3.10 of the Code, the ACMA assesses whether the broadcast portrayed Access Ministries in a negative light, and if so, whether that negative portrayal was a result of the program placing gratuitous emphasis on religion.

It is considered that the ordinary reasonable viewer would have perceived a negative portrayal of Access Ministries, and that this was on the grounds of its approach to religious instruction in state schools, including the promotion of evangelical and fundamentalist messages in a way that is not made clear to parents. However, the ACMA is not satisfied that any negative portrayal was a result of the program placing *gratuitous* emphasis on religion. In coming to this conclusion, the ACMA has considered the ordinary English language meaning of the word 'gratuitous', as defined in the *Macquarie Dictionary (Sixth Edition)*:

gratuitous *adjective* 2. being without reason, cause, or justification

The segment's topic, on the whole, related to the organisation's methods and approach to religious instruction in schools. In this context, it is considered that referring to religion and Christian beliefs during the broadcast was necessary and justified. The views of the interviewees, the Presenter and the Reporter were relevant to the issue reported and could not be conveyed without some reference to religion.

Accordingly, the licensees did not breach clause 4.3.10 of the Code, and it is not necessary to consider whether the material broadcast was in the public interest.

Attachment A

Transcript

Presenter: First, how much do you really know about what your children are being taught in school, especially when it comes to religious instruction?

[Reporter] joins us live. [Reporter], there's growing concern about the secretive methods of one organisation preaching in our classrooms. What have you discovered?

Reporter: Well [Presenter] they're paid millions of dollars by governments to deliver religious instruction in our state schools. Now, they're not meant to try and convert the kids, but critics say that's exactly what they're doing. They also stand accused of misleading parents and using secret codes to hide what they're really teaching our kids, and when the parents complain, this group calls in the lawyers. It's really quite extraordinary, let's take a look.

OAC spokesperson: "We are the Evangelists [laughs]. I am the missing link".

Parent 1: All I'm trying to do here is get the truth across to parents.

Reporter: We're from a Current Affair. We rang about an interview. We couldn't get anyone to call us back.

Parent 1: They're a very secretive organisation. They won't answer questions.

Reporter: I actually just want to talk to somebody in charge.

Receptionist: I'm sorry, they're not available.

Retired Catholic Priest: You've got to be all transparent or nothing.

Reporter: They're ducking for cover. This is the fanatical religious group on Australian soil. And they're hiding for good reason. Their dirty tactics are fast becoming exposed. Hidden codes. Fear campaigns. Misleading parents.

Principal: Access Ministries is clearly grooming children.

Reporter: They're tax-payer funded and they're targeting young school children. And if anyone dares take them on, they'll drag you to court.

Parent 1: They want me to disappear.

Reporter: Tonight we lift the lid on this secretive fundamentalist group accused of cult-like behaviour.

Parent 2: They were overtly evangelical in their character, in their outlook.

Principal: There's an increasing number of principals who believe Access Ministries is an unfit organisation to be in our schools.

Parent 1: Kids are coming home saying - Will you go to hell because you don't believe in God? Will our pets go to hell because animals don't have souls? Volunteers say things like, not to like Jews because Jews killed Jesus Christ, and that Muslims won't go to heaven because they worship a false god.

Reporter: Week after week thousands of state schools around the country offer special religious instruction classes, also known as SRI. These classes are run by a number of tax-

payer funded groups, including Access Ministries. It receives millions of dollars [\$21 million captioned in the broadcast] from our state and federal governments. But a backlash is brewing about the tactics Access Ministries employ once they're in front of our kids.

Principal: Principals in schools for many, many years have just tolerated this.

Reporter: After years of allowing Access Ministries into his primary school, Principal [name of principal] decided to investigate exactly what went on when the volunteers turned his classes into churches.

Principal: Well they simply want to implant in the minds of very young children certain religious beliefs, and, for these children to accept it, unquestioningly, as fact.

Reporter: Rather than teaching about religion, the Access Ministries' volunteers were attempting to convert the children into its own brand of fundamentalist Christianity.

Principal: They believe our public schools are mission fields for creating disciples.

Parent 1: A lot of parents think the kids are being taught about many religions and that it's an educational program, rather than an instruction program where they're told what to believe.

Reporter: [Parent 1] has opted her daughter [...] out of special religious instruction over concerns about Access Ministries.

Parent 1: They are a deeply dishonest organisation. If parents really knew what was going on, they wouldn't sign their kids up for SRI.

Reporter: Online, Access Ministries presents itself as a volunteer organisation that works with state education departments to provide religious education. But [Principal] says the reality is very different.

Principal: Access Ministry [sic] describes its program as education. It's not education. They describe their instructors as teachers, and they're not teachers. They claim their material in Victoria at least is approved by the Education Department. It's not.

Reporter: Instead [Principal] says Access Ministries has an unspoken agenda, to use our schools to convert our kids, to fundamentalism. Officially, the organisation denies this, and volunteers are made to sign an agreement where they promise not to preach.

[screen image of excerpt – "Not attempt to convert students through proselytizing"].

Reporter: But listen to the way Access Ministries boss [CEO] described our state schools in the speech she gave to other fundamentalists.

CEO Access Ministries: "I believe that this is the greatest mission field we have in Australia our children and our students our greatest field for disciple making".

Principal: I think when it comes to Access Ministries, honesty is in short supply.

Parent 2: There is no question that parents are gob-smacked when they find out that there's a missionary group running around handing out evangelical material to preps.

Reporter: [Parent 2] has also opted his two daughters out of special religious instruction, after concerns that voluntary missionaries were taking the classes.

Parent 2: Access Ministries wants parents to believe that they are teaching about Christian tradition and how it connects to the values and traditions in Australia. And what they actually

are doing is missionary work in the prep class. They are doing Sunday school on a Wednesday.

Reporter: And here is where Access Ministries' tactics become even more concerning. For a start, their volunteers only receive between 6 to 8 hours of training before entering our schools, and that training is conducted by a self-described evangelical group called Outreach and Church Ministries. This is an OAC Ministries spokesperson:

"Evangelism is so risky that it's often the thing that's left out, and that's where our group, Outreach and Church Ministries can actually help, because we are the Evangelists. We are the missing link [looks strangely]. I am the missing link [laughs]."

Reporter: Outreach and Church Ministries was banned from all Victorian schools back in 2013, because for years prior they had been coming into our schools without permission and delivering the kind of religious instruction that the Department of Education described as completely unacceptable.

Parent 1: They tell our kids that Jesus is a real person, and he can be your friend today.

Reporter: [Parent 1] became so concerned about what was being taught by these volunteers she decided to do some digging.

Parent 1: I've actually bought the books for myself which has cost me hundreds of dollars.

Reporter: And that's when she discovered the most evangelical messages are literally hidden in codes, which the school children have to crack. So, if a parent or a teacher checks the books before they're given out to the kids, they may seem harmless enough. It's only once they're filled out that the fundamentalist messages become clear.

[screen image of books with puzzles and excerpt of message – "Jesus is alive! He can be our friend today!"].

Parent 1: I think parents need to see these materials.

Reporter: Which is why [Parent 1] decided to upload one of the course books to the Fairness In Religion In Schools website. But Access Ministries weren't willing to turn the other cheek.

Reporter: How does it feel being legally threatened by a tax-payer funded religious organisation?

Parent 1: It's really scary.

Reporter: Access Ministries are demanding [Parent 1] remove the work books from her website.

Parent 1: They know that the average Mum and Dad wouldn't approve of what's going on in the classes.

Retired Catholic Priest: You shouldn't sneak people in as, what, people whisperers or pastoral carers.

Reporter: [The Priest] is a local legend in Melbourne, and he believes our state schools are no place for missionaries.

Retired Catholic Priest: There's a bit of something going on in there. There's a bit of hanky panky going on in there somewhere.

Reporter: And, [the Priest] says Access Ministries is wrong to pass off fiction as fact.

