

Senate Standing Committee on Environment and Communications
Answers to Senate Estimates Questions on Notice
Budget Estimates Hearings May 2015
Communications Portfolio
Australian Communications and Media Authority

Question No: 99

Program No. Australian Communications and Media Authority

Hansard Ref: Written, 5/6/2015

Topic: ACMA investigation number 2741

Senator Bernardi, Cory asked:

Senator BERNADI: Regarding ACMA investigation number **2741**, (about a segment of a *Sunday Night* broadcast on Channel 7 on 4 September 2011).

The segment related to a story on the Suruwaha tribe in Brazil.

Mr Paul Raffaele was the producer of the story.

1. Was Mr Raffaele or the journalist (Mr Noonan) questioned by the ACMA as part of its investigation? Did ACMA approach them at any time during the ACMA's investigation, before the ACMA's investigation report was completed?
If so, on what date did the questioning take place?
If not, why was the decision made to not question Mr Raffaele or Mr Noonan as part of the investigation?
2. Did the ACMA question, or at any point consider questioning, the Suruwaha woman who was featured in the story (who claimed to have saved her child from infanticide) as part of their investigation?
If so, on what date did the questioning take place?
If not, why was the decision made to not question the woman as part of the investigation?
3. Did the ACMA receive any correspondence from Mr Raffaele, requesting that his opinions be published by the ACMA?
If so, what action did the ACMA take regarding Mr Raffaele's requests, and if no action was taken, what were the ACMA's reasons for not acting on Mr Raffaele's requests?

Answer:

1. Mr Raffaele and Mr Noonan were not questioned directly by the ACMA as part of investigation 2741 which commenced in December 2011. This reflects the fact that investigations into complaints about broadcasts under *the Broadcasting Services Act 1992* (the BSA) assess the compliance of the licensee within its obligations, rather than individual producers or journalists.

The ACMA's usual practice is to conduct its broadcasting investigations 'on the papers' with the broadcast material considered against the relevant code of practice. Ordinarily, the ACMA does not conduct hearings or take witness statements. Nor does it question producers, journalists and participants in broadcasts as the focus of any investigation is the material that was actually broadcast. In this case, particulars were requested of the licensee, submissions

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were received from the licensee and representatives of the ACMA met with representatives of the licensee in order to receive a response to the ACMA's preliminary investigation report.

Through an email to the licensee on 10 August 2012, Mr Noonan and Mr Raffaele were then each given the opportunity, under section 180 of the BSA, to make representations about the publication of the investigation report.

2. The Suruwaha woman who was featured in the story was not questioned by the ACMA.

Otherwise, please see the above answer in relation to the ACMA's usual investigative practice.

3. On 10 August 2012, the ACMA provided Mr Raffaele and Mr Noonan with the opportunity to make representations on publication under section 180 of the BSA. In a joint response, they provided comments to the ACMA on 28 August 2012. They argued against publication of the ACMA's investigation report until the possibility of a further appeal was explored. The letter also set out their concerns with the ACMA's findings on the substantive matters and requested that, should the ACMA publish its findings, it also publish their response.

The ACMA's investigation findings were the subject of an application for judicial review by the licensee to the Federal Court. That application was dismissed in June 2014 and an appeal to the Full Federal Court which was dismissed in December 2014. The ACMA did not publish its investigation report while these processes were ongoing.

The ACMA's investigation report was published on 7 January 2015. The section 180 opportunity provided to Mr Raffaele is limited to representations on publication. The ACMA considered that these representations had been assessed and the requirements for section 180 were met. The section 180 opportunity does not provide an obligation on the ACMA to publish a party's response to that opportunity. The substantive issues were ventilated in the Federal Court on judicial review and in the Full Federal Court on appeal. As the ACMA's investigation findings were upheld, the ACMA considered that it was in the public interest to publish the investigation report.