

## APPENDIX B: SUBMISSIONS TO THE REVIEW

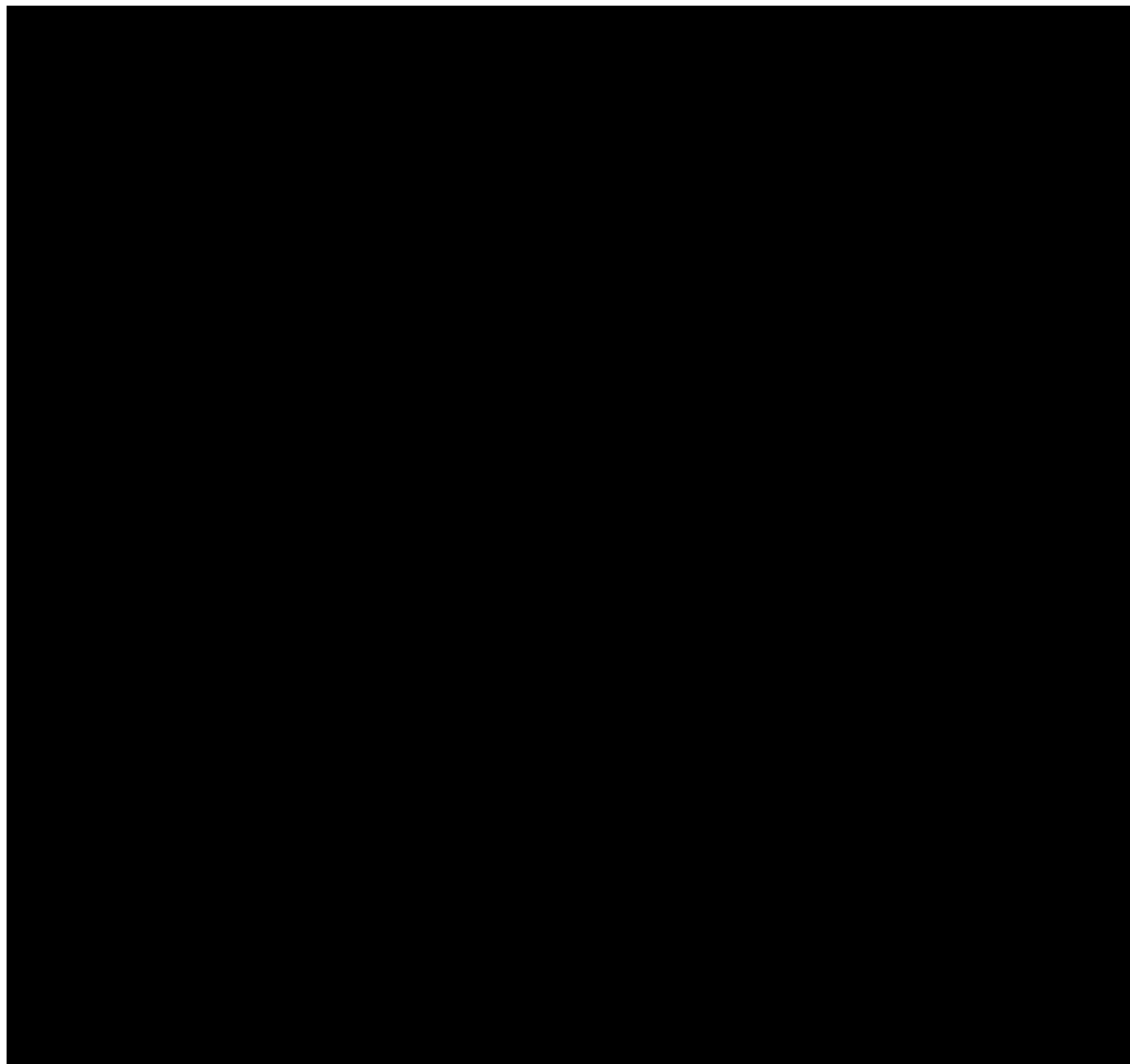
The following submissions have been published on the ABC website on the Reports and Publications page under Other Performance Reports: <https://about.abc.net.au/how-the-abc-is-run/reports-and-publications/#:~:text=Other%20Performance%20Reports>

**Note:** The review received 55 submissions in total. Not all submissions have been published or published in full: some people asked that their submission be kept confidential; some submissions were received before publication of the Consultation Paper which announced that submissions may be published; some submissions did not appear to relate to the Terms of Reference for this review; and the attachments to some submissions have been removed on the basis of length. The ABC has decided that some other submissions (or attachments) will not be published or will be published with redactions for legal or privacy reasons.

## **APPENDIX B: SUBMISSIONS TO THE REVIEW**

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**From:** [REDACTED]  
**Sent:** Friday, 12 November 2021 8:19 PM  
**To:** [REDACTED]  
**Subject:** Complaints handling review: Att Prof John McMillan

Dear

I am writing to Prof McMillan about the complaints handling review. His email has not been made available so I request that you confirm that you have forwarded this email and the attachment to him.

I am concerned that there seems to be no avenue for public input to the review. I would have thought that the public's view of the complaints handling process would be central to such a review and I request that it calls for public comment.

My experience of the ABC complaints process was that it is abysmally bad. This experience is set out in some detail in the attached letter to Mr Anderson, to which I have had no response. In it I have suggested some fundamental changes that need to be made.

Sincerely

Dr John Formby



Mr David Anderson

The Managing Director, ABC

### **Failure of A&CA complaints process**

Dear Mr Anderson,

I am writing to you in despair after attempting unsuccessfully to make a complaint through the complaints process conducted by Audience and Consumer Affairs. As it stands, this process is implemented to obstruct, avoid and reject complaints, not to be responsive to them. The complaints process and the people running it should be subjected to a thorough review to ensure that in the words of the ABC's editorial policies 'it is accountable to the people who fund us'.

In July-Sept 2021, 1,958 complaints were assessed by A&CA. Of these the extraordinary total of nine (yes, nine) were upheld. That is, 2.1 percent of the only 411 investigated, or 0.46 percent of total complaints. These figures alone demonstrate a failed process. The public simply cannot be wrong or misguided in 97.9 percent of complaints investigated, let alone 99.54 percent of all complaints.

The explanation lies in the highly restrictive framework within which complaints are required to be made. Many complaints are refused investigation because they do not meet some minor aspect of these requirements. In my case both [REDACTED] ruled that my complaint could not be investigated due to insufficient information because I had not supplied the date of the program. But I gave the date of the program on top of the complaints form as 26 May! I also supplied the name of the presenter, the radio station, the program, the approximate time of day, the topic and the name of the person being interviewed. Despite all this, they kept on saying that I did not provide the required information.

[REDACTED] (email 23 Sept 2021) claims that saving public money requires that complainants must identify the time and date the content was broadcast. If the ABC wished to verify the date that I gave, the cost of one phone call or email to the presenter must be balanced against the benefits of accepting and responding to public criticism. What seems to have happened is that [REDACTED] ignored the date given at the outset and seized where I said in the text that the interview was 'on or about' 26 May and used this to refuse to investigate. This is ludicrous bureaucratic nit-picking. What it shows is not a desire to investigate complaints and learn from them, but to avoid them by all possible means.

But this is just the beginning of the ABC's bureaucratic restrictions on complaints. A potential complainant is required to explain where the ABC's Editorial Policies or Code of Practice have been breached and in what way. The ABC's Audience and Consumer Affairs is even confused as to which policies a complainant should refer [REDACTED] refers to the Code of Practice, [REDACTED] to the Editorial Standards. This requires the potential complainant to find, print off and try to make sense of 52 pages of policies and relate them to their complaint. By comparison, let's say I complain to a government agency about a polluted creek. If they followed the ABC's lead, then I would have to identify the pollutant, the strength of the pollutant, the extent of the damage, the relevant pollution laws and regulations which are alleged to have been breached and the way in which they have been breached.

The public should not be required to become expert in the ABC's policies. It should be the ABC's job to assess complaints and relate these to the relevant Policies and Codes. Many people will abandon legitimate complaints when they are required to spend hours finding the relevant policies. By

putting complaints into a straitjacket, the ABC loses the opportunity to find out what the public's concerns really are.

My specific concerns related to two interviews by [REDACTED] on ABC 549 two weeks apart in which both interviewees made a variety of claims for the merits of renewable energy and used offensive terms for those who dare to identify problems with it. Without any different viewpoint being provided by 549 over the period, in terms of the Code as well as being offensive this lacked balance, impartiality and diversity of perspectives. My complaint concerned the totality of two interviews. However, I could not cite the earlier program as I was warned that it would be likely to fall outside the six week limitation on complaints. Yet [REDACTED] had taken six weeks to reply, breaching the ABC's guideline of thirty days to respond.

The next tactic by A&CA to avoid complaints is to say that they are 'outside the remit of this unit'. My general complaint concerned the adoption and promotion of ideologies by the ABC such as its relentless advocacy for crisis action on anthropogenic climate change, particularly on Radio National, and its denigration of those who do not agree, like [REDACTED]'s reference to 'lizard brains'. These ideologies on issues such as climate change, gender issues and multiculturalism reflect the views of the ABC's predominantly inner city, green and leftist presenters. They are not the preoccupations of a large swathe of the ABC's audience from working class and rural areas. The ABC should not be promoting ideologies at all. In doing so it is acting as an unelected political party and transgressing the principle of impartiality it claims to uphold. There is no avenue for complaints about fundamental issues such as this to be placed before senior management. The response to my concerns was 'noted'.

Regarding my specific complaints about the 549 interviews, the presenter on 549, [REDACTED], responded by email to my complaint about lack of balance by saying that according to 'ABC staff guidelines' he did not have to apply balance on 'the basic science' of climate change. But the interviews in question were not about the basic science. They were principally about renewable energy. Whatever one may think of the ABC's edict of no questioning of the basic science of climate change, it does not and should not extend to specific aspects of the science e.g., the validity of assumptions or weightings of climate models or the content of energy policies including the effectiveness, impacts or economics of renewables.

It should be of major concern to the ABC's management that Mr [REDACTED] incorrectly extended the ABC's policy on climate change science to debate on related issues, particularly in a broadcast region where adverse impacts of wind turbines occur and are subject to community concern. This misunderstanding of the policy of 'no debate on the basic science' has been adopted by other ABC presenters. Further, Mr [REDACTED] cited 'staff guidelines' which he could not subsequently provide and do not appear to exist. But this complaint was 'outside the remit of this unit'. If these problems cannot be examined by the ABC's Audience and Consumer Affairs, who will? Apparently, nobody.

Another means of complaint avoidance is to misrepresent the nature of the complaint. [REDACTED] initial response to my complaint was largely to sermonise that 'the ABC does not debate the existence of anthropogenic climate change'. This was not my complaint. My general complaint was about the ABC's continual *promotion* of the need for action on the anthropogenic climate change 'crisis' and renewable energy across its programs. This complaint was not addressed.

[REDACTED] (23 Sept) uses the same tactic, saying that [REDACTED] 'reasonably understood on the basis of your August 6 email' that my complaint was about lack of impartiality. This is nonsense. I explained specifically in that email that in terms of Editorial Policies I was concerned about

offensiveness, inaccuracy, impartiality and diversity of perspectives. My initial complaint (June 26) repeatedly noted my concern with lack of balance. Did either of them really read my emails?

What this whole lengthy process indicates is that once my initial complaint was rejected, [REDACTED] and [REDACTED] retreated into organisational defence mode and nothing I said would induce them to review the complaint. I was finally advised that I could take up my concerns with the Australian Communications and Media Authority. Then the ABC can simply disagree with ACMA's findings, as it has in the past.

### **Conclusions**

The staff of the Complaints Unit and the [REDACTED] should be moved elsewhere. They have become habituated over years to finding ways of rejecting or obfuscating complaints and will not change. Complaints about the ABC should be dealt with by an entirely independent ABC Ombudsman.

Complainants should not be required to frame their complaints in terms of the ABC's Editorial Policies or Code of Practice. The Ombudsman should decide what is a valid complaint.

Broad complaints about the conduct, politics and ideology of the ABC should be accepted and an avenue created for the Ombudsman to take these up with senior management.

The ABC should be required to act in accordance with the Ombudsman's findings and make public the action it has taken.

If this process has been followed and the complainant is still dissatisfied, recourse to the Australian Communications and Media Authority should still be available. Directions by this Authority should be binding on the ABC.

Dr John Formby    21 Oct.2021

**From:** [Stuart Buss](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** THREE YEARS - STILL WAITING FOR A REPLY  
**Date:** Friday, 26 November 2021 4:00:01 PM

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Dear Sirs,

About three years ago I was driving home from the country [REDACTED] and listening to [REDACTED].

A caller rang in, observing that he had been listening all day to [REDACTED] and that every programme was in some way related to women's issues, and noting that there appeared to be a preponderance of such matters on the ABC.

This was a valid observation, backed up by the listener's experience of the days' broadcast. It was also a comment on perceived bias in the ABC, and should therefore have been addressed respectfully and with concern for breach of the charter of the ABC to be without agenda.

Instead, [REDACTED] told the caller to "pull your head in", and spoke derisively of him. I was disgusted that a public servant such as an ABC announcer would treat a member of the public with such ill-mannered contempt. In no other area of Public Service would such conduct be tolerated for a moment. But this is the ABC, so standards do not apply.

I immediately rang the ABC and complained (in those days one could actually ring the ABC and speak to someone in [REDACTED]). My complaint was "noted" and I heard nothing more despite expecting a response of some sort.

I rang again several months later asking what had been done. They had no record of my complaint and told me to resubmit it online, which I did. I have yet to receive any sort of response.

I have today sent another message (see attached). I expect to hear nothing, as usual, or a reply saying they cannot find my complaint (for which I did have a reference).

I urge you to insist on the ABC behaving like a properly functioning organization, and to exhibit in its behaviour a degree of gratitude and humility for its privileged position as a protected club funded involuntarily by the people of Australia. Behaviour such as that of [REDACTED] (which I am told continues – I rarely waste my time listening to the ABC) is not to be tolerated.

Yours faithfully

Stuart Buss

*ABC Complaints (online message 26/11/21):*

*Dear Sir/ Madam,*

*A few years ago I submitted a complaint concerning [REDACTED] abuse of a concerned caller.*

*I heard nothing back. When I rang to ask why, I was told you could not find the complaint and to*

*re-submit it, which I did using your online form.*

*That was about three years ago. I am still waiting for a response.*

*Given the current interest in the ABC's failures in dealing with complaints, I am interested to discover what happened to my complaint.*

*I assume that the ABC would have a standard procedure whereby complaints are able to be retrieved by complainant name. This would be the very least that would be expected of a genuine complaints procedure.*

*I do not have the reference number of the complaint to hand.*

*I require an answer to this enquiry by Friday, 10th December. I have sent a copy of this enquiry to the official Enquiry, along with details of the failure of your complaints system in this matter.*

*Yours faithfully*

*Stuart Buss*

Sent from [Mail](#) for Windows

**From:** [Carolyn Stewart](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Complaint about ABC...  
**Date:** Friday, 26 November 2021 4:00:52 PM

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I would like to register a complaint, but not about ABC bias, but about political attacks on our much loved and highly valued only independent national broadcaster.

It is quite telling that attacks come from those who have much to hide. Which is why we really need to protect those who would bring things into the light.

Those loud voices about ABC bias only serve to draw attention to their own inadequacies.

The ABC is doing a good job at holding a middle ground and a fair ground, unlike other news organisations which increasingly are adopting a shrill and ugly tone. The ABC also represents true Australian values. I owe my own intelligence and can-do attitude to a long lifetime of ABC watching.

Support a true Australian media organisation. It should not be for sale or for breaking up.

Yours sincerely,  
Carolyn Stewart

**From:** [Michael Doyle](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Submission  
**Date:** Saturday, 27 November 2021 10:07:56 PM  
**Attachments:** [ABC Attempt At Correction.docx](#)

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Michael Doyle

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Phone: [REDACTED]

27/11/21

### Independent Review of ABC Complaint Handling

I attach a submission in relation to this Review.

Michael Doyle

[REDACTED]

[REDACTED]

## **When is a Correction not a Correction? When its made by the ABC**

Background:

*On 11 March, 2011, a nuclear accident occurred at the Fukushima Daiichi Nuclear Power Plant in Ōkuma, Fukushima Prefecture, Japan. The accident was triggered by an earthquake and tsunami. Systems at the nuclear plant detected the earthquake and automatically shut down the nuclear reactors. It was reported by the BBC in 2018 that Japan had announced a worker at the plant had died from lung cancer which was diagnosed in 2016. Japan's government had previously agreed that radiation caused illness in four workers. No other deaths have been acknowledged. There were 16 non-fatal injuries, with 2 workers being taken to hospital suffering from what were thought to be radiation burns. Of the estimated 18,500 people who died in Fukushima, almost all either drowned when the tsunami hit the Japanese coast or were killed in the earthquake.*

### **Issue relating to the Enquiry - The ABC's Attempt at a "Correction"**

On 11 March 2021 ABC television news stories reporting on the 10<sup>th</sup> anniversary of the Fukushima disaster described it as 'the deadly Fukushima nuclear disaster'. A viewer's complaint, that the story misrepresented the cause of the widespread loss of life, to the ABC's Audience and Consumer Affairs unit was upheld.

The ABC's website posted the following statement on its Corrections and Clarifications page on 31 March 2021 under the heading Fukushima and Tsunami Deaths:-

*"On 11 March, television news stories reporting on the 10th anniversary of the - Fukushima disaster described it as 'the deadly Fukushima nuclear disaster'. This was incorrect.*

*"The ABC acknowledges that it was the earthquake and tsunami that triggered the nuclear accident which overwhelmingly accounted for the loss of lives; no one died directly in the nuclear reactor meltdown."*

## **When is a Correction not a Correction? When its made by the ABC**

Although preceded by the acknowledgement about the accident's trigger, the ABC's correction states "the nuclear accident which overwhelmingly accounted for the loss of lives". The words "no one died directly in the nuclear reactor meltdown" can be taken as implying that many people did, however, die indirectly.

### **My complaint concerning the "Correction"**



I emailed the ABC's Audience and Consumer Affairs unit (Reference Number C6374-21) on 31 March 2021 stating that ...

*There needs to be an "and" before the "which overwhelming". As it stands the reader is still left with the idea that it was the nuclear accident which overwhelmingly accounted for the loss of lives.*

Having no response, I requested a status report on June 6 2021.

████████████████████ responded as follows:-

*The ABC Audience Support team has passed on your recent message following up on your complaint C6374-21. I regret that you were disappointed not to receive a detailed reply to your earlier complaint; your comments were considered and noted at the time they were received.*

*The correction states that: the ABC's description of 'the deadly Fukushima nuclear disaster' was incorrect; no one died directly in the nuclear reactor meltdown; and the earthquake and tsunami (which triggered the nuclear accident) overwhelmingly accounted for the loss of lives. In context, we are satisfied that the correction makes clear that the nuclear accident did not overwhelmingly account for the loss of lives and that adding an 'and' as you suggest would make no material difference to a reader's understanding of the correction.*

*Thank you for passing on your feedback.*

I responded with an email as follows:-

*Hi,*

*You do realise that the "correction" on your website doesn't have the brackets which you have in your email?*

*If it did, I would not be complaining.*

████████████████████ replied:-

*Thank you for your further email.*


*I am aware that the correction does not use parentheses but remain of the view that when the three sentences which comprise the correction are read together, the context is clear and it is not misleading.*

## CONCLUSION

It seems to me that ██████████ is aware that the 'Correction' is less than adequate, else why would she (in her version of the 'correction') have used parentheses? She has also inserted several semi-colons. Reading the three sentences together, the context is far from and, I strongly believe, it is very misleading.

The whole point of a correction/clarification is to make what was previously incorrect/misleading abundantly clear. The ABC's current website has a "Correction" which has failed to do that.

I do not believe that this is simply an error in preparing the “correction”. ABC staff are of course free to have an opinion that a nuclear accident caused deaths. But they should not allow their opinions to influence a correction.

  
30 November 2021

The ABC Board  
abccomplaintsreview@abc.net.au

## Independent Review of ABC Complaint Handling

The Consultation Paper invites public comments and submissions on the issues being considered.

I applaud the Board for commissioning this review at this time. The ABC's enabling Act establishes the ABC as the 'independent national broadcasting service'. Its independence is its greatest distinguishing feature, the feature most valued by its audience and the ABC's most important characteristic.

A review of the policies and practices of complaint handling has the intent of reviewing, developing and changing the editorial policies which reflect the organization culture. To retain its independence, the ABC needed an independent review.

Each of the past examinations of the ABC complaints process has been conducted by a different body with different objectives.

- The 2009 review was 'internal', conducted by an ABC executive. Complaints management was a subset of the review scope (of self-regulation, appropriately).
- The 2018 review by ANAO was a performance audit. Its focus is not on What is done but on How Well it is done. The ANAO has its own independent discretions to exercise including the timing and selection of such audits. To properly avoid impacting upon the ABC's editorial independence, the ANAO confined its 2018 review narrowly to that of a performance audit. Even so, the ABC response to the ANAO recorded a tension. Whether "proportionality" is properly balanced now is a subject for this 2021-22 Review.
- The Consultation Paper records that the ABC Complaint Handling Procedures "...have operated since 2011 and were last revised in August

2017.” The triggers, the approval and adoption of that August 2017 review should now be evaluated.

- The Consultation Paper notes the ability of the ACMA to “...receive and investigate a complaint from any person dissatisfied with the ABC’s response to a complaint alleging non-compliance with the ABC Code of Practice in relation to radio or television broadcasting.” This ‘appeal’ role of the ACMA is already narrowly cast. As print and digital content become increasing important roles of the ABC, it will become less appropriate that the ACMA continues to have a role in regulating ABC complaint handling.

The Act refers to the ABC as the ‘independent national broadcasting service’. Every future complaints review must respect and reinforce that independence and that properly confines the ANAO to a performance audit so narrow that it answers few of the policy questions.

The Australian Standard AS/NZ 10002 is going to be an important yardstick, with international comparisons a very useful check.

Theme 10 in the Consultation Paper suggests an important trend. Broadcasting is expanding and diversifying into web and other digital technologies, all of them commercially dominated. That makes the ABC’s role increasingly unusual and valuable. Those new media release the audience from the constraint inherent in traditional broadcasting, namely a concurrent and real-time participation. The viewing or listening experience of each audience member becomes more individual to their environment, potentially influencing a complaint.

My objective for this little submission is to applaud the Board’s timing and conduct in commissioning this independent review. It is not to influence the conduct of the review itself.

“How well does the ABC manage external complaints and feedback about compliance with ABC editorial standards?” The Board’s Terms of Reference do not explicitly question the editorial standards themselves. That is because the ‘ABC Editorial Policies’, a consolidated set of 13 Editorial Policies are approved by the ABC Board itself, are comprehensive and are actively reviewed for currency, and were updated in 2019.

The Independent Review does not accept that editorial policies are beyond reconsideration. One of the Review themes opens the subject :

9. Does the ABC have satisfactory Editorial Policies and a Code of Practice? Should these be revised in any way? Should a single set of Editorial Policies apply to all ABC programming, or should special policies apply to specific programming types?

The Consultation Paper thus sets the scene for the most comprehensive review of the policies, practices and performance of the ABC' complaint handling. It extends to the selection and staffing of the specialist unit. It follows through to the way that complaint-handling outcomes inform the ABC and influence its performance and its change.

The Board has commissioned a thorough and timely review. It has properly reinforced the ABC's independence by choosing to conduct an independent review. These are precedents the Board can apply and adapt in future. This independent review has been commenced on footings that are very reassuring to ABC audiences.

Sincerely,

Glen Davis

**From:** [Shelley Francis](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Complaints review  
**Date:** Wednesday, 8 December 2021 4:46:56 PM

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Hi - I have made a couple of complaints to the ABC over the last 18 months. The issue in my first complaint about the Drum was completely misunderstood and therefore not addressed at all. The only option in the response was to write to ACMA which I did.

So my first point is that its frustrating to not be able to engage further , which I tried, when your entire point has been missed and the only option being to go to ACMA.

I made a second complain about 4 corners, The reply I received was very unsatisfactory, it was self congratulatory ie saying how great 4 corners was. It was also smug and dismissive and quite frankly wrong and also signed by [REDACTED] which was entirely unsatisfactory.

I also wrote a further complaint which was not responded to at all despite my request that that occur.

So in summary, the current complaints process does not work. The complaints unit can remain in the ABC but people, other than those responsible for the program the subject of the complaint, need to respond. In most work places senior management addressed complaints.

There needs to be option for further engagement on the same complaint not just one reply that states if you're not satisfied to go to ACMA. The reviewers need to fully investigate what the role and powers of ACMA are because as far as I can see its very limited in what if any action it can take in relations to complaints. An ombudsman needs to be investigated as well if its found ACMA are too limited in what it can do.

Also I am deeply concerned about a number of comments by the Managing director at estimates where it seems the ABC believes its totally fine to broadcast allegations in a way that presents them basically as facts. That's is fundamentally wrong and happens mostly on opinion shows like 4 corners The ABC often doesn't give the person the subject of allegations any right of reply either.

Thanks for your consideration and I hope the outcome of the review is a better ABC.

regards

Shelley



**From:** [Ken Blackman](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Trauma and Truth-telling – ABC Inquiry re May 27 2021 ABC TV Q & A.  
**Date:** Monday, 13 December 2021 2:18:47 PM

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Trauma and Truth-telling – May 27 2021 ABC TV Q & A.

*My submission to ABC internal investigation:*

I am not any more a regular watcher of the Q & A program. This is not because of any perceived bias!

But I happened to be watching on May 27, and have since revisited the segment which is the focus of attention of the complaint before you.

I suspect the reaction from the Israel lobby to this program segment has more to do with widespread positive comment on the effectiveness of the points made by Ms. Abdel-Fatah than with genuine dissatisfaction with ABC bias.

Israel's die-hard backers in Australia, where criticism of the Israeli state's actions are thinner on the ground than in the western media generally, are unfamiliar with their own stock defensive tropes on Israel being so obviously bested.

Mr Sharma was on the panel, and is a well-known supporter of Israel; he had, and took, full opportunity to respond. Or do Israel's defenders necessarily have to be Jewish? The Labor party also had a 'representative' there on the night; he spoke on the issue too. He, and the human rights lawyer also on the panel happened to agree with Ms Abdel-Fatah. I submit that is what gets up the nose of your complainant.

I note that the only two audience-questions permitted by the compere on the night came from a pro-Israel perspective. These would have been ticked off by the producers.

I reject any suggestion that ABC programming should be vetted by some diversity guru just because its Charter invokes that principle. And that document does not require "balance" of its editors and producers regarding specific current affairs series or one-offs. In my experience, Muslim or Hindu devotees have far more to complain about here in Australia regarding fair media exposure of the nations where their faiths are dominant.

I am frankly amazed that the ABC feels it necessary – with this one complaint before it – to offer up for examination dispute resolution options, remedies that can be granted when a complaint is upheld, the selection and tenure of staff in the ABC complaints unit and its investigative powers. Talk about overkill!

I see no evidence of the need for significant change to the reviewing or appealing or reporting processes around complaints to the broadcaster. And I have complained myself over time. As is typical, the Zionist lobby in Australia is looking for scapegoats lurking within the public broadcaster behind which it can hide its own navel-gazing

propaganda. The problem's not within the ABC, it's within Israel!

This complaint to the ABC exposes the blindness of many Israelis and most Zionists to the exceptionalism so frequently inherent in Israel's position, an arrogant exceptionalism that unfortunately goes unquestioned by my own country, Australia, on the international stage.

Claims that the May 27 Q & A session was somehow rigged to smear Israel are as farcical as the suggestion that there should have been an Israeli-supportive 'voice' on Q & A on May 27. You should conclude your inquiry thus.

Thank you.

Ken Blackman

[REDACTED]



## Independent Review of ABC Complaint Handling

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**SUBMISSION FROM:** Alan Sunderland

[REDACTED]

**Email:** [REDACTED]

**Telephone:** [REDACTED]

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**Personal Background:** I am a journalist and editorial consultant with more than four decades of experience in the broadcast industry. I was the Director of News at SBS TV from 1996 to 1999. I was the Director of Editorial Policies (a role later expanded and re-named as Editorial Director) at the ABC from 2013-2019. I was a board member of the Organization of News Ombudsmen (ONO, the peak international body representing news ombudsmen and standards editors) from 2015 to 2019 and since 2019 I have been the Executive Director of that organization. I have provided advice on ethical and regulatory media issues in the Ukraine to the Organization for Security and Co-operation in Europe (OSCE) as an international expert on self-regulation mechanisms.

***This submission is made in a personal capacity and the views expressed in it are my own. They do not represent the views of any organisation I am or have been associated with.***

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I welcome this opportunity to make a submission to this inquiry.

A version of this submission was originally prepared for the planned Senate Inquiry, but as that has been suspended indefinitely it seemed appropriate to provide this version (from which recommendations in relation to SBS have been removed) to the ABC inquiry.

### 1. EDITORIAL INDEPENDENCE

The ABC is an independent statutory authority and in particular, it has editorial independence from the Government of the day.

This is a central and essential factor, and any proposed changes to complaints handling processes which run the risk of undermining or removing that editorial independence must be rejected.

The ABC is, of course, ultimately accountable to the Australian people via the Parliament. However, that accountability must ensure (rather than undermine) the key principle of editorial independence.

This fundamental principle of editorial independence is what separates public broadcasters in democracies from state broadcasters in repressive, autocratic, one-party or totalitarian regimes.

I am not aware of any genuine public broadcaster anywhere in the world that has an editorial self-regulatory complaints process appointed by or imposed on it externally by the government of the day.

## **2. TWO FORMS OF EDITORIAL REGULATION ALREADY EXIST**

In order to ensure the right balance between independence and accountability, the editorial performance of both of Australia's public broadcasters – SBS and the ABC - are subject to two different forms of regulation – internal and external.

The internal complaints handling processes of SBS (by way of comparison) are conducted through the office of the SBS Ombudsman, while the ABC processes are handled by the Audience & Consumer Affairs team.

For both broadcasters, the external complaints process is handled by ACMA, the independent regulatory body for the media industry.

If the Committee has any concerns about the way SBS or ABC editorial complaints are handled by the external regulator, that is a matter to take up in relation to the functions, effectiveness and operations of ACMA.

Any perceived shortcomings in that area would not be solved by turning the existing self-regulatory processes of SBS and the ABC into external regulatory processes, since one already exists.

## ADEQUACY OF THE EXISTING SYSTEMS – INTERNATIONAL COMPARISONS

In my role as the Executive Director of the Organization of News Ombudsmen and Standards Editors, I am familiar with a wide range of complaints handling mechanisms and processes at news organisations around the world, including public broadcasters such as the BBC (United Kingdom), CBC (Canada), NPO (Netherlands), VRT (Belgium), DR (Denmark), ERR (Estonia), YLE (Finland), and both NPR and PBS in the United States.

The ABC complaints handling process is consistent with all of these international comparators in that the process is set up and overseen by the organisation itself rather than imposed from outside. There may additionally be a form of external regulation (such as ACMA here in Australia or Ofcom in the United Kingdom), but the internal systems are the responsibility of the broadcasters themselves.

This is fundamental in ensuring editorial independence from inappropriate sectional, political or partisan influence.

Whether they take the form of an ombudsman role (as is the case with SBS, CBC and NPO) or a complaints handling team (as is the case with the ABC and the BBC), one feature they all have in common is that they are set up as an internally independent entity, separate from the content and program making teams and with a direct line of reporting and management to the Board and/or senior management of the broadcaster.

The teams or individuals involved in handling complaints are not involved with the preparation of content and do not report into those who are responsible for the preparation of content. The ABC and SBS both follow this important principle.

It is also important to note that there are two different (but equally valid) models that exist internationally when it comes to complaint handling mechanisms.

In an **Ombudsman** role (such as exists at SBS, CBC in Canada, NPO in the Netherlands or ERR in Estonia), the Ombudsman has the power to investigate complaints, reach conclusions and issue findings, but those findings are not binding on the broadcaster. In practice, they are almost invariably accepted and acted upon, but the decision by program teams to accept and act on them is voluntary.

In a **Complaints Handling Team** process (such as exists at the ABC and the BBC) the findings are final and enforceable – program teams have no choice but to accept them.

This becomes a key point when considering whether the ABC ‘needs’ an independent role – around the world, such a role is internally selected and appointed and their findings are not binding. Officially, the ABC’s complaints handlers already have more compulsive powers than any Ombudsman.