Retired Catholic Priest: For God's sake don't start teaching children, especially very young children, that this is the literal truth. Because it ain't.

Reporter: For her part [Parent 1] says she won't be bullied by Access Ministries.

Parent 1: I'm just a Mum that's trying to do the right thing by other parents.

Presenter: It's more than a little bit alarming, and if you're worried about what is being taught at your children's school, please let us know. [...]

Attachment B

Complainants' submissions

Complainant 1 submitted to the broadcaster [all emphases added by the complainant]:

I am writing with regards to the story presented on A Current Affair on Wednesday 11th June 2014 regarding ACCESS Ministries and Special Religious Instruction classes in public schools.

Firstly let me say that any religious body that acts inappropriately in any way should be removed from our education system, and whilst some of the information allegedly presented by Access Ministries' volunteers may have been "too far" (e.g. teaching kids to hate Jews, etc.), the vast majority of your presentation was nothing short of "Christian bashing" and religious vilification.

The purpose of any Special Religious Instruction (or Special Religious Education in NSW) is to teach the specific beliefs of that religion, which is why there are often classes for Christian, Jewish, Muslim and even Buddhist in some schools. Children are only ever included where their enrolment records show their religion to be that of the SRI/SRE class, and where the parents have not chosen to "opt out" of the class. Finding that a Christian SRI/SRE class teaches about Jesus, God, Salvation, etc., is no stranger than finding a Muslim SRI/SRE class teaches about the Qur'an, Allah, Mohammad, etc.

Despite the rather outrageous comments by the (retired) [Catholic Priest], comments that are not supported by the Catholic Church for which he once worked (see attached), the core of the Christian religion is the belief that Jesus is the Son of God and that He not only lived and died, but that He was resurrected and lives today.

This is what all Christian SRI/SRE classes teach, because this is what the Christian religion is. There is in fact more historical evidence that Jesus was a real person than there is for many other ancient people that our kids are taught about every day, and yet your story ridicules our SRI/SRE classes for teaching this very fact! In fact, have you any proof whatsoever that what they teach is not true? Certainly the theory of evolution has never been proven or observed, and remains a theory, and yet you have no concerns about children being taught a theory that around 50% of secular scientists now admit may be wrong as pure fact!

The "hidden codes" are nothing more than games that supplement the SRI/SRE class and teach the Christian beliefs. This is exactly what SRI/SRE is intended to do!

If your team had done their homework prior to the story they would have found the following in relation to VICTORIA and SRI (emphasis added)
(<http://www.education.vic.gov.au/school/principals/spag/curriculum/pages/religious.aspx>):

The provision of special religious instruction in Victorian Government schools is legislated in Section 2.2.11 of the *Education and Training Reform Act 2006* (the Act).

The Act makes the following distinctions. It defines:

- general religious education as 'education about major forms of religious thought and expression characteristic of Australian society and other societies in the world
- **special religious instruction (SRI) as 'instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.'**

They would also have found this:

The Department engages two major organisations to administer the accreditation and approval of religious instructors. They are (1) Access Ministries, and (2) World Conference of Religions for Peace.

Access Ministries' religious instructors deliver Religion in Life® Christian Religious Education, which is an agreed syllabus representing 12 Christian denominations. Students receiving such instruction are not to be grouped for SRI according to denomination, but taught in their usual classes.

As you can see, the *Victorian Department of Education and Early Childhood Development* have **accredited** Access Ministries AND have **authorised** an **AGREED SYLLABUS**. This means that:

1. the statement by the school principal that the subject material is not approved by the Department of Education was **FALSE** and **MISLEADING**; and
2. the claims that ACCESS Ministries are 'sneaking' their own coded material in is also **FALSE** and **MISLEADING** as the syllabus they use is **APPROVED** by the Department of Education; and
3. the claims that specific religious beliefs should not be part of SRI are also **FALSE** and **MISLEADING** as the whole purpose of SRI is to teach the **distinctive religious tenets and beliefs**. [Emphases provided]

Your story falsely reported that they are teaching kids something they should not, when in fact it is the school principal that has failed to comprehend the purpose of the SRI programme and what the SRI groups are permitted to teach the kids.

The site also makes it clear that it is the **PRINCIPAL** who is responsible for ensuring that the parents are aware of the SRI, what it teaches, and to obtain approval for their child's enrolment in SRI. Obviously your reporter also failed to research this, or the fact that the religious education that the parent "thought" their child was receiving, the education in all religions, is in fact **General Religious Education**, a responsibility of the school, not of any religious body.

It would also seem that the actions of the principal in ceasing the SRI provided by [the organisation], and action your reporter encourages, is in breach of the *Victorian Department of Education policy on religious education*. Again from their website:

Principals must:

- obtain parental advice via the prescribed GC 566 form (PDF - 33Kb) (pdf - 32.68kb) for their child to participate or not participate in SRI
- **arrange for the provision of SRI where an accredited and approved instructor is available**
- ensure that attendance at SRI classes is not compulsory for any student whose parents request that he/she be excused from attending
- **schedule SRI in the school timetable (usually 30 minutes per week) when accredited and approved instructors are available**
- ensure appropriate supervision for students who attend SRI

[Emphases provided]

[...] the Department's own policy refers to the ACCESS Ministries volunteers as "religious instructors". From the online Merriam-Webster Dictionary (<http://www.merriam-webster.com/dictionary/instructor>):

in·struc·tor *noun* \in-'strək-tər\

- : a person who teaches a subject or skill : someone who instructs people
- : a teacher in a college or university who is not a professor

In NSW there are also two types of religious education in public schools: "General Religious Education", which covers all religions in a general term and is presented by the school (as in Victoria), and "**Special Religious Education**", which covers specific religions in more detail and is presented by the church/SRE provider, as in Victoria. All providers must be endorsed by the NSW Government and their syllabus must be approved before they can offer SRE in schools. The *NSW Department of Education & Training*, defines GRE and SRE in the following ways, in their document "*Religious Education Implementation Procedure*" (https://www.det.nsw.edu.au/policies/curriculum/schools/spec_religious/REimplementproced.pdf):

Special religious education is education in the beliefs and practices of an approved religious persuasion by authorised representatives of that persuasion.

General religious education is education about the world's major religions, what people believe and how that belief affects their lives. It is taught mainly through the school curriculum.

The document goes on to say:

Section 32 of the Education Act 1990 requires that 'in every government school, time is to be allowed for the religious education of children of any religious persuasion'.

And;

Where a religious persuasion was nominated on enrolment, the student is enrolled in a special religious education class of the religious persuasion identified on the student's enrolment record.

Your story was both misleading and false, was poorly researched, and achieved nothing more than "religion bashing" of the Christian beliefs. If there is a specific problem with an SRI/SRE provider then cover that and go after that provider only, not the entire syllabus and programme that has already been approved by the State Government and part of public schools for over 50 years (including the teachings that Jesus is real and you should honour God). In fact, it was the Christian church that first started school education in Australia!

Also, by looking at the letter shown on the story with regards to the "legal action" taken against the mother by Access Ministries, legal action that your reporter claimed was simply because she "questioned their practices", the action appears to be for "Copyright infringement", presumably because she posted copyright material on the internet for free download by others. I wonder, if I was to record a Channel Nine copyrighted programme and then post it to the internet for free, would Channel Nine take legal action for copyright infringement also? If so, would ACA run a story ridiculing Channel Nine for taking legal action because I simply asked a question? Is this presenting an accurate and fair portrayal of the story?

I believe that your story was in breach of the "*Commercial Television Industry Code of Practice*", specifically section 4 "*News and Current Affairs Programs*", which at 4.3 states:

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.