Another consistent feature of all international media self-regulatory editorial complaints processes that I am aware of is that many minor or routine complaints are forwarded directly on to the relevant program team to handle in the first instance, usually after an initial assessment.

There has been some public criticism of the ABC recently because of situations where complaints about programs can be referred back to the program team itself.

It needs to be kept in mind that this is a common feature of similar best-practice complaints processes around the world. Each one is different, but here are some examples:

- The BBC process allows for many editorial complaints to be responded to in the first instance by the program teams themselves, with the complaint only escalating to the independent complaints team if the response is considered unsatisfactory (see page 9, [https://www.bbc.co.uk/contact/sites/default/files/2020-06/BBC Complaints Framework.pdf](https://www.bbc.co.uk/contact/sites/default/files/2020-06/BBC_Complaints_Framework.pdf) )
- In Canada, all editorial complaints at the CBC are responded to in the first instance by the relevant program team, with the Ombudsman only becoming involved if the response is considered unsatisfactory (<https://cbc.radio-canada.ca/en/ombudsman/mandate-ombuds> )
- At the Dutch public broadcaster NPO, all complaints are passed on to the relevant program teams for response, and the Ombudsman steps in if the response is considered unsatisfactory (see points 8 and 9 <https://ombudsman.npo.nl/comprehensive-complaints-procedure> )

In comparison, the SBS Ombudsman handles all editorial code complaints personally (a total of 231 in the last reporting period (see page 78 of the latest [Annual Report](#)) but other complaints are either resolved informally or referred back to content areas to handle.

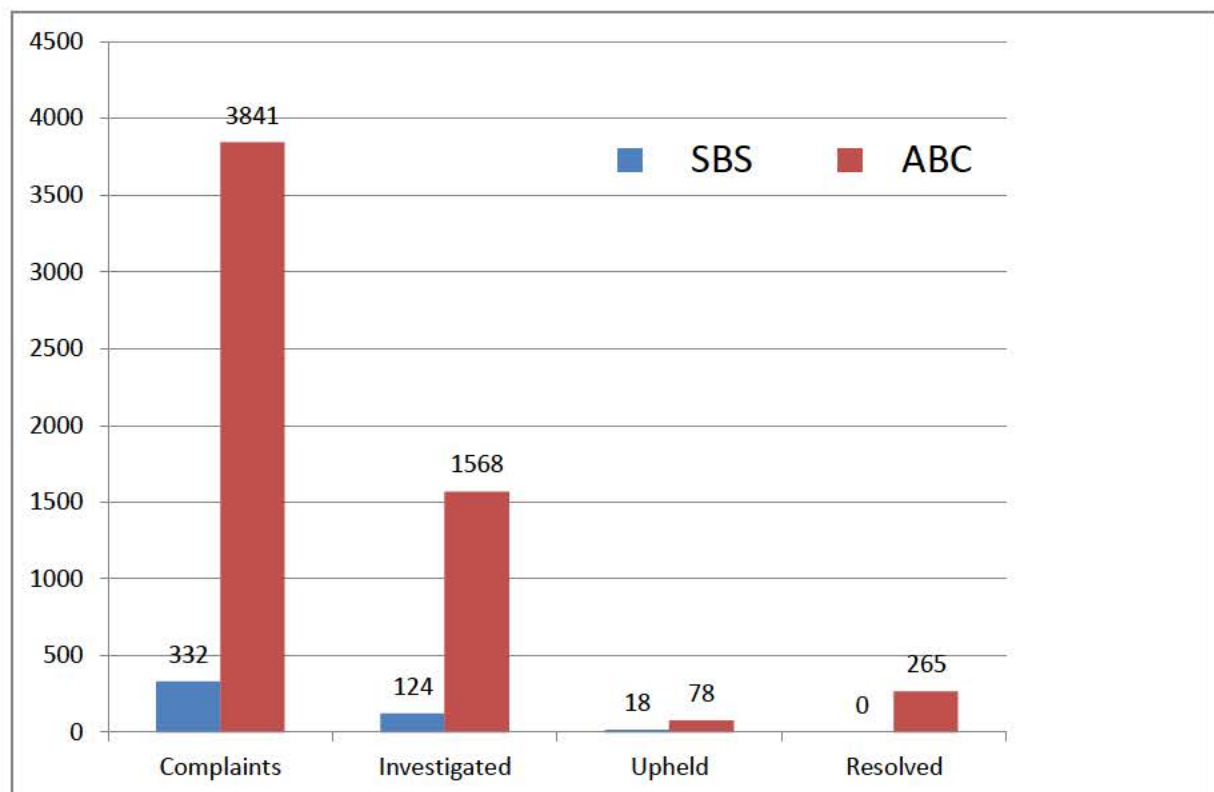
In the ABC's system, all editorial complaints are initially assessed by the complaints handling team (see page 115 of the [Annual Report](#) ) but about half are referred back to the program teams for a response while the rest are independently investigated.

From that perspective, the fundamental structures of the complaints processes at both SBS and the ABC are sound and appropriate.

The ABC's complaints handling team of five people is significantly larger than the single ombudsman role at SBS, but this is explained by the volume of editorial complaints received.

While the way in which editorial complaints are categorised and described is slightly different between the two broadcasters, making direct comparisons complex, Figure 1 below includes key, top-level numbers that I have drawn from both the ABC and SBS' latest Annual Reports:

**Figure 1:**



As you can see, the ABC has five times more staff acting as decision makers on editorial complaints and managing the process, but ten times as many complaints.

There is one final aspect of the ABC's complaints process which also deserves mention, as it has been the cause of some confusion and controversy.

In addition to the formal complaints investigation process, the ABC also regularly commissions broader pro-active reviews of its content to ensure it is delivering the best possible content to audiences. These can be conducted by external reviewers, internal independent reviewers from the editorial standards team or a combination of the two. They are asked to consider broader editorial quality issues beyond formal editorial breaches. There have been [36 such reviews](#) since 2007, and they often identify areas for improvement that go beyond formal standards breaches. In other words, content may be compliant with ABC editorial policies but still able to be improved.

The ABC is alone among Australian broadcasters (or indeed the wider Australian media) in conducting such content reviews and making their findings available to the public.



It constructing this submission, I was mindful of the five issues that the Senate Inquiry initially identified as worthy of consideration when it planned its own inquiry: accessibility, responsiveness, efficiency, accountability and fitness-for purpose.

I have decided to retain this structure for the body of my submission, if only to establish that this inquiry has had the ability to directly consider all of the issues deemed significant by the Senate.

## **ACCESSIBILITY**

The ABC has ensured that its complaints handling process is visible and easy to access.

The home page for **ABC complaints** can be found here, via a simple search:

<https://about.abc.net.au/talk-to-the-abc/editorial-complaints/>

It provides its Editorial Policies via a standalone, searchable site that is also optimised for mobile users: <https://edpols.abc.net.au/policies/>

It also has a simple and clear process for lodging an editorial complaint:

<https://www.abc.net.au/contact/complain.htm>

The ABC also makes its detailed complaints handling procedures publicly available for all to read: <https://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf>

In terms of the Australian media landscape, I consider this to be best practice.

By contrast, the Nine website (for example) has minimal information about how to lodge an editorial complaint - <https://ninehelp.zendesk.com/hc/en-au/articles/221997427-How-do-I-give-feedback-on-a-show-presenter-guest-or-advertising-I-saw-on-Channel-Nine> - and the page instructing people to complain in writing has no advice on the form that complaint needs to take and no link to the Code of Practice itself. I was unable to find any link to the Commercial TV Code of Practice on the Nine website. To find it, you need to go to a separate website run by Free TV.

Similarly, a search for 'complaints' at the Seven Network takes you to a very basic page with no clear advice on how to frame and lodge a formal complaint -

<https://7news.com.au/contact-us>

In order to find the relevant Code of Practice, you need to go to a separate corporate website which mentions it but provides no link -

<https://www.sevenwestmedia.com.au/assets/pdfs/Group-Editorial-Policy2.pdf>

The Ten Network has a slightly better information page on its website -

<https://www.10viacomcbs.com.au/about/contact-us/> - but viewers are still directed to the

Free TV site for code complaints, and the process around complaints is not spelled out in a way that is as clear and encouraging as the public broadcasters.

In the context of the Australian broadcast media landscape, both SBS and the ABC provide by far the most accessible editorial complaints processes.

## **RESPONSIVENESS**

The ABC makes it clear in its publicly available complaints handling procedures that it aims to respond to editorial complaints that are accepted for investigation within 30 days. Under the Broadcasting Services Act, complainants are entitled to take their complaint to ACMA if the ABC has not responded within 60 days.

In the latest ABC Annual Report, the complaints handling team reported that it had responded to 81.4% of the complaints that it investigated within 30 days.

It is certainly the case that, ideally, all complaints and in particular all significant editorial complaints would be handled as quickly as possible. However, there are a number of factors that can militate against that.

One is the sheer volume of complaints, and the limited resources available to deal with them. To take the ABC as an example, in 2020/2021 five independent complaints investigators had to handle over 1500 complaints. This does not count the minor complaints that were passed back to the relevant content teams to handle (a process that still takes a little time in terms of logging, tracking and communication with the program teams). It only includes the complaints they actually needed to investigate themselves.

That level of activity means that each team member handled an average of 300 complaints across the year – almost one new complaint every day. This is a significant workload to manage.

Another reason that complaints can sometimes be delayed is the unavailability of program staff who need to be consulted to respond to a complaint. If a program is in recess or if the journalist or producer is assigned elsewhere, it can take some time to receive a response to the allegations in a complaint.

Finally, the complexity and contested nature of many detailed editorial complaints mean investigators need to conduct their own independent research to fact-check and form a view on disputed issues. All of this takes time.

Given those factors, it is a matter for judgement as to whether the finalisation of 80% of significant complaints within 30 days (and almost all within the statutory requirement of 60 days) is sufficiently responsive.

Certainly the ANAO, in its detailed and wide-ranging [2018 report](#) into the ABC's complaints handling processes, considered that they were appropriately responsive.

## **EFFICIENCY**

The ABC has limited funding and its first priority is to use that funding to create content.

As a result, any bureaucratic, governance, quality control, marketing or complaints handling structures and processes need to be proportionate in their use of funding and resources, as every dollar spent on ancillary and support services is a dollar that cannot be used to create content.

The ABC's complaints team has always been subject to financial and efficiency pressures. In my time at the ABC (specifically the period 2013-2019) the ABC was subjected to significant budget cuts and the editorial policy and complaints handling areas were not immune to these cuts. I personally oversaw a reduction in staffing and funding for these areas.

In the circumstances, the ABC works diligently to ensure that its complaints handling obligations can be met efficiently without too great an impost on budgets that are already under significant and growing pressure.

## **ACCOUNTABILITY**

When it comes to accountability for complaints handling, there is one crucial element which must be preserved for the process to be effective.

It is essential that those determining whether the broadcaster's program teams have met their editorial obligations are responsible not to those program teams but to the board and management of the organisation.

This essential level of accountability is clearly in place at the ABC.

The Head of Audience and Consumer Affairs reports directly to the Editorial Director, who is a member of the Leadership team of the ABC and in turn reports directly to the Managing Director.

This means that, as is the case with SBS, the role is independent from all content areas (page 15 of the ABC Annual Report).

The Editorial Director regularly reports to every meeting of the ABC Board on complaints handling performance, including the number of upheld complaints and the actions that flowed from those breaches.



## **FITNESS FOR PURPOSE**

The purpose of a good complaints handling process is not to uphold complaints – it is to investigate them as impartially and thoroughly as possible. This is often forgotten, particularly when those considering the effectiveness of the process are dissatisfied complainants who have had their complaints dismissed. One of the defining features of the current public debate about complaints handling at the ABC is that it is being driven by complainants who are dissatisfied with the treatment of their own specific complaints. This is not the healthiest or most productive way to proceed. Those individual complaints need to be debated on their own merits, rather than being used as proof that the whole system is flawed.

To repeat: the purpose of a good complaints system is not to uphold complaints; it is to investigate complaints and deal with them as fairly and factually as possible.

To determine whether the processes used by the ABC and SBS are fit for purpose, these are the criteria I turn to, rather than the fate of a specific complaint an individual may be personally attached to:

- The process is easy to find and easy to access
- Complaints are assessed against clear ethical standards that represent the recognised principles of objective journalism
- The process used to handle complaints is consistent and transparent
- Where the findings of the process are later contested and referred on to an external ‘umpire’, the findings of that external umpire are broadly supportive of the original process

That last point is a critical one, and deserves some focus.

The complaints decisions of the ABC are subject to review by ACMA if complainants are dissatisfied with the outcome. Overwhelmingly, where complaints are referred on to ACMA, ACMA agrees with the decisions made by the ABC complaints handlers. There are occasions where ACMA will disagree and find against the ABC, and this is both reassuring and unsurprising. No one is perfect, and complaints handlers are as likely to make occasional errors as program makers. But the consistent evidence over a great many years suggests that this is rare. The fact that external processes and internal processes so often reach the same conclusion about complaints is one of the strongest pieces of evidence available to this inquiry that the system is fit for purpose and does its job well.

## ROOM FOR IMPROVEMENT – MY RECOMMENDATIONS

No system is beyond improvement, and there are ways in which an already strong ABC complaints handling system can be made even better. The following recommendations would, in my view, assist with that.

1. As is the case with most systems I am aware of around the world, many editorial complaints at the ABC are referred back to the relevant program teams for direct handling and response. They are all subject to independent assessment first, but routine, minor or straightforward ones are regularly sent to the program teams so that the complaints investigators can focus their time and resources on the major complaints. This should continue, but there is a measure that can be taken to ensure this works effectively. As was pointed out in the ANAO report in 2018, the ABC would benefit from a **better system to track these minor complaints** and their outcome. Following that recommendation, the ABC took steps to improve its tracking systems, but I believe more can and should be done. The disadvantage of this is that it places additional bureaucratic processes and, potentially, expense on already stretched program teams and this will come at a cost to the ABC, but on balance I believe it would assist in providing greater transparency and accountability to a greater number of complaints.
2. Alternatively or in addition to the above measure, the ABC could consider adopting a system closer to the ones used in some other public broadcasters overseas, where complainants who are unhappy with a response they have received from a program team could **refer their complaint on to the Audience and Consumer Affairs team** for a review and further consideration, prior to having to send it on to ACMA. This additional step, while potentially adding to the complexity and time involved, may well provide a better opportunity to review situations where a program team may have ignored or failed to properly assess a complaint. It avoids the current situation where a complainant who is unhappy with a response from a program team has no other redress than to go direct to ACMA.
3. Consideration should be given to **strengthening the role of the Head of Audience and Consumer Affairs** within the ABC structure. As Editorial Director, I was always uncomfortable with the notion that the position reported to me. As the person responsible for providing pre-publication and pre-broadcast advice on editorial standards, I felt it was inappropriate for me to then manage the team that determined whether complaints about a failure to observe editorial standards were upheld. I solved the problem by putting in place a process that prevented me from ever acting as a decision-maker on an editorial complaint. This ensured I could never over-rule someone who decided I had not provided good advice to a program team. That system continues to this day, but I believe it would be better if the Head of ACA was no longer a direct report to the Editorial Director, but rather a direct report to the Managing Director and the Board. To further strengthen the role, you could also:

- a. Rename the role as “Ombudsman” to give it more visibility and impact
- b. Consider a limited, fixed term for the role
- c. Ensure it is appointed by the Board (with the Managing Director as a member of the selection committee) and reports to the Board on a regular basis

## **SUMMARY**

The existing complaints handling process at the ABC is effective and fit-for-purpose, and this is readily apparent to anyone who has noted:

- Its consistency with international best practice
- Its endorsement by experts like the ANAO
- The consistency of its findings when compared with the external regulator, ACMA

It can always be improved, but any improvements need to be mindful of proportionality, ensuring they remain efficient given the tight budgets and competing priorities for the broadcaster.

Any changes that undermine the editorial independence of the ABC, or are driven by a desire to ensure that certain partisan complaints are given preferential treatment regardless of their merit, are misguided.

**Alan Sunderland**

**December 2021**

**From:** [Nick and Jess Morgan](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Fwd: Submission to review of the ABC's editorial self-regulatory system and complaints handling.  
**Date:** Tuesday, 14 December 2021 4:49:50 PM  
**Attachments:** [REDACTED]

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Dear Professor McMillan and Mr Carroll,

I wish to provide this submission for your review.

I made a complaint to the ABC in 2020 which was summarily dismissed. I wish to put forward this as a case of poor practice to the review of the ABC's editorial self-regulatory system and complaints handling.

This case goes to at least points 4, 5, 7, and 10 of the [terms of reference for the review](#). The ABC did not reasonably apply its own procedures or editorial standards on this matter, and was evasive in its responses, and did not address the matter at hand. Correspondence relating to this case is below and attached.

I also wish to draw the reviewers' attention to a gap in the regulatory framework for the ABC whereby the ABC is not able to be held to account for their online content by an external body. I understand that for print or televised content, there is recourse to seek external review of a complaints process from the Australian Press Council or ACMA. This is not the case for online content and this needs to be corrected. External oversight should be consistent from medium to medium.

Can this information please be considered by your review. I would be grateful if you could acknowledge receipt of this submission

Thanks

Nick Morgan

----- Forwarded message -----

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **SUBMISSION TO INDEPENDENT REVIEW OF ABC COMPLAINT HANDLING – DECEMBER 2021**

**Milton Cockburn**

### **1. Summary**

In April 2021 I lodged a complaint with the ABC's Audience and Consumer Affairs unit (ACA) under the ABC's complaints-handling procedures about an ABC-TV program "Exposed: The Ghost Train Fire". My complaint was rejected in total.

The ACA ignored the ABC's Editorial Policies in rejecting my complaint. This was confirmed by a subsequent independent external review of the program commissioned by the ABC Board.

My experience has convinced me that the ACA is not independent of ABC management; nor can it be seen to be independent.

A complaints mechanism operating outside the ABC is unnecessary to overcome this lack of independence. The ABC Board needs to perform the functions which the Federal Parliament already expects of it. Section 8(1)(c) requires the Board to "ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to recognised standards of objective journalism". Section 8(1)(d)(i) requires the Board to "ensure that the Corporation does not contravene, or fail to comply with, any of the provisions of this Act."

The ACA unit should be maintained and the Head of ACA report, on editorial complaints, directly to the ABC Chair. This would eliminate present concerns that the ACA is not independent of ABC management.

I have set out my specific recommendations in section 9. In other sections of this submission, I have outlined in detail my experience with this objection which has led to these recommendations.

### **2. My Complaint**

In March 2021 ABC-TV broadcast a three-part documentary "Exposed: The Ghost Train Fire". Among other claims the documentary alleged that former NSW Premier, Neville Wran, had intervened to ensure a lease over Luna Park was awarded to a company controlled by crime figure Abe Saffron. The program further alleged that Wran "on occasions" attended drinks with others at Saffron's house and that the pair were "pally, really pally".

After investigating the material on which the program supposedly relied, I concluded there was no credible support for these allegations. (My investigation would result in the **attached** article "Underexposed: The ABC's Ghost Train Fire", published in the *Southern Highlands Newsletter*). I therefore decided to lodge a complaint under the ABC's complaint-handling procedures with the ABC's Audience and Consumer Affairs (ACA). A copy of the complaint, which I submitted on 19 April 2021, and the ACA's response of 11 June 2021, are **attached**.

The program also claimed Wran engaged in a cover up of the cause of the fire at the ghost train. The presenter's exact words were: "Essentially the allegation is that the reason why it [the investigation] didn't go any further was because of corruption further up. There are a lot of powerful people in powerful places protecting Abe. So it went right to the top we are told." Despite the obvious conclusion that "the top", in this context, could only mean the Premier of NSW, this was subsequently denied by the ABC Managing Director, David Anderson, when he appeared before the Senate Estimates Committee on 26 May 2021. Mr Anderson told the Senate: "This program in no way suggested that Neville Wran was involved in the cover up of the fire". I emailed Mr Anderson on 1 June 2021 pointing out that he had misled Parliament by saying the program "in no way" suggested Wran was involved in a cover up. I requested this comment by the presenter be edited out of the program which was accessible on ABC iView and was continuing to be publicised. Although this email was directed to Mr Anderson personally, he chose to respond by referring it to ACA, which also addressed this email when responding to my complaint.

I had lodged the complaint with little expectation of success. I was aware of how few editorial complaints are upheld. I was also aware that the program had been a very expensive one – only later did we learn that it had cost nearly \$2 million – and had been around 18 months in the making. More than 40 staff worked on the program at various times. ABC management, having expended such substantial resources on one program, were obviously hopeful and confident that that the program would be a multi-award-winning one. I realised there would be pressure on ABC management not to find fault with the program since such a finding would diminish its chances of winning major journalism prizes. (The program has, in fact, failed to be short-listed for a Walkley Award; did not win a Kennedy Award; or win an ACTAA Award).

### **3. Outcome of Complaint**

My low expectations were met. The ACA, by email of 11 June 2021, rejected my complaint in total. ACA ruled it would not consider my complaint under the "fair and honest dealing" standard (5.3) because I did not "have sufficient interest in this matter to satisfy the test under the Code". (This is puzzling since I am a former staff member of Neville Wran, including during the period of the Luna Park fire, and am also a co-biographer of Wran.)

ACA did consider my complaint under the "accuracy" standard (2.1). ACA informed me the allegations about Wran had been presented as "allegation rather than a fact" and therefore were not a breach of the accuracy standard. This is despite there being no corroboration for any of these allegations and despite the Editorial Policies of the ABC, and "recognised standards of objective journalism", requiring "multiple sources" for serious allegations.



#### **4. Appeal of Rejection of Complaint**

ACA advised me if I was dissatisfied with its determination, I could pursue the complaint with the Australian Communications and Media Authority (ACMA). I chose not to take this action. My main concern, arising from this experience, was the reasoning used by ACA in rejecting my complaint. I do not consider ACMA to be an appropriate body to consider the implications of ACA's reasoning.

There is no basis in the ABC's Editorial Policies for ACA's reasoning that allegations not presented as facts do not require corroboration from multiple sources. This is an unusual and disturbing interpretation by ABC management of the policy relating to accuracy. I can find no support for this interpretation in the Editorial Policies or Editorial Guidance Notes, leading to the conclusion that ACA has misinterpreted those policies and standards to the benefit of the program makers.

At around this time I also became aware of a comment by [REDACTED] the ABC executive responsible for implementing the Board's Editorial Policies and to whom the ACA reports. [REDACTED] was asked at the Senate Estimates Committee on 26 May 2021 (while my complaint was still being considered by ACA), why there was only one source used in the program for the allegation about Wran and Saffron. He replied: "The matter concerning Mr Wran was not the focus of the documentary series. Normally in these sorts of situations where they are going to explore a particular allegation or line of inquiry, that would certainly require them to speak to other sources".

The program made three specific allegations of criminality against Wran so it is nonsense to suggest this was not a focus of the series. Putting this to one side, there is no support for [REDACTED] claim that the Editorial Policies do not apply if a person is simply collateral damage in a program. I stress that [REDACTED] is the executive responsible for the implementation of the Editorial Policies within the ABC and has oversight of the ACA.

We can demonstrate the absurdity of the reasoning of [REDACTED] and ACA if we swap the name of Bob Carr (to choose a former NSW Premier still living) with that of Neville Wran. Both ACA and [REDACTED] know that the ABC's legal advisers would not permit such an allegation about Mr Carr to be broadcast without reliable confirmation from "multiple sources".

Both ACA and [REDACTED] have effectively interpreted the Editorial Policies to say that allegations about dead people do not require the same corroboration as allegations made about the living. There is no support for this interpretation in the Editorial Policies or in recognised standards of journalism. This is a reinterpretation of the Editorial Policies to suit ABC management. If allowed to stand this means open season has been declared on dead people with no requirement for ABC journalists to corroborate allegations made against them.

For this reason, I decided to pursue this matter with the ABC Board and not with ACMA. This is because the ABC Board is responsible, under section 8 of the *Australian Broadcasting Act*, "to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to recognised standards of objective journalism." The main way the Board does this is by adopting the Editorial Policies to which it requires ABC management adhere. The Board is also responsible under section 8 for ensuring that ABC program makers do not contravene the legislative requirement for "accurate and impartial" news and information.

## **5. The ABC Chair**

I therefore decided to bring this matter to the attention of the ABC Chair, Ms Ita Buttrose. I sent an email to Ms Buttrose on 18 June 2021. I said I was not seeking to appeal the rejection of my complaint. "My concern is the reasoning adopted by Audience and Consumer Affairs in rejecting my complaint and the implications this has for the Board's Editorial Policies and Editorial Guidance Notes."

I respectfully requested of Ms Buttrose that the reasoning of ACA and [REDACTED] be considered by the Board. "Is [REDACTED] correct in interpreting the ABC Editorial Policies and Editorial Guidance Notes as only being applicable when an allegation about a person is presented as an allegation without any factual basis? Is [REDACTED] correct in saying there is no obligation for multiple sources if a person about whom an allegation is conveyed is not the focus of a program? I consider it necessary for the ABC Directors to satisfy themselves that the ABC's Editorial Policies are being properly interpreted by ABC management".

Shortly after my email, and to her credit, Ms Buttrose advised me, following a meeting with the ABC Managing Director, that an external review of the program would be commissioned. There was no announcement of this review by the ABC.

## **6. External Review**

The report of the review was released by the ABC on 30 August 2021 after being selectively leaked the day before. The reviewers were not asked specifically whether the program contravened the Editorial Policies in relation to the allegations about Wran. Nevertheless, their findings directly contradict the findings of ACA in relation to my complaint.

Concerning the awarding of the Luna Park lease, the reviewers found "there is no evidence of Wran interfering with [the government officials committee's] decision-making". On the absurd and uncorroborated claim by a Saffron intimate that Wran was "pally" with Sydney gangster, Abe Saffron, the report found "no solid evidence was given to corroborate [the presenter's] most serious claims, and no contrary views were presented." Noting the ABC's insistence that the program's claim that a cover-up of the fire "went all the way to the top" was not a reference to Wran, the report noted that several elements of the program "left the reviewers with a strong impression the program concluded Wran was complicit."



The report of the external reviewers provides no support or comfort for ACA's claim that "allegations rather than facts" do not require multiple sources; nor for Mr McMurtrie's claim that allegations about people who are not the focus of a program do not require corroboration from multiple sources.

## **7. The ABC Board**

At the same time as the report was released ABC management released a media statement, in the name of [REDACTED], which effectively doubled down on the program's claims about Wran and ignored the criticism of the external reviewers. There would be no correction or qualification of the claims – as the ABC would subsequently do with the Juanita Neilson documentary – and the program would remain available without editing or qualification on ABC iView. [REDACTED] has subsequently stated: "I still defend the Ghost Train fire documentary" (SMH 8/10/21).

The report of the external reviewers was commissioned by the ABC Board and I was advised the report would not be released until it had been considered by the Board. We do not know if this media statement was authorised or endorsed by the Board.

If the statement was endorsed by the Board one is entitled to ask: what was the purpose of the review if the findings are ignored? Since the program remains on iView without editing or qualification, this would suggest the Board must be satisfied with ABC management's interpretation of the Editorial Policies. The Board must therefore amend its Editorial Policies to make clear that allegations that are not factually based made about people, or allegations about people who are not the focus of a program, no longer require corroboration.

If the statement was not endorsed by the Board this suggests ABC management has effectively told the Board that management intends to interpret the Editorial Policies in a manner that it thinks fit. This has serious implications for the Board's Editorial Policies and the Board's responsibility under the Act to ensure the gathering and presentation of news and information is accurate and impartial. It has even more profound consequences for the governance of the ABC.

The ABC Board should be transparent and advise what action, if any, it has taken or proposes to take on this report.

## **8. Eligibility of Complainants**

As noted above (section 3), in deciding whether to consider my complaint for investigation, ACA advised me that, in relation to the "fair and honest dealing" principle, "the information that you have provided does not indicate that you have sufficient interest in the matter to satisfy the test specified in the Code". My complaint was only accepted in relation to whether the program had breached the "accuracy" principle.

I am now aware, under the *ABC Code of Practice*, that complaints that a program's contents have breached the fair and honest dealing principle fall outside the Code if the complainant does not have sufficient interest in the subject of the complaint. I was a staff member of Neville Wran at the time of the Luna Park fire and a co-biographer, although I did not believe it necessary or relevant to point that out when lodging my complaint. My former membership of Wran's staff was widely reported in the media in the controversy over the program.

This is a very subjective criterion and one that should not be left to the ACA to decide. Since the ABC is publicly funded, all Australians have an interest in ensuring that the ABC is "fair" and "honest" in its reporting. There is no justification for limiting the eligibility of complainants in such a manner. The other criteria are sufficient for ACA to make a judgment as to whether a complaint should be accepted for investigation.

## **9. Recommendations**

- (a) A separate complaints-handling mechanism located outside the ABC is unnecessary.
- (b) Determination of editorial complaints should be a matter for the ABC Chair in consultation, when necessary, with the ABC Board. This is consistent with the responsibilities of the Board under section 8(1)(c) and section 8(1)(d)(i) of the Act.
- (c) The Audience and Consumer Affairs unit of the ABC should be maintained but the Head of ACA should report directly to the ABC Chair on editorial complaints. This would eliminate concerns that the ACA is not independent of ABC management.
- (d) When considering whether a complaint alleging a breach of the "fair and honest dealing" principle should be accepted by ACA for investigation, the criterion of "proximity of the person raising the matter to the substance of the matter" be deleted from the proportionality criteria. All taxpayers have an interest in the accuracy, fairness and honesty of the ABC. The other proportionality criteria are sufficient.
- (e) When an editorial complaint has been dealt with by the Board, a statement should be issued by ABC Communications detailing the complaint, the Board's decision and any action that will flow from the decision. The decision on whether a complaint is a serious or complex one, and therefore one for the Board to investigate, should rest on the judgment of the ABC Chair, based on the proportionality criteria (as amended by recommendation 9(d)).
- (f) There should be no appeal to the Australian Communications and Media Authority from a decision by the ABC Board on editorial complaints. The Australian Senate has parliamentary oversight of decisions made by the ABC Board.

- (g) A position of Chief Editorial Executive be appointed, with statutory authority, reporting directly to the ABC Board. This position to have overall responsibility for implementation of the Board's Editorial Policies and Editorial Guidance Notes and be responsible for raising the editorial standards of the ABC. This person would also assume all responsibilities of the current position of Editorial Director which would become redundant. (I appreciate this recommendation may be outside the scope of the review but it is significant for items 7 and 8 of the terms of reference.)

[REDACTED]

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**From:** ABC Corporate\_Affairs14 [REDACTED]  
**Sent:** Friday, 11 June 2021 3:52 PM  
**To:** [REDACTED]  
**Subject:** RE: Exposed

Dear Mr Cockburn

Thank you for your email about the final episode of *Exposed: The Ghost Train Fire* broadcast on 30 March on the ABC's main channel.

In accordance with the ABC's complaint handling procedures, your correspondence has been considered by Audience and Consumer Affairs, a unit separate to and independent of program areas within the ABC. The role of Audience and Consumer Affairs is to investigate complaints alleging that ABC content has breached the ABC's editorial standards (<https://about.abc.net.au/reports-publications/code-of-practice/>).

To the extent that your complaint raises substantive editorial issues, we have reviewed and assessed the program against the relevant standard for accuracy: 2.1 *Make reasonable efforts to ensure that material facts are accurate and presented in context*. Part II of the Code of Practice makes clear that complaints about radio and television programs broadcast by the ABC on its free-to-air television or radio broadcasting services fall within the scope of the Code 'except where the complainant does not have a sufficient interest in the subject matter of the complaint, where the complaint alleges a breach of Fair and honest dealing (standards 5.1-5.8)'. While noting your reference to standard 5.3, the information that you have provided does not indicate that you have sufficient interest in this matter to satisfy the test specified in the Code.

*Exposed* is a three-part true crime documentary series that aims to 'expose the truths behind the mystery of the Ghost Train Fire at Sydney's iconic Luna Park'. In this third and final episode, [REDACTED] 'delves into claims of corruption and cover-ups'.

#### *Allegation number 27*

The first aspect of your complaint raises concerns that 'The program alleged former Premier Neville Wran intervened to ensure a lease over Luna Park was awarded to a company involving Abe Saffron'.

The program team has provided Audience and Consumer Affairs with a detailed response to your complaint, noting that the program made no such allegation, but rather that the allegation was attributed to 'allegation number 27' of the 1986 Parliamentary Commission of Inquiry into the conduct of Justice Lionel Murphy. Audience & Consumer Affairs note the following instances of attribution in the program:

[REDACTED] When Lionel Murphy died, all of the evidence and testimony about what he was allegedly up to was locked up by the government for 30 years. Buried among those thousands of pages is allegation number 27.

John Dowd QC: Allegation number 27: 'The Honourable Lionel Keith Murphy, in or about the early months of 1980 and whilst a Justice of the High Court of Australia, agreed with Morgan Ryan

Genia McCaffery: That he, the judge, would make representations on behalf of

Ken Herd: the company associated with Abraham Gilbert Saffron [...] to the honourable Neville Wran, then the Premier of New South Wales.'

and

[REDACTED]: So, what's the allegation number 27?

Wayne Evans: Neville Wran and Lionel Murphy colluded to obtain a lease for Abe Saffron of the premises known as Luna Park.



The program sought to contextualise this allegation through a range of interviews with key figures, including the coordinator of the Parliamentary Commission of Inquiry into the conduct of Justice Lionel Murphy, Mr Andrew Phelan; former senior sergeant Paul Egge, whose testimony at the Stewart Royal Commission later became allegation number 27; and former constable Roger Kilburn, who also worked on the intercepted phone conversations. The program made clear that there were 15 allegations that the inquiry considered 'should have been brought forward to a hearing', but that this did not happen as a result of Justice Murphy's terminal illness. The program also made clear that it took 30 years for allegation number 27 and records relating to the inquiry to be publicly released.

The program additionally made clear that then Premier Neville Wran 'declared the tapes phony'.

The Luna Park lease tender process was also examined, and the last living member of the 1980 Tender Assessment Committee, Andrew Andersons, expressed his view that it 'should have been a more rigorous process. It was pathetic. And with hindsight, I'm increasingly of the view that it's about the land. It's about getting hold of the land, getting your foot in the door by pretending you're a park operator.'

Audience & Consumer Affairs is satisfied that the allegation concerning Mr Wran was presented as an allegation rather than fact and appropriately attributed, and that relevant context about allegation number 27, the circumstances of the inquiry and the tender process of the Luna Park lease were set out for viewers to ensure they could draw their own conclusions about the matter, in keeping with the ABC's accuracy standard.

#### *Rosemary Opitz*

The second aspect of your complaint contends that the program 'alleged that Wran "on occasions" attended drinks at Saffron's house and the pair were "pally, very pally"'. Audience & Consumer Affairs note that this is once again not the case. This was presented as the eyewitness account of Ms Rosemary Opitz:

Rosemary Opitz: Oh god, it's Neville. Neville Wran.

[REDACTED]: Did you see that man with Abe Saffron?

Rosemary Opitz: I did. Friday night drinks.

[REDACTED]: Okay. And at those Friday night drinks is that where ... Neville Wran would be, or?

Rosemary Opitz: On occasion.

[REDACTED]: You're very sure about that, aren't you.

Rosemary Opitz: Very sure about that.

[REDACTED]: How did they seem together, what can you remember?

Rosemary Opitz: Very pally. Really pally. I guess looking back ... if I hadn't been stupid, I would have realised that something wasn't quite kosher. Why would you be mixing ... when you're in a situation like that, you just see what you want to see. You look past things you don't want to look at. It's terrible, just terrible.'

The program has detailed the efforts it made to establish the veracity of Ms Opitz and her credibility, including interviews with others and examinations of primary source material.

Audience & Consumer Affairs consider the program made reasonable efforts in the circumstances to establish Ms Opitz's credibility. Ms Opitz's claims were not presented as fact, and appropriate context was provided about Ms Opitz and her relationship to Abe Saffron so that viewers could make up their own minds about her credibility and the veracity of her claims concerning Neville Wran.

#### *Former Sergeant Paul Egge*

The third aspect of your complaint contends that former senior sergeant Paul Egge's evidence is unsupported and lacks credibility, and the program 'fails to note that not one of the other three police officers interviewed by the Commission of Inquiry backs up Egge's claim that Wran was involved. These are sergeants Treharne, Ogg and Meadley.'

The program team has explained that:



... as the Royal Commission makes clear in this document at page 31 (found here <http://dl.aph.gov.au/C40%20-%20Allegation%20No.%2027.pdf>) Mr Egge made the allegation when he appeared towards the concluding days of the Royal Commission's hearings. A decision was made by the Commission not to recall witnesses previously examined by the Commission, i.e. they were not asked to return, meaning they were not asked about the allegation regarding Mr Wran. However, crucially, two witnesses who followed Mr Egge and gave testimony after him 'recalled similar conversations' about the Luna Park lease/land.

The program team also interviewed the relevant person, Mr Egge, who steadfastly maintained the same information he provided under oath to the Stewart Royal Commission, being the key contemporaneous account from the time. The *Exposed* team also corroborated Mr Egge's version of events and memories of the telephone conversation about the Luna Park lease with others, including former police officers. The program team also verified Mr Egge's reputation and credibility through multiple checks with former police officers. In addition, *Exposed* also interviewed another former police officer on camera, Mr Kilburn, former NSW Police sergeant with the TSU [Technical Support Unit]. Mr Kilburn confirmed he too recalled a conversation about the Luna Park lease at the same relevant time period, supporting Mr Egge's account. Again the *Exposed* journalists drew on primary sources to corroborate information about the intercepted telephone conversations.

Audience & Consumer Affairs consider that audience members would reasonably understand that the program was attempting to establish whether Abe Saffron had an interest in the Luna Park lease, and that the testimonies of Mr Treharne and Mr Ogg were clearly relevant to that focus. The program did not suggest that Mr Treharne or Mr Ogg had specifically heard mention of Wran, nor was there any requirement for the program to state that they had not. The credibility and validity of Mr Egge's account does not hinge on this point.

We are satisfied that the program made reasonable efforts to establish Mr Egge's credibility and the plausibility of his account, that his allegation was clearly presented as such, and that the program did not mislead viewers as to the nature of testimony from Mr Treharne and Mr Ogg.

#### *Unjustified 'rhetorical questions'*

The fourth aspect of your complaint contends that 'There is no justification for the presenter to pose the rhetorical question: Why would Neville Wran get involved in this? Why would Neville Wran take that call from Murphy and make sure the lease swung over to Abe Saffron?'

Audience & Consumer Affairs note that these questions were put by [REDACTED] to former police prosecutor Wayne Evans for response, and he answered with his own view that 'There had to be something in it for Wran.' These questions do not meet the test of a rhetorical question, which is a question posed with no expectation of an answer and with the assumption that only one answer is possible. At no stage was it stated as fact that Neville Wran was involved or that he *did* take 'that call from Murphy and make sure the lease swung over to Abe Saffron'. The wording of the questions clearly reflected that this was an allegation of involvement and not a statement of fact.

#### *The program's conclusion*

Your complaint of 1 June, addressed to the Managing Director, contends that the program 'obviously did suggest that Neville Wran had an involvement in or knowledge of the fire at Luna Park'. Since your complaint again raises editorial matters, it was referred to Audience & Consumer Affairs.

Audience & Consumer Affairs considers that your complaint mischaracterises the program and its conclusions. At no stage did the program suggest that Neville Wran was involved in or knew about the Luna Park fire, or that he was involved in a cover-up of its cause. During the conclusion to the series, [REDACTED] presented the 'strong' belief of judicial figures, police insiders and detectives interviewed for the program that Abe Saffron was 'behind the fire', as well as their allegation that he was protected by 'a lot of powerful people in powerful places'. This was

presented as allegation rather than fact, and we are satisfied that no breach of the ABC's accuracy standard has occurred.

Your further email of 3 June addressed to the Managing Director raises no substantive new issues; however, your comments are duly noted.

We are satisfied that the program complied with the ABC's editorial standards for accuracy. Should you remain dissatisfied, you may be able to pursue your complaint with the Australian Communications and Media Authority, [www.acma.gov.au](http://www.acma.gov.au).

Yours sincerely

To: Audience & Consumer Affairs

From: [REDACTED]

Subject:

Date: 19-Apr-2021 16:53

Below is the result of your feedback form. It was submitted by [REDACTED]

ABC program:

Response required: Yes

Date of program: 30-Mar-2021

Contact type: Complaint

Location: NSW

Subject:

Comments: The program alleged former Premier Neville Wran intervened to ensure a lease over Luna Park was awarded to a company involving Abe Saffron. It further alleged that Wran "on occasions" attended drinks at Saffron's house and the pair were "pally, very pally". No credible evidence was produced to justify either allegation. The program, in broadcasting these claims without corroboration, breached the ABC's Editorial Policies, specifically 2.1 (accuracy): "Make reasonable efforts to ensure that material facts are accurate and presented in context" and 5.3 (fair and honest dealing): "where allegations are made about a person or organisation make reasonable efforts in the circumstances to provide a fair opportunity to respond". These allegations would not have been broadcast without corroboration if Wran was alive. The fact that he is dead means there should have been an even greater effort "to provide a fair opportunity to respond". The ABC owed this to Wran's widow and his children who must live with this slanderous allegation about a person they loved. A solitary witness was produced to claim that Wran had socialised with Saffron. How credible is it that the Premier of NSW would attend functions with a gangster in an environment where he could be witnessed by many others? For an ABC journalist to make "reasonable efforts to ensure that material facts are accurate" surely requires corroboration by at least one independent and trustworthy source. Every journalist is trained to require a minimum of two independent sources before an allegation is broadcast or published. That obligation does not cease because a person is dead and therefore unable to sue. The obligation becomes even more important when a person is unable to defend himself or herself. Legal privileges should come with moral responsibilities. The ABC's Editorial Guidance Notes relating to "accuracy" are relevant here. This notes that "one of the central challenges for any journalist or content maker is how far they need to go to cross reference, investigate and confirm through multiple sources". I stress the reference to "multiple sources". The note lists several factors that are relevant in assessing how far the journalist should go: materiality; the actual content; the likely audience expectations; the consequences; and the circumstances in which



content was presented. There is no doubt that an allegation of corruption against the most senior public official in NSW satisfies all of these factors. As the note states: "Generally speaking the strongest expectation of accuracy applies to news and analysis of current events relating to political or controversial matters of public importance". The program should have produced "multiple sources" for such an allegation to be broadcast. At the very least this allegation, since it is uncorroborated, should have been balanced by an interview with a former close staff member, such as his personal secretary or press secretary or one of his two drivers. Why was Wran's name even relevant for the program? The program claimed, without providing credible evidence, that Wran had intervened to ensure the lease for Luna Park was awarded to a Saffron-related corporate vehicle. The program had earlier noted that the decision on the lease was made by a special committee of five very senior public servants. The only member of this committee still alive - according to the program - was interviewed and made no claim that the committee had been pressured in making its decision. This committee comprised two heads of departments, a deputy head of a department, the Valuer General and the senior government architect. It stretches credulity to suggest that such a committee could be pressured into reaching its recommendation. The program instead relies heavily on the evidence of Sergeant Egge, one of those involved in an illegal wiretapping operation, who is the only person to make the claim that Lionel Murphy had said that Wran would intervene to arrange for Saffron to get the lease. Here the program relies on the document "Allegation No. 27", before the Parliamentary Commission of Inquiry into Justice Murphy, which was publicly released in 2017 and widely reported at the time. But the program fails to note that not one of the other three police officers interviewed by the Commission of Inquiry backs up Egge's claim that Wran was involved. These are Sergeants Treharne, Ogg and Meadley. For space reasons I have not included their comments but would be happy to provide if requested. I note that Allegation No. 27 states that Sergeant Meadley "who spent considerable time while he was attached to the BCI involved in surveillance of Ryan and who heard tapes of Ryan's telephone conversations at the TSU from time to time, had no recollection of hearing any references in the Ryan conversations to Luna Park". The document also states: "It should be noted that although it may appear on a reading of Egge's evidence that he actually heard some telephone conversations as they occurred, this was not the case." The only witness, therefore, to Wran being involved in a conspiracy to act on behalf of Saffron is Sergeant Egge, whose evidence is uncorroborated, who did not hear any telephone conversations and who apparently relies on transcripts which have conveniently been destroyed. There is therefore no justification for the presenter to pose the rhetorical questions: "Why would Neville Wran get involved in this? Why would Neville Wran have taken that call from Murphy and make sure the lease swung over to Abe Saffron? No credible evidence was produced by the program that Wran did any of the things suggested by those questions. Another question should have been posed by the program and asked also by those who gave permission for the allegations against Wran to be broadcast. This question is: why would the state's most electorally successful premier, one of the most astute politicians Australia has seen, put his entire career at risk, by socialising with, and doing favours for, a person he had described in Parliament as disreputable. It is only necessary to pose this question to realise how ridiculous are the program's allegations about Wran.

Network - Television

RecipientName - Audience & Consumer Affairs

Referrer - Complaint

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**From:** [Peter Bayley](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** Independent Review of ABC Complaint Handling  
**Date:** Thursday, 16 December 2021 3:04:04 PM

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Thanks for the opportunity to submit my personal views.

I have written to the ABC twice in past years complaining about bias, and only received one reply which asked for a lot of detail.

I have been a fan of the ABC for most of my life (72 yrs old) however in the past 20 years I ceased watching ABC TV Current Affairs Programs and I no longer listen to ABC Radio. I occasionally watch the news only if I have missed other news on other channels.

I will return to the ABC when it corrects its significant lack of balance and adheres to the Charter. It is no longer a reliable source of information.

A typical example of ABC bias is the way [REDACTED] was pursued without evidence. When [REDACTED] resigned the 7pm news item [REDACTED] was solely about the recent allegations – just a regurgitation the recent past. The report contained nothing about his time in the [REDACTED] Governments, his achievements and disappointments.

In the same news bulletin the Sex Discrimination Commissioners' Report on Parliament House staffers was reported by ABC journalists. It was stated that sexual harassment was mainly perpetrated by males amongst staffers - correct. The news item didn't mention that females did the majority bullying.

The ABC is a very important institution. Its bias needs correction if it wants Australians to care about. I have lost my patience with ABC current affairs reporting. A condition of engagement of journalists should be that they comply with the Charter.

I am a middle-of-the-road voter.

regards

Peter Bayley  
[REDACTED]  
[REDACTED]  
[REDACTED]



## ZFA Submission to the Independent Review of ABC Complaint Handling

**President** Jeremy Leibler  
**CEO** Ginette Searle  
**Director of Public Affairs** Dr Bren Carlill

The Zionist Federation of Australia welcomes the opportunity to provide its perspective to this review. The ZFA believes that the ABC complaints mechanism is currently not fit for purpose. The absence of transparency and independence leads to a lack of accountability within the ABC, which undermines the *raison d'être* of the complaints mechanism.

While this submission is relevant to most of the review's terms of reference, it is of particular relevance to:

- 4. whether complaints relating to ABC editorial standards are dealt with efficiently, fairly and reasonably
- 9. whether the capabilities and resourcing of teams responsible for complaint processes are fit for purpose
- 10. measures taken by the ABC to ensure public transparency about complaints and complaint outcomes

This submission makes four recommendations that, if implemented, will introduce transparency, accountability and nuance to the ABC's complaint mechanism, as well as to its content divisions.

### Recommendation 1

Create transparency in the complaints mechanism by publishing all complaints and responses.

### Recommendation 2

Prevent content divisions from seeing or commenting on complaints until after preliminary findings have been made.

### Recommendation 3

Create a public media compliance office, which would include an independent complaints mechanism external to the ABC (and SBS).

### Recommendation 4

Have a public media compliance office conduct performance audits on ABC (and SBS) editorial decision-making. When assessing bias, these audits would pay attention to *how* each perspective is presented, not merely that they *are* presented.

## REPRESENTATION. ADVOCACY. CONNECTION.

• President Jeremy Leibler • Chief Executive Officer Ginette Searle •

• Constituent Organisations State Zionist Councils of: ACT • New South Wales • Queensland • South Australia • Victoria • Western Australia

• Affiliated Organisations: Amenu • ARZA • Australian Forum of Russian Jewry • Australasian Union of Jewish Students • Australian Zionist Youth Council • Friends of Likud • Jewish National Fund Australia • Maccabi Australia • Maccabi Masorti Australasia • Mizrahi Organisation • National Council of Jewish Women Australia • Union for Progressive Judaism • United Israel Appeal Australia • Women's International Zionist Organisation •



The ZFA is aware that the implementation of these recommendations goes beyond the remit of the ABC Board and so will require Government intervention. However, the ZFA believes that making the ABC complaints mechanism fit for purpose requires more than just cosmetic changes.

Further to these recommendations, this submission also notes that the 2018 Australian National Audit Office (ANAO) report on the ABC complaints mechanism is relevant only in regard to the efficiency of the complaints mechanism, and does not relate to whether complaints are dealt with fairly and reasonably.

## A lack of transparency

The ABC publishes summaries of the complaints it upholds<sup>1</sup> or resolves<sup>2</sup>. It also publishes a statistical overview of its responses to the complaints it has received.<sup>3</sup> This statistical overview is provided as yearly statistics (e.g. in 2020, the ABC received 3701 editorial complaints and upheld 87 issues raised therein).

The ABC also provides a statistical quarterly breakdown of complaints by category. For instance, the ABC records that, in the second quarter of 2021, editorial complaints the ABC received included 454 allegations of bias (in regards to coverage of domestic and international affairs). The ABC did not uphold any of these complaints.<sup>4</sup>

That in the first three-quarters of 2021, the ABC complaints department upheld only 0.29 per cent of the 1024 allegations of bias made in complaints<sup>5</sup> suggests either an inadequate complaints process or a material disconnect between community expectations and ABC reporting. It is impossible to determine which is the case because, without being able to view the complaints and responses, one cannot judge whether or not the Audience and Consumer Affairs (ACA) team have responded fairly to the complaints.

This would not be the case if all complaints to the ABC (and all ABC responses) were to be published. Such transparency would provide evidence to back the claims of those commenting on the ABC complaints mechanism. This evidence would either show the ABC's adherence to its editorial standards, or else create accountability by showing how the complaints mechanism does not adequately address complaints.

The ZFA is concerned that the ABC's complaints mechanism only determines whether the main arguments of an issue have been aired, as opposed to determining whether or not one of those arguments was emphasised over others. It is impossible to definitively prove this (and impossible for the ABC to mount a plausible defence of its complaints mechanism) without complaints and the responses being published.

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<sup>1</sup> See "Upheld complaints", ABC, <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/upheld-complaints/>, accessed 13 December 2021.

<sup>2</sup> See "Resolved complaints", ABC, <https://about.abc.net.au/talk-to-the-abc/resolved-complaints/>, accessed 13 December 2021

<sup>3</sup> See "Audience and Consumer Affairs reports", ABC, <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/reports-and-reviews/>, accessed 13 December 2021

<sup>4</sup> See "Quarterly Summary: 1 April to 30 June 2021", ABC, <https://about.abc.net.au/wp-content/uploads/2021/08/Statistical-Report-on-Editorial-Complaints-April-to-June-2021.pdf>, p. 3.

<sup>5</sup> See "Quarterly Summary: 1 January to 31 March 2021", ABC, <https://about.abc.net.au/wp-content/uploads/2021/05/Statistical-Report-on-Editorial-Complaints-January-to-March-2021.pdf>, p. 3; "Quarterly Summary: 1 April to 30 June 2021", ABC, <https://about.abc.net.au/wp-content/uploads/2021/08/Statistical-Report-on-Editorial-Complaints-April-to-June-2021.pdf>, p. 3; and "Quarterly Summary: 1 July to 30 September 2021", ABC, <https://about.abc.net.au/wp-content/uploads/2021/10/Statistical-Report-on-Editorial-Complaints-July-to-September-2021.pdf>, p. 3.

Accordingly, the ZFA recommends that all complaints to the ABC (and responses thereto) are published online, and that submitting a complaint to the ABC becomes conditional on accepting that the complaint and its response will be published. Individual complainants should have the option of having their complaints anonymised before publication.

<b>Recommendation 1</b>
Create transparency in the complaints mechanism by publishing all complaints and responses.

## A lack of independence

Notwithstanding the ABC's claims, the complaints mechanism is not independent. According to the ABC Complaint Handling Procedures, after ACA accepts a complaint for investigation, it will provide the complaint to the relevant content division. The latter will provide a response as a first step "that substantively addresses compliance with the relevant editorial standards".<sup>6</sup>

What this means in effect is that the party that substantially analyses whether the ABC's editorial standards were breached is the same party about whom the complaint has been made. Self-interest dictates that content divisions will typically report that no editorial standard was breached.

Further, if ACA makes a preliminary finding that a complaint is upheld or partially upheld, the content division may "persuade"<sup>7</sup> ACA to revise it. Only if such persuasion isn't successful, will ACA take its finding to the director.

The relevant content division should be able to respond to complaints made about its content. However, the ZFA believes that by providing the complaint to the content division *before* ACA has made its preliminary finding (and by waiting for a response before issuing a preliminary finding), ACA is ceding its independence and allowing its analysis to be unduly affected by parties whose primary interest is not determining the objective truth, but defending that party's professional reputation.

ACA would be much more independent if it were to make preliminary findings only on the basis of the published content, without the content division being aware that a complaint had been made. Preliminary findings would then be shared with the content division, which would be invited to respond with contextual or other details that might shape the final outcome. In the interests of transparency, the preliminary findings and the subsequent content division response should be published alongside the final report.

For as long as complaints are shared with the content divisions (and content divisions are invited to respond) before preliminary findings are made about that complaint, the complaints mechanism cannot be regarded as independent.

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<sup>6</sup> See "ABC Complaint Handling Procedures", ABC, August 2017, <https://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf>, p. 5.

<sup>7</sup> "ABC Complaint Handling Procedures", ABC, August 2017, <https://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf>, p. 6.



#### Recommendation 2

Prevent content divisions from seeing or commenting on complaints until after preliminary findings have been made.

### A public media compliance office

Because quarantining complaints from the content divisions will be difficult for as long as the ABC complaints mechanism is an internal process, the ZFA believes that an external complaints mechanism should be established. In addition to not having its findings unduly influenced by content divisions, being external to the ABC, the complaints mechanism would also be impartial to outcome.

The ZFA suggests that such an external complaints mechanism could incorporate the SBS complaints mechanism as well, to become a public media compliance office.

#### Recommendation 3

Create a public media compliance office, which would include an independent complaints mechanism external to the ABC (and SBS).

### A lack of oversight

Adding to ACA's absence of transparency and independence is a lack of adequate oversight.

The ZFA believes that a newly-created public media compliance office (see Recommendation 3) should conduct regular 'performance audits', of the kind conducted by the ANAO, that examine how the ABC (and SBS) cover publicly-contested issues. Topics would likely be selected due to the number and type of complaints made about a particular issue. The performance audit would focus on the ABC coverage of the issue over time, including its response to complaints.

Although the Australian Communications and Media Authority (ACMA) has a significant research program, it does not examine ABC (or SBS) editorial decision-making.

The ZFA is concerned that the ABC's complaints mechanism only determines whether the main arguments of an issue have been aired, as opposed to determining whether or not one of those arguments was emphasised over others.

Avoiding bias in reporting (and, relevant to this review, determining allegations of bias raised in complaints) requires more than merely presenting 'both sides of the argument' in a program or over time. The ZFA believes that the ABC has often displayed significant bias despite being careful to air both sides of an argument.

In order for the ABC to meet its editorial standards, the ABC's content divisions and its complaints mechanism must be aware of how the presentation of narratives can influence an audience. The following three examples show how the ABC has presented highly biased content despite superficially presenting 'both sides of the story'.

## Behind the News

██████████, the ZFA made complaints to the ABC regarding two separate *Behind the News* programs.<sup>8</sup> ██████████ In its complaint, the ZFA showed how, even though both Israeli and Palestinian perspectives of the violence had been presented, the episodes remained deeply biased, due to the way they were presented. Among other observations, the ZFA noted that:

- The time allowed for the Palestinian perspective to be presented was five times the length allowed for the Israeli perspective;
- Imagery accompanying the Israeli narrative was of aggressive Israelis, whereas imagery accompanying the Palestinian narrative was of friendly-looking children or aggressive Israelis;
- The Palestinian narrative was stated as a series of facts, whereas the Israeli narrative was stated as opinion (e.g. 'Israelis say...');
- The summary of the Israeli narrative was concluded with the line that it "provides a bit of context to its behaviour over the years, which has been criticised for being aggressive and disproportionate", whereas no such conclusion casting aspersions on Palestinian behaviour was provided for the Palestinian narrative; and
- During the programs, facts or issues that cast Israel in a negative light were emphasised or more fully explained than facts or issues that cast Palestinians in a negative light, which were glossed over or ignored.

The ZFA complaint also showed how the presentation of some historical claims and facts in concert with the exclusion of other historical claims and facts would lead an otherwise ignorant viewer to an incorrect understanding of each side's claims, actions and objectives. It is the ZFA's conclusion that not only were the *Behind the News* programs biased, they were *designed* to have its target audience accept the Palestinian side of the story.

The ZFA complaint about the two programs raised 19 individual issues, all backed by evidence. ACA dismissed each issue by claiming that both Israeli and Palestinian perspectives were aired, and therefore the ABC had met its editorial obligations.

## Q&A

ACA made a similar response to the ZFA's complaint<sup>9</sup> about the ██████████ Q&A episode, which aired both Israeli and Palestinian perspectives, but in a highly biased way (i.e. the Palestinian perspective was given more airtime and the panel included two people professionally involved in the Palestinian cause, but no people involved in the Israeli cause).

The ACA response to the ZFA complaint ignored (as opposed to dismissed) most of the issues raised in the complaint. The ZFA subsequently learned that the ACA response was a pro-forma response that it sent to multiple complainants. Because the ACA response ignored most of the issues raised by the ZFA, the ZFA

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complained to the ACMA about the ACA response. In August 2021, the ACMA notified the ZFA that it was launching an investigation. As of December 2021, that investigation is ongoing.

ABC News website

the ABC News website published an article with three Palestinian Australians and three Jewish Australians offering their thoughts on the then-ongoing Hamas–Israel violence.<sup>10</sup> On the face of it, this might appear to be balanced reporting. However, all three Palestinian Australians interviewed expressed strong support for the Palestinian narrative, and strong criticism of Israel. Of the three Jewish Australians interviewed, two expressed strong support for the Palestinian narrative, and strong criticism of Israel.

The Australian Jewish community is far from monolithic, and a small minority of the community feels about Israel the way those two interviewed Jewish Australians feel. However, the overwhelming majority of the Australian Jewish community was of the firm view that Israel's actions were justified in responding to the Hamas tactics and Hamas's instigation of the violence. An otherwise ignorant reader of that article would have come to the conclusion that most members of the Australian Jewish community were highly critical of Israel, and felt that Israel was unjustified in its defence against Hamas violence.

This article is another example of an ABC publication that was deeply biased despite the fact that both perspectives were shared. This purposeful pushing of the Palestinian narrative in what was superficially presented as a balanced article was made all the more obvious because the social media footprint of the journalist who wrote it shows that she takes a clear pro-Palestinian position in regards to the Israeli–Palestinian conflict.

This is exactly the type of reporting that Australia's public broadcasters should avoid, and that the ABC's complaint mechanism should look out for when investigating allegations of bias.

The ABC has a statutory duty to “present news and information with due impartiality” and to “not unduly favour one perspective over another”.<sup>13</sup> It is possible to air both sides of a story and still unduly favour one of those sides. It appears that ACA is either not aware of this or chooses to ignore it. ABC presentation of a contested issue should provide a fair and balanced presentation not merely of facts, but of narrative,

<sup>13</sup> “Editorial Policy: Impartiality and diversity of perspectives”, ABC, <https://edpols.abc.net.au/policies/4-impartiality-and-diversity-of-perspectives/> (accessed 15 December 2021).

including in the way that narrative is presented. It is up to the audience to come to their own conclusions on an issue, not for the ABC to guide them to a pre-determined conclusion through the sophisticated use of soundtrack, imagery and other narrative techniques. If, in an ABC program or article, the way differing perspectives are presented to an audience influences that audience to side with one narrative over another, then that represents a failure to abide by the ABC's editorial standards.

The performance audits that a public media compliance office would conduct (see Recommendation 3) would analyse *how* differing perspectives are presented, not merely that they *are* presented.

#### Recommendation 4

Have a public media compliance office conduct performance audits on ABC (and SBS) editorial decision-making. When assessing bias, these audits would pay attention to *how* each perspective is presented, not merely that they *are* presented.

### An ineffective appeals mechanism

Further to the lack of transparency, independence and apparent unwillingness to determine bias in presentation, the ABC complaints mechanism also suffers from an ineffective appeals mechanism.

Currently, dismissed editorial complaints may be appealed to the ACMA, which is external to the ABC. The ACMA has the ability to open investigations as a result of these appeals. Unlike the ABC, the ACMA publishes a report of each of its investigations, regardless of its findings. This transparency creates accountability for the ACMA.

The ACMA is an independent body and adjudicates its investigations fairly, if extremely slowly. For instance, an ACMA investigation finalised in November 2020 was commenced in November 2019 (about a program broadcast in July 2019).<sup>14</sup> Similarly, an investigation was finalised in July 2021 about a program that was broadcast in August 2020.<sup>15</sup> The ZFA notes that an ACMA investigation, launched in August 2021 as a result of a ZFA appeal about a May 2021 program, is ongoing.

The ACMA findings in these sorts of investigations do not have to be abided by the relevant broadcaster, but the ACMA does reserve the right to have tabled in Parliament a report to the effect that the broadcaster has ignored its findings. In this regard, the ACMA has similar powers to an ombudsman.

The ACMA opens relatively few investigations, and these take too long to be finalised. Further, that its findings can be—and are<sup>16</sup>—ignored by the ABC diminishes the ACMA's relevance as an appeals body.

The ZFA believes that the appeal mechanism should be faster and binding on the ABC (and SBS). Once a public media compliance office (see Recommendation 3) is created, it could absorb the appeals mechanism, creating greater efficiency, transparency and, ultimately, accountability.

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<sup>14</sup> See "BI-541 Investigation report", ACMA, 26 November 2020, <https://www.acma.gov.au/publications/2020-12/report/bi-541-investigation-report>.

<sup>15</sup> See "BI-587 investigation report", ACMA, 14 July 2021, <https://www.acma.gov.au/publications/2021-07/report/bi-587-investigation-report>.

<sup>16</sup> See, for example, "ABC statement on the ACMA Four Corners "Cash Splash" finding", ABC, 15 December 2020, <https://about.abc.net.au/statements/abc-statement-on-the-acma-four-corners-cash-splash-finding/>.



## The 2018 ANAO report is not relevant to fairness and reasonableness of ABC complaint responses

Several news articles<sup>17</sup> and commentary<sup>18</sup> have cited a 2018 ANAO report into ABC complaints handling as finding that the ABC “effectively manages complaints”.

A citation of the ANAO report, with the much-quoted phrase “effectively manages complaints”, appeared in the ABC statement announcing the current review<sup>19</sup> and in ABC Editorial Director Craig McMurtrie’s ‘backstory’<sup>20</sup>, published 15 November 2021, which explained the ABC complaints mechanism.

The ANAO report was also cited in the 26 November 2021 Consultation Paper of the current review.<sup>21</sup> The Consultation Paper reproduced the “effectively manages complaints” line.

However, none of the above note that the ANAO report specifically and only examined the *logistics* of the ABC complaints handling system.

The ANAO report clearly states:

The audit focused on the key processes of receiving, handling and recording complaints, as well as complaint reporting and analysis. *The merits or content of complaints, and the ABC’s decision-making and associated responses to complaints, were not examined as part of the audit.*<sup>22</sup>

According to the fourth term of reference for the current review, the independent panel will have regard to “whether complaints relating to ABC editorial standards are dealt with efficiently, fairly and reasonably”.

To the extent that this review examines the efficiency of the ABC complaints handling process, the ANAO report is relevant.