4.3.2 must not present material in a manner that creates public panic;

The story failed to present factual material accurately, in the context of the segment in its entirety, in that it portrayed only Access Ministries offer[s] religious education based on the Christian core beliefs (in fact it claimed they were “their [Access Ministries] version of Christianity”, that the Department of Education do not in any way authorise the content, and that Special Religious Instruction should not teach children the basic tenets and beliefs of the Christian religion, all of which is contradicted by the Department of Education’s own website and the authorised practices of every Christian SRI/SRE provider in Australia. In addition, it had the real potential to cause public panic by portraying the Christian religious instructors and material as presenting information that should not have been presented to the children, when in fact the information given is exactly what the SRI class is supposed to teach.

Furthermore, 4.3.10 of the Code of Practice states:

4.3.10 must not portray any person or group of persons in a negative light by placing gratuitous emphasis on age, colour, gender, national or ethnic origin, physical or mental disability, race, religion or sexual preference. Nevertheless, where it is in the public interest, licensees may report events and broadcast comments in which such matters are raised;

The story placed great negative emphasis on Access Ministries, its volunteer instructors, and Christian groups in general, based solely on the religion of the group and people, and the fact that they were teaching those religious beliefs in accordance with their obligations to the Department of Education. In one statement the reporter [...] even went as far as to state that they should “not present fiction as fact”, and whilst he referred to [the retired Catholic Priest], this comment still places a negative emphasis on the religious beliefs of the majority of the population and should not have been repeated by the ACA reporter, who was allegedly “impartial”. Whether the “atheist fundamentalists” at ACA and Channel Nine like it or not, Australia is and always has been a Christian nation. Our country’s Constitution begins with the words:

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God...

Sir Henry Parkes, Father of Federation, said:

As we are a British people - pre-eminently a Christian people as our laws, our whole jurisprudence, our Constitution are based upon and interwoven with our Christian belief, and as we are immensely in the majority, we have a fair claim to be spoke of at all times with respect and deference.

And, Sir John Downer said:

This Commonwealth of Australia from its first stage will be a Christian Commonwealth.

In closing I would suggest that you research the information shown at http://christiantruths.net/christian_nation.php, in particular the graphs at the bottom that show the changes that occurred in the USA when God and prayer were removed from public schools in 1963. It is a warning to us in Australia on what we could face if poorly researched and presented stories such as yours keep airing and causing a problem where none exists.

Complainant 1 subsequently referred the matter to the ACMA, stating that:

[...]

My complaint to Channel Nine primarily claimed a breach of the Code of Practice, section 4.3, in that it failed to provide factual material.

As you can see from my original complaint to Channel Nine, their report involved Special Religious Instruction in public schools, particularly in Victoria, although the report did not necessarily make that distinction clearly. It reported how parent(s) (although only 1 was shown) and a principal believed the organisation ... were trying to "create disciples" by teaching specific Christian doctrine, although again the report indicated it was "their version" of Christianity. In particular it isolated books that "contained codes" such as "Jesus is real" and "honor God", beliefs that are core to the Christian religion.

What the report failed to advise was that this is exactly the purpose of Special Religious Instruction in our public schools. My letter to Channel Nine directed them to information from the Victorian Department of Education that clearly states:

The provision of special religious instruction in Victorian Government schools is legislated in Section 2.2.11 of the *Education and Training Reform Act 2006* (the Act).

The Act makes the following distinctions. It defines:

- general religious education as 'education about major forms of religious thought and expression characteristic of Australian society and other societies in the world
- **special religious instruction (SRI) as 'instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.'**

The lessons that ACA reported, allegedly teaching our children "religion", were indeed covering the "*distinctive religious tenets and beliefs*" of Christianity, which is exactly what the *Victorian Education and Training Reform Act 2006* stipulates. However, this was never reported in the story, and in fact the organisation was ridiculed for doing precisely that.

Furthermore the story reported that the material used by Access Ministries is not approved by the Department of Education, yet the Department's own website states:

The Department engages two major organisations to administer the accreditation and approval of religious instructors. They are (1) ACCESS Ministries, and (2) World Conference of Religions for Peace.

ACCESS Ministries religious instructors deliver *Religion in Life*® Christian Religious Education, **which is an agreed syllabus representing 12 Christian denominations**. Students receiving such instruction are not to be grouped for SRI according to denomination, but taught in their usual classes.

The response by Channel Nine that Access Ministries was given the opportunity to comment is, in my opinion, not an excuse for failing to report information that the research staff should have easily found. The story should never have gone to air, and the parent(s) advised that what they claimed to be incorrect instruction in religion was actually exactly what the Government stipulated SRI must include, yet Channel Nine chose to present the factually incorrect views of those few involved without once balancing that against factual material readily available from the Department of Education.

Furthermore, their reliance on a retired and outspoken priest [the retired Catholic Priest], a priest that was forced into retirement by the Catholic Church, is not an adequate source of information on the Christian faith. There is no doubt whatsoever that had Channel Nine actually asked the Catholic Church, rather than a priest they forced out, or indeed one of any number of other Christian churches, they would have been told that what Access Ministries was teaching was indeed the "distinctive religious tenets" of Christianity. One only has to

Google to find that information, or look at the material used in other states by special religious bodies, as most use common material.

The information presented, and the information left out, made the Christian religious education groups around Australia look like they were doing something illegal and underhanded. This is plain wrong, and not supported by the Victorian (and NSW) education department websites and information. The story they presented may indeed have been the "first-hand" views of several people, but surely a commercial television network current affairs program has a moral and legal responsibility to research these claims first, and where that research identifies an incorrect view by those people, a responsibility not to provide an Australia-wide platform from which they can promote views that are not supported by fact.

Complainant 2 submitted to the broadcaster:

I write to you in response to the story in last night's Current Affair.

I was amazed at the obvious bias in the presentation of the story about Access Ministries. This was a story without a shred of fairness, which I thought was a given in good journalism.

I cite the following examples:-

1. The principal who indicated some problems was not balanced by the many principals who are happy to have A.M. in their schools.
2. The parent who objected to A.M. was not balanced by the hundreds of parents who are glad to have the help and support that A.M. offers to their children. The image of the mother and child leaving the school gate was rather contrived and did not mention that parents have to opt in to the program rather than opt out, so they have freedom of choice to be involved or not.
3. The image of the lesson material was a clumsy way to imply some sort of subversive doctrine and mind control. The idea of a God who loves us is hardly offensive and has been the centre of Judae-Christian belief upon which our culture and Western civilization has been built. To try to rewrite history and expunge this notion is not the role of the press. People can choose for themselves, but unless they are exposed to the possibility there is no choice.
4. The issue of training for volunteers was presented as being inadequate. I know several volunteers who are retired professional teachers, so here is another example of lack of balance in the story.
5. The images of the officers of A.M. were not put in context of place or time, and I suspect were borrowed from the archives. It is misleading to present a local problem as a general one. Good journalism gives specific instances rather "tarring everyone with the same brush".
6. The last straw was when [the Priest] was wheeled out as the final word. This is just lazy journalism, because he is hardly an authority on this issue.
7. Having worked as a school chaplain for 27 years in a number of school settings here in Victoria, I feel I have some insight into the function of the Christian ministry within an educational setting, particularly in regard to pastoral care. Even your own [name of television presenter] has been a guest speaker at my fundraiser dinner.

The argument that chaplains should be replaced by psychologists may at first sound convincing, but where can you get a psychologist at chaplaincy prices.

So at best the treatment of the issue on Wednesday was simply sloppy journalism, quite unworthy of a Current Affair.

If on the other hand it reflects a deliberate attack on the Christian values of faith, hope and love, it should be declared in the station's editorial policy.

To declare that faith has no part in education is to say that mathematics is the only legitimate subject to be taught in schools.

All other subjects, yes even science itself, depends on opinion and belief, ever changing and hopefully improving.

Perhaps we are facing a crisis in society, with violence and meaninglessness, because we are abandoning that faith hope and love.

[...]