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<sup>17</sup> For example, “ABC complaints process under review”, The Australian, 17 October 2021, <https://www.theaustralian.com.au/business/abc-complaints-process-under-review/news-story/81d4e9fbe5d88400b06ee733f88d5f05>

<sup>18</sup> For example, “Is the latest ABC inquiry really just ‘business as usual’?”, The Conversation, 16 November 2021, <https://theconversation.com/is-the-latest-abc-inquiry-really-just-business-as-usual-171824>

<sup>19</sup> “ABC announces independent review of complaints handling processes”, ABC, 18 October 2021, <https://about.abc.net.au/press-releases/abc-announces-independent-review-of-complaints-handling-processes/>

<sup>20</sup> “The essential role of the ABC’s Audience and Consumer Affairs unit in investigating complaints”, ABC, 15 November 2021, <https://www.abc.net.au/news/backstory/2021-11-15/abc-craig-mcmurtrie-on-abc-complaints-handling-inquiry/100620738>

<sup>21</sup> Independent Review of ABC Complaint Handling: Public Consultation Paper, 25 November 2021, p. 7, <https://about.abc.net.au/wp-content/uploads/2021/11/Independent-Review-of-ABC-Complaint-Handling-Public-Consultation-Paper.pdf>.

<sup>22</sup> “ANAO Report No. 37 2017–2018: Australian Broadcasting Corporation—Complaints Management”, 3 May 2018, <https://www.anao.gov.au/work/performance-audit/australian-broadcasting-corporation-complaints-management>, paragraphs 1.21–1.22 (emphasis added).

However, to the extent that this review examines whether complaints are handled fairly or reasonably, the 2018 ANAO report is irrelevant and should not be cited as evidence of an absence of bias or other deficiencies in the ABC complaints mechanism.

By way of example, as above, on 24 June 2021, the ZFA submitted a complaint about the 27 May Q&A program.<sup>23</sup> ACA responded on 28 June. This is, indeed, efficient. However, as also noted above, the ACA response ignored most of the issues raised in the ZFA complaint, making the response neither fair nor reasonable.

## Conclusion

The ZFA believes that, due to a lack of transparency, independence, adequate oversight and ignoring *how* narratives are presented, ACA does not provide sufficient accountability for the ABC's content divisions. As such, as currently constituted, it is not fit for purpose.

In this submission, the ZFA makes four recommendations that, if implemented, would create such accountability, and thus not just help the ABC better meet its editorial standards, but also provide the evidence to better assess future claims that the ABC is, or is not, meeting those standards.

The ZFA recommends the creation of a public media compliance office that would:

- absorb the complaints-handling mechanism of the ABC (and SBS);
- absorb the appeal mechanism of the ACMA; and
- conduct performance audits on
  - ABC (and SBS) editorial decision making; and
  - whether or not the public broadcasters make changes to their editorial decision-making as a result of upheld complaints and/or compliance office recommendations.

The compliance office reporting would be transparent. Crucially, its staff would have the skills and knowledge to be aware of how narratives are portrayed, and so won't be satisfied by merely assessing whether both sides' arguments were aired in some way. Being external to the ABC (and SBS), the office would be impartial to outcome. Rather than create an entirely new bureaucracy, the office could sit within the ACMA.

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<sup>23</sup> See "Q&A complaint, 27 May 2021", ZFA, 24 June 2021, <https://www.zfa.com.au/wp-content/uploads/01ZFAComplainttoABCQandAJune2021.pdf>.



# **Submission to the Independent Review of ABC Complaint Handling**

## **Executive Summary**

The Australia/Israel & Jewish Affairs Council (AIJAC) appreciates the opportunity to make a submission to the Independent Review of ABC Complaint Handling and to respond to the thoughtful public consultation paper prepared by John McMillan and Jim Carroll.

AIJAC has had significant experience with the ABC complaint handling process for more than a decade.

As a consequence of this experience, AIJAC has consistently recommended reform to the current ABC complaint handling process for several years. The current process is inefficient; largely unaccountable; not genuinely independent; and denies procedural fairness to complainants.

AIJAC's recommendation is for the current ABC complaint handling process to be replaced with a new genuinely independent and external complaints process. This new independent and external complaints process would continue to have the ability to request information from ABC content staff. Complaints would then be assessed by an individual or panel jointly appointed by government and the ABC board, supported by professional research staff. This new process would have the ability and resources – and be encouraged – to instigate thematic reviews or to inquire into editorial matters in response to community concerns.

This submission will address the terms of reference for the Independent Review of ABC Complaint Handling. It also responds to a number of the consultation paper's key issues and specific issues.

AIJAC makes four substantive recommendations to the Independent Review:

**Recommendation 1**

Reforms to the ABC's online complaints form to make it easier to lodge complaints with hyperlinks or attachments, where required, and an increase in the word limit. This would improve the user experience for complainants and improve the fairness of the process.

**Recommendation 2**

Introducing a new independent and external complaints process for the ABC where complaints are assessed by an individual or panel jointly appointed by government and the ABC board, supported by professional research staff.

**Recommendation 3**

Align the ABC complaints handling process with best practice models of complaints handling, including, but not limited to, assessing whether the complaints process meets the requirements of procedural fairness including the rule against bias.

**Recommendation 4**

If ACMA is to continue functioning as a practical and viable appeals process for ABC editorial complaints, it must be sufficiently resourced to enable it to adjudicate referrals in a timely manner and assessed in line with the recommendations of the 2012 Finkelstein Report of the Independent Inquiry into the Media and Media Regulation.

## Introduction

AIJAC presents this submission to the Independent Review of ABC Complaint Handling. This submission will focus on summarising AIJAC's own experiences with the complaints handling mechanisms at the ABC and drawing conclusions based on this experience.

AIJAC has had extensive experience, over a long period of time, with the ABC's complaints process (see Appendix 1). AIJAC is well placed to make recommendations and expand on these recommendations in the context of comparing the ABC processes to complaints handling mechanisms of public broadcasters in other jurisdictions.

It bears noting that AIJAC is not alone in expressing dissatisfaction with ABC editorial decisions and the complaints process. The complaints activity statistics provided in the public consultation paper indicate editorial complaints to the Audience and Consumer Affairs unit (ACA) are trending upwards, while the number of complaints resolved is trending downwards.

AIJAC continues to value a diverse Australian media landscape, including strong public broadcasters. The ABC plays a key role in providing news and current affairs content to Australians, as well as a range of other programming. AIJAC supports a strong, well-resourced and independent ABC.

AIJAC is the premier independent public affairs organisation for the Australian Jewish community. AIJAC conveys the interests of the Australian Jewish community to government, media and other community organisations. AIJAC seeks to participate in public debates in Australia on a range of issues of concern, including, but not limited to, strategic affairs, Middle East affairs, multiculturalism and community affairs. AIJAC also works to promote close ties between Australia and Israel and to ensure media coverage of Israel in Australia is accurate, balanced and fair.



## Israel and the Australian Media

To better understand AIJAC's perspective, it is important that the reviewers appreciate the global news context in which Israel is positioned, and the background to controversies over Australian media reporting and analysis on Israel. Israel is one of the most highly scrutinised countries on the planet, particularly with regards to its tiny size and population. Its conflict with the Palestinians (and to an extent the broader Middle East and non-Arab world) has regrettably lasted decades. However, contrary to much media portrayal, in comparison to other global conflicts, death tolls have been relatively low<sup>1</sup>.

In a 2014 essay, which remains relevant today, former Associated Press (AP) Jerusalem bureau reporter and editor Matti Friedman used a crude measurement to depict the importance of the ongoing Israeli-Palestinian conflict to AP, a large and influential American newsagency.

Friedman wrote: "When I was a correspondent at the AP, the agency had more than 40 staffers covering Israel and the Palestinian territories. That was significantly more news staff than the AP had in China, Russia, or India, or in all of the 50 countries of sub-Saharan Africa combined."<sup>2</sup> He goes on to note that AP is "wholly average" and the effect, he writes, is that "The volume of press coverage that results, even when little is going on, gives this conflict a prominence compared to which its actual human toll is absurdly small."

Citing examples contemporaneous to the article's publication in 2014, he continues: "News organizations have nonetheless decided that this conflict is more important than, for example, the more than 1,600 women murdered in Pakistan last year (271 after being raped and 193 of them burned alive), the ongoing erasure of Tibet by the Chinese Communist Party, the carnage in Congo (more than 5 million dead as of 2012) or the Central African Republic, and the drug wars in Mexico (death toll between 2006 and 2012: 60,000), let alone conflicts no one has ever heard of in obscure corners of India or Thailand. They believe Israel to be the most important story on earth, or very close."

It is worth noting that of the ABC's nine foreign correspondents, it has one Middle East correspondent. That correspondent is not based in Dubai, Riyadh or Amman, but in Jerusalem. The ABC also previously funded a Beirut-based Middle East correspondent, but he returned in June 2020 to Australia due to the Covid-19 pandemic.

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<sup>1</sup> *The Economist* reports there have been 14,000 casualties due to Israel-Palestinian fighting since 1987. Compare this to reports that between one million and five million have died due to conflict in the Congo in a much shorter time period. Sources: "The Israel-Palestine conflict has claimed 14,000 lives since 1987" (2021) *The Economist* (May 18), <https://www.economist.com/graphic-detail/2021/05/18/the-israel-palestine-conflict-has-claimed-14000-lives-since-1987>; "Review of Congo war halves death toll" 2010 *NBC News*, <https://www.nbcnews.com/id/wbna34958903>.

<sup>2</sup> Friedman, M (2014) "An Insider's Guide to the Most Important Story on Earth", *Tablet*, <https://www.tabletmag.com/sections/israel-middle-east/articles/israel-insider-guide>.

## **AIJAC's experience with ABC complaint handling**

AIJAC has built a reservoir of knowledge about the ABC's news and current affairs output through many decades of observation, experience and analysis of its programs and online content.

Analysis of the ABC's news and current affairs content - the positive and the negative - is recorded and made publicly available in AIJAC's monthly journal the *Australia/Israel Review*<sup>3</sup> and on AIJAC's website<sup>4</sup>.

AIJAC management has direct experience with ABC editorial staff through offering its policy analysts, as well as guest speakers AIJAC has brought to Australia, to appear on ABC programs - and some have indeed done so.

AIJAC analysts have written opinion pieces that have been published on the ABC website<sup>5</sup>.

AIJAC staff also have decades of professional experience in dealing with how the ABC processes complaints.

This includes formal and informal correspondence with ABC editorial management and staff and the ABC Board, but primarily through contact with the Audience and Consumer Affairs (ACA) unit.

In AIJAC's experience, whilst ACA has always agreed to consider our complaints, those complaints – carefully prepared and extensively footnoted – are rarely addressed in a manner that is satisfactory to AIJAC. This is particularly true where complaints address questions of bias, balance, and lack of context in ABC content, as specified in the ABC's Editorial Policies. Blatant factual errors are mostly conceded by ACA.

AIJAC's experience with complaints over more than two decades has shown that ACA, often working together with content providers, has a very great deal of leeway to interpret the elements of ABC Code of Conduct provisions related to issues like accuracy, providing context, impartiality, diversity of perspectives, and fair and honest dealing. In practice, it often interprets these provisions in such a way that they place no actual effective requirements or limitations on any program or segment complained about, with improbable explanations offered as to why the plain language of these Code of Conduct provisions do not apply.

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<sup>3</sup> Past editions of the *Australia/Israel Review* can be accessed free of charge here, <https://aijac.org.au/category/australia-israel-review/>

<sup>4</sup> AIJAC has closely monitored ABC coverage of the Middle East and Jewish affairs over many years, some of this work has been published at this link <https://aijac.org.au/tag/abc/>

<sup>5</sup> For example, Lee, A (2010) "Of blockades and blockheads", June 15, *ABC Opinion* <https://www.abc.net.au/news/2010-06-15/34976> or Levin, N (2019) "Antisemitism vandalism during this federal election campaign – why is it happening? What can be done?", May 14, *ABC Religion and Ethics*, <https://www.abc.net.au/religion/antisemitic-vandalism-during-the-federal-election-campaign/11111046>.



For example, ACA has rejected past AIJAC complaints, or elements of them, and provided the following reasons:

- Two completely one-sided 2015 radio programs, containing several factual errors, and produced by an ABC employee with a history of pro-Palestinian activism, were retroactively declared to be opinion, and thus immune from any accuracy or impartiality requirements, even though there was no indication at the time of broadcast that the programs were opinion. ACA's response to AIJAC's complaint said it accepted that the program should have informed listeners about the producer's activism but said that shortly after they were broadcast, a note had been added to the programs' webpage to mention the producers' affiliations and the online audio of both programs amended to mention the producers' affiliations and state that the programs were "her perspective". ACA stated that these additions contributed "to the overall impartiality of the program" – even though they actually lacked any impartiality whatsoever<sup>6</sup>.
- ACA has argued that a factual error was not a breach of the Code of Conduct, nor required any correction, because the journalist had reason to believe it was true at the time the segment was broadcast.<sup>7</sup>
- On more than one occasion when a contentious claim was reported as fact, ACA cited a single source to uphold a claim, even though numerous other sources disputed the accuracy of the claim.
- ACA claimed that a segment that presented only one side's perspective on a contentious issue was acceptable because the segment was only about the views of that side. This involved ACA's rejection of an AIJAC complaint over an item sourced from *Al Jazeera* and broadcast on *ABC News Radio "Drive"* (July 17, 2013) regarding an Israeli plan to relocate Bedouins living in unauthorised hamlets without sanitation, electricity, and running water in Israel's Negev Desert to new purpose-built towns. The report included three critics of the scheme, with one calling Israel "an apartheid regime" and another saying the plan was "nothing less than a policy of Judaisation". The report did not include any balancing comment from any Israeli official, but ACA said this was acceptable because the report was only about the protests against Israel's plan. To be clear, no segment providing any substantive Israeli explanation of why the plan was necessary has ever been broadcast on any ABC outlet, as far as AIJAC has been able to discover.
- ACA has frequently used the Code of Conduct provision saying that "a diversity of perspectives" will be presented "over time" as an all-purpose validation for any segment complained about, no matter how one-sided and lacking in actual diversity of perspectives. ACA frequently cites past broadcasts of material of only the most tangential relevance to a segment complained of as evidence that a "diversity of perspectives" has been presented "over time". To support such claims, it also cites material that appeared years previously, or appeared in only very obscure parts of the ABC output, as providing a "diversity of perspectives" which balanced a completely one-sided segment broadcast on a very high-profile program. On some

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<sup>6</sup> The two programs in question were "Jerusalem: A Divine Crime Scene", and "An Unholy Mix" broadcast on ABC Radio National's "Earshot" program on 27 July and 30 July 2015, respectively. The ABC corrections page for these programs is <https://www.abc.net.au/news/corrections/2015-10-21/cathy-peters/6873360>.

<sup>7</sup> AIJAC can provide the Reviewers with evidence of these findings on request.

occasions, ACA used the “a diversity of perspectives” will be presented “over time” provision as part of the reason for rejecting a complaint without bothering to cite a single ABC segment which provided any “diversity of perspectives” on the issue. To give only one recent example, on March 2, 2021, ACA rejected AIJAC’s complaint regarding two ABC Radio reports from Dec 21, 2020 and January 5, 2021 on Israel, the Palestinians and Covid-19 vaccinations. These reports both strongly implied Israel was legally obliged to provide vaccines to Palestinians without reporting the Israeli view explaining why this was not the case, based on a treaty clause which specifically said the Palestinian Authority was responsible for vaccinations. One justification ACA made for rejecting the complaint was “we further observe that ABC Radio news and current affairs programs have continued to cover the vaccination issue in the region, on a newsworthy basis, over time.” ACA did not offer any specific examples to back this claim up, and in fact, to the best of AIJAC’s knowledge, no ABC segment ever mentioned the Israeli argument about why they were not legally obligated to vaccinate Palestinians until 10 days after ACA handed down its finding. This was more than three months after the initial allegation was made on the ABC.<sup>8</sup>

It appears it is not just AIJAC that is dissatisfied with ACA’s interpretation of ABC Editorial Policies and Code of Practice. A media report indicated that the Australian Communications and Media Authority (ACMA) had queried ABC Managing Director David Anderson over ambiguities, particularly over the “over time” clause, in its Code of Practice<sup>9</sup>.

Due to the continued dissatisfaction with the ABC complaints handling process, in early 2019, AIJAC management decided to institute a policy of only making complaints about blatant factual errors in reporting. AIJAC revised this policy in 2021 and returned to lodging more detailed complaints where we identified breaches of the ABC Editorial Policies. This was despite AIJAC’s lack of confidence that there would be any significant chance such complaints would be upheld by ACA. Indeed, AIJAC’s two detailed complaints about breaches of ABC Editorial Policies lodged in 2021 have been rejected.

With too many complaints to list and detail, and with complaints having been lodged for over two decades, the table below only summarises complaints lodged by AIJAC with ACA and the outcomes from 2019 to 2021. Please see the articles in the Appendix which cite some specific and detailed examples of earlier AIJAC complaints that ACA has rejected and which explain the various methods and rationales it has used to reject complaints.

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<sup>8</sup> AIJAC can provide the Reviewers with evidence of these findings on request.

<sup>9</sup> Elsworth, S (2021) “The ABC’s ‘ambiguous’ code on impartiality in media regulator’s spotlight”, *The Australian*, July 25, <https://www.theaustralian.com.au/business/the-abcs-ambiguous-code-on-impartiality-in-media-regulators-spotlight/news-story/4bf8b694d29b7604411fa638cee13d69>

**Table 1: Complaints submitted by AIJAC to ABC's ACA (2019-2021)**

Date	Program	Topic	Summary of concern	Outcome
03/01/19	[REDACTED]	[REDACTED]	Host focussed obsessively on Israel, stated claims that were not supported by evidence, and interviewed a guest who had no specific expertise on Israel or the Palestinian Territories.	The ABC partially acknowledged one factual error, but rejected the remainder of the complaint.
26/06/19	Local radio - AM	Palestinian refugees	Factual error – the reporter said there were 450,000 Palestinian refugees in Lebanon. There are 175,000.	Complaint upheld.
03/05/20	Local radio "Australia All Over with Ian McNamara"	Talkback	Talkback caller made antisemitic comment on air	Complaint upheld.
04/10/20	ABC TV - Weekend News	News story	Factual error – the reporter incorrectly named Tel Aviv as Israel's capital.	Complaint upheld.
21/12/20 and 05/01/21	Local radio - AM and World Today	"Israel starts mass COVID-19 vaccination program" and "Israel considers hard lockdown amid vaccination roll out"	The reports left listeners with a false impression that Israel was acting illegally towards Palestinians. The reports included factual inaccuracies	Complaint rejected.  AIJAC has appealed to ACMA.

			and omitted important context.	
27/05/21	TV - Q&A	Panel on Israel-Hamas conflict	The panel included high profile pro-Palestinian advocates but no pro-Israel or pro-Israel Jewish advocates	Complaint rejected.  AIJAC has appealed to ACMA.
09/11/21	ABC Online article "There's not enough brutality"	Allegations that TikTok censors pro-Palestinian content and accounts	Report was one-sided and failed to meet editorial standards on accuracy, impartiality and diversity.	Currently being considered by ACA.

Based on experience, AIJAC has found the ABC's complaints handling process to be inefficient, unaccountable and lacking genuine independence, and deficient in procedural fairness - the exception being if a complaint relates to a simple factual error. The next section will expand on these findings, linking them to the specific issues, key issues in the review and terms of reference outlined in the Independent Review of ABC Complaint Handling Public Consultation Paper.



## Terms of reference: (4) Whether complaints relating to ABC editorial standards are dealt with efficiently, fairly and reasonably

While the ABC maintains that ACA is “separate to and independent of content making teams”<sup>10</sup> and as [REDACTED], recently remarked in a blog post on the ABC website, “they don’t commission or broadcast any content, they don’t sit under any content team or content director, and no one other than the ABC Managing Director has any discretion to intervene in complaint processes”<sup>11</sup>, ACA operates *within* the ABC.

In his blog post, [REDACTED] outlined the process of the complaints handling by ACA, which he manages. However, he brushed over the fact that according to the ABC’s Complaint Handling Procedure, the first step is for a complaint to be referred back to “content divisions for handling”<sup>12</sup>.

Similarly, in the Independent Review of ABC Complaint Handling Public Consultation Paper, [REDACTED] wrote that:

*“ACA may recommend a remedy for a complaint that is wholly or partly upheld. These matters are first notified to a division as a preliminary finding that it may accept (within 3 days) or contest (within 7 days). The final decision rests with ACA, and it must give reasons for its decision.”<sup>13</sup>*

Both [REDACTED]’s remark and this excerpt from the Public Consultation Paper expose the fundamental problems with the ABC’s current dispute resolution practices, as well as the lack of fairness in the ABC’s current complaints handling processes.

Firstly, as [REDACTED] points out, the current procedure allows content divisions to disagree with a preliminary finding of ACA and for any disputes between ACA and the content divisions to be resolved by the Managing Director - who is neither independent nor external to the ABC’s content divisions.

Therefore, in view of the above, it must be acknowledged that the claim that ACA is separate from the content divisions in the complaints procedure is difficult to sustain. This is

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<sup>10</sup> “Complaints Process”, ABC Website, <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/complaints-process/>.

<sup>11</sup> [REDACTED] (2021) “The essential role of the ABC’s Audience and Consumer Affairs unit in investigating complaints”, ABC Online, [https://www.abc.net.au/news/backstory/2021-11-15/abc-\[REDACTED\]-on-abc-complaints-handling-inquiry/100620738](https://www.abc.net.au/news/backstory/2021-11-15/abc-[REDACTED]-on-abc-complaints-handling-inquiry/100620738)

<sup>12</sup> “ABC Complaint Handling Procedures”, ABC Website, <https://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf>.

<sup>13</sup> Independent Review of ABC Complaint Handling Public Consultation Paper (2021), <https://about.abc.net.au/press-releases/independent-review-of-abc-complaint-handling-public-consultation-paper/>



due to the fact that the content division is involved in the assessment of complaints at every step of the process and that the arbiter in the case of disputes is the Managing Director.

Secondly, according to the account in the Public Consultation Paper, the “division” – assumed by AIJAC to mean the content division responsible for the subject of the complaint – is notified of the preliminary finding and has the option to contest it. AIJAC accepts that the rules of procedural fairness entitle ABC employees who are the subject of a complaint to be given reasonable opportunities to respond. However, a similar option is not provided to the complainant. The complainant cannot view a preliminary finding, nor contest such a finding. This practice favours the content division and again highlights how the ABC’s current complaints handling process falls well short of dispute resolution best practice and denies procedural fairness to complainants.

## **Specific Issues: (1) Accessibility of the ABC complaint process for members of the public + (2) Ease of making a complaint to the ABC**

Based on AIJAC's many years of experience in lodging editorial complaints, AIJAC strongly believes that the ABC's online complaints system is not user friendly.

Complaints can be lodged via a form on the ABC website or dictated over the phone. The ABC's preference is for complaints to be lodged online. The online form has remained largely unchanged since 2007 and contains a number of practical impediments to submitting detailed, high-quality complaints.

These include:

- There is no text formatting function.
- The word limit is 1500 words, which, when dealing with an hour-long TV program or long radio broadcast, is insufficient.
- Links to source material can only be pasted as long web addresses and cannot be hyperlinked, which further erodes the word limit.
- Attachments containing source material or supporting evidence cannot be uploaded.

In 2019, AIJAC contacted the ABC to suggest changes to its complaints form. ACA responded that it had "no plans" to change the form.

The current complaints process is not only fundamentally inefficient, but, by severely restricting the arguments and evidence a complainant can submit, it undermines basic procedural fairness.

### **RECOMMENDATION 1**

Reforms to the ABC's online complaints form to make it easier to lodge complaints with hyperlinks or attachments, where required, and an increase in the word limit. This would improve the user experience for complainants and improve the fairness of the process.

## Specific Issues: (7) Investigation powers available to the ABC complaints unit

As outlined in the introduction, Israel is one of the most media saturated countries in the world. The ABC, as well as many other news outlets, devotes more coverage to Israel than to almost any other similar sized country. Due to the nature of the politics of the region, the reporting is often complex and contested, mistakes are inevitably made, and personal biases do inevitably emerge in news and current affairs coverage from time-to-time.

As per the table at the beginning of this section, AIJAC has had cause to lodge complaints regularly over the past three years, most of which relate in some way to reporting on Israel.

However, due to the nature of the ABC's complaints procedure and the mode of investigation, whereby content divisions have significant sway over the response to a complaint, AIJAC lacks confidence in the ability of the ABC to independently assess these complaints.

This lack of confidence can be explained using a specific example from 2021.

During the conflict between Israel and Hamas in Gaza in May this year, an open letter was circulated among Australian journalists calling for media to "Do Better on Palestine", including to prioritise Palestinian voices in their reporting, avoid "bothsiderism" and be allowed to openly express solidarity with the Palestinian cause, despite their professional obligations and, in the case of ABC staff, their obligations to ABC Editorial Policies.<sup>14</sup>

Following the publication of this open letter, signed by several dozen ABC employees and content contributors, ABC managing director David Anderson provided advice to some ABC employees that "they should not do anything that otherwise compromises their ability to be seen to be impartial when reporting any matter" but defended the right of ABC employers to sign the petition.<sup>15</sup>

We note this is different from SBS, where journalists were reportedly advised<sup>16</sup> that it was incompatible with their professional responsibilities to sign this open letter.

AIJAC respects the rights of all people to express their views. In this instance, however, a number of ABC editorial staff aligned themselves politically and proudly to one side of a

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<sup>14</sup> "Open letter: Do Better on Palestine" (2021), <https://dobetteronpalestine.com/>.

<sup>15</sup> Anderson, D (2021), evidence at 2021-2022 Budget Estimates, Senate Environment and Communications Committee, Estimates, May 26 2021, [https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/6d1c8914-28bc-4ad0-ba8d-aec5a4509bd9/toc\\_pdf/Environment%20and%20Communications%20Legislation%20Committee%202021%2005%2026%208789%20Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/6d1c8914-28bc-4ad0-ba8d-aec5a4509bd9/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/6d1c8914-28bc-4ad0-ba8d-aec5a4509bd9/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee%202021%2005%2026%208789%20Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/6d1c8914-28bc-4ad0-ba8d-aec5a4509bd9/0000%22)

<sup>16</sup> Henderson, G (2021) "Censorship dressed up as a plea for fairness in media reporting", May 22, *The Australian*, <https://www.theaustralian.com.au/inquirer/censorship-dressed-as-a-plea-for-fairness-in-media-reporting/news-story/15dcb5ec847ca58c2952cbf4307012c0> - Please note, some SBS staff nonetheless signed the petition



contentious and disputed conflict. In doing so, they disregarded foundational tenets of journalism, such as accuracy, objectivity and impartiality in covering this issue. Many of these employees are members of the content divisions, which are forwarded complaints by the ACA, including those made by AIJAC, and asked to dispassionately respond.

AIJAC also notes the two books<sup>17</sup> penned by ██████████ about his time as Middle East correspondent for the *Australian* newspaper. In both publications, ██████████ alleges that he felt unduly targeted as a journalist by supporters of Israel and believes that advocates for Israel stymie the ability of Australians to truly understand what is happening in the region by deliberately bullying and intimidating journalists and through unjustified accusations of antisemitism. Both publications accuse AIJAC of practising these tactics, which AIJAC rejects<sup>18</sup>.

While ██████████ too is entitled to his strongly held personal views, he not only has significant influence over news and current affairs programming at the ABC, but, ██████████ has potential to be directly involved in the ABC's complaints process at the point where ACA refers complaints to the content division.

Creating an independent and external editorial complaints process for the ABC removes the perception that the "Do Better on Palestine" signatories, as well as those ██████████ with strongly held views on various issues, could unfairly influence the resolution of editorial complaints.

## **RECOMMENDATION 2**

Introducing a new independent and external complaints process for the ABC would assist in creating a more accountable complaints process. Complaints would be assessed by an individual or panel jointly appointed by government and the ABC board, supported by expert professional staff.

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<sup>17</sup> ██████████, J (2021) *Dateline Jerusalem: Journalism's Toughest Assignment*, Monash University Press.

██████████ J (2017) *Balcony over Jerusalem*, HarperCollins Publisher.

<sup>18</sup> See for example: Lee, A and Fleischer, T (2021) "Some points everyone should understand about ██████████' new booklet 'Dateline Jerusalem: Journalism's Toughest Assignment'" (Oct. 25), *AIJAC Online* <https://aijac.org.au/fresh-air/some-points-everyone-should-understand-about-██████████-new-booklet-dateline-jerusalem-journalisms-toughest-assignment/>; Fray, P. (2021) "Has the pro-Israel lobby beaten Australian media into submission?", (Oct. 8) *Plus 61J Media*, <https://plus61j.net.au/featured/has-the-pro-israel-lobby-beaten-australian-media-into-submission/>; Gawenda, M (2021) "Dealing with the Lobby is not the toughest gig" (Oct. 5) *The Age* <https://www.theage.com.au/national/dealing-with-the-lobby-is-not-the-toughest-gig-20211005-p58xbq.html>. The Sydney Institute (2021) "Editorial: ██████████ 'Dateline Jerusalem says more about the ABC than it does about Israel'" *Media Watch Dog* (Oct. 15), <https://thesydneyinstitute.com.au/blog/issue-563/#editorial>.

## Specific Issues: (9) Remedies that can be granted when a complaint is upheld, and the sanctions that can be imposed for breach of ABC editorial standards + (17) External ACMA review of complaints handling

According to the Commonwealth Ombudsman's *Better Practice Complaint Handling Guide*, referenced in the Independent Review of ABC Complaint Handling Public Consultation Paper, a complaint handling process should adhere to the following characteristics to be considered to embody the principles of procedural fairness:

- (1) Decisions are evidence based and free of bias;
- (2) Reasons for decisions are provided to complainants, including the evidence on which the decision is based and reasons for not accepting complainant's assertions or evidence;
- (3) Communication with complainants is clear, and preferably in a form that the particular complainant can best understand;
- (4) Complainants are given an opportunity to respond to a decision, and if applicable provide further information to support their complaint, before a complaint is finalised; and
- (5) There is a process for complainants to seek review of how their complaint was handled.<sup>19</sup>

AIJAC assesses that the ABC complaints process clearly fails at point (1), point (4) and point (5).

### Point (1)

██████████ argues that the ABC complaints process operates as "an ombudsman by any other name", and that the Australian National Audit Office found the "ABC has effective processes and practices in place" for ACA-managed complaints.<sup>20</sup> But, with respect to both ██████████ and the ANAO's review (neither of which canvassed the views of complainants), these assessments of the fairness of the ABC complaints process do not consider one of the two main requirements of procedural fairness: the rule against bias.

The rule against bias, in the context of procedural fairness, ensures that the decision makers can objectively be considered impartial in their adjudication.

In the case of the current ABC complaints process, the notion that the adjudicating body sits within the ABC's institutional framework, working alongside (albeit not together with)

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<sup>19</sup> Commonwealth Ombudsman, "Part 8: Key terms and principles", *Better Practice Complaint Handling Guide*, <https://www.ombudsman.gov.au/publications/better-practice-guides/Better-practice-complaint-handling-guide/part-8-key-terms-and-principles>.

<sup>20</sup> ██████████ (2021) "The essential role of the ABC's Audience and Consumer Affairs unit in investigating complaints", *ABC Online*, <https://www.abc.net.au/news/backstory/2021-11-15/abc-██████████-on-abc-complaints-handling-inquiry/100620738>



content divisions, receiving input from these content divisions, is appointed by and reports to the Managing Director - who can effectively over-rule any decision it makes if it becomes a dispute, or for any other reason - yet is nonetheless able to act objectively to adjudicate a complaint unsustainably stretches the concept of procedural fairness.

#### **Point (4)**

When assessing the validity of a complaint, ACA refers the matter to the relevant content division for its assessment and then receives the content division's response without an independent assessment of its validity and without providing the complainant with an opportunity to respond<sup>21</sup>. This allows the content division to have significant influence over the complaints process, while the complainant is not given an opportunity to provide further input before the assessment of a complaint is finalised. In addition, the Independent Review of ABC Complaint Handling Public Consultation Paper notes that the division is permitted to view a preliminary finding and to contest this finding. A similar opportunity is not afforded to the complainant. Moreover, as noted earlier, technical shortcomings mean the complainant is severely limited in the material that can be submitted as part of the original complaint - restrictions which presumably do not apply to the content division in providing a response, or series of responses, to the complainant or to ACA.

#### **Point (5)**

The appeals authority for findings made by ACA is the ACMA. ACMA is a genuinely independent body but in practice it does not have the resources to satisfactorily fulfill this role and has no apparent power to impose remedial action. In addition, as noted in the Public Consultation Paper, the *Broadcasting Services Act 1992* does not permit ACMA to consider appeals relating to ABC print and digital content, the latter of which is increasing in volume and significance.