Complainant 2 subsequently referred the matter to the ACMA, stating that:

I herewith submit a copy of a complaint I made to TCN Nine regarding an item on Current Affair on 11th. June 2014. Today I received a reply simply stating the code of practice and the belief that they had treated the story fairly. Regardless of ones religious beliefs, I still believe the bias was obvious and refer the matter to a higher court, the ACMA.

Their justification for the story was a complete “brush off.”

Complainant 3 submitted to the broadcaster:

I wish to record my objection to [the segment] which, I feel, vilified the reputation and intent of Access Ministries and its Christian volunteer workers.

The [segment] was misleading [...] We might teach the fundamental truths of Christianity but we are not members of a Fundamentalist Cult as was stated. The work books we use might have accepted practice of codes to revise lessons but they are not a secret language used by us or Access Ministries.

Access Ministries is an ecumenical organisation which provides Christian Instruction in schools through trained volunteer workers and Courses of Instruction in line with the Department of Education guidelines. There is nothing hidden about their goals or the Christian values that they uphold. Their openness to scrutiny has been misrepresented.

Some of the information stated on the program was more than misleading, it was wrong (some would say even a deliberate lie). I have been told that Access Ministries received \$135,000 from the State Government over the last financial year – nothing from the Federal Government. Nowhere near the \$21 million government money as stated on the program.

I feel sorry for the spokesperson who has been deceived by unnamed persons into thinking that there is something subversive about Access Ministries. I feel sorry for those viewers who depend on current affairs programs such as yours for information on subjects outside their realm who now believe, without any credible facts, that children who attend SRI classes are at risk.

I do not know how you, as Program Manager, could have sanctioned this program and deemed it suitable to go to air without first checking the credentials of people making these accusations or considering the journalism – the story was handed to you on a plate! It was not even current affairs – it presented individuals' unsubstantiated fears as news.

I would like to hear from you, as Program Manager, to explain why Access Ministries and all SRI volunteers should not receive an apology for the broadcasting on channel 9 of a program that you sanctioned that vilified Access Ministries, SRI volunteers and the SRI – Christian program in schools.

In a subsequent letter to the station, the complainant submitted:

I have come across some information regarding The Current Affairs program shown at 7pm on Wednesday, June 11th in relation to my concerns that some facts were not only misleading

but untrue. I have enclosed my original letter and hope that this additional information will lead to an explanation as to why you allowed such erroneous material to be aired on your program and what you might do to rectify this matter.

The following are some of the statements made on the program that are not true:

Statement 1: That Access Ministries enters schools without permission is FALSE.

Every accredited Access Ministry volunteer has received Departmental approval to deliver Special Religious Instruction (SRI) programs. No volunteer participates without approval or permission.

Statement 2: That Access Ministries volunteers proselytise during SRI classes is FALSE.

Access Ministries forbids proselytising within schools and all SRI teachers are clearly instructed that this is the case. (A review commissioned by the then Commonwealth Minister Peter Garrett, and another conducted by HLB Mann Judd for the State Education Department in 2011, found no evidence of proselytising.)

Statement 3: That Access Ministries receives \$21 million of funding for SRI is FALSE.

State funding for SRI runs from July to June the following year. For the 2013-14 financial year, \$135,000 was received to be used in providing SRI in Victorian Government schools. (No money was received for SRI from the Federal Government).

Statement 4: That Access Ministries volunteers receives only 6-8 hours training is FALSE.

Access Ministries' volunteer instructors receive 2 days initial accreditation training, followed by one term of supervised classroom instruction. They also participate in ongoing Professional Development in order to retain their accreditation and enhance their teaching skills.

Statement 5: That Access Ministries accredited OAC is FALSE.

Access Ministries does not accredit OAC.

Statement 6: That Access Ministries is a deeply dishonest organisation is FALSE.

Access Ministries comply with all Department Regulations and Policies as applicable to the delivery of SRI. Information and sample curriculum are available on the Access Ministries website.

Parents freely choose to have their children participate in the program. The Access Ministries SRI program was presented by 2,500 volunteers to around 90,000 children in nearly 800 Victorian schools in 2013. All of these people have been affected by the program that you allowed to air on June 11th that also misled your viewers into believing that Access Ministries and its volunteer instructors are dishonest and that the SRI program has a hidden agenda – a frightening prospect for any parent and disrespectful to all SRI volunteers.

[...]

Complainant 3 subsequently referred the matter to the ACMA, stating that:

[...] I felt that [the segment] contained erroneous material that was misleading and was detrimental to how the public perceives the work of ACCESS MINISTRIES and its volunteers. The public reputation of ACCESS Ministries is important to uphold because parents make the choice on behalf of their children as to whether their children attend Special Religious Instruction (SRI) classes or not. I feel that this segment deliberately misled the public into questioning the integrity of Access Ministries as a Christian organisation.

[...]

Attachment C

The licensees responded to each of the three complainants as follows:

[...]

The Segment reported on how the organisation Access Ministries delivers special religious instruction (or SRI) classes in state schools around Australia. Much of the material presented in the Segment was based on the first-hand experiences of parents, children and school principals, amongst whom there is growing concerns about the organisation's delivery of some of these classes and whom want to educate other parents.

Your complaints raise issues of discrimination, bias and inaccuracy, which are covered by the Commercial Television Code of Practice ('Code').

For the reasons set out below, we believe that the Segment was presented accurately and fairly and did not discriminate on any ground and accordingly we maintain that we complied with the Code.

[...]

Bias and inaccuracy

4.3.1 "In broadcasting news and current affairs programs, licensees must broadcast factual material accurately and represent viewpoints fairly having regard to the circumstances at the time of preparing and broadcasting the program",

The Australian Communications and Media Authority (the 'ACMA') regulates compliance with the Code. In prior investigations, the ACMA has held that the requirement to represent viewpoints fairly does not prevent current affairs programs from taking a particular editorial stance or presenting only a particular point of view.

As noted above, the Segment focused on the provision of SRI classes by some [the organisation] volunteers and the content of their classes. As also noted above, much of the material presented was based on the first-hand experiences of principals, children and parents in state schools (particularly those in Victoria).

In this context, Nine maintains that the factual material presented in the Segment was done so accurately and supported by evidence. To the extent the Segment featured the viewpoints of interested persons (including a representative voice of Christianity in the form of [the Priest]), Nine also maintains that these viewpoints were portrayed fairly. Further, we provided Access Ministries with ample opportunities to be interviewed and respond to the Segment, however they declined to participate in an interview.

Discrimination

The Code provides that a broadcaster must not:

1.9.6 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.

In previous investigations, the ACMA has held that the above provision sets a high threshold and that content must be strong to meet the benchmark of 'intense, serious or severe.' There are also a range of exceptions to this requirement, including a fair report on any event or matter of identifiable public interest.

Further and as you provide in your letter, the Code provides in relation to news and current affairs programs specifically that broadcasters:

4.3.10 "must not portray any person or group of persons in a negative light by placing gratuitous emphasis on age, colour, gender, national or ethnic origin, physical or mental disability, race, religion or sexual preference". Nevertheless, where it is in the public interest, licensees may report events and broadcast comments in which such matters are raised.

Having reviewed the footage of the Segment, Nine denies that it provoked or perpetuated dislike, contempt or ridicule against any person or group of persons on any of the specified grounds (let alone meet the high benchmark set by the Code and ACMA) or portrayed any person or group of persons in a negative light by placing gratuitous emphasis on their religion.

In any event, we believe the public interest exception is relevant as the Segment presented a fair report of the informed viewpoints of concerned parents, principals and [the Priest] on a topic of clear public interest. Accordingly, we do not believe the Segment breaches clauses 1.9.6 or 4.3.10 of the Code in this instance.

[...]

The licensee's response to Complainant 1 also included:

Public panic

As you note in your letter, the Code provides that broadcasters:

4.3.2 must not present material in a manner that creates public panic.