In 2019/20, ACMA finalised a total of two investigations into complaints against the ABC while the ABC received 6057 editorial complaints. Of the total number of editorial complaints investigated by ACA, it is believed that a minuscule number are upheld in part or in full. Depending on how the numbers are crunched, the actual number ranges between 3%<sup>22</sup> and 6%<sup>23</sup>. It is clear that ACMA could not process appeals for even a tiny fraction of the more than 5000 complaints that were rejected by the ACA.

In terms of resourcing, according to ACMA's "Action on content complaints and investigations: October to December 2020"<sup>24</sup>, the authority investigated 50 matters across all media outlets and each investigation took, on average, *six months* to resolve. It may

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<sup>21</sup> *ibid*

<sup>22</sup> Henderson, G (2019) "Media Watch Dog: How the ABC handles complaints", Nov.1, *The Australian*, <https://www.theaustralian.com.au/commentary/media-watch-dog-how-the-abc-handles-complaints/news-story/f5def9cba3ea64c487281f0061567d64>.

<sup>23</sup> ABC Annual Report 2020, ABC Website, <https://about.abc.net.au/wp-content/uploads/2021/02/Annual-Report-2019-2020-UDATED.pdf>, p21.

<sup>24</sup> Action on content complaints and investigations: October to December 2020, Australian Communications and Media Authority, <https://www.acma.gov.au/publications/2021-08/report/action-content-complaints-and-investigations-october-december-2020>.

seem obvious, but still bears stating, that if a complaint is lodged within 30 days of a program being broadcast, is then assessed within 30 days by the ABC, an appeal is then made immediately to ACMA, but this appeal takes six months to be resolved, the news cycle has surely moved on from when the original, potentially erroneous, material was broadcast eight months earlier.

In addition, ACMA has no authority to investigate print or digital content. Thus, if the AIJAC complaint lodged with respect to the ABC online story “There’s not enough brutality”, posted on Nov. 11 and noted above, is not upheld by ACA, there appears to be simply no avenue of appeal that AIJAC can turn to.

There is thus a strong case that ACMA should be given jurisdiction to hear appeals to complaints about ABC content that appears online – if a new body is not created with the power to do so. As outlined earlier, the *Broadcasting Services Act 1992* does not currently make provisions for ACMA to do this.

The 2012 Report of the Independent Inquiry into the Media and Media Regulation<sup>25</sup> looked at how ACMA functions regarding general complaints about broadcast media and in relation to the ABC and SBS.

The report found that an ACMA investigation of a broadcasting complaint takes months to finalise (four months on average, but any given complaint could take much longer).

Justice Ray Finkelstein QC concluded that “where the complaint is that a statement about a person is inaccurate, that period is much too long.”<sup>26</sup>

Similar to the situation in the ABC’s own complaints process, the report found, “It appears that ACMA is less concerned to provide the complainant with opportunities to comment. ACMA observes that although investigations are triggered by a complaint, the complainant is not a ‘party’ to the investigation.”<sup>27</sup>

In other words, the complainant gets one opportunity to present their case, but the ABC can, potentially, be given multiple opportunities to respond.

In addition, despite ACMA’s enforcement powers being expanded in 2006, it does not have the power to require a broadcaster to publish a finding that there has been a breach of a standard. As stated in the public consultation paper, “ACMA may uphold a complaint and recommend to the ABC that it take action to comply with its editorial standards, or to publish an apology or retraction.” The flimsiness of this enforcement is borne out by the fact

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<sup>25</sup> Finkelstein, R (2012) *Report of the Independent Inquiry into the Media and Media Regulation*, Department of Broadband, Communications and the Digital Economy, Commonwealth of Australia, <https://apo.org.au/node/28522>.

<sup>26</sup> Finkelstein, R (2012) *Report of the Independent Inquiry into the Media and Media Regulation*, Department of Broadband, Communications and the Digital Economy, Commonwealth of Australia, <https://apo.org.au/node/28522>, p179.

<sup>27</sup> Finkelstein, R (2012) *Report of the Independent Inquiry into the Media and Media Regulation*, Department of Broadband, Communications and the Digital Economy, Commonwealth of Australia, <https://apo.org.au/node/28522>, p177.



that in all ACMA findings against the ABC since 2018<sup>28</sup>, the ABC has decided to “respectfully disagree” with ACMA’s findings of a breach and therefore disregard the finding. It is, to be blunt, shocking, that the public broadcaster can choose to “respectfully disagree” with ACMA and simply dismiss its findings.<sup>29</sup>

The 2012 report did say that “If the ABC or SBS does not take action that ACMA considers appropriate within 30 days, ACMA may give the minister a written report on the matter, which must be tabled in parliament.”<sup>30</sup> Despite this possibility, AIJAC is not aware of any occasion where this occurred with respect to ACMA findings against the ABC and it is not clear this would be an effective enforcement mechanism even if ACMA were to actually choose to employ it.

The report’s conclusion was that the complaints process was broken across the board and that:

*“What can be learnt from an examination of ACMA’s complaints-handling procedure is that a new system is needed, one which is swift in its operation, treats complainants and licensees on the same footing, and which requires licensees to broadcast findings of a breach.”<sup>31</sup>*

Finally, according to the Commonwealth Ombudsman’s *Better Practice Complaint Handling Guide*, complaints can and should be used to improve services. As the ANAO found in its review, ACA has a good data collection system and reports regularly on the outcomes of the complaints it receives. However, AIJAC has not observed any measurable improvement in the ABC’s news and current affairs content in response to editorial complaints received - nor has there been a decline in total complaints received by the ABC. This point reflects the specific issue (16) in the Public Consultation Paper.

### **RECOMMENDATION 3**

Align the ABC complaints handling process with best practice models of complaints handling, including, but not limited to, assessing whether the complaints process meets the requirements of procedural fairness including the rule against bias.

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<sup>28</sup> “Australian Communication and Media Authority investigations” (2021) ABC Website, <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/australian-communications-and-media-authority-investigations/>.

<sup>29</sup> See “ABC response to AMCA report findings” (May 24 2019), ABC Website, <https://about.abc.net.au/statements/abc-response-to-acma-report-findings/> and “ABC statement on the ACMA Four Corners ‘Cash Splash’ finding” (Dec 15 2020), ABC website, <https://about.abc.net.au/statements/abc-statement-on-the-acma-four-corners-cash-splash-finding/>.

<sup>30</sup> Finkelstein, R (2012) *Report of the Independent Inquiry into the Media and Media Regulation*, Department of Broadband, Communications and the Digital Economy, Commonwealth of Australia, <https://apo.org.au/node/28522>, p173.

<sup>31</sup> Finkelstein, R (2012) *Report of the Independent Inquiry into the Media and Media Regulation*, Department of Broadband, Communications and the Digital Economy, Commonwealth of Australia, <https://apo.org.au/node/28522>, p178.

#### **RECOMMENDATION 4**

If ACMA is to continue functioning as a practical and viable appeals process for ABC editorial complaints, it must be sufficiently resourced to enable it to adjudicate referrals in a timely manner and assessed in line with the recommendations of the 2012 Finkelstein Report of the Independent Inquiry into the Media and Media Regulation.



## **Key Review Themes: Do you have a view on the preferred structure for an ABC complaints unit?**

AIJAC has reviewed complaints handling processes for public broadcasters from various jurisdictions. A small number of these overlap with some of the processes outlined in the Public Consultation Paper.

While none of these models directly correspond to AIJAC's preferred structure for an external and independent complaints process that oversees ABC editorial processes, it is AIJAC's view that the implementation of a process based on features of the Netherlands or Canadian models would considerably improve the complaints handling processes at the ABC as in Recommendation 3.

**Table 2: Public broadcaster complaints processes**

<b>BROADCASTER</b>	<b>COUNTRY</b>	<b>SUMMARY OF EDITORIAL COMPLAINTS PROCESS</b>	<b>INDEPENDENT COMPONENT</b>	<b>REPORTING FREQUENCY</b>
ABC	Australia	Complainant can lodge an online complaint, this complaint is referred to the Audience and Consumer Affairs (ACA) unit, which is separate to content producing staff. ACA assesses the complaint against ABC editorial standards. Complainants who are dissatisfied with the outcome can refer the complaint to ACMA.	Limited. ACMA considers a limited range of referrals and cannot impose meaningful sanctions.	Quarterly
SBS	Australia	Complaints are lodged online and assessed by the SBS Ombudsman.	The Ombudsman is not independent. The role is internally appointed and the Ombudsman reports directly to the managing director. The Ombudsman is functionally separate from all SBS content producing staff.	The Ombudsman reports routinely to the SBS Board but only appears to report publicly in the annual report.
BBC	United Kingdom	Complaints are first considered by a BBC manager or member of the editorial team. If the complaint is not deemed to be adequately dealt with it can then progress to the Executive Complaints Unit (internal). If complainants are dissatisfied, they can appeal to the communications regulator Ofcom.	Limited, but Ofcom can direct the BBC to remedy the failure or prevent a recurrence and can impose fines of up to £250,000.	Fortnightly

NPR	United States	<p>There does not seem to be a complaints process, just an online form to request a correction.</p> <p>The US has a Corporation for Public Broadcasting Ombudsman. It is unclear whether individuals can make referrals to the CPB Ombudsman. It was also reported recently that the term of the current CPB Ombudsman has expired and a new one will not be appointed.</p>	There does not seem to be one.	There does not appear to be complaints reporting.
PBS	United States	Those with concerns are encouraged to contact individual stations or producers. Viewers can also provide “feedback” to the PBS Public Editor, who is described as an “interlocuter” between the audience and content production teams.	Limited. There is a Public Editor, but that role does not seem to handle or respond to individual complaints.	The Public Editor has a Twitter account that provides irregular information.
CBC	Canada	Complaints are lodged online with the CBC Ombudsman. The Ombudsman forwards the complaint to a content staff member to respond. If the complainant is unsatisfied with the response, they can request the Ombudsman review the case. The Ombudsman can also initiate its own analysis of content in areas of public concern.	The Ombudsman is independent of CBC program staff and management and reports to CBC’s president. The Ombudsman is selected by the Board for a period of five years and cannot be dismissed except for gross misconduct or breach of the CBC’s code of conduct. The Ombudsman can also	Annual

			appoint independent advice panels to assist.	
DR	Denmark	Press Council of Denmark was established in 1992. It covers public broadcaster, Denmark Radio Corp. Complaints can either be made to the media in question or directly to the PC. However, complaints concerning DR, TV2 or TV2's regional enterprises must always be lodged with these establishments in the first place. The notice of complaint is four weeks after publication. The decision of the undertakings must be brought before the PC within four weeks after the plaintiff has been apprised thereof. Denmark also has a Media Liability Act that imposes criminal sanctions on media.	The Press Council of Denmark is independent. The PC consists of a chairman, a vice-chairman and 6 other members who are appointed by the Minister of Justice. The appointment of the chairman and the vice-chairman, who must be lawyers, is made upon recommendation by the president of the Danish Supreme Court. Two members are appointed upon recommendation by the Danish Journalists' Union. Two members are appointed to represent the editorial managements of the printed press and radio and television upon recommendation by these and two members are	Twice a year



			appointed as public representatives upon recommendation by the Danish Council for Adult Education. When ruling in a case, the Council consists of four members – one person from each category mentioned above.	
Swiss Broadcasting Corporation	Switzerland	Before a complaint can be filed with the Swiss Independent Complaints Authority (ICA), the proceedings must be brought before the Office of the Ombudsman. The eight ombudsman's officers for radio and television broadcasters examine the matter and mediate between the parties involved. They provide the results of their investigations in a report. Upon the completion of proceedings before the ombudsman, the complaint can be filed with the ICA. The persons entitled to file a complaint are those persons who are mentioned or referred to in the published or broadcast material. If a person who is not mentioned or referred to in the offending published or broadcast material wishes to appeal, they must provide the support of at least 20 people. After completing its investigation, the ICA decides on the case in an essentially public hearing. The ICA's decision can be appealed to the Federal Supreme Court.	The ICA (Independent Complaints Authority) has existed since 1984 and was established after Swiss Parliament determined to transfer the supervision of radio and television content to an independent authority.	The ICA's proceedings are generally held in public.

France Televisions	France	The Conseil Supérieur de l'Audiovisuel (CSA)'s role is to regulate radio and TV in France. CSA's role goes well beyond a complaints procedure to include working groups into issues, such as promoting a plurality of views that are broadcast.	The CSA is an independent public authority and its members are appointed by the President of France and members cannot hold any positions perceived as conflicts of interest.	
NPO	Netherlands	Complainants are encouraged to first contact the broadcaster. If dissatisfied by the response, complainants can email the complaint to the Public Broadcaster Ombudsman. The Ombudsman only adjudicates news and current affairs programs. An amendment to the Dutch Media Act will clarify the position of the Ombudsman further.	The NPO Ombudsman is independent and impartial. The ombudsman follows and examines all journalistic programming and production by the Dutch Public Broadcasters and examines and investigates complaints by the public.	Pronouncements and investigations by the ombudsman are published on the website
NRK	Norway	Complaints can be made directly to NRK and/or the Broadcasting Council. The Broadcasting Council's role is determined by the Broadcasting Act 1992. It can investigate complaints from the	The role of the Broadcasting Council is to discuss and comment on NRK's programming agenda	

		public and also matters submitted by the head of broadcasting.	for Norwegian radio and television, and to advise on administrative and financial matters. The Broadcasting Council meets eight to ten times annually and has 14 members. The Parliament of Norway appoints eight of the members, while the Council of State appoints the other six.	
YLE	Finland	Advised to complain directly to broadcaster first. Can then send an online complaint to the Parliamentary Ombudsman. Finnish media is also self-regulated by the Council for Mass-Media, which provides guidance but has no legal jurisdiction. If a complaint against a media organisation is upheld, the Council issues a notice of violation, which the party responsible for the violation must publish in a timely manner.	Independent authority, but not media specific, similar to Australia.	Annual reports, investigations published on website
NBT	Thailand	Draft legislation has passed cabinet approval and would create an independent media council which would have the power to rule on complaints.	Soon to be independent authority	

## RECOMMENDATIONS

In this submission, AIJAC has made four key recommendations to improve the ABC complaints process. This final part of the submission will provide additional details for those recommendations.

### Recommendation 1

***Reforms to the ABC's online complaints form to make it easier to lodge complaints with hyperlinks or attachments, where required, and an increase in the word limit. This would improve the user experience for complainants and improve the fairness of the process.***

This is the simplest of all recommendations. It requires an upgrade of the ABC's online complaints form to allow the ABC's consumers to lodge complaints easily and more fairly. The current form is out-dated, and in its current format, not conducive to detailed complaints that require supporting evidence and therefore arguably does not provide complainants with procedural fairness.

### Recommendation 2

***Introducing a new independent and external complaints process for the ABC where complaints are assessed by an individual or panel jointly appointed by government and the ABC board, supported by professional research staff.***

It is worth reiterating the fact that the ultimate arbiter of the ABC's supposedly "independent" internal complaints process is the ABC's Managing Director. For this reason, and others outlined, AIJAC recommends introducing a new truly independent and external complaints process for both the ABC.

While this is beyond the scope of this review, AIJAC believes that this new complaints process could similarly be applied to SBS. While the two Australian public broadcasters are governed by different Acts and adhere to different editorial policies, the expertise required to assess editorial complaints is common to both. In addition, it would serve audiences of both public broadcasters if there were consistent complaints processes across both networks. If this were the case, AIJAC would recommend the SBS board also provide input to the appointment of the individual or panel responsible for complaints.

Based on AIJAC's own experience and extensive research into the complaints processes of public broadcasters in a range of other jurisdictions, AIJAC believes that the following attributes should be incorporated into a new independent, external complaints process.



- (1) Complete independence from the ABC (and, if adopted as a common complaints process for both ABC and SBS, specific only to public broadcasters);
- (2) Adequately broad guidelines and resources to investigate all content-related complaints, quickly and thoroughly;
- (3) Ability to initiate wider investigations on its own, both in response to specific stories or the coverage of a specific issue, and across wider aspects of news and current affairs reporting;
- (4) Ability to issue binding findings that the public broadcasters are required to implement and a mandate to ensure improvements are made where errors have been identified.

To ensure complete independence, complaints would be assessed by a panel that is appointed jointly by government and the board of the ABC.

The complaints panel would need to be separately and sufficiently resourced to investigate and determine complaints in a timely manner.

In a significant change from the current process, the panel should also be given the power to initiate investigations. The panel would be provided with sufficient resources to undertake independent investigations, either based on thematic or cyclical reviews or in response to a contentious matter.

Finally, this complaints process would issue binding findings to be implemented immediately and in a meaningful way. The broadcasters would then be required to demonstrate they have remedied a breach of editorial policies in a way that is satisfactory to the complaints panel.

This last point is essential given, as outlined earlier, there are at least two recent incidents where the ABC dismissed the findings of ACMA investigations because it “respectfully disagrees” with them.<sup>32</sup> Under a reformed ABC complaints process, there should be no scope for a public broadcaster to ignore, respectfully or otherwise, a determination made by the complaints handling authority duly overseeing a public broadcaster’s compliance with its statutory obligations.

It is worth highlighting, as noted in the public consultation paper, that Ofcom, the UK’s communications regulator, can, in some circumstances, issue fines of up to £250,000 if the BBC fails to remedy a failure or prevent a recurrence of a failure.<sup>33</sup> While AIJAC is not suggesting a penalty system be imposed on the public broadcasters (ultimately it would be

<sup>32</sup> See “ABC response to AMCA report findings” (May 24 2019), ABC Website, <https://about.abc.net.au/statements/abc-response-to-acma-report-findings/> and “ABC statement on the ACMA Four Corners ‘Cash Splash’ finding” (Dec 15 2020), ABC website, <https://about.abc.net.au/statements/abc-statement-on-the-acma-four-corners-cash-splash-finding/>.

<sup>33</sup> “Procedures for enforcement of requirements in the BBC Agreement and compliance with Ofcom enforcement action”, Ofcom, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/99420/bbc-agreement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/99420/bbc-agreement.pdf), p2.

taxpayers who are responsible for paying the penalty, which lacks logic), it is an example of the seriousness other jurisdictions attach to complaints that have been upheld against public broadcasters.

### **Recommendation 3**

***Align the ABC complaints handling process with best practice models of complaints handling, including, but not limited to, assessing whether the complaints process meets the requirements of procedural fairness including the rule against bias.***

The current ABC complaints handling process fails to meet best practice models of complaints handling, particularly when it comes to the issue of bias.

A new external and independent complaints process should be created to comply with best practice models and to ensure procedural fairness for the complainant.

AIJAC has undertaken work on the models implemented in other countries for handling complaints about public broadcasters. While none of the models appear to be perfect, AIJAC calls the reviewers' attention to examples provided by the Netherlands or Canada as perhaps having qualities that may assist in the development of a "best practice" model appropriate for the Australian context.

### **Recommendation 4**

***If ACMA is to continue functioning as a practical and viable appeals process for ABC editorial complaints, it should be sufficiently resourced to enable it to adjudicate referrals in a timely manner and assessed in line with the recommendations of the 2012 Finkelstein Report of the Independent Inquiry into the Media and Media Regulation.***

This final recommendation deals with ACMA and its role as an appeals mechanism for the ABC. There are a number of major challenges currently facing ACMA in its capacity for adequately and impartially handling complaints.

The first is resourcing. ACMA should have the capacity to adjudicate referrals in a timely manner. As explained earlier, on average, six months lapses between the referral to ACMA and ACMA's ruling. In addition, ACMA appears able to handle only a very small number of complaints per year.

Another involves making ACMA's decisions binding on public broadcasters. After assessing complaints, the only "penalty" available to ACMA to enforce its findings on the ABC, is

outlined in Section 153 of the *Broadcasting Services Act 1992*.<sup>34</sup> This provides for ACMA to write to the Minister outlining the matter and for the Minister to then table ACMA's report in Parliament. This is not an effective deterrent or incentive for future improvement given the ABC's recent record of "respectfully" disagreeing with ACMA and ignoring its findings.

**Submitted by Dr Colin Rubenstein AM**  
Executive Director, AIJAC

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<sup>34</sup> *Broadcasting Services Act 1992*, Cwlth.

Professor John McMillan AO and  
Mr Jim Carroll  
Independent Review of ABC Complaint Handling

Fintán Ó Laighin

[abccomplaintsreview@abc.net.au](mailto:abccomplaintsreview@abc.net.au)

16 December 2021

## Submission to the Independent Review of ABC Complaint Handling

Dear Professor McMillan and Mr Carroll,

My interest in this inquiry arises from how the ABC handled my complaint about what was in effect a Nike advertisement that was screened during a broadcast of a W-League soccer game in January 2017. I have attached copies of my correspondence with the ABC to provide context to my submission.

My experience raised concerns about the ABC's processes for handling complaints and dealing with Freedom of Information (FOI) requests, as well as its lack of transparency.

My original complaint related to a screening of a Nike advertisement during the feed of the women's soccer grand final in January 2017 which the ABC took from Fox Sports. I did not receive any response from the ABC, nor to my follow-up query, so after six months submitted an FOI request for documents generated as a result of my query. What I learnt was that my allegation of a serious breach of s31(1) of the *Australian Broadcasting Corporation Act 1983*, i.e. the airing of a commercial on ABC television, did not warrant any investigation but was instead bundled off to the area that committed the breach to investigate. And there my complaint languished.

In the final e-mail I received from the ABC, on 3 November 2017, [REDACTED] advised that the role of her area "is to assess, and where appropriate investigate, complaints alleging that ABC content has breached the ABC's editorial standards". She advised that my "complaint raised a legitimate editorial matter which would in the first instance be most appropriately dealt with directly by the ABC's [REDACTED]".

I strongly disagree that it is most appropriate that an area responsible for committing a significant breach of the ABC's governing legislation should be the area that investigates the breach. The fact that after almost 12 months, I did not receive an adequate response to my allegations demonstrates this. [REDACTED] notes that I received a response from the ABC's [REDACTED] [REDACTED] apologising for the delay and that he had responded to the issues I raised. She was right to say that I received an apology from [REDACTED] and that was appreciated, but he did not respond to the substance of my allegations. In fact, he advised that he hadn't even seen the footage in question.

[REDACTED] also advised that the ABC takes "complaint handling responsibilities very seriously" and that the ABC was "not attempting in any way to bury your complaint as you suggest". This alluded to the fact that my complaint had not been included on the ABC's FOI disclosure log despite the FOI Act requiring documents released under FOI to be published within 10 working days. She notes that my "case has since been published online".

I would be more persuaded by the claim that the ABC was not seeking to bury my complaint were it not for two matters: 1) how the ABC has recorded my complaint on the FOI disclosure log; and 2) the reasons given for not releasing the documents.



Regarding my first point, the following extract is from the disclosure log at <https://about.abc.net.au/how-the-abc-is-run/what-guides-us/freedom-of-information/foi-disclosure-log/foi-disclosure-log-archive/#2017>:

ABC FOI Reference Number	Date of access	Summary of FOI request received by the ABC	Information published in the disclosure log	Attachment
2017-023	6 Sep 2017	Documents relating to his complaints to the ABC.	Access granted in part. <i>Documents not published (FOI Act section 11C(1)).</i>	

If the ABC was not trying to bury my complaint, at a minimum the summary would include an indication of what my complaint was about, e.g. "Documents relating to his complaints about the screening of an advertisement on the ABC in breach of the ABC's governing legislation".

Regarding my second point, to claim that the FOI Act provides justification for not publishing the documents is absurd. The text of s11C(1) - and s11C(2) which is referred to in s11(C)(1)) - is in the following box (extracted from [www.legislation.gov.au/Details/C2018C00016](http://www.legislation.gov.au/Details/C2018C00016) which is the version of the Act in force at the time):

### **11C Publication of information in accessed documents**

#### *Scope*

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
  - (a) personal information about any person, if it would be unreasonable to publish the information;
  - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
  - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
  - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

I have read and re-read s11C(1) and do not believe that it provides any reason for withholding publication of the documents that were released to me. Any personal information identifying me could easily have been redacted.

While almost five years have passed since the broadcast, I remain concerned that the ABC has never addressed the substance of my allegations. If the ABC had bothered to conduct an examination, it may have found that my complaint was unjustified. However, as mentioned in my correspondence with the ABC, including the then chair and managing director, the lack of any analysis means that the ABC was not in a position to make such a call. What I would like to see, however, is an improvement in the ABC's processes for handling complaints, particularly serious ones, and on how it responds to FOI requests.



In terms of investigating complaints, it should overhaul the system so that serious complaints - and I consider my complaint to be in that category - are investigated properly by an independent unit within the ABC and not referred to the area that committed the alleged breach. I note that the public consultation paper <https://about.abc.net.au/wp-content/uploads/2021/11/Independent-Review-of-ABC-Complaint-Handling-Public-Consultation-Paper.pdf> advises that:

"A complainant has a right to take a matter to ACMA, if dissatisfied with the ABC response or the matter has not been satisfactorily resolved within 60 days of a complaint being lodged. A complainant is to be advised of this option at various stages of the ABC complaint process."

Despite what is claimed in the second sentence quoted above, at no stage was I advised of this option.

In terms of my FOI request, the ABC should publish the documents that were released to me and amend the summary of my complaint so that the issues I raised are clear. This will make things transparent and address my concern that ABC is trying to bury my complaint. For an organisation that demands transparency of others, it falls far short of this expectation itself.

Yours sincerely

Fintán Ó Laighin

#### **Enclosure**

##### **1. Exchanges with the ABC**

1.1 Letter of 31 July 2017 acknowledging my FOI application

1.2 Letter of 6 Sep 2017 responding to my FOI application

1.2.1 Documents released under FOI

1.3 Letters of 29 Sep 2017 to the chair and managing director of the ABC

**From:** [Adrian Goh](#)  
**To:** [ABC Complaints Review](#)  
**Subject:** ABC Complaints Review Submission  
**Date:** Friday, 17 December 2021 6:13:46 AM

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Dear Prof. John McMilan and Mr. Jim Carroll,

Thank you for inviting members of the public to provide written submissions to the ABC Complaints Review (the "Review"), especially via email.

Referencing the Review's Public Consultation Paper (the "Paper"), I would like to provide an email submission below to address Key Review Themes 2, 6 and 7 as set out on page 10-11 of the Paper.

**1. Have you used the ABC complaints procedure, and if so, what was your experience? (Key Review Theme No. 2)**

I have used the ABC complaints procedure four times since March 2020 (Ref. Nos. C22558-20, C5841-21, C9460-21 and C21019-21). All concerned ABC News. Of the four, I was satisfied with one (C5841-21), very dissatisfied with another (C22558-20) and quite disappointed with the last two.

- The response I was most satisfied with (C5841-21) concerned Federal Minister Greg Hunt's speech, which was cut off just before he explained why legislation was needed for mitochondrial donations. Network - ABC NEWS Channel team replied with a link to Mr. Hunt's speech in full and filled in the missing information. That was excellent as I didn't know Mr. Hunt's full speech was available online.
- I was very dissatisfied with ABC's response to [REDACTED] interview on ABC News [REDACTED] in which he clearly but falsely linked the rise in Singapore's Covid-19 infections (at the time) to non-closure of Singapore schools. The contorted reply from Audience and Consumer Affairs ("ACA") reviewed [REDACTED] interview like a comprehension exercise, and claimed that "...his comments were more speculative." I had complained about this so-called "speculative comment" because it had real potential for causing undue panic and anxiety to Australian parents of schoolchildren. I invite the Review to listen to that interview and decide for yourselves whether ACA's reply spoke well for ABC's complaint process. From my perspective as a complainant, **ABC's complaints procedure places too much weight on ABC's noble intentions and good faith when communicating news, rather than how well (or badly) the ABC had actually done so.** Instead of considering how ABC's diverse consumers would most likely have understood [REDACTED] interview and whether information was accurately and competently presented, the complaints procedure left the impression that inaccuracies and miscommunications at the ABC can explained away, dismissed with assertions that accuracy standards were met. **There simply is no excuse for ABC New's failure to communicate well and accurately, especially during a once-in-a-lifetime pandemic.**
- I sent my third complaint (C9460-21) partly as a test - will the ABC concede that it had repeatedly made a simple but obvious mistake if irrefutable proof were provided? ABC News had pronounced "Maldives" wrongly, over and over again, for almost a week. I sent in my complaint together with a YouTube link to a U.N. speech by the President of the Republic of Maldives, where he correctly pronounced the word "Maldives". Did I get an acknowledgement of the mistake? No, I did not. What I got instead was a template reply: *"Your concerns about the pronunciation for*

*the name Maldives have been brought to the attention of our team that provides pronunciation guidance for ABC content makers."* That reply from *The team at ABC NEWS* left me with an unshakeable and unpleasant impression that the ABC does not readily admit to mistakes; even when they are obvious and when there is irrefutable evidence that the ABC had got it wrong. If ABC's complaints procedure cannot ensure that small, obvious and irrefutable mistakes are acknowledged and corrected, how can the public be confident that bigger, more serious errors would be properly addressed? Refusing to acknowledge mistakes, even minor ones, is indicative that the ABC (including the ACA) has a more serious problem with its beliefs, values and attitude; not so much a problem with its complaints procedure. This perception of the ABC refusing to acknowledge or apologise for mistakes gets entrenched when the ABC defended one of its journalists who also refused to apologise for a mistake -- this time costing taxpayers hundreds of thousands of dollars.

- There is a recurring theme in ACA's replies to my complaints: the assertion that the ACA is satisfied that this or that segment being complained about "was not in contravention of the ABC's editorial standards." Therein lies another problem for the ACA and ABC's complaints procedure: to most organisations, standards are high bars of quality and expectations to rise up to; standards for what is great and not just good.. It seems to me, from the ABC's perspective, standards for accuracy and balance are low floors not to be breached/fall below; to justify the barely passable and avoid having to say "Sorry". .

## 2. Do you have a view on how ABC complaint work should be reported publicly? (Key Theme No.6)

Yes, I do.

- Today, ABC complaint statistics are categorised in ambiguous ways, e.g., "Investigated", "Resolved", "Upheld". Of the 6,233 complaints ABC received in 2021, only about 20% were "Investigated", 3.7% "Resolved" and 1% "Upheld". So how many mistakes did ABC make in 2021? I don't know but I do know it's more than 61, the number of "Upheld" complaints. Is the number of "Investigated" complaints an indication of the number of mistakes ABC had made in 2021? Maybe, but that is a far more likely figure.
- The ABC can under report errors and mistakes simply by refusing to acknowledge a mistake has been made. In my complaint about the pronunciation of "Maldives", the ABC News team replied that they had "brought to the attention of our team that provides pronunciation guidance for ABC content makers." No acknowledgement of any mistake made, so no negative statistic added. So that's where the battle is being fought in the ABC - every refusal to acknowledge even a minor error increases the ABC's "complaints resolution" statistics. There is absolutely zero incentive for the ABC to be honest and forthcoming about any errors, inaccuracies, lack of balance, mispronunciations, unchallenged questionable remarks by guests, failure to get more than one side to a story, etc.
- The fact that ACA comprises only 5 staff allows the ABC to claim that it lacks resources to handle complaints more thoroughly. How convenient.
- The ACA must be empowered to record every irrefutable/provable mistake that the ABC has made regardless of whether the content teams acknowledge them or not. If in doubt, the complainant should have the benefit. At the end of the year, the difference between the errors ACA has recorded and the number of errors

recognised by the content teams should be categorised, published used as the basis for improvements within the ABC.

- All complaints, and those "Investigated", "Resolved" and "Upheld" should be broken down further into the program being complained about, type of complaints and where geographically those complaints came from, and published.

**3. Are any ABC program or content areas of particular concern to you? (Key Review Theme No.7b)**

Yes, there is. ABC News should be held to a much higher standard than opinion-driven or entertainment programs, for example. ABC News should be quick to acknowledge and correct errors on-air, if possible, because public expectations of accuracy, balance and language is far higher for ABC News than for other ABC programs.

- Therefore, the ABC News should face far more scrutiny for example, for using words like "bungle" (clumsy mistake) to describe Victoria's hotel quarantine fiasco (a complete failure) where more than 800 people died from Covid-19 viruses that escaped from hotel quarantine. It should be easier for the public to call out such inappropriate/dismissive use of words to seemingly minimise the mistakes of a Left-leaning government, for example. Similarly, using words like "militants" on ABC News to describe the 9/11 terrorists (the subject of my fourth complaint) should be recognised as a breach of ABC's Editorial Guidance for Hate Speech, Terrorism and Mass Killings.
- The ABC complaints procedure should take a more rigorous approach with responses to complaints about ABC News content, and, for example, not be satisfied with an ABC News content maker's flippant remark, "I think this is an interesting perspective on "militant" that I'll bring to this month's language meeting." as response to a viewer complaint.. As if ABC News content makers don't already know that

"Newspapers, magazines, and other information sources may deem militant a neutral term, whereas terrorist or guerrilla conventionally indicates disapproval of the behavior of the individual or organization so labeled, regardless of the motivations for such behavior."

(Quoting from Wikipedia (referring to Juergensmeyer, Mark. Terror in the Mind of God: The Global Rise of Religious Violence. Comparative studies in religion and society, 13. Berkeley: University of California Press, 2003. Page 9.):

Feigning ignorance is not a good way to respond to viewer complaints. It betrays an arrogant attitude (perhaps that is the underlying reason for ABC's refusal to acknowledge mistakes) and disrespects viewers.

Thank you.

Best regards,  
Adrian Goh



From: [Bob Fearnley-Jones](#)  
 To: [ABC Complaints Review](#)  
 Cc: [REDACTED]  
 Subject: ABC Complaint Handling Review: Bob F-J Public Submission 3.  
 Date: Friday, 17 December 2021 2:46 50 PM  
 Attachments: [Four Corners Weather alert TV News grabs \(extract complaint 1\).docx](#)

Dear Reviewers,

I copy Maurice Newman (ex-Chairman of the ABC) and Dr Jennifer Marohasy (Senior Fellow, IPA) who collegially published over the unjustifiable dismissal of my multiple complaints of provenly false claims in an episode of 'Four Corners', *Weather Alert*, as elaborated in my Public Submission 1, of 16 December.

The primary outcome of my complaints over many provenly false claims in that episode of Four Corners was that [REDACTED] of A&CA advised that they had "exercised their discretion not to investigate...". My subsequent email enquiries with [REDACTED] failed to change that ruling. That ruling was also advanced to include four additional complaint dossiers that I submitted over subsequent weeks, each of them containing irrefutable proof of multiple false claims, including on hard data.

At that stage I considered the option of appealing to the ACMA but noted from their 2017 report ([now archived](#)) that the process can take so long that it may be that any provenly false claims have become indelibly established as true facts in the minds of the public and media. For instance, two separate complaints relating to a relatively simple matter on the ABC's 7:30 program on 21/04/2017 were not ruled on until 29/09/2017 (5 months later, Re cases BI-329 and BI-330).

Thus, rather than going to the ACMA, I sought to make alternative email enquiries to three of the program principals:

From: Bob Fearnley-Jones [REDACTED]  
 Date: 18 April 2018 at 15:40:09 AEST  
 To: [REDACTED]  
 [REDACTED]  
 Cc: [REDACTED]  
 Subject: Four Corners accuracy concerns

Dear Four Corners team,

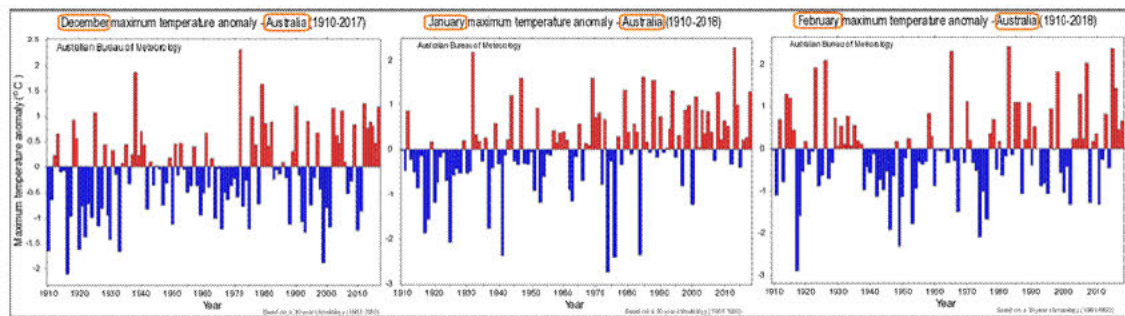
I noticed some errors of fact in your *Weather Alert* episode and so raised some formal complaints on Audience and Consumer Affairs. I was advised over a month later by A&CA that they have exercised their discretion not to investigate it, but that my advice has been noted. Further correspondence with them has been unhelpful.

**Please advise** if you have been advised of the content of those complaints.

Here is one example in [REDACTED] opening line:

[REDACTED] *Another long hot summer is finally over...*

However, if the relevant daytime maximum temperature data are checked via the Bureau of Meteorology's easily accessible [drop-down menus here](#), it can be seen that all three summer months of 2017/18 were rather ordinary when compared with the warmer times in the past:



Sure, some places were hotter than average (as always will be the case; somewhere) but a greater proportion were much cooler last year than in prior years.

I would like to know if [REDACTED] claim was driven by the three TV-News screams following [REDACTED] introduction, or if maybe they were editorial embellishments and not of his making. He can be excused for not realizing that the official commentary of the Bureau's Dr Karl Braganza covered rather different statistics. BTW, as far as I'm aware some good news of our winters warming more rapidly than the summers is never good copy from the Bureau. It gets buried in the popular mean data.

Oh, and in the startling use of unchecked TV headline grabs as evidence all three of the TV-News scares were found by the simplest of searching online to be false; badly.

**Please advise** if the team is interested in learning more about the many other false statements made in the introduction and for the most directly affected primary industry representatives that I covered in the complaints.

Yours sincerely,

Bob Fearnley-Jones (Mechanical engineer retired, Melbourne)

A&CA responded on their behalf, in entirety, with:

From: [ABC Corporate Affairs5](#)  
 Sent: Thursday, 19 April 2018 11:08 AM  
 To: [REDACTED]  
 Subject: Four Corners accuracy concerns



Dear Mr Fernley-Jones

Thank you for your email.

In keeping with the Corporation's complaint handling procedures, *Four Corners* has referred it to me for response.

Your comments have been noted by *Four Corners*.

Yours sincerely

[REDACTED]  
Audience and Consumer Affairs

I then pointed out to A&CA and the Editorial Director that the ABC was in contravention of its editorial standards:

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**From:** [Bob Fernley-Jones](#)  
**Sent:** Friday, 20 April 2018 2:42 PM  
**To:** [ABC Corporate Affairs](#) [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Four Corners accuracy concerns

Dear [REDACTED],

And attention Editorial Director

Thank you for your email advising that the Four Corners team have noted my brief comments (below). [\[Above\]](#)

However, that does not include a response to the points I raised, so are you inferring that there will be no response or that corrective action taken will not be taken?

Have you actually given them copies of the five complaints (not investigated by A&CA) so that they might also 'be noted', whatever that means?

Will this self-declared iconic [investigative journalism](#) programme continue to infringe multiple aspects of the ABC Editorial Policies such as in this extract from the [Guidance Notes](#)?

*"...If something is presented as a fact (as opposed to expert opinion) in a complex and highly specialised area by an acknowledged subject expert, then that can often serve as a sign of accurate and reliable content.*

*But beware. Expert opinion can differ, even on the same facts, and even the most experienced subject matter experts can tend to present their opinions as if they were facts.*

*So don't just assume that, provided we attribute a quote accurately, then it becomes someone else's problem.*

*In other words, don't think that if a demographer appears in a piece of ABC content asserting that 25% of our population comes from Asia, then if that turns out to be inaccurate it is his problem and not ours.*

*If it there are simple and reasonable ways to verify such an asserted fact, then we should. At the very least (and particularly if the comment comes in a live interview), we should be prepared to question or challenge anything stated as a fact which seems problematic or contested."*

Yours sincerely,

Bob Fernley-Jones

There was no response to this, so I also tried with [REDACTED], the responsible content director:

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**From:** [Bob Fernley-Jones](#)  
**Sent:** Tuesday, 24 April 2018 4:41 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** ABC Four Corners [REDACTED]

[REDACTED]

[REDACTED], I'm forwarding for your attention copies of five complaints submitted to A&CA after they have advised refusal to investigate them, despite that they prove the use of false claims. I copy as witnesses of this advice; Professor John Nicol and Dr Jennifer Marohasy who are among others that endorse these serious concerns.

The show opened with three sensational TV-News grabs which of course are inherently unreliable 'evidence' and which upon simple checking online were found to be false. There were also some truly surprising anecdotal claims that should have caught the attention of any [investigative journalist](#) to check for reality. (E.g., frosts at the height of summer). Again, the claims (including [data](#)) were easily found to be disproved, including by Bureau of Meteorology data, the Australian Bureau of Statistics, and the three relevant primary industry Associations for firstly a multipitious beef grazier, one boutique cherry orchardist and two differing vigneron interviewees.

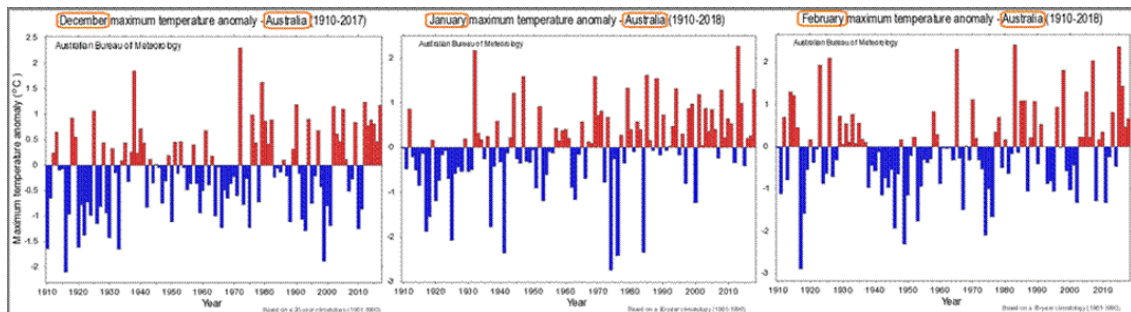
It seems that A&CA have reclassified [REDACTED] as a show that in short is allowed to employ fringe anecdotal opinions that are false, while excluding the bulk of evidence and balancing opinions that are contradictory to the agenda of that particular show.

These five complaints were not to deny that global warming exists, but to condemn the making of false claims that were apparently made with the primary intent of grossly exaggerating the risks of global warming to your viewers.

Here is an example from the transcript. What with the emotional introduction over, our investigative reporter now enters:

██████████ Another long hot summer is finally over....

So, what does the BoM have to say about 'Another long hot summer'? Well nothing to get excited about actually, if the relevant daytime maximum temperature data are checked via their easily accessible [drop-down menus here](#), rather than the different statistics misleadingly employed subsequently in the show.



As can be seen, all three 2017/18 summer months were rather ordinary when compared with the warmer times in the past. Our investigative journalist opened the show with another highly misleading claim for our viewers. Sure, some places were hotter than average (and they always will be somewhere) but a greater number of places were cooler.

**We recommend that you request A&CA have these five complaints properly investigated. Please advise your views.**

Yours sincerely,  
Bob Fernley-Jones (Mechanical engineer retired, Melbourne)

PS: [off focus deleted herewith]

There were no responses to these emails.

#### Matters that should be rectified:

1. It remains unclear if my five "*not investigated*" major complaint submissions were referred to the *Four Corners* Team for action.
2. The ABC has been silent when individuals outside of A&CA are queried over the denial of proven false program claims by A&CA.
3. The situation in 2. should be rectified because the option of appeal to the ACMA takes far too long, AND, it is preferable to have ABC director level analysis when complaints are unjustifiably rejected by A&CA.
4. Director level arbitration outside of A&CA is not only to be preferred because it should be far quicker, but it should be more likely to result in improvements in various processes including in the editorial policies.

An awful example of 2. (Maurice Newman also complained in The Australian) was with the three scary TV news grabs which were false or very misleading. They dramatized ██████████ entrance and his misrepresentation of "Australia burning" that summer. Two Directors remained silent when advised of this, and, the Weather Alert video is not due to expire on ABC iView until 2033.

See attachment; EXTRACT from my complaint dossier 1.

#### On the matter of ACMA (Re the Review invitation to comment in item 11 under Key issues):

After all else failed in the above, I did appeal to the ACMA and was astonished when 6 months after the broadcast they ruled in their [report BI-407](#) that there was no breach of any of the editorial standards.

**It may be that the ABC will defend the issues I've raised by pointing out that ruling.**

**However**, the ACMA selectively employed obscure arguments on lesser matters and avoided any of the proofs of false data. For instance, none of the indisputable hard data contained in 21 graphics and tables that proved false claims were considered. A very definite breach of editorial standards in an alleged investigative journalism program!

Among their 18,173-word report they employed this ludicrous exaggeration by ██████████ three times:

*That drought went on for ten years and it got hotter and drier and the availability of water started to really shock us because water availability for our vineyards, and particularly in the Murray Valley, went from something like \$100 a tonne to \$800 a tonne in a couple of years and that really changed the dynamics and the way we thought about our vineyards and the profitability of the industry.*

The claim of \$100/tonne going to \$800/tonne for a mere 1,000 litres of water or just 1 cubic metre, say a mere utility pickup load, is just plain silly and just another exaggeration not worthy of comment among the hard facts in my complaint.

Worse than that, they edited transcript of a statement by Mr Brown by changing one word (worsening the already poor syntax) in order to infer it drove a move to Tasmania to combat climate change.

*Tasmania is a good foil and we're finding that has been a good balance to have a cooling into our spectrum of climate, and we still do grow grapes on the mainland. And there's grape varieties that thrive very well in the warmer climates.*

The original ABC transcript and audio has *Tasmania is a good soil*... In reality, Brown Brothers have been famous since 1994 for their marketing of Tasmanian varietals that take advantage of the good soil and other environmental conditions. Also, their most recent acquisition is as of today nearly 6 years ago [in Victoria](#) BTW.

Please find one attachment.

Yours sincerely,

Bob Fernley-Jones  
Mechanical engineer retired  
Melbourne



Weather Alert extract from Complaint 1

Example 2)

The opening narrative sets-up the programme agenda with several sensational TV news grabs:

2.1) Sydney newsreader:

"Tonight fires break out across the state as Sydney sizzles and the mercury soars, with Penrith recording its hottest day ever at 47.3 degrees.

This claim became rapidly obsolete in the media with widespread correction of a mistaken early tweet from the BoM. Again, your investigative reporter apparently failed to do a quick online search for ‘Penrith 47.3’ or the like. Maurice Newman, a former Chairman of the ABC put it rather succinctly in The Australian:

“...according to Australia’s Bureau of Meteorology, little old Penrith in Sydney, Australia, was the warmest spot on the planet, recording its highest temperature ever, having “broken the all-time maximum temperature record for ... the Sydney metropolitan area”. Well, perhaps in all that excitement the bureau can be forgiven for overlooking the fact Penrith Lakes started recording temperatures only in 1995 and for missing a much higher temperature recorded in nearby Richmond in 1939. But they were right. It was hot.”

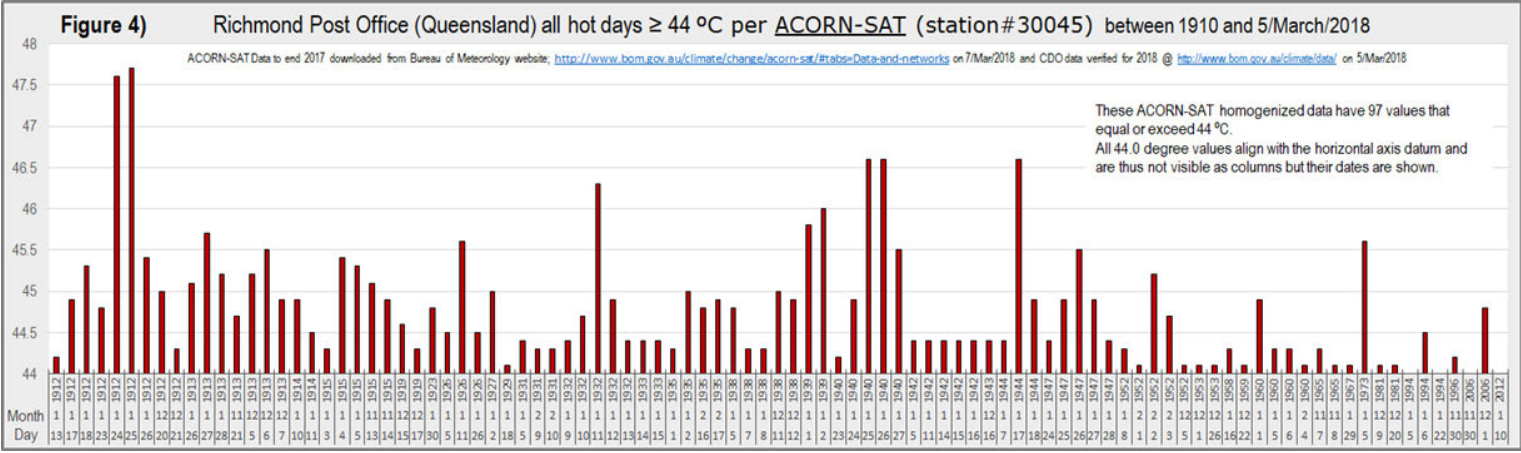
2.2) Brisbane newsreader:

"Queenslanders have suffered through temperatures at least 10 degrees above average as the heatwave sets in for the weekend.

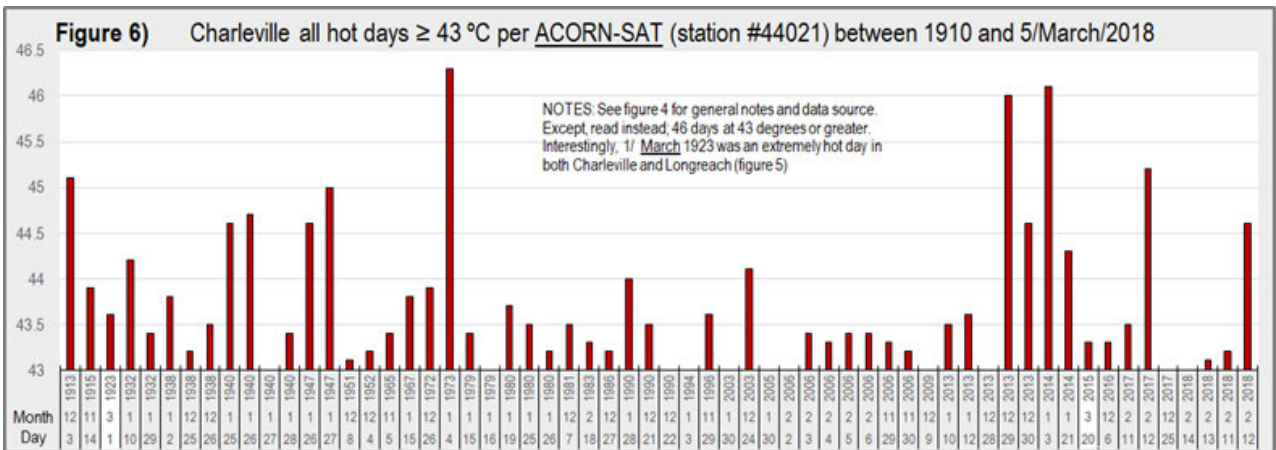
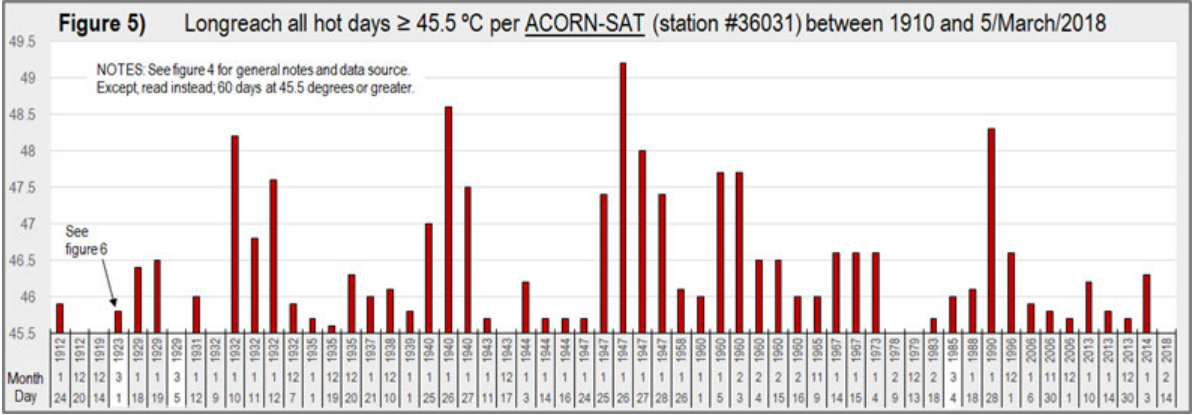
The claim of “at least 10 degrees above average” is again severally misleading including that sparsely populated areas in the hot centre have a long history of very high fluctuations in temperature that were more severe than those of late. Your programme failed to reveal the proper perspective of various less alarming reports such as in the Brisbane Times on 15/Feb/2018 (even though it too is partly exaggerative or mistaken when compared with the relevant BoM databases):

“[BoM] forecaster Sean Fitzgerald said much of Queensland recorded temperatures above 35 degrees during the week. In particular, out west is where it is very very hot - temperatures out there are at or exceeding 40 in some places, so quite a bit above average,” Mr Fitzgerald said. “Lots of places are five degrees above average and some places are even 10 degrees above average, so plenty of warm temperatures about the state. “You’re talking about places like Charleville, Longreach, Roma even Toowoomba.” Records were also broken in Winton in central-west Queensland which recorded 46.5 degrees on Wednesday, breaking a February 28, 2016, record of 45.5\* degrees, while a couple of hundred kilometres south, in Richmond, a 1983 record of 44 degrees was broken when the town hit 44.5 degrees.”

However, when the BoM databases are examined, all six stations cited were relatively cool in recent times. (e.g. figures 4, 5, 6) Mistakenly, the forecaster’s statement about Richmond is strongly contradicted in figure 3, and, although the stated 45.5 in 2018 is apparently OK, one of the corrective BoM tweets on the saga in 2.1 above admitted that it was 2.3 degrees hotter in 1939. Also, the Winton, Roma and Toowoomba examples only have short records that are incapable of providing long-term trend determinations. Moreover, Winton’s 45.5 in 2018 did not break the record high of 46.9 on 1/Dec/2006 anyway!



These graphics show [ACORN-SAT ‘homogenised’ values](#) through to the end of 2017, and, if there are any relevant high values in 2018 that have not yet been added to the homogenised dataset, the “Raw” data from the Climate Data Online portal (CDO, [hyperlink above](#)) are added.



2.3) Melbourne newsreader:

"The state's public transport system and power supply have come under pressure as Melbourne baked through its hottest day in two years.

There were 193 days hotter than 40 degrees recorded at the Melbourne Regional Office before its closure in 2015. At Olympic Park, the replacing station, it spiked at 41.7 °C on 6/Jan/2018 atop a modest month average of only 27.2 °C. Some more notable past highs were; 2009\* = 46.4, 1939\* = 45.6, 1908 = 44.2, 2003 = 44.1, 1862 = 44.0. So, a single 41.7 °C day in Melbourne is hardly a big deal but it is dressed-up to be a sign of pending doom.  
\* Catastrophic bushfires driven by extreme winds from the hot interior.



Please advise what corrective action will be taken over the seriously misleading statements in all of these seven points, and over failure to check their validity or provide balance.

Extracted from Complaint 1 on 17 December 2021

Yours sincerely,  
Bob Fernley-Jones (Mechanical engineer retired, Melbourne).

12/March/2018

## Submission to Review of ABC complaints handling process

Ian Hone

My experience of the ABC complaints handling process is that it results in a very slow response to complaints (over four months), considerable prompting is needed to get a response (three prompts going up the chain of command, in the end requiring an email to the Minister)), the essence of the complaint is not addressed, and the response is misleading.

The complaint was that the ABC mislead the public on the fact that warmer temperatures lead to lower death rates. The ABC did not advise listeners of this fact, despite me pointing it out twice, and actually implied it was not true.

Note that the Australian Institute of Health and Welfare has published a paper (1) analysing temperature and death rate data to show that death rates are inversely related to temperatures. Other reputable authorities have also come to this conclusion.



### Details

26 April 2021 Complaint lodged with ABC Audience and Consumer Affairs via ABC website (Complaint Reference C8618-21)

30 May 2021 Contacted website-based ABC Support Team seeking resolution of the complaint (Ticket 246609)

27 June 2021 Letter sent to Mr David Anderson, Managing Director, seeking that the resolution of the complaint be expedited

29 July 2021 Email to Minister, The Honourable Paul Fletcher seeking his assistance to expedite resolution of the complaint

30 August 2021 Response to complaint (attached)

Note that

1. The reply did not address the complaint that the ABC mislead listeners through comment and omission of information about the inverse relationship between death rates and temperatures.
2. Although the complaint had nothing about the cause of climate change, the bulk of the reply was about the cause of climate change.
3. Anyone reading just the reply would think that the complaint was disputing the cause of climate change. Hence the reply was misleading to a reader who only had the reply to consider.

It appears that ideology may have flavoured the response.

To overcome the problems that I encountered it appears that a solution would be:  
Complaints and the replies should be monitored and reviewed by a  
body independent of the ABC,  
comprising persons with no associations with the ABC  
selected by people who have no association with the ABC.

(1) AIHW: de Looper M 2002. Seasonality of death. Bulletin No 3

## Attachment

Dear Mr Hone,

Thanks for writing to ABC Radio Canberra with your concerns about your text messages not being read in full.

Firstly, apologies for the delay in getting back to you.

ABC Radio Canberra receives many text messages each day and while producers and presenters do their best to read as many as possible and to reflect a broad range of views, unfortunately not all of them can be read on air.

To your substantive point, the ABC accepts the scientific consensus on anthropogenic climate change and understands that the majority of the world's governments, major international institutions and corporations do too, and that is why they have introduced climate mitigation policies to address the threat.

We note that Australia's federal and state governments accept the scientific consensus on climate change and have policies dedicated to addressing its impact, as does the UN, the EU, NASA, the CSIRO and so forth. The ABC does not debate the existence of anthropogenic climate change.

This complaint is covered by the Code of Practice. You can find a copy of the Code here: <http://about.abc.net.au/reports-publications/code-of-practice/> If you are dissatisfied with my response, you may refer the matter to ACMA.

Thanks, [REDACTED]

[REDACTED]

ABC Canberra.



## Introduction

Five hundred years ago, Christopher Columbus set out on a voyage in an attempt to discover a new route to the Indies. Upon reaching land and meeting the indigenous people he called them Indians, as he had believed he had reached the Indies. On his return, many believed he had reached the Indies by sea. But the fact was the land he reached was the Americas and not the Indies. All of what was reported to be the Indies, was actually America and it was only later when this was corrected.

How would a mistake like this be handled today? In the ABC series of programs on Falun Gong, the ABC makes the same mistake. This mistake has already misled more than a hundred thousand viewers around the world and has caused hatred towards and harmed those who practice Falun Gong. These programs have been used by the Chinese Communist Party (CCP) in their propaganda to legitimise the persecution of Falun Gong. The ABC set out to create programs that follows the opinions of a handful of people who dislike Falun Gong, but do not practice Falun Gong, so they don't actually know Falun Gong well. The entire direction of the programs is wrong and as such the ABC have not created programs displaying what Falun Gong is. They have created completely incorrect programs which slander Falun Gong and Falun Gong practitioners.

Prior to the airing of the series of programs and after the airing of the programs, Falun Gong practitioners in Australia have expressed their concerns of the program and have tried to contact the ABC for our voices to be heard and to correct the incorrect statements presented in the programs.

Last year, I had sent in an editorial complaint (Ref. No. C35298-20) to the ABC regarding their defamatory programs on Falun Gong, which was then reviewed by *ABC Audience and Consumer Affairs* (ACA). I hoped that the ACA would investigate the programs, correct the mistakes, and retract the programs. However, the ACA replied stating that there were no breaches of editorial standards.

According to the *Independent Review of ABC Complaint Handling Public Consultation Paper*, the ABC complaints handling unit received 83 complaints regarding their series of programs on Falun Gong where no breaches of editorial standards were found. The paper states the complaints were of bias, inaccuracy and unfairness towards Falun Gong, however it was much more serious than presented, as the programs were highly misleading and have caused serious harm.

If the ABC programs are wrong from the outset and what is presented is not factual, how can the ABC improve their policies to handle such mistakes? It is clear that the current *ABC Editorial Policies* and *Codes of Practice* are not fit for purpose, given that such a grave mistake is allowable by policy. Would the ABC be willing to improve its policies and standards to correct such mistakes?

I believe the *ABC Editorial Policies* and *ABC Codes of Practice* require changes to prevent this kind of misleading reporting and that the complaints handling unit, *ABC Audience and Consumer Affairs* needs stricter standards on reviewing complaints. This submission goes over some of my thoughts on this serious issue.

## The adequacy of the ABC Editorial Policies and ABC Code of Practice for upholding the requirements of the Australian Broadcasting Corporation Act 1983

There are no editorial policies that cover fundamental mistakes of the Falun Gong program. Given that the initial topic is incorrect, the entire set of editorial policies and codes of practice are useless as they do not cover such an issue. The policies then become talking points for the ACA to remain unaccountable for any complaints received on their program. The policies are written extremely vaguely and open to wide interpretations giving the ACA the ability to talk their way out of any issues.

Fundamental mistakes such as the Falun Gong program are related to the current standards of accuracy which state *“An opinion, being a value judgement or conclusion, cannot be found to be accurate or inaccurate in the way facts can”*. Such a fundamental mistake occurs at the initial stages of program creation, which would fall under the opinion of ABC producers and presenters. There are no standards regarding how opinions of ABC staff can influence the content of the program and the presentation of facts within the program.

The accuracy standard also states, *“The accuracy standard requires that opinions be conveyed accurately, in the sense that quotes should be accurate and any editing should not distort the meaning of the opinion expressed”*. This only requires that opinions are conveyed accurately, whereas the opinions themselves may or may not be factual. However, the Falun Gong programs consisted mainly of opinions. The way the standard is currently written, non-factual information can be presented in a program if the opinions are represented accurately. Due to this, in my complaint response from the ACA, they dismissed my concerns I had on the opinion pieces by stating that there was some factual information in the program.

The accuracy standard only vaguely references presentation of content, which should be expanded upon. A major issue left out of the standards is the overall perception of content, which is influenced by the design of the narrative and editing of the program. Just because the program contains some facts does not mean that the program as a whole gives an accurate and factual presentation to the viewer. The entire basis of the Falun Gong programs was to slander Falun Gong, however since the programs were interspersed with some facts, they did not break editorial standards. A viewer is often not able to clearly distinguish what is fact and what is opinion, especially if the program is edited in such a way such that one viewpoint is unfavourable. It should be the responsibility of the ABC to ensure accurate presentation of facts. Without a standard set here, factual accuracy is meaningless if the audience is guided to believe opinions.

The harm and offense standard states that the ABC *“should never gratuitously harm or offend and accordingly any content which is likely to harm or offend must have a clear editorial purpose”*. In my complaint response the ACA state that the Falun Gong programs were *“newsworthy”*, so they are free to publish them even if it causes harm and offense. The ACA also feign ignorance, stating that the ABC are not responsible for harm and offense caused. There is no clear definition for what is newsworthy within the standards themselves. Not to mention that the program does not present facts but are largely opinion. In no case should a program consisting of mostly opinion, be allowable to cause harm and offence to people.

The impartiality standard states *“Aiming to equip audiences to make up their own minds is consistent with the public service character of the ABC.”* Therefore, the programs that the ABC makes should not guide the viewer along a predetermined path. The standards are not clear about presentation of the program. In the Falun Gong programs, the narrative begins by painting Falun Gong in a negative light, and it remains that way throughout the program. Providing a diversity of perspectives is not the only factor that allows the public to make up their own minds. It largely depends on the narrative of the program, how it is edited together, the opinions presented and the opinions of the program writers/presenters. These need to be covered in the standards.

## **Broadcasting is characterized by rapid digital change, innovation and distribution of content. Is the ABC complaints process adapting adequately to that change?**

Due to rapid digital change and publishing platforms such as YouTube, the reach of the ABC is now wider than ever before. As such the responsibility of the ABC is much greater as they are not only responsible for Australians but also those over the world. The editorial standards should be updated to

reflect this. Especially in the issue of the Falun Gong program, with over 100,000 views on YouTube, it has spread lies and endangered people across the entire world. It has been used by the CCP for propaganda to legitimize their brutal persecution of Falun Gong. The ABC cannot brush off their overseas influence just because they have no control over it. The ABC being a news source clearly understands how propaganda in China operates and should consider people overseas.