ACMA has previously stated in an investigation that this clause is intended to prevent broadcasters from presenting material that would have the result of causing relatively widespread fear and terror in the general community in the form of the high threshold of 'public panic'. In this context, Nine maintains that the Segment was not presented in a manner that caused public panic. The Segment sought to inform parents that SRI classes may not necessarily always be providing the type of religious instruction to their children that they authorised. Nine believes that ordinary reasonable viewers who became concerned after viewing the Segment may have done their own investigations and research into this matter, rather than panic.

Further, ACMA has previously stated in an investigation that the language in clause 4.3.2 is such that for a breach to have occurred, it must be demonstrated that the broadcast actually had the effect of causing panic within the community. Nine is not aware of any evidence of actual instances of public panic regarding this matter caused by the broadcast of the Segment.

In light of our investigations, we believe that the material in the Segment was accurate, fair and did not discriminate on any ground or create public panic and we therefore maintain we have complied with the Code.

[...]

Nine submitted to the ACMA:

[...]

3. As part of Nine's response, you have also specifically requested that we provide particulars as to the information relied on regarding the following statements made by the reported:
 - a. Access Ministries 'receives millions of dollars [\$21 million captioned in the broadcast] from our state and federal governments'; and
 - b. Access Ministries "'volunteers only receive 6-8 hours of training before entering schools".
4. In regards to the first statement made by the reporter in paragraph 3(a) above, this information was sourced from:
 - a. Information provided on the Access Ministries website located at URL <http://www.accessministries.org.au/news/id/26>, which states in relation to school chaplaincy programs that "*ffunding from the Commonwealth is currently \$5.3 m per year and this goes towards salaries, administration and supervision*" and for SRI programs, \$135, 000 per year. The above figures equates to total government funding to Access Ministries of over \$21 million in the last four years; and
 - b. An article by Konrad Marshall in The Age published online on 7 March 2014 located at URL <http://www.theage.com.au/victoria/pressure-builds-on-states-religious-instruction-educator-20140306-34aar.html>, which specifically states "*Financial statements from Access Ministries, the organization that also delivers 81 per cent of religious instruction in primary schools show that it received almost \$20 million in government grants between 2009 and 2012*" and "*Access Ministries chief executive [...] said the organization expected to make a small surplus in 2013 - a year in which it received an additional \$4.1 million from state and federal governments*". Therefore, according to this article, Access Ministries received well over \$21 million in the last five years.
5. In regards to the reporter's second statement in paragraph 3(b) above, this information was sourced from the Access Website page located at URL <http://www.accessministries.org.au/events/category/cre-training>, providing information about a volunteer's training. It appears to Nine that the information on this page has changed since the date it was first accessed by the reporter, and Nine does not have a copy of the page as it appeared at the time of broadcast. However, even according to the information currently on the page, volunteers must attend two training sessions, Part 1 and Part 2. Each session runs for 5 hours with breaks for morning tea and lunch. Total training time is therefore up to 10 hours, which without breaks, Nine maintains amounts to approximately 6-8 hours of actual training.
6. At the outset, Nine maintains that the Report complied with clauses 1.9.6, 4.3.1, 4.3.2 and 4.3.10. Nine's reasons supporting compliance with each clause are set out in more detail below, in each case with reference to the specific relevant allegations made by each of the three complainants We also note that the report related to important matters of public interest, including the education provided to children in government schools, the provision of religious education to children in government schools, and the content and appropriateness of programs being funded by taxpayers and government.

4.3.1

7. [...]

8. Nine maintains that in broadcasting the Report, it broadcast factual material accurately and represented viewpoints fairly, having regard to the circumstances at the time of the Report's preparation and broadcast, for the reasons set out below.

[Complainant 1]

9. In his complaint to the ACMA, [Complainant 1] alleged generally that the Report failed to provide certain factual details of the subject represented, which he maintained resulted in the Report being inaccurate.
10. In prior investigations, the ACMA has acknowledged that clause 4.3.1 of the Code does not prohibit current affairs programs from taking an editorial stance on matters upon which it reports. This clause also does not require broadcasters to include all factual details in relation to the subject matter, as long as the omission of that material does not impede the accuracy of factual material that is included. Provided the factual information that a licensee presents is accurate in the circumstances at the time of broadcast, failure to include all factual details on the subject presented does not amount to a breach of the code.
11. Accordingly, Nine submits in response to [Complainant 1's] allegation in paragraph 9 above that the material Nine presented was accurate, the alleged omission of facts to which the complainant refers did not render it inaccurate, and Nine was not obliged to include that extra material specified by the complainant.
12. Further, [Complainant 1] specifically alleges in his complaint to the ACMA that:
 - a. The Report did not convey that the content of the special religious instruction provided by Access Ministries covers "distinctive religious tenets and beliefs" of Christianity, as stipulated in section 2.2.11 of the *Education and Training Report Act 2006*;
 - b. The Report incorrectly reported that material used by Access Ministries is not approved by the Victorian Department of Education;
 - c. Nine failed to provide full factual details of the subject presented by only presenting the views of a few parents and a principal whom, in the complainant's view, had failed to research the purpose of special religious instruction in schools; and
 - d. The reliance on information from [the Priest] was 'not an adequate source of information on the Christian faith'.
13. In response to each of the above allegations:
 - a. Nine denies [Complainant 1's] allegation in paragraph 12(a). As stated above, the omission of material does not constitute a breach of clause 4.3.1, as long as the factual material presented is accurate having regard to the circumstances at the time of preparing and broadcasting it.

Further, the Report did convey that Access Ministries is a government-backed provider of SRI in State Schools around Australia (even if it did not refer specifically to the legislative basis in Victoria). Relevantly, the reporter states the following in the Report:

"Week after week thousands of State schools around the country offer special religious instruction classes, also known as SRI. These classes are run by a number of taxpayer funded groups, including Access Ministries. It receives millions of dollars from our state and federal governments."

Nine submits that the ordinary reasonable viewer would understand therefore that Access Ministries is an approved provider of SRI due to some form of government protocol or legislative basis in each state (such as the Education and Training Reform Act 2006 in Victoria referred to by the complainant). Therefore, Nine maintains that it did not breach clause 4.3.1 of the Code.

- b. Nine denies the complainant's allegation in paragraph 12(b) above. In the Report, principal [name of principal] stated "[Access Ministries] claim their material, in Victoria at least, is approved by the Education Department. It's not". The Victorian Department of Education notes in their policy materials in relation to SRI and, given the religious nature of the content, the Department does not endorse such materials. Accordingly, Nine maintains that it did not breach clause 4.3.1 of the Code.
 - c. In regards to the allegation in paragraph 12(c) above, Nine refers to its submissions in paragraphs 10 and 11 above.
 - d. In regards to [Complainant 1's] allegation in paragraph 12(d) above, Nine denies that it 'relied' on [the Priest] and that the inclusion of the opinion of [the Priest] resulted in any factual inaccuracy or otherwise resulted in a breach of the Code. The Report merely presented [the Priest's] views on the relevant topic, which it was perfectly entitled to do, and did so fairly having regard to the circumstances at the time of preparing and broadcasting the Report. It is open to the viewer to agree or disagree with his opinion, as with the opinion of any person.
14. Nine notes that [Complainant 1] also alleged in his complaint to Nine that commercial television network current affairs programs have "a moral and legal responsibility to research claims first and, where the research identifies an incorrect view by those people, a responsibility not to provide an Australia-wide platform from which they can promote views that are not supported by fact." Current Affairs programs are perfectly entitled under the Code to present the opinions of people, as long as these people's viewpoints are presented fairly and distinguishable from factual material, which itself must be presented accurately.
15. Nine maintains that the presentation of fact and opinion in the Report was easily and readily distinguishable to the ordinary reasonable viewer. Each person whose view was presented in the Report was identified by name and context (e.g. parents, principals and [the Priest]), the reporter and each of these people used language attributable to the giving of opinions, and the beginning of the report introduced the subject matter in a way which would assist viewers in realizing that much of the content of the Report was presenting the views of 'critics' of the SRI program provided by Access Ministries. In each case, such opinion was readily identifiable and distinguishable from the factual material presented.

[Complainant 2]

16. In his complaint to Nine, [Complainant 2] alleged that the Report was biased and unfair. As stated above, *A Current Affair* is permitted to take an editorial stance in presenting current affairs programs. As the Report was not part of a news program, the provisions of the code in clause 4.4 do not apply.
17. In his complaint, [Complainant 2] specifically alleged the following:
- a. The Report did not provide the views of "many principals who are happy to have Access Ministries in their schools";
 - b. The Report did not provide the views of "hundreds of parents who are glad to have Access Ministries in their schools";

- c. The Report did not mention that “parents have to opt in to their children receiving special religious instruction rather than opt out and that they therefore have freedom of choice to be involved or not”;
- d. “the image of the lesson material was a clumsy way to imply some sort of subversive doctrine and mind control” and the Report tried to “rewrite history and expunge the notion [that God loves us]”;
- e. The Report did not adequately present the issue of training of volunteers;
- f. The context of images of Access Ministries officers [sic] in the Report, which “misleadingly presented a local problem as a general one”; and
- g. The Report should not have included an opinion of [the Priest] as he is ‘hardly an authority on this issue’.

18. In response to each of the above allegations:

- a. In regards to the allegation in paragraph 17(a) above, Nine refers the ACMA to its submissions in paragraphs 10 and 11 above;
- b. In regards to the allegation in paragraph 17(b) above, Nine refers the ACMA to its submissions in paragraphs 10 and 11 above;
- c. In regards to the allegation in paragraph 17(c) above, Nine refers the ACMA to its submissions in paragraphs 10 and 11 above and states further, that at the time of preparing and broadcasting the Report, it was Nine’s understanding that a parent had to opt out their child from receiving SRI (at least in Victoria) rather than opt their child in. Firstly, section 2.2.11(2)(c) of the *Education and Training Reform Act 2006* provides that if “*special religious instruction is given in a government school during the hours set apart for the instruction of the students, attendance for the special religious instruction is not to be compulsory for any student whose parents desire that he or she be excused from attending*”. Further, Nine understands that at the time of preparation and broadcast of the Report, the Victorian Education Department’s consent form required parents who did not want their child attending SRI classes to indicate this on the form by ticking an opt-out box. Nine understands that this position has changed since broadcast and now parents are only required to provide a consent form if they want their children to attend SRI classes;
- d. Nine denies the allegation made by [Complainant 2] in paragraph 17(d). Nine submits that the Report presented that Access Ministries’ volunteers are contractually obliged not to attempt to convert children. The Report also presented the viewpoints of some parents and a school principal that they are concerned that the lesson material used by Access Ministries in SRI lessons is not suitable for children as children may not be able to distinguish between Christian tenets and beliefs on the one hand and what is presented in the materials as the absolute or literal truth on the other. The Report showed some examples to give context to their concerns, including materials featuring “brain games” and codes that children must crack to reveal hidden messages, such as “Jesus is alive! He can be our friend today!”, “God always keeps his promises!”, “Don’t worry about anything but pray about everything ...” and “Everyone should honour the Lord... As soon as he spoke the world was created...”. Accordingly, Nine denies the complainant’s allegation. Rather, Nine maintains that the presentation of this material was factually accurate, and fairly represented the viewpoints of the parents and persons interviewed in the Report;

- e. In regards to the allegation in paragraph 17(e) above, the Report provided information about the training of volunteers sourced from the Access Ministries website. See paragraph 5 and also paragraphs 10 and 11 above;
- f. Nine does not understand the allegation in 17(f), or the manner in which it is alleged that use of certain images were misleading, and therefore cannot meaningfully respond to the allegation other than to deny that the use of any material in the report, in context, resulted in a breach of clause 4.3.1; and
- g. In regards to the allegation in paragraph 17(g) above, Nine refers the ACMA to its submission in paragraph 13(d) above.

[Complainant 3]

- 19. [Complainant 3] alleged in her complaint to the ACMA that the Report contained erroneous material that was misleading.
- 20. Nine denies [Complainant 3]'s allegation and maintains that in broadcasting the Report, it broadcast factual material accurately and represented viewpoints fairly, having regard to the circumstances at the time of the Report's preparation and broadcast.
- 21. In her original complaint to Nine dated 20 June 2014, [Complainant 3] also alleged that the Report was misleading, including alleging that the Report incorrectly reported that:
 - a. Volunteers are "members of a fundamentalist cult";
 - b. The work books are "secret language used by volunteers or Access Ministries";
 - c. Access Ministries is "hidden about their goals and the Christian values they uphold" and they are not open to scrutiny; and
 - d. That Access Ministries received \$21 million in funding from the government.
- 22. In response to each of the above allegations:
 - a. In regards to the allegation in paragraph 21 (a) above, Nine denies that this statement was used in or conveyed by the Report. These words do not appear in the broadcast and the word 'cult' was not used in the Report, let alone in relation to Access Ministries or its volunteers. Nine can only infer that the complainant is referring to the statement made by the reporter about growing concerns from principals and parents that Access ministries volunteers were attempting "to convert children into its own brand of fundamental Christianity", which it submits does not convey what the complainant alleges. Nine further maintains that this statement fairly represented the relevant viewpoints;
 - b. In regards to the allegation in paragraph 21(b) above, please refer to our submissions in 18(d) above;
 - c. In regards to the allegation in paragraph 21(c) above, Nine denies that the Report conveyed that Access Ministries is "hidden about their goals and the Christian values they uphold" and they are not open to scrutiny. The Report intended to convey that whilst Access Ministries might present itself publically as providing SRI classes in accordance with government education policy, there is growing concern amongst some parents and principals that the reality is different and that Access Ministries is a missionary-like organisation attempting to convert kids. In this regard, we refer the ACMA to the following transcript excerpt in the Report:

Reporter: Online Access Ministries presents itself as a volunteer organisation that works with State Education Departments to provide religious education. But [the Principal] says the reality is very different.

[Principal]: Access Ministries describes its program as education. It's not education. They describe their instructors as teachers. And they're not teachers. They claim their material in Victoria at least is approved by the Education Department. It's not.

Reporter: Instead [X] says Access Ministries has an unspoken agenda to use our schools to convert kids to fundamentalism. Officially the organisation denies this and volunteers are made to sign an agreement where they promise not to preach. But listen to the way Access Ministries boss [CEO] described our state schools in a speech to other fundamentalists...

[Access Ministries CEO]: I believe this is the greatest mission field we have in Australia – our children and our students – our greatest field for disciple making....,

- d. And in regards to the allegation in paragraph 21 (d) above, Nine refers the ACMA to its submission in paragraph 4 above.
23. In her second complaint dated 4 July 2014, [Complainant 3] alleged that the following statements were made in the Report and that they were misleading and false:
- a. Access Ministries enters school without permission;
 - b. Access Ministries volunteers proselytize during special religious instruction classes;
 - c. Access ministries volunteers receives \$21 million in funding;
 - d. Access Ministries receive only 6-8 hours training;
 - e. Access Ministries accredits OAC; and
 - f. Access Ministries is a deeply dishonest organisation
24. In response to each of the above allegations:
- a. In regards to the allegation in paragraph 23(a) above, Nine denies that the Report stated that Access Ministries enters schools without permission. The reporter did state in the Report that *"Outreach and Church Ministries was banned in all Victorian schools in 2013. Because for years prior they had been coming into our schools without permission and delivering the kind of religious instruction that the department of education described as completely unacceptable."* Nine maintains that the factual material contained in this statement is accurate and viewpoints are represented fairly, having regard to the circumstances at the time of preparing and broadcasting the Report;
 - b. In regards to the allegation in paragraph 23(b) above, Nine maintains that on the evidence of examples provided by the parents and principal interviewed for the purposes of the Report, the imputation that Access ministries volunteers proselytise during SRI classes is accurate at least in relation to the examples provided by the parents and principal, having regard to the circumstances at the time of preparing and broadcasting the Report;
 - c. In regards to the allegation in paragraph 23(c) above, Nine refers the ACMA to its submission in paragraph 4 above.