The advancements of computing power have also allowed rapid editing of content with new editing techniques introduced which can greatly influence the perception of programs. Currently there are no standards that cover this. In the Falun Gong program, editing of the content is largely responsible for the biased presentation of the opinions such that it guides viewers to opinion and not fact.

## **Whether complaints relating to ABC editorial standards are dealt with efficiently, fairly and reasonably**

There are no clear guidelines on how the ACA should respond to complaints, in my own case the ACA completely ignored sections of my complaint on clearly misleading portions in their program on Falun Gong. Why were sections of my complaint ignored and the only response was that the comment was noted? What standards are used to judge what the ACA will and will not respond to?

ACA also does not always individually respond to complaints. In my response the ACA responds to points that I never made in my complaint and state that I stated things that I never did. Clearly the ACA had just copy pasted a response to another complaint. Why is the ACA able to copy and paste responses that have no relevance to the complaint being handled? This should not be allowable.

The complaints process itself is largely based off opinion of the ABC staff and as such is not factual as based on the accuracy standard. Is the complaints process exempt from factual accuracy? The ABC complaints handling process is given a lot of room to talk their way out of potential issues and largely this is because of the vague terminology of standards and loopholes built into them.

## **Conclusion**

The current form of the editorial standards and codes of practice has many loopholes that allow the ABC to make content that is opinion based and not factual. This stems the opinions of the ABC presenters themselves who design the programs. Programs are allowed to consist largely of opinion as long as it is interspersed with fact, regardless of how it is perceived by the audience. I do not believe this results in an accurate presentation of facts which should be the goal of the ABC. The ABC's Falun Gong programs have caused much damage to the Falun Gong community and put people in danger. If programs like these are not in breach of the editorial standards, then there must be a large problem with the current standards. It is my hope that these issues can be rectified.

The Falun Gong issue is a very sensitive and serious matter in the current world. The persecution of Falun Gong practitioners in China has been ongoing since 1999. The whole world knows of the horrors of organ harvesting from Falun Gong practitioners. It is not a topic that can be carelessly discussed. Media should use a serious attitude towards this issue. With the ongoing persecution, Falun Gong practitioners face dangers to their lives every day, just because they want to follow the principles of Truthfulness, Compassion and Tolerance to become better people. The ABC has produced a program that slanders Falun Gong, and it is being used by the CCP for propaganda. This program is directly aiding the persecution of Falun Gong, a persecution campaign against one hundred million people around the world. As such, the ABC has created the largest ongoing human rights abuse in Australian history.

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How would a mistake like this be handled today? In the ABC series of programs on Falun Gong, the ABC makes the same mistake. This mistake has already misled more than a hundred thousand viewers around the world and has caused hatred towards and harmed those who practice Falun Gong. These programs have been used by the Chinese Communist Party (CCP) in their propaganda to legitimise the persecution of Falun Gong. The ABC set out to create programs that follows the opinions of a handful of people who dislike Falun Gong, but do not practice Falun Gong, so they don't actually know Falun Gong well. The entire direction of the programs is wrong and as such the ABC have not created programs displaying what Falun Gong is. They have created completely incorrect programs which slander Falun Gong and Falun Gong practitioners.

Prior to the airing of the series of programs and after the airing of the programs, Falun Gong practitioners in Australia have expressed their concerns of the program and have tried to contact the ABC for our voices to be heard and to correct the incorrect statements presented in the programs.

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## Submission: Independent Review of ABC Complaint Handling

The Editorial Policies division, as currently configured, consists of three very small teams working with the ABC Editorial Director. They are:

- The five editorial policy advisors, who offer pre-publication advice, deliver regular training to both internal and external content-makers, and develop and revise the editorial guidance notes through which the policies are interpreted.
- Audience and Consumer Affairs.
- Classification, a team of three who view and classify television content prior to broadcast.

The editorial policy advisors and Audience and Consumer Affairs maintain a degree of necessary separation. While members of both teams attend monthly Editorial Policy Group meetings throughout the year (with representatives of the ABC's content divisions), other contact is largely confined to email communication through the final stages of the complaints handling process when advisors are sent copies of responses to upheld and resolved complaints. The editorial policy advisors sometimes offer an opinion on these matters but cannot overrule or veto the final judgement of the ACA investigators.

Notwithstanding this careful distance between the pre-publication advice and the post-publication assessment, the Editorial Policies team are more familiar with the broad performance of ACA than any other group within or beyond the ABC. While we will be focussing on the future in this submission, we wish to place on the record our respect for the professionalism of our colleagues and the exceptionally high standard of their work. Even on the small number of occasions when we don't agree with their conclusions, we appreciate the depth of reasoning, the careful interpretation of the editorial standards, the commitment to continuous improvement of editorial performance through the complaints process, and a certain degree of courage. We have seen this small team come under considerable pressure, occasionally from colleagues though more often from external complainants, but we have never seen them do anything but apply their consistent, intelligent and independent reasoning to each individual piece of content which comes before them.

### The purpose of an editorial complaints process.

The Editorial Policies team believes absolutely that the ABC must have a complaints-handling process of the highest quality. A public sector media organisation must actively engage with the public, who not only have a right to understand how journalistic work is carried out, but to express their views on our content and know that these have received a fair and open-minded hearing and may indeed influence future practice.

An effective system also plays an essential role in the continuous improvement of standards. Standards don't exist in a vacuum – they evolve with societal understandings and community expectations, and complaints are important evidence to us on this evolution. We are therefore strong supporters of a complaints process which is well-publicised, clear and easy for the public to use.

The benefits of excellent complaints-handling to the internal culture are also very significant. The work which goes into assessing complaints made by the public directly informs changes made by the Editorial Policies team to guidance notes, to advice given and to training. We believe that the circular movement of editorial thinking between audiences, content-makers, editorial managers, editorial

advisers and internal but independent complaint-handlers in general works extremely well. We would particularly like to make the point, given the extent to which some of the ABC's external critics assert the contrary, that ABC staff take this process very seriously.

### The current situation.

Complaint investigation outcomes are reported to the federal government-appointed ABC Board at every meeting. The most recent ABC annual report revealed that between them they assessed 7,592 written complaints during the 12-month reporting period. They provided responses, often very detailed explanations, to 2,206 of those complaints.

Others, less serious, were referred to ABC content teams so they could respond directly.

Over that period, 4.1 per cent of all investigated issues were upheld, another 14 per cent were resolved because content teams took prompt action to remedy the cause of the complaint – whether correcting an inaccuracy or adding necessary context.

Some detailed complaints ran to dozens of pages. The complaint investigators are required to work quickly. In the last reporting period, more than 81 per cent of complainants responded to directly by the investigators heard back within 30 days.

Much of the criticism of our current system comes from disappointed complainants who write to tell us why they don't *like* a piece of content. They are sometimes unhappy to receive a reply which formally assesses that content against precise editorial standards. The feeling that the system doesn't respond to their concerns is genuine, but a large media organisation can only operate with a standardised regulatory system which applies across all content-making. A regulatory system cannot determine whether a piece of content is good, or ideal, or better than another piece on the same topic. It can only reasonably determine whether it does or doesn't comply with the standards articulated in the policies.

Only a small fraction of all ABC output is subject to complaints, but every one of them is taken seriously. Where mistakes are made responses include written apologies to complainants, on-air and online corrections, revisions to published content with explanatory editors notes, counselling of staff, other disciplinary action, and further training.

The outcomes of investigated complaints are fully transparent. Summaries of upheld and resolved complaints are published, along with a quarterly complaint handling overview, hundreds of Senate Estimates questions are answered, and senior ABC representatives led by Managing Director David Anderson attend hearings.

In 2009, the ABC Board published a review that found the ABC's self-regulatory framework was "*fundamentally sound*" and, compared to other media organisations in Australia, "*well developed and transparent*."

Nine years later the Australian National Audit Office found the ABC editorial complaints handling system was "*accessible to the public, easy to navigate and responsive to complainants*".

In recent years the industry regulator - the Australian Media and Communications Authority - has examined dozens of complaints about ABC content. And what does the regulator say about ABC adherence to editorial standards?

In 2019, in a rare breach on impartiality grounds for an episode of Catalyst, it acknowledged "the ABC's strong record of compliance."

In 2021, the ACMA has not made any breach finding against the ABC.

Three years on, the same framework is still in place. There is no compelling evidence of a systemic problem with the existing editorial complaints handling system at the ABC.

### Other models

The Editorial Policies team keeps an eye on the regulatory models of other public and private sector media organisations around the world. Members of the team have attended the conferences of the Organisation of News Ombudsmen, where commercial and non-commercial practices around audience complaint and communication have been dissected and compared. In the vast majority of cases, whether called ombudsmen, reader's editors, editorial directors or other titles, these roles exist within organisations.

While the idea of an external complaints body may seem superficially attractive as a means of ensuring greater accountability, it becomes more elusive as further questions are asked. It is significant that no comparable English speaking public broadcaster has an external ombudsman for complaints handling in addition to an external regulator. All follow self-regulatory models and for good reason – because it is essential to maintaining editorial independence:

*"The ABC receives public funds and is obliged to fulfil certain functions, to meet high standards and to be accountable. Independence is assured by law and convention. The ABC's independence is fundamental to the ABC fulfilling its functions, especially its functions to inform, educate and promote the arts. Effective self-regulation is fundamental to maintaining independence." Self-Regulation Framework Review, August 2009*

The ABC complaints handling unit - Audience and Consumer Affairs - already effectively operates with the authority of an independent ombudsman within the ABC. It operates outside all content divisions and its decisions are binding - only the Managing Director can intervene to determine a matter via another process.

In addition to the undermining of independence, the editorial policies team believes that there would be even more to be lost with the distance that would necessarily come from formal separation. Under current arrangements Audience and Consumer Affairs investigators are considered by content makers to be independent, respected and objective but not antagonistic. We consider it likely that the current balance between the external consideration of responding to the public and the internal interest in continual improvement, which operates to the mutual benefit of each, would be changed for the worse.

### Suggestions for improvements



### *Internal structure*

1. While we do not believe that the current structure, in which ACA sits in the same ABC division as the pre-publication advisors and the classifiers affects the independence of the former, we understand that this may affect perceptions and are therefore proposing that the complaint investigation function should report directly to the Board through the Managing Director as Editor-in-Chief.
2. For greater clarity over its core function, Audience and Consumer Affairs should be renamed the Editorial Complaints Unit.
3. Having observed the increasing workload over recent years, we would also propose that the staff of this unit be increased from five to six members to ensure complaint investigations are completed within 20 business days wherever possible. The team should be led by a head of ECU to supervise editorial complaint investigations.
4. The ECU should continue to be the primary point of contact for the ACMA and the unit should continue to produce reviews of complaints data, analysing compliance against individual editorial standards.

### *External communication*

5. While the ABC does publish a range of material on its editorial and complaints processes, these are diffused and can be difficult for the public to find. We would like to see the creation of a prominent online site collating and presenting audience feedback, complaint investigation and review outcomes, editorial reviews and links to other relevant ABC sites including Editorial Policies, Corrections and Clarifications and Complaint Handling Procedures.
6. Further, this site could also include more discursive materials promoting public accountability and transparency around our editorial performance, including articles, opinion pieces on editorial practices and decisions, as well as explainers around media literacy. While the Editorial Director should perhaps be the most prominent voice on this site, work should also be commissioned from a variety of perspectives to present a robust range of opinions.
7. We should also establish means by which the site could act as an audience advocate or conduit.

### Personal social media

The review invites comment on whether the personal use of social media should be covered by Editorial Policies. Currently ABC Editorial Policies apply to content published on ABC broadcast and digital platforms, including official ABC social media accounts. This content that has been through approved pre-publication processes.

Like any other Australian, ABC workers have their own personal social accounts. They are not required to use personal social media for work purposes but may choose to.

Posts on personal social media are not subject to ABC pre-publication processes. Employees are instead required to comply with five standards under the ABC's Personal use of Social Media Guideline:

- Do not damage the ABC's reputation for impartiality and independence.

- Do not undermine your effectiveness at work.
- Do not mix the professional and the personal in ways likely to bring the ABC into disrepute.
- Do not imply ABC endorsement of your personal views.
- Do not disclose confidential information obtained through work.

Breaches of the Personal use of Social Media Guideline are dealt with in accordance with the relevant ABC employment agreement and can lead to disciplinary action, from a direction to delete the content, to termination of employment.

Employment contracts have been updated to specify employee responsibilities on personal social media. They are required to ensure usernames and handles on personal social media do not include ABC, or a program name or station callsign. Further training is being provided.

The vast majority of ABC workers understand and comply with these standards.

While staff use of personal social media has become a regular feature of Senate Estimates hearings, formal complaints from the public are rare. They are referred to the relevant director for further examination by his/her delegate and serious complaints are referred to ABC People for investigation and possible disciplinary action.

Current ABC policy settings on the personal use of social media remain appropriate and are consistent with the practice of other large employers in both the public and private sector.

### Editorial Policies

The Consultation Paper released by the reviewers also invites comment on existing Editorial Policies and the Code of Practice.

As the ABC Annual Report states, the Editorial Policies give practical shape to statutory obligations in the ABC Act. They provide the basis for the ABC Code of Practice which the ABC provides to the industry regulator, the Australian Communications and Media Authority. Most importantly, they are a day-to-day reference point for content makers and journalists. They also explain the ABC's editorial and ethical principles for the public.

Independence, accuracy, corrections, impartiality, fair dealing, privacy, and harm & offence are common standards for public broadcasters. The thirteen core ABC Editorial Policies have stood the test of time and have been largely unchanged over recent years. This consistency assists content teams who are under constant deadline pressure in their work, as well as audience understanding.

Editorial Policies are kept under constant review. Editorial policy advisors lead the drafting of revised policies and updated or new guidance. External and ABC subject specialists are consulted, along with staff reference groups. Final draft policies and guidance are examined and endorsed by a pan-ABC Editorial Policies Group chaired by the Editorial Director, before being recommended for approval to the Managing Director and Board. There are senior representatives from all content divisions on the EPG, along with the Head of Audience and Consumer Affairs.

In 2021 after investigating an episode of *Fight for Planet A: Our Climate Challenge* the ACMA took the unusual step of commenting publicly on the ABC Code of Practice in relation to impartiality, describing it as “ambiguous” on an appropriate timeframe for the provision of all perspectives and

calling for greater clarity on what role factors such as whether the issue is contentious play in assessing whether due impartiality has been achieved.

The same principles and standards had been successfully applied in over 100 previous ACMA investigations, nonetheless after meeting senior ACMA representatives in May, ABC impartiality guidance was revised in December 2021. The ABC has offered to brief the regulator on the latest changes.

Other important recent editorial guidance published includes *Respecting Indigenous people and culture in ABC content* (revised December 2021); *Domestic violence and abuse* (revised December 2020); *Dealing with trauma and survivors of trauma* (issued June 2020); *Hate speech, terrorism and mass killings* (issued November 2019); *Reporting and portraying disability in ABC content* (issued July 2019).

After new policy or guidance is issued commissioning editors and managers are briefed and training workshops are held with relevant content teams.

The current system of reviewing, revising, and issuing editorial policy and guidance is widely accepted and proportionate, striking the right balance between setting standards and quality assurance - and unduly constraining fearless public interest journalism, or adventurous, sometimes confronting, forms of art and entertainment.

### Conclusion

The ABC already has the most robust self-regulatory framework for editorial activity and complaints handling in Australian media.

This submission recognises those strengths but also acknowledges that to be effective self-regulation must continue to evolve.

The changes proposed in this paper emphasise public accountability, clarity in reporting lines and the ABC's commitment to continuous quality improvement.

ABC Editorial Policy Advisor Team

17 December, 2021

**Submission 17 December****Independent Review of ABC Complaint Handling**

**From Ian McGarrity** Former Head of SBS TV, deputy to the Head of ABC TV and as Nominee of the 7, 9 and 10 Commercial TV Networks, Chair Digital Broadcasting Australia.

**Mob #** [REDACTED]

**Email** [REDACTED]

**Postal** [REDACTED]

**Recommendations**

- a) it is essential that the Reviewers take into account that the only way for any ABC complaint responding service to reasonably play its vital role is for the unit responsible for it to be seen to be, and actually be, independent of content departments are hence its staff:
  - should not have worked for an ABC content department for at least two years before appointment; and
  - should not be able to be employed by any ABC content department for at least 2 years after they cease employment.

Section 2
- b) I believe the head of the unit should be appointed by the ABC Board and work to the Editor in Chief who would then report the work of the complaints unit to the Board  
Section 3
- c) it would be beneficial for the Editor in Chief to be separate from the Managing Director but I recognise the separating of the role of Editor in Chief and MD is probably beyond the remit of the Reviewers – but this structural issue is in the shadows behind many things the Reviewers will consider.  
Section 3
- d) The complaints unit head should only be appointed by the Board for an initial 3 year term and be eligible for reappointment by the Board for only one subsequent 3 year term.  
Section 3
- e) The head of the complaints unit must not be used as a trusted high level responder to personal letters written to senior ABC officers or Board members when no complaint is being made.  
Section 4
- f) The ABC Editorial Policies, Standards, Statement of Principles and Editorial Guideline Guidelines must be simplified  
Section 5



- g) Understand the Natural Reticence of Any Organisation Constantly in the Public Eye  
to Put Dead Cats across the Path of Complainants  
Section 6

## **1. Introduction**

The overall system of:

- providing access to the public to make complaints to the ABC;
- how those complaints are received and investigated;
- how the ABC forms judgements regarding those complaints; and
- how the results of those judgments are implemented within the ABC and to the complainant,

is a vital feature of a financially independent publically funded public service National Broadcaster such as the ABC.

In asserting that, it should be noted that there are only three substantial public service National Broadcasters that are free from financially driven commercial interests, The ABC, BBC and NHK. None of these are allowed to seek advertising revenue from their domestic free-to-air broadcasting services to complement funds received direct from government or thorough hypothecated taxes levied on the public.

Hence the ABC, like the other two, is in a small minority of public service free-to-air broadcasters who can clearly say their audiences are their only customers.

All other public service free-to-air broadcasters, in whole or part, deliver audiences to advertisers or sponsors – who are in whole or part the ‘customers’ of their services.

Hence it is important for the two Reviewers in this exercise to take into account that the ABC has an exclusive link to its audiences – unfettered by commercial considerations – and that complaints from those audiences are more personal and relevant to the provision of its free-to-air domestic broadcasting services than for any other substantial public service national broadcaster with the possible exception of the BBC and or NHK.

The Reviewers are dealing with a near unique environment for a complaint making and handling system.

## **2. My Personal Standing**

I was a member of what was called the ABC Executive Service from late 1979 until my departure from the organisation in July 2000.

This culminated in me effectively being the deputy to the ABC Head of Television for around 8 years until 1996, including cumulatively over 12 months acting as the ABC’s Television Head, and ending as Head of ABC Development from 1996 until July 2000.

In former days I had been Executive Producer of a weekday daily TV Current Affairs program entitled Horizon 5 which was broadcast nationally between 13.10 and 13.30.

My basic professional background was as a journalist on ABC Radio and then Television.

During my period acting as Head of Television I was closely involved in many (if not most) responses to audience complaints by the ABC TV News and Current Affairs Department.

My experience was one of having to constantly tone down the common self-justification and defensive draft letters of response for my signature.

This self-justification and defensive reflex to complaints was not restricted to the News and Current Affairs department. All content departments exhibited the same characteristic but for probably self-evident reasons were not involved in anywhere near as many complaint responses.

In my view it is essential that the Reviewers take into account that the only way for any ABC complaint responding service to reasonably play its vital role is for the unit responsible for it to be seen to be, and actually be, independent of content departments and hence its staff:

- should not have worked for an ABC content department for at least two years before appointment; and
- should not be able to be employed by any ABC content department for at least 2 years after they cease employment.

### **3. Appointment and Term of Head of Complaints Unit**

I believe the head of the unit should be appointed by the ABC Board and work to the Editor in Chief who would then report the work of the complaints unit to the Board

In this respect I think it would be beneficial for the Editor in Chief to be separate from the Managing Director but I recognise the separating of the role of Editor in Chief and MD is probably beyond the remit of the Reviewers – but this structural issue is in the shadows behind many things the Reviewers will consider.

The ABC in my view need not always have an MD who is an experienced journalist and content maker – but the complaints unit should always work to and report to the Board through the Editor in Chief.

An MD who is not an experienced journalist and content maker will always struggle to vigorously undertake the functions of Editor in Chief and have his or her final editorial decisions command respect. But a complaints unit head should always report to the Editor in Chief. N'est-ce pas?

The complaints unit head should only be appointed by the Board for an initial 3 year term and be eligible for reappointment by the Board for only one subsequent 3 year term.

Otherwise over time inevitable and understandable friendships with – or just as importantly antagonisms regarding – influential people within the content departments whose work is being investigated will develop and hinder the reality and perception of independence.

#### **4. Duties of Head of Complaints Unit**

In my direct experience since I left the ABC in July 2000 I have become personally aware that the current Head of the ABC Audience and Consumer Affairs (ACA) unit is used to do things other than assess, investigate and respond to audience complaints.

For example she has become (no fault of hers) a convenient trusted person to respond to all manner of correspondence including to the Chair – even when no complaint is involved.

In February 2018 I wrote a flippant and personal letter to Justin Milne (who was a professional acquaintance of mine of over 20 years standing). I got a response from the current Head of ACA 8 weeks later – supposedly on the request of Justin.

Now I knew from my acquaintance of Justin that no such request would have been made and it was almost certain he never saw my letter.

This fact was confirmed by the current Head of ACA later in 2018 when responding to a question from me asking why Justin was not given my letter: *“I can advise that it has been the practice for many years for various items of correspondence addressed to the Chairman to be forwarded to Audience and Consumer Affairs for reply. Your letter was referred to Audience and Consumer Affairs in the usual way, and a response – approved by me – was prepared and sent to you. I couldn’t say whether the Chairman read your letter or my response”*

The head of the complaints unit must not be used as a trusted high level responder to personal letters written to senior ABC officers or Board members when no complaint is being made.

The person’s job must be seen as high level and dedicated to receipt, assessment and responses to complaints.

#### **5. The ABC Editorial Policies, Standards, Statement of Principles and Editorial Guideline Guidelines Must be Simplified**

No doubt the Reviewers will have been amazed at the fact there are four layers of documents (set out on page 2 of the Review Discussion Paper) which may play a part in the ACA determining the outcome of a complaint.

Like many other instrumentalities the ABC has, perhaps like the frog in the container of slowly heating water, produced over time a set of documents which tend toward outfling what you can’t do. Such ‘actuarial’ approaches have a tendency to allow a unit assessing a

complaint to find technical reasons to avoid upholding an otherwise generally legitimate complaint.

Should there be any natural tendency to support / defend the host organisation of which you are a constituent part, members of the ACA can find myriad ways to deflect a complaint by reference to a vast array of qualitative words in the package of documents against which such ACA staff or Head might determine a complaint outcome.

For example see the example of the “Accuracy Policy” point 2.2 of the associated Standards cited on page 2 of the Review Discussion Paper: *“Do not present factual content in a way that will materially mislead the audience”*.

To unpack this, the ACA has to determine if the material the focus of the complaint is, first, *“factual content”* (as compared with analysis or opinion) and if *“factual”* then determine whether any errors or inaccuracy involved will *“materially”* mislead.

Now I was heavily involved in the first iterations of the ABC Editorial Practices document set out in the early 90s.

I can assure you the current package of documents are not complainant; ABC content creator; or ACA assessor friendly. In many ways they represent a group of documents which, begun long ago, have been added to every time the MD or the Board have encountered a problematic content issue which the package of documents leaves unmentioned.

The frog in the slowly boiling pot of water and the endlessly reviewed and added to package of reference documents have both over time lost sight of what is happening.

The point is, regardless of how many guidelines and policies are written, an experienced fair minded independent person reviewing ABC content with access to the content creator and a viewer complaint – can make a judgement about accuracy without countless pages attempting to spell out what that concept comprises.

If you operate in a defensive way and keep trying to plug loopholes in the editorial package of documents in an attempt to show the political and bureaucratic world you have covered all bases, you can never reach the end.

For example just from my quoted 2.2 on page 2 of the Review Discussion Paper – you could request a few more lines explain what criteria might determine the difference between a *“material”* misleading from an *“immaterial”* misleading.

In the end the key always relevant issue is: *“would the content the subject of the complaint stand up to public scrutiny if put out for public consideration”*.

Detailed reams of paper giving guidelines to an in-house assessor are more redolent of a public institution trying to find escape routes from accountability for errors in judgement, fact, opinion and analysis more than a transparent one trying to improve its content.

The results of the actuarial reams of paper guidelines approach is there for all to see on page 5 of the Discussion Paper for the Review.

Of the 6,233 ACA assessed complaints (IE ones passed to the ACA by the ABC Audience Support section) only 0.97% ended up as upheld complaints. Just 20.5% were investigated. Some 91.7% of those investigated were rejected.

If there is any inbuilt tendency for the ACA to defend the content creator it seems likely the actuarial reams of good solid editorial guidance will throw up a point upon which a complaint falls foul.

The statistics on page 5 – if not sourced to the ABC and its audience complaints outcomes – would tend to make me think of the Chinese Judicial System outcomes for anyone charged with an offence by the authorities.

Does the ABC Board and its MD really think that ABC content complainants are so misguided that only on 0.97 times out of a hundred they get a complaint right!!!!

I hope by being completely separate from the frog in a pot syndrome which has guided the development of the package of editorial guidelines the Reviewers can see the wood of the figures on page 5 of the Discussion Paper for the trees of attrition created loopholes for avoiding content accountability.

And consider how many more complaints than the 6,233 that had been assessed by the ACA in the first 10 months of calendar 2021 there would have been – had potential complainers not been deterred over decades from making a complaint that had on average a 1 in 100 chance of being upheld!!

So simplify the background documents which might aid a reconstructed complaints unit in making more brave, inconvenient and internally uncomfortable determinations ‘against’ content broadcast while defending content that is being attacked and complained of mistakenly or vexatiously.

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**Ian McGarrity**

Former Head of SBS TV, deputy to the Head of ABC TV and as Nominee of the 7, 9 and 10 Commercial TV Networks, Chair Digital Broadcasting Australia





## The essence of my complaint

My complaint referred to the following statements from three ABC Online articles:

[REDACTED]

[REDACTED]

[REDACTED]

The complaint then pointed out that:

- these statements/articles relied on a 2017 AIFS report, *Challenging conceptions on sexual offending*, which cited a prevalence estimate (of 5 per cent) for false sexual assault allegations
- the AIFS report sourced that estimate from a 2016 meta-analysis by Ferguson and Malouff
- Ferguson and Malouff explicitly cautioned that its prevalence estimate covered only “confirmed” false reports; and that the conservative definition of false reports adopted “is not intended to imply that all other cases are true reports”
- the total of all false reports (confirmed plus unconfirmed) is potentially multiple times higher than the 5 per cent figure used in the ABC’s articles.

The complaint also made several other points as to why the ABC’s statements were misleading.

## Some deficiencies in the way ACA handled my complaint

### *Lengthy timeframe*

From lodgement, it took almost three months for ACA to provide a response. I understand that the ABC has resource constraints and that, had it addressed my complaint fully and rigorously, the complaint may have taken longer to consider than some others. Nonetheless, it appears that my complaint may have been ‘parked’ and then ‘forgotten’ for a while — perhaps after being sent to the ABC News area for comment — and was only acted upon after I sent a follow-up email in late August.

Slip-ups of this nature can occasionally happen in even the best-run organisation. However, if the Independent Review finds that my experience is not a rare one, it could investigate possible improvements to ACA’s administrative processes.

### *Limited explanations in ACA’s response*

ACA’s response (Appendix B) to my complaint was quite brief, running to about a page. It:

- outlined my complaint
- briefly explained ACA’s role
- mentioned that ACA had consulted the relevant program area and some other sources (without explaining, for the most part, what it had taken from those sources)
- set out the minor corrections the ABC had made to the articles and on the corrections page
- provided one or two observations (including a quote from the AIFS 2017 paper) that were apparently to be taken as counterpoints to points I had made in my original complaint.

However, the ACA response did not engage directly or transparently with the substance of my complaint to any significant extent. In essence, the ACA response said “thank you for your complaint, we have considered the merits of your arguments and we agree with X but not with Y”. As such, I was expected to ‘trust’ that ACA had properly considered my complaint and that its determination was well based.

This is quite different from the approach taken by the competitive neutrality complaints body, where once a complaint was accepted, the complaints office would respond to the arguments in the original complaint in a much more direct, thorough and transparent manner. The office would also often engage with the complainant and, in effect, issue draft decisions and invite the complainant (and complained-about body) to respond or make further input. This did not happen with my complaint to the ABC. Once I submitted my complaint, I was not included in the process nor invited to make any comment before ACA issued its decision.

If the complaints functions is to remain within the ABC, the Independent Review could consider recommending that ACA provide more open, transparent and rigorous responses when it responds to complaints it has ‘accepted’ for investigation.

### *Weak arguments used by ACA*

While the ACA response provided limited information to help explain the reasons for its decisions, the information it did provide was generally underwhelming.

For example, in its response to my original complaint, ACA quoted the 2017 AIFS report as if the quoted material justified the statements in the ABC articles. Yet, my original complaint had in effect already pointed out why the AIFS statement could not be relied upon to support the statements in the ABC articles. As I said in my rejoinder:

Given that my complaint (a) pointed out that the Ferguson and Malouff meta-analysis cited in the AIFS study does not support the conclusion drawn by the AIFS, and (b) warned you of the unreliability of the source (AIFS) documentation referenced by the ABC, I submit that it is not an adequate response for you to simply quote the AIFS conclusion as if that shows that the ABC’s statements are correct.

ACA repeated this approach in its reply to my rejoinder. In that case, my rejoinder explained why material from another study mentioned by ACA — by *Lisak et al* — could not be relied on to support the statements in the ABC articles. Yet, without addressing my point, the ACA response to my rejoinder simply quoted the material from *Lisak et al*!

The ACA response also relied on appeals to authority and technicalities to avoid addressing the substance of my complaint and making more substantive changes to the ABC articles. (My rejoinder — Appendix C — explains these points in more detail).

### **Was there some politics at play in the ACA response?**

The Independent Review’s public consultation paper mentions three high-profile complaints around which there has been a concern, at least in some quarters, that the (conscious or unconscious) political biases of ABC staff may have played a role in the initial reporting that led to the complaint. One of these, the *Ms Represented* complaint, relates to a program about gender politics.

This is also potentially relevant to the subject matter of my complaint, given that most sexual assaults are committed by males and most victims are female. The ABC has been heavily involved in

breaking and reporting sexual assault issues recently, as well as stories emphasising gender discrimination against women. Accurate and balanced news reporting on such issues is always to be welcomed. However, rightly or wrongly, the ABC has been under fire in recent years for its reporting on sexual assault allegations affecting some high-profile Australians, [REDACTED]. A former ABC Board Member has also accused the ABC of having a feminist bias.<sup>1</sup> In this context, while I submitted my complaint in good faith, I did wonder whether the ABC and its complaint unit would feel more pressure than it might otherwise to 'hold the line' on the statements that were the subject of my complaint.

While I do not know what discussions within the ABC were had in framing of the ACA response, to me the nature of the response — including its reliance on limited and weak arguments and the minimal (and arguably almost token) changes it made — seems to at least be consistent with the view that some gender politics had been at play.

Of course, I recognise that it is beyond the scope of the Independent Review to make any general determination about whether the ABC or its staff have a political bias that interferes with either its reporting or how ACA responds to complaints.

Rather, the relevant point for the Independent Review is that there may be value in the complaints body being separate and thus more undoubtedly independent from the ABC. This would remove any question of ABC bias (genuine or perceived) affecting the outcome of complaints.

# **Australian Communications and Media Authority Submission**

## Independent Review of the ABC's Complaints Handling Processes

DECEMBER 2021

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# Executive summary

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. Our remit also includes some aspects of online content regulation, for example restrictions on gambling advertising in live streamed sport and illegal internet gambling services.

## ***The ABC is a critical part of the media landscape in Australia***

The ABC is one of the largest media organisations in Australia with a national network of radio and television stations and an extensive online presence, including live and catch-up streaming services. The ABC offers a full suite of programming across its networks, including entertainment, information and education genres and broadcasts thousands of hours of content each week.

The ABC offers a considerable suite of investigative journalism, news, current affairs and factual programming content which is a key source of its product differentiation from other broadcasters. In delivering this and other content, the ABC holds itself out, and is held by others, to a high standard. This is reflected in a key duty of the ABC Board which is to ensure that the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism.

To meet and be seen to be meeting this high standard, a robust complaints handling framework is crucial. Such a framework not only plays a role in resolving complaints, but also in providing feedback to the organisation and, importantly, in fostering audience confidence in the ABC.

The ACMA recognises that complaints to the ABC can be about a wide range of issues, as they can be in relation to other broadcasters. Our submission focuses solely on complaints about content on the ABC covered by its Code of Practice and in relation to broadcast content as distinct from content disseminated online. This is likely a small subset of complaints handled by the ABC but they are often high-profile complaints about contentious matters where views will differ and resolution can be complex. These complaints may therefore require separate detailed consideration by the Independent Review.

## ***The ACMA investigates escalated complaints about broadcasters' compliance with codes of practice, including the ABC, under a co-regulatory framework***

The *Broadcasting Services Act 1992* (BSA) establishes a co-regulatory framework that provides for industry to develop their own codes of practice. The ACMA assesses unresolved complaints about compliance with those codes from viewers and listeners, and where appropriate, conducts formal investigations into a broadcaster's compliance. Those codes predominantly cover the treatment of content and this is therefore the area in which the ACMA has most visibility and expertise. Accordingly, this submission focuses on complaints handling in relation to editorial content. It has been informed by our experience as the escalated complaints handling body for both national as well as commercial broadcasters.

Between January 2019 to mid-November 2021, the ACMA assessed 130 matters about content broadcast by the ABC where complainants were not satisfied with the

response received from the ABC in the first instance. Of these, after consideration of the complaints, we formally investigated 10 complaints, ultimately finding 4 breaches of the code relating to impartiality, privacy, causing undue distress, and unduly favouring one perspective.

In the same period the ACMA assessed around: 155 matters about commercial television of which 45 proceeded to formal investigation; 65 matters about commercial radio of which 11 proceeded to formal investigation; and 10 complaints about SBS of which 2 proceeded to formal investigation.

### ***The ACMA has no role in developing and registering ABC codes of practice***

While broadcasters develop their own codes, in the case of licensed broadcasters, this is done in consultation with the ACMA. The ACMA registers licensed broadcaster codes of practice if satisfied of certain requirements. The code development process is prescribed in the BSA which indicates matters the codes may cover.<sup>1</sup>

Unlike other broadcasting codes, the *Australian Broadcasting Corporation Act 1983* (ABC Act) provides for the development of the ABC Code by the ABC Board and the code is notified to the ACMA. The ACMA does not have a formal role in its development.

### ***On the whole, the existing co-regulatory complaints framework provides a functional escalated complaints model but could be improved to enhance operability and community confidence in respect of ABC complaints***

Against the benchmarks for complaints handling identified in the Independent Review discussion paper, the ACMA makes the following observations:

- > Accessibility of the ABC's Code of practice for its audience is substantially inhibited and is directed to internal content and program makers. The Code is complex and difficult to interpret—even by the experienced regulator— compared to those covering commercial broadcasters and may alienate audiences in the process of complaining about ABC content.
- > The ABC could be more accountable to its audience through greater transparency of its complaints handling data and engagement of audiences in the development of its Code.
- > It is currently not possible to assess the effectiveness and efficiency of the ABC's content complaints handling performance as complaints procedures do not form part of its Code.
- > The ABC could be more open and responsive to feedback and findings made through independent review findings. This includes accepting the findings of the ACMA as the independent content regulator, that assesses what audiences would take from a program and how that content complies with the ABC's Code

In order to improve how the ABC manages complaints against themes of accessibility, accountability and independence, efficiency and effectiveness and responsiveness, the ACMA makes the following recommendations to the review.

### **Recommendation 1**

The ABC should review and update its code to provide clarity for audiences on the standards ABC sets for itself and what they can expect from the ABC. The Code should be externally focussed and independent from internal editorial guidance.

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<sup>1</sup> Subsection 123(3) of the BSA.

**Recommendation 2**

When reviewing and updating its code, the ABC should consult publicly, including being transparent about what evidence base (e.g. consumer research) it is relying on to support arguments to change or not change the code.

**Recommendation 3**

The ABC Code should be updated to include complaints handling obligations with clear commitments that can be objectively assessed for efficiency and effectiveness.

**Recommendation 4**

In the development of future codes or code revisions, the ABC should voluntarily engage with the ACMA.

**Recommendation 5**

The ABC should give greater weight to findings of the ACMA, as an independent content regulator, including improving transparency about actions taken in response to those findings to ensure future code compliance.

# Regulatory framework and the role of the ACMA

## Broadcasting content regulation and the national broadcasters

Content broadcast on radio and television broadcasting services is regulated, predominantly via codes of practice, under a statutory framework set out in the BSA.<sup>2</sup> Under the BSA, codes of practice may relate to, amongst other matters, accuracy and fairness in news and current affairs, protection of children from harmful content and program classification

Section 13 of the BSA articulates the application of this framework to the national broadcasters (ABC and SBS), stating that, 'except as expressly provided by the BSA, the regulatory regime established by the BSA does not apply to national broadcasting services'.<sup>3</sup> Instead, each national broadcaster has its own enabling legislation, namely the ABC Act and the *Special Broadcasting Service Act 1991* (SBS Act).

One area in which the ACMA is 'expressly' given a role is in relation to complaints made that the ABC or SBS has acted contrary to its code of practice (sections 150–153 of the BSA).

## Complaints and investigations in the co-regulatory framework

The BSA establishes a co-regulatory complaint system for both licensed (commercial television and radio, community, subscription and narrowcast)<sup>4</sup> and national broadcasters.<sup>5</sup> This system enables a person to make a complaint to the ACMA about a broadcaster's compliance with the relevant code of practice where they have first made a complaint to the broadcaster and either not received a response within 60 days or consider the response to be inadequate.

For the purposes of this submission, we have focused on complaints data relating to national and commercial television and radio broadcasters as being of most relevance to the Review. The ACMA carefully assesses all unresolved complaints that have first been referred to the broadcaster and where the matters raised are governed by the applicable code of practice.

The ACMA is not obliged to investigate every complaint but instead has discretion to commence an investigation where it considers it desirable to do so.<sup>6</sup> The ACMA may also initiate an investigation without a complaint either of its own motion<sup>7</sup> or at the direction of the Minister<sup>8</sup>.

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<sup>2</sup> Section 123 and Part 11 of the BSA.

<sup>3</sup> Section 148 of the BSA.

<sup>4</sup> Section 148 of the BSA.

<sup>5</sup> Section 150 of the BSA.

<sup>6</sup> Section 141 of the BSA.

<sup>7</sup> Section 170 of the BSA.

<sup>8</sup> Section 171 of the BSA.



The ACMA's primary consideration is whether it is in the public interest to commence a formal investigation. Reasons for deciding to formally investigate a matter following assessment, include the substantiveness of the response of the broadcaster to the complainant in the first instance, any action taken by the broadcaster in response to the complaint, whether based on a preliminary examination of the broadcast it is considered likely there is a breach of the applicable code of practice, the seriousness of the allegations and the nature of the material.

In its investigations, the ACMA sits in place of the ABC's audience. We apply the lens of the 'ordinary reasonable viewer' or 'listener'- and what they take away from the content complained about and whether that content complies with the ABC's Code. It is not our role to assess the program from the point of view of a content maker, journalist or academic. Nor is it our role to resolve or mediate between the ABC and the complainant. A mediation role is one usually undertaken by an Ombudsman, for example the Commonwealth Ombudsman or the Telecommunications Industry Ombudsman. The observations made in this submission should be read with our particular role in mind.

## **Enforcement for breach findings**

Where the ACMA has investigated and found a breach of a code of practice, whether it is necessary or appropriate to take any enforcement action will turn on the facts and circumstances of the case. What actions are available will depend on whether the breach was the responsibility of a national or licensed broadcaster. In keeping with the co-regulatory approach of the BSA,<sup>9</sup> the ACMA adopts a graduated and strategic risk-based approach to compliance and enforcement and engages with both national and licensed broadcasters to promote voluntary compliance.

Under its Compliance and Enforcement Policy, the ACMA seeks to:

- > foster industry compliance with, and contribution to, the regulatory framework without imposing undue financial or administrative burdens
- > encourage a compliance culture within the communications and media sector and adherence to regulatory obligations
- > promote a communications and media sector that is respectful of community standards and diligent in responding to community complaints.

The ACMA will take regulatory action commensurate with the seriousness of the breach and the level of harm. Generally, the ACMA will use the minimum power or intervention necessary to achieve the desired result, which in many cases is to ensure future compliance with the relevant obligation.

### **Licensed broadcasters – commercial television and radio**

In the case of a potential breach finding, the ACMA provides commercial broadcasters with an opportunity to respond to the preliminary finding and to provide submissions on action that the broadcaster intends to take to remedy the contravention if the ACMA's preliminary breach finding is maintained. In most instances, broadcasters make submissions on both the ACMA's preliminary finding and their proposed remedial action.

There is no formal requirement for broadcasters to accept or acknowledge the ACMA's findings but in practice they normally do. Broadcasters have some limited options to appeal the ACMA's decision, including in some cases applying to the Federal Court for judicial review of the ACMA's findings.

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<sup>9</sup> Section 5 of the BSA.

In practice, most breaches of co-regulatory codes do not warrant escalated compliance and enforcement action, and acceptance of commitments from broadcasters to address non-compliance is an appropriate outcome. Commitments may include publication of the ACMA's findings, disseminating ACMA investigation reports within the organisation, undertaking additional staff training for presenters and program makers and revising internal procedures and policies. In the ACMA's experience, broadcasters implement the commitments they make to the regulator in a timely and effective way.

In part, the acceptance of commitments from broadcasters is adequate because formal enforcement measures remain a live option should broadcasters not comply or there is evidence of systemic issues. Escalated enforcement options for code breaches include:

- > accepting enforceable undertakings;
- > imposing additional licence conditions or varying existing conditions—this effectively 'lifts' the licensee's code compliance into direct regulation by the ACMA.

Where there is a breach of a licence condition, additional enforcement actions are available, including:

- > issuing a remedial direction;
- > suspending or cancelling a licence.

Where the ACMA identifies serious and systemic issues across a class of broadcasters, it has the power to make an industry standard targeted at addressing the relevant deficiencies through direct regulation.

## **The ABC**

In contrast, the ACMA has relatively limited enforcement options for national broadcasters. If the ACMA decides that formal action is necessary following a breach finding, it may provide written notice to the broadcaster recommending that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.<sup>10</sup>

If the national broadcaster does not, within 30 days after the recommendation was given, take action that the ACMA considers to be appropriate, the ACMA may give the Minister a written report on the matter. The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which they received the report.<sup>11</sup>

In 1999, the former Australian Broadcasting Authority issued a notice to the ABC recommending it make an apology to remedy a breach of the ABC Code, which the ABC did. Since that time, the ACMA has pursued actions by the ABC to voluntarily address code breaches rather than using its formal notice and reporting powers.

## **Code-making**

### **Licensed broadcasters**

Under section 123 of the BSA, industry groups representing the different broadcasting sectors (commercial, subscription, narrowcast and community) develop codes of practice in consultation with the ACMA and must consider any research conducted by the ACMA. The ACMA is required to register such codes where it is satisfied that:

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<sup>10</sup> Section 152 of the BSA.

<sup>11</sup> Section 153 of the BSA.

- > the code provides appropriate community safeguards for the matters covered by the code
- > the code is endorsed by a majority of the providers of broadcasting services in that section of the industry
- > members of the public have been given an adequate opportunity to comment on the code.

Subsection 123(2) of the BSA sets out matters that may be addressed by codes of practice. The current codes for licensed broadcasters cover matters such as accuracy, impartiality, harmful and offensive content, privacy, classification and complaints handling.

Codes are periodically reviewed by industry to ascertain whether they provide appropriate safeguards and reflect audience expectations.

### **The ABC**

Under the ABC Act, the ABC Board is responsible for developing codes of practice and is required to notify these to the ACMA.<sup>12</sup> The Act does not contain any specific requirements for what the code of practice should cover or how it should operate, nor is there a formal requirement for public consultation by the ABC on the code.<sup>13</sup> However, the Board must ensure that the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism.

The current ABC Code of Practice (2019) incorporates 7 principles and standards drawn directly from the ABC's internal editorial policies, as well as additional principles and standards on content classification. The Board periodically updates the code and under the BSA is required to notify this to the ACMA.

The ACMA has no role in assessing the quality or potential effectiveness of the ABC's Code nor does it register such Codes, even though we have a responsibility to investigate complaints under the Code in the circumstances outlined above.

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<sup>12</sup> Section 8 of the *ABC Act 1983*.

<sup>13</sup> The ABC Board is accountable to the Parliament through the provision of annual reports, corporate plans, financial and performance audits and appearances before Parliamentary Committees.

# ACMA broadcasting complaints and investigations relating to the ABC 2019-2021

Over the past 3 years, the ACMA has received a number of complaints and enquiries about content broadcast by the ABC. This has resulted in several formal investigations being conducted.

## Complaints and enquiries

### ABC

Between January 2019 to mid-November 2021, the ACMA received 201 complaints that had not been to the ABC in the first instance for a response. We referred these complainants to the ABC.

In the same period, we received 188 complaints where the complainant had contacted the ABC in the first instance and was not satisfied with the ABC's response, including a small number where the ABC had not responded to the initial complaint.

The two issues complained about most frequently in relation to ABC content relate to accuracy and impartiality. This is perhaps not surprising given our comments above about the scale of investigative, news and current affairs and information content broadcast by the ABC as compared to both SBS and commercial broadcasters.

### *Comparative data—commercial television, radio and the SBS*

There are 69 licensees that provide commercial television services and 276 licensees that provide commercial radio services, covered by industry codes of practice. The ACMA investigates complaints about these services and those of the SBS.

Between January 2019 and mid-November 2021, the ACMA received around 1300 complaints about commercial television, 350 complaints about commercial radio and 40 complaints about SBS, that had not been to the licensee in the first instance for a response.

In the same period the ACMA received around 230 complaints about commercial television, 145 complaints about commercial radio and 12 complaints about SBS, where the complainant had contacted the broadcaster in the first instance and was not satisfied with the response, including a small number where the broadcaster had not responded to the initial complaint.

The issues most complained about in relation to:

- commercial television content are the classification of content, followed by care in selecting material for broadcast. Closely behind that is both accuracy and material that causes distress.
- commercial radio are 'decency' and the incitement provisions (for example incitement to hatred, serious contempt, severe ridicule on various grounds including age, race, gender etc).
- SBS are accuracy, impartiality and classification.

## Assessments and formal investigations

Between January 2019 to mid-November 2021, the ACMA undertook 130 assessments to decide whether to commence a formal investigation in relation to content broadcast by the ABC. 10 assessments proceeded to a formal investigation, which may have considered more than one issue or provision in the ABC Code. These investigations were predominantly all related to news and current affairs programming including *Four Corners*, *Q&A* and *Insiders*.

**Table 1: Investigation decisions by the ACMA relating to the ABC (January 2019 to mid-November 2021)**

Formal investigation commenced	10
Assessed and no further action	120
<b>Total</b>	<b>130</b>

In the same period the ACMA undertook around:

- 155 assessments about commercial television of which 45 proceeded to formal investigation
- 65 assessments about commercial radio of which 11 proceeded to formal investigation
- 10 assessments about SBS of which 2 proceeded to formal investigation.

## Finalised investigations about the ABC

Between January 2019 to mid-November 2021, the ACMA finalised 7 investigations about the ABC. One further investigation was finalised with a no finding decision.

Of these, the ACMA found 5 breaches of the code from 3 separate investigations. Of these 5 breaches, the ABC accepted one (Standard 7.5: avoid causing undue distress) and the ACMA was satisfied with the measures suggested by the ABC to address the accepted breach.

A more detailed list of these investigations including our findings and the actions taken is at [Attachment A](#).

In the same period the ACMA finalised:

- 46 investigations about commercial television, of these 16 Investigation reports found breaches, 24 did not find breaches and 6 involved no finding.
- 12 investigations about commercial radio, of these 7 Investigation reports found breaches and 5 did not find breaches.
- One investigation about the SBS was finalised with a no finding decision.

## Current investigations about the ABC

The ACMA is currently undertaking 5 investigations about the ABC (2 of these were commenced after the reporting period used in this submission, of mid-November). These are in relation to allegations of lack of impartiality, clarifications and corrections, accuracy and privacy and include programs such as *Four Corners*, *RN Breakfast*, *The World Today* and *Q & A*.



# ACMA observations

The Independent Review's Public Discussion Paper describes a range of models of better practice complaints handling. We have addressed our observations below against the relevant benchmarks in the *Benchmarks for Industry-Based Customer Dispute Resolution*. However, we note that an assessment of content raised in a complaint against the ABC's code is not necessarily analogous to, for example a complaint about an administrative action by a government agency.

## Accessibility

Broadcasting codes of practice are a cornerstone of the co-regulatory scheme. They:

- > set out broadcasters' obligations with respect to the content they broadcast
- > inform audiences about what they can expect from broadcasters, and what they can do when they consider these expectations have not been met
- > provide the ACMA with a framework by which to assess broadcasters' compliance.

The codes therefore link broadcasters, audiences and the media regulator via a set of mutual expectations.

In addition to the ABC Code of Practice, the ABC Editorial Policies set out principles and standards that are internally enforceable under management processes and under the ABC's complaints handling procedures. A set of Editorial Guidance Notes assists in the interpretation of these policies. While the Code of Practice, Editorial Policies and Guidance Notes are publicly available, they are primarily directed at ABC journalists and editorial staff, designed to assist and guide them in the production of programs.

As a result, the ABC code is complex and is directed primarily to content and program makers rather than audiences. This focus substantially inhibits accessibility to complaints handling for ordinary audience members. In contrast, the commercial television and radio industry codes of practice set out less detailed core requirements for broadcasters. In turn, this makes it easier for audiences to assess whether a complaint is warranted and confidently articulate the nature of it.

A key plank of the co-regulatory framework is for broadcasters to be given the opportunity to resolve a complaint before the ACMA becomes involved. It is therefore imperative that complainants have faith in the process. If the regulator is experiencing difficulties interpreting the code, it is likely that audiences may also be struggling with some of the same issues. There appears to be evidence of this in many of the referrals we receive from ABC audience members.

In the view of the ACMA, the knowledge required of audiences to understand whether the ABC is compliant with key aspects of its current code is prohibitive. This can lead to complainants feeling alienated by the process and therefore unconvinced by the response they receive from the ABC.

These same sorts of challenges are not evident in the referrals we receive from audiences of commercial broadcasters. This is something we attribute in part, to clearer code obligations and audiences not having to navigate code obligations associated guidelines and detailed policies, which are largely intended for journalist or content makers.

The ACMA has previously flagged, both in correspondence with the ABC and publicly at Senate Estimates, additional areas of challenge we have faced in interpreting and

applying some of the more complex aspects of the ABC code in the course of our investigations. Areas of particular complexity previously flagged with the ABC include:

- > Unclear requirements at Standard 4.2 (diversity of perspectives to be presented over time). The Code does not advise audiences how 'over time' should be judged. For example – should the audience expect to see or hear a diversity of perspectives:
  - > within the same program
  - > across a series of programs on television or radio
  - > across programming on all platforms on which the ABC distributes content
- > different application of the Code provisions by the ABC to different types of news and current affairs programs (for example point of view documentaries versus investigative journalism).

## **Accountability and independence**

Under Section 8 of the ABC Act, the Board has a duty to maintain the independence and integrity of the Corporation. However, as a publicly funded, national broadcaster, the ABC is also accountable to its audiences and to the broader Australian public. The ACMA considers that accountability and transparency of processes can bolster rather than interfere with the ABC's editorial independence.

The ABC could be more transparent and accountable to its audience through greater opportunity for them to contribute to the development of its Code. In the ACMA's experience, broad consultation during code development is more likely to produce a code that is in line with community expectations, and which better aligns what audiences think they should expect and what the ABC (or any other broadcaster) holds itself to account for. The extent to which the ABC conducts public consultation is not clear to the ACMA.

The ABC currently reports complaints handled by its Audience and Consumer Affairs unit in its annual report and on its website. However, it does not appear to report on the totality of complaints (be they about content or other matters) directed to other parts of the organisation, including content producers who may respond directly to complainants. It is therefore not possible to consider the totality of complaints received annually by the broadcaster or its response to those complaints. Greater transparency of such information would promote greater accountability of the ABC and confidence in its processes.

The ACMA also notes that the Audience and Consumer Affairs unit is established separate to program-making areas of the ABC. The intent of this arrangement is to have editorial complaints handled independently from the makers of the program. The SBS has a similar arrangement through its Ombudsman role which assesses content against its code (rather than the dispute resolution role of other Ombudsman roles).

In contrast, commercial TV and radio broadcasters—who also strongly hold to maintaining editorial independence, particularly from government—are subject to assessment of their content by an independent statutory authority, the ACMA, with an associated set of enforcement powers.

## **Effectiveness and Efficiency**

Unlike the codes of other sectors, the ABC code does not include rules on complaints handling. Instead, the preamble to the ABC code provides information on the regulatory framework supporting the handling of complaints on code matters. At the end of the code, information is provided on how to make a complaint. These do not form an enforceable part of the code.

The effect of this framework is that, unlike with other broadcasters, the ACMA is not able to review or investigate the ABC's compliance with its complaints-handling procedures. It cannot therefore assess the effectiveness and efficiency of the ABC's complaints handling against an objective and transparent set of criteria.

The ACMA considers that the ABC Code would be enhanced if its management of complaints handling was included, such that there could be clarity for audiences about what they should expect if they do complain and, in turn, they have the ability to raise concerns about whether the complaints handling function is working effectively.

This would substantially enhance the co-regulatory complaints system and community confidence by providing audiences with the opportunity to escalate any concerns about the ABC's compliance with its own complaints-handling policies and procedures.

It would bring the code into alignment with the other broadcasting codes, all of which include rules about complaints handling, such as time limits on submitting complaints. It would also engage an escalated complaints handling function by permitting the ACMA to investigate broadcasters' compliance with the complaints-handling provisions in the relevant code.

## **Responsiveness**

While responsiveness is not one of the key benchmarks identified in the consultation paper, the ACMA suggests its inclusion should be considered.

One of the benefits of an effective complaints handling mechanism is the opportunity for the ABC to receive and respond to feedback from both its audiences and the ACMA. Recent engagement with the ACMA would indicate that the ABC is resistant to the feedback provided by the ACMA, whether or not it has made breach findings. This may reflect a disconnect between what the ABC thought the code was intended to achieve with what both its audiences and the ACMA determined.

As noted in the discussion of specific complaints above, of 5 breach findings the ACMA has made against the ABC since January 2019, the ABC accepted one, and agreed to undertake measures to remedy the breach. The ABC noted but did not accept the other 4 breach findings, and for this reason no remedial measures were agreed upon or, as far as the ACMA is aware, undertaken.

In rejecting findings of ACMA—as the independent content regulator sitting in place of its audience—in regard to Code breaches, the ABC may undermine the confidence of its audiences that it will be responsive to their concerns. It may also inhibit the ABC's reflection on whether training, systems or processes should be improved to ensure its future compliance.

The ACMA may need to reinvigorate its use of notice and reporting powers under the BSA in circumstances where the ABC has rejected its findings and where, in the view of the ACMA, actions should be taken by the broadcaster to improve compliance. The ACMA notes that these powers do not create an obligation on the ABC to act on a notice but may provide greater transparency to the public and the Parliament of the regulator's concerns.

We note that while the ABC recently responded to concerns about the "The Ghost Train Fire" by commissioning its own external expert reviewers, the ABC also partly rejected their findings. It has also failed to accept all of the findings of a 2018 performance review by the Australian National Audit Office into the ABC's complaints handling.

These rejections of findings from different fully independent processes may be interpreted as the ABC being unresponsive to community concerns. The ABC should carefully assess such independent advice and make transparent and clear as to its reasoning for not responding openly and positively to such advice.

## **ACMA recommendations for change**

In light of these observations, the ACMA recommends the following to improve the complaints handling framework and process and to enhance audience confidence:

### **Recommendation 1**

The ABC should review and update its code to provide clarity for audiences on the standards ABC sets for itself and what they can expect from the ABC. The Code should be externally focussed and independent from internal editorial guidance.

### **Recommendation 2**

When reviewing and updating its code, the ABC should consult publicly, including being transparent about what evidence base (e.g. consumer research) it is relying on to support arguments to change or not change the code.

### **Recommendation 3**

The ABC Code should be updated to include complaints handling obligations with clear commitments that can be objectively assessed for efficiency and effectiveness.

### **Recommendation 4**

In the development of future codes or code revisions, the ABC should voluntarily engage with the ACMA.

### **Recommendation 5**

The ABC should give greater weight to findings of the ACMA, as an independent content regulator, including improving transparency about actions taken in response to those findings to ensure future code compliance.

## **Alternative approaches**

While the ABC operates under the co-regulatory framework, alternative models do exist (as described below). More substantive changes (if indicated) would require decisions of government and policy and legislative changes.

Alternative regulatory approaches operate both in Australia and in other jurisdictions such as Canada and the United Kingdom.

### **Australia**

- > As noted above, codes of practice for licensed broadcasters are developed in consultation with the ACMA and must take account of ACMA research. ACMA registers these codes when satisfied of a number of factors including an adequate opportunity for public comment.
- > The ACMA can review escalated complaints made about codes (including in relation to complaints handling) and has enforcement powers to address breaches and encourage future compliance.
- > The ACMA does not consider that changes to current arrangements to provide it with a greater role in regard to the ABC would impact on the ABC's editorial independence. Such an approach would make approaches consistent with arrangement for commercial broadcaster who are similarly concerned about their editorial independence.

- > The ABC Code of practice (and SBS) could be expanded to cover all content produced by national broadcasters regardless of whether it is communicated online or is broadcast on television and radio. Together with an expansion of the ACMA's powers to cover online content, this would provide independent oversight of all content produced by the national broadcasters.

## Canada

- > The CBC Ombudsman is responsible for evaluating CBC's compliance against the CBC Journalistic Standards and Practices.<sup>14</sup> These standards cover content on radio, television, websites, and other digital platforms.
- > The Ombudsman has the power to make recommendations only, and cannot issue any decision-making authority over programming, personnel management, or editorial choices.
- > A more detailed outline of the CBC's complaints review process is available on its website.<sup>15</sup>

## United Kingdom

- > Ofcom—the ACMA's UK equivalent—develops a Broadcasting Code in consultation with stakeholders that sets a regulatory framework for all broadcasters, including the BBC.
- > Ofcom is required to set an Operating Framework for the BBC, which includes a detailing of how complaints are to be handled.<sup>16</sup>
- > Ofcom publishes an annual report on the BBC that includes information about the BBC's complaints process and compliance with the broadcasting code.<sup>17</sup>
- > In addition to the financial penalties that Ofcom can issue, it may also direct the BBC, or accept undertakings from the BBC, to take steps to remedy the failure of BBC to comply or ensure that the BBC complies with its requirements in the future.
- > Ofcom has the powers to 'step in' and intervene in a BBC content standards case at an earlier stage or to launch an investigation in the absence of a complaint, where it considers it necessary.
- > These arrangements involving a much more active role of the regulator are not considered to impact on the editorial independence of the BBC.

## Conclusion

The ACMA welcomes the Independent Review of the ABC's complaints handling and thanks the reviewers for the opportunity to provide a submission. We are able to provide additional data and information to the review as needed and welcome further discussions on aspects of the review.

<sup>14</sup> See <https://cbc.radio-canada.ca/en/vision/governance/journalistic-standards-and-practices>.

<sup>15</sup> See <https://cbc.radio-canada.ca/en/ombudsman/complaint-review-process>.

<sup>16</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/99408/bbc-framework.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/99408/bbc-framework.pdf).

<sup>17</sup> Ofcom, [Ofcom's Annual Report on the BBC 2020-21](#).



## Attachment A

### Finalised investigations about the ABC

Finalised investigations about the ABC (January 2019 to mid-November 2021)

ACMA ref/ Program / Description	Findings	Publication date	Actions taken
<a href="#">BI-442</a> <i>Catalyst – Feeding Australia: Foods of Tomorrow</i>	No breach of Standard 2.1 [accuracy]  No breach of standard 2.2 [materially mislead]  Breach of Standard 4.1 [impartiality]	5/4/19	Nil. The ABC published a media release stating why it did not accept the ACMA's breach findings.
<a href="#">BI-451</a> – <i>Insiders</i>  A complaint alleging that comments made by a panellist were discriminatory and amounted to an accusation that gay teachers were paedophiles.	No breach of ABC Standard 7.1 [harm and offence]  No breach of Standard 7.7 [condone or encourage prejudice]	6/9/19	n/a
<i>Various</i>  Allegation of distressing content, not suitable for broadcast, pertaining to the Christchurch terrorist attack on 15 March 2019.	The ACMA published a report relating to a range of broadcasters available <a href="#">here</a> .	22/7/19	
<i>Unpublished investigation</i>  Allegations that a broadcast invaded privacy and caused distress.	Breach of Standard 6.1 [privacy]  Breach of Standard 7.5 [avoid causing undue distress]	Not published  (Note: an investigation report was not published due to the sensitivities surrounding the privacy breach)	The ABC did not accept the breach finding in respect of Standard 6.1 but did accept the breach finding in relation to Standard 7.5.  The ABC agreed to undertake several remedial measures including revising guidance provided to content teams.

<p><a href="#">BI-536</a> – <i>Four Corners</i></p> <p>Allegation that an episode <i>Extinction Nation</i> about Australia's protections of endangered species contained inaccuracies and lacked impartiality.</p>	<p>No breach of Standard 2.1 [accuracy]</p> <p>No breach of Standard 2.2 [materially mislead]</p> <p>No breach of Standard 4.1 [due impartiality]</p> <p>No breach of Standard 4.5 [unduly favour one perspective]</p>	12/8/20	n/a
<p><a href="#">BI-541</a> – <i>Four Corners</i></p> <p>Allegation that an episode <i>Cash Splash</i> about projects under the Murray-Darling Basin Plan contained inaccuracies, misled viewers, and lacked impartiality.</p>	<p>No breach of Standard 2.1 [accuracy]</p> <p>No breach of Standard 2.2 [materially mislead]</p> <p>Breach of Standard 4.1 [due impartiality]</p> <p>Breach of Standard 4.5 [unduly favour one perspective]</p>	15/12/20	Nil. The ABC published a <a href="#">media release</a> stating why it did not accept the ACMA's breach findings.
<p><a href="#">BI-543</a> – Q&amp;A</p> <p>Allegations that an episode produced in collaboration with <i>Broadside</i>, a feminist ideas festival, lacked impartiality, contained coarse language, incited violence, and promoted offensive male stereotypes.</p>	<p>No breach of Standard 4.1 [due impartiality]</p> <p>No breach of Standard 4.5 [unduly favour one perspective]</p> <p>No breach of various Harm and offence provisions</p>	11/9/20	n/a
<p><a href="#">BI-587</a> – <i>Fight for Planet A: Our Climate Challenge</i></p> <p>Allegations that an episode about the carbon footprint of food production lacked impartiality.</p>	<p>No breach of Standard 4.1 [due impartiality]</p> <p>No breach of Standard 4.2 [diversity of perspectives]</p> <p>No breach of Standard 4.5 [unduly favour one perspective]</p>	14/7/2	n/a

## AUDIENCE AND CONSUMER AFFAIRS

### SUBMISSION TO INDEPENDENT REVIEW OF ABC COMPLAINT HANDLING

#### 1. Introduction

The purpose of the independent review is to ensure the ABC's complaints handling procedures meet audience expectations. While all audience members are welcome to lodge complaints, the vast majority are not complainants. The ABC's complaints handling procedures seek to meet the expectations of the broad ABC audience, not just those who make complaints.

As an independent public broadcaster operating under statute, audiences are right to expect more of the ABC than of any other media organisation in Australia. The preamble to the ABC's editorial policies demands content that is adventurous, brave and creative. ABC audiences expect the Corporation's complaint handling procedures to operate in ways that facilitate these content ambitions. They