- d. In regards to the allegation in paragraph 23(d) above, Nine refers the ACMA to its submission in paragraph 5 above.
 - e. In regards to the allegation in paragraph 23(e) above, Nine denies that the Report conveyed that Access Ministries accredits OAC. The Report actually stated that OAC Ministries provides training to Access Ministries volunteers, which Nine maintains was accurate having regard to the circumstances at the time of preparing and broadcasting the Report. and
 - f. In regards to the allegation in paragraph 23 (f) above, Nine denies that it conveyed this allegation as fact. Rather, it conveyed the views of a number of parents and a principal that the organisation is dishonest. In representing their views, Nine maintains that the Report did so fairly. Further, Nine gave Access Ministries the opportunity to respond and present their side of the story, which they declined to do.
25. Nine otherwise maintains that factual material broadcast in the Report was presented accurately and viewpoint were represented fairly having regard to the circumstances at the time of preparing and broadcasting the program. Accordingly, Nine maintains that in broadcasting the Report, it has not breached clause 4.3.1 of the Code.

1.9.6 & 4.3.10

- 26. [Complainant 3] alleged that the Report reflected a “deliberate attack on the Christian values of faith, hope and love”.
- 27. In her original complaint to Nine, [Complainant 3] alleged that the Report “vilified the reputation and intent of Access Ministries and its Christian volunteer workers”. In her second complaint to Nine, [Complainant 3] further alleged that the Report was “detrimental to how the public perceives the work of Access Ministries and its volunteers” alleging that the Report misled viewers into thinking that Access ministries and its volunteer instructors are dishonest and that the special religious instruction program has a hidden agenda, which is disrespectful to all volunteers.
- 28. Nine appreciates that the complainants were distressed and offended by the broadcast of the material complained about and apologized to each of the complainants accordingly.
- 29. These allegations raise issues under clause 1.9.6 of the Code ...
- 30. In previous investigations, the ACMA has held that the above provision contemplates a strong reaction and sets a high test for the prohibited behavior and therefore that content must be strong to meet the benchmark of ‘intense, serious or severe.’ There are also a range of exceptions to this requirement, including a fair report on any event or matter of identifiable public interest. ...
- 31. Nine denies that the Report provoked or perpetuated dislike, contempt or ridicule against any person or group of persons on the basis of religion (or any of the other specified grounds) let alone meet the high benchmark set by the Code and ACMA.
- 32. [...]
- 33. Nine also denies that the Report portrayed any person or group of persons in a negative light by placing gratuitous emphasis on their religion.
- 34. In any event, we believe the public interest exceptions in clauses 1.10.3 and 4.3.10 are relevant as the Report presented a fair report of the informed viewpoints of concerned parents, a principal and [the Priest] on a topic of clear public interest – public education in state schools.

35. Accordingly, Nine does not believe the Report breached clauses 1.9.6 or 4.3.10 of the Code in this instance.

4.3.2

36. [Complainant 1] also alleged in his original letter of complaint to Nine that the Report caused public panic in breach of clause 4.3.2 of the Code. This clause provides that broadcasters “*must not present material in a manner that creates public panic*”.

37. The ACMA has previously stated in investigations [...] that this clause is intended to prevent broadcasters from presenting material that would have the result of causing relatively widespread fear and terror in the general community in the form of the high threshold of ‘public panic’.

38. In this context, Nine denies that the Report was presented in a manner that would create public panic. The Report sought to inform parents that Access Ministries were not necessarily providing the type of SRI lessons to their children that they authorized. Nine believes that any ordinary reasonable viewers who may have become concerned after viewing the Report may have done their own investigations and research into this matter, and that in the circumstances, panic would not be a reasonable reaction by an ordinary reasonable viewer.

39. Further, ACMA has previously stated in an investigation [...] that the language in clause 4.3.2 is such that for a breach to have occurred, it must be demonstrated that the broadcast actually had the effect of causing panic within the community. Nine is not aware of any evidence of actual instances of public panic regarding this matter caused by the broadcast of the Report.

40. Accordingly, Nine maintains that in broadcasting the Report, it did not present material in a manner that created public panic and therefore, did not breach clause 4.3.2 of the Code.

[...]

In further submissions to the ACMA, Nine submitted:

[...]

3. The ACMA has found that Nine breached clause 4.3.1 in that it failed to present factual material accurately in respect of “representations concerning religious instruction” and “representations concerning dishonesty and secretiveness”. The precise matters of fact alleged to have been inaccurately presented and thus resulting in the breach findings are not clearly set out [...] but Nine believes it has identified them as follows:
 - a. [...] a finding that the Report “*overwhelmingly conveyed to the viewer a proposition that Access Ministries was not entitled to be providing instruction in a particular religion, including instruction in how to live and behave according to the tenets of the particular faith. In fact, this was exactly what Access Ministries was both entitled and expected to do within the Victorian Education system*”; and
 - b. [...] “*that Access Ministries misleads parents and uses hidden codes to convert children and mislead parents*” and that “*presenting such hidden word puzzles as ‘hidden codes’ somehow demonstrating the secrecy and dishonesty of Access Ministries is inaccurate*”.
4. For the reasons set out in our original submissions and in our additional comments below, Nine maintains that it did not breach clause 4.3.1 of the Code in the above instances. Nine is also concerned that each of the findings appears to be based on assertions for which no proper evidentiary basis is given.
5. Nine repeats its original submissions, and further submits as follows:
 1. In relation to the ACMA’s finding as set out in 3(a) above:
 - a. Nine is concerned that the ACMA’s findings appear to be based on a reliance upon assertions made by the complainants in their complaints, rather than the actual content of the Report in its entirety or the objective evidence. The Report did not convey that Access Ministries could not teach about a particular faith. What the Report did do was question whether the activities of Access Ministries went further than what it was permitted to do, and whether parents would approve of the precise content of the type of SRI provided by Access Ministries and the manner in which it was provided. It was entirely appropriate for the Report to raise these matters, and certainly did not constitute an inaccurate presentation of factual material.
 - b. [...] the ACMA includes certain limited excerpts from the Department’s website upon which the ACMA has apparently also relied in making the findings. Nine notes however that the Department’s website relevantly also includes the following provisions [...] (emphasis added):

*The Department will play a role in determining minimum standards for program content that SRI providers will be required to comply with, **to ensure program content does not conflict with human rights and anti-discrimination laws**, or principles in the Act.*

*Principals must ensure that an accredited instructor does not... **induce or attempt to induce any student to convert** to a particular religion.*

*Principals must ensure that any information, ideas, opinions or beliefs communicated to students or any written material distributed to students by an SRI provider or instructor **does not contradict the school’s values, school curriculum or any other applicable***

law. The Act (s 1.2.1(a)) contains guidance in relation to overarching principles for all schools:

- (1) *all providers of education and training, both government and non-government, must ensure that their programs and teaching are delivered in a manner that **supports and promotes the principles and practice of Australian democracy**, including a commitment to—*
 - (i) *elected government;*
 - (ii) *the rule of law;*
 - (iii) ***equal rights for all before the law***
 - (iv) ***freedom of religion;***
 - (v) *freedom of speech and association;*
 - (vi) ***the values of openness and tolerance.***

- c. The Report raised concerns by various persons that Access Ministries was not doing what it said it was doing or supposed to be doing (which was, providing SRI within the scope of the Act) and, rather, was making attempts to convert children or persuade children to adopt the beliefs of its specific strand of the Christian religion, which is beyond the scope of what is permitted as SRI (as evidenced at 5. 1) b. above). It also reported allegations that volunteers of Access Ministries were telling students things such as “*not to like Jews because Jews killed Jesus Christ, and that Muslims won’t go to heaven because they worship a false God*” which would clearly also be outside the scope of permitted
- d. The Report sought to highlight to ordinary reasonable viewers that there were concerns about the nature of the SRI provided by Access Ministries, and cites the following elements in the Report to support this:
 - i. in the opening sequence in which the reporter states “...they’re not meant to convert the kids, but critics say that’s exactly what they’re doing”;
 - ii. the statements of the parents in the broadcast (as set out at the top of page 7 of the [...]report);
 - iii. various claims made by the school principal and the reporter in the broadcast (as set out at the bottom of page 7 of the preliminary report).

In the above context there is clearly a distinction between what the complainants alleged (and upon which the ACMA based its reasoning) and the matters the Report raised. Nine respectfully maintains that these distinct points have been confused by the ACMA in making the breach findings in this case.

The Report presented material and opinions as to the activities of Access Ministries’ volunteers. It is a matter for viewers of the Report to decide, based on the material presented to them, whether they agree or disagree with the viewpoints put forward that Access Ministries was acting inappropriately, or outside the scope of its remit as an SRI provider.

- e. Nine denies the ACMA’s assertion [...] that the Report strongly implies that “teaching a particular faith in schools, as Access Ministries does, is neither legitimate nor permitted”. Nine does not agree that the Report conveys any such meaning.
- f. The Report presented the views of concerned parents that Access Ministries was:
 - i. telling children *what to believe* (as is demonstrated in the interviewee statement of Parent 1 [...]); and
 - ii. “*actually doing ... missionary work in the prep class*”,

and reported concerning comments of a senior member of the organisation that suggested that Access Ministries did in fact actively seek to convert students, saying of schools: *“I believe that this is the greatest mission field we have in Australia, our children and our students, our greatest field for disciple making”*.

The Report simply did not convey that Access Ministries was not entitled to teach *about* a particular faith (the Christian faith), (see the interviewee statement of Parent 2 [...]). This distinction is clear to the ordinary reasonable viewer, as there are numerous references within the Report to the difference between what Access Ministries holds itself out as providing in SRI classes and what has been reported by concerned parents, a principal and other critics that Access Ministries actually provides in these classes.

- g. The alleged omission of material in the Report to assist the viewer in understanding the role or legitimacy of SRI in Victorian schools did not result in an inaccurate presentation of factual material. It was evident from the Report that Access Ministries was entitled to provide SRI. The stance that the Report was presenting to viewers was an enquiry into alleged instances of proselytization by Access Ministries in schools, and the alleged teaching of things beyond the scope of permitted SRI, not that it was unlawfully teaching particulars of a religion. Nine also submits that it would have been clear to ordinary reasonable viewers watching the whole segment, that Access Ministries was entitled to teach children about the Christian tradition, based on what Parent 2 states is what “Access Ministries wants parents to believe” and also what the principal and reporter said was described by Access Ministries on its website as its role as an SRI provider.
 - h. Nine also notes that the ACMA relies upon numerous assertions in its findings, particularly in the summary paragraph [...] without providing any evidentiary basis for these assertions.
2. in relation to the ACMA’s breach finding set out at 3(b) above:
- a. Nine disputes the assertion that “presenting such word puzzles as ‘hidden codes’ somehow demonstrating the secrecy and dishonesty of Access Ministries” constitutes an inaccurate presentation of factual material. It is a matter of fact (apparently undisputed) that such word puzzles are used by Access Ministries. Whether or not the use of word puzzles in this manner *does* adequately demonstrate the secrecy and dishonesty of the organisation is clearly a matter of opinion. It is open to the viewer to decide whether they agree that the use of word puzzles in such a way is or is not inappropriate in the circumstances. For this reason, Nine maintains that the relevant finding [...] is erroneous.
 - b. In the same way, in the context of the Report, whether or not Access Ministries “misleads parents and uses hidden codes to convert children and mislead parents” are subjective matters and not a presentation of factual material as asserted by the ACMA. It is open to the viewer to agree or disagree that the conduct and/or use of puzzles is misleading. This does not and cannot constitute an inaccurate presentation of factual material.
 - c. Even if these were matters of fact, which is not conceded, Nine is further concerned that the [ACMA’s investigation report] contains a number assertions that apparently form the basis for these findings, without any evidentiary basis being provided for such assertions.

For example, [the ACMA's investigation report] includes findings such as "giving children word puzzles to solve, with answers to that reinforce what is being taught, is a common teaching method" and "the answers to the word puzzles...appear to be messages about mainstream tenants [sic] of the Christian faith...and is material that is permitted in the delivery of SRI" for which no evidentiary basis or reasoning is given, and which are arguably subjective matters. Nine maintains that the findings of factual inaccuracy are not and cannot be substantiated by such assertions in the absence of any proper evidentiary basis for them.

- d. In relation to the teaching materials, Nine notes again that while Access Ministries is permitted to provide SRI, Complainant 1's submissions are misleading to the extent he/she alleges that "the syllabus [Access Ministries] use is APPROVED by the Department of Education" [...] In fact, the Department website clearly states that "each accredited provider prepares its own program materials for use during SRI. Given the religious nature of the content, **the Department does not endorse such materials.**" [emphasis added].

[...]

Attachment D

The ACMA's considerations for assessment of factual material

- > In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
- > The ACMA will have regard to all contextual indications (including subject, language, tenor and tone and inferences that may be drawn) in making its assessment.
- > The ACMA will first look to the natural and ordinary meaning of the language used.
- > Factual material will usually be specific, unequivocal and capable of independent verification.
- > The use of language such as 'it seems to me' or 'we consider/think/believe' will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common sense judgement is required and the form of words introducing the relevant content is not conclusive.
- > Statements in the nature of predictions as to future events will rarely be characterised as factual material.
- > Statements containing hyperbole will rarely be characterised as factual material.
- > The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
- > Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
- > Where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.¹²
- > Sources with expertise may be relied on more heavily than those without, in determining whether material is factual, but this will depend on:
 - o whether the statements are merely corroborative of 'lay' accounts given by other interviewees,
 - o the qualifications of the expert,
 - o whether their statements are described as opinion,
 - o whether their statements concern past or future events¹³ and
 - o whether they are simply comments made on another person's account of events or a separate assertion about matters within their expertise.

¹² See investigation 2712 (*Today Tonight* broadcast by Seven in 2011); *Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority* [2014] FCA 667.

¹³ See investigations 3066 (*Four Corners* broadcast on ABC1 in 2012) and 2961 (*Alan Jones Breakfast Show* broadcast on 2GB in 2012).

Attachment E

Interpretation of clause 1.9.6 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 (Sixth Edition)*.

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

Incitement or provocation can be achieved though comments made about a person or group; there is no requirement that those comments include a specific call to action. There is no need for proof of intention to incite or that any one was in fact incited.¹⁴ The relevant conduct must have the capacity or tendency to incite others, in the sense of urging, promoting the audience to experience the relevant reaction. Conduct that merely conveys a person’s hatred of, intense dislike, serious contempt or severe ridicule towards a person is not unlawful.

There must be something more than an expression of opinion, something that is positively stimulatory of that reaction in others.¹⁵

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.

The *Macquarie Dictionary (Sixth 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).

¹⁴ *Kazak v John Fairfax Publications* [2000] NSWADT 77 at [23-29].

¹⁵ *Trad v Jones & anor* (No 3) [2009] NSWADT 318 at [61].

¹⁶ *Burns v Dye* [2002] NSW ADT 32.

¹⁷ NSW ADT at 40.

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

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

'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.²⁰

¹⁸ The definition of 'severe ridicule' is addressed in more detail at pages 18 and 19 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 (*Today Tonight* broadcast on Seven in 2007).

²⁰ (No. 2) [2007] NSWADT 47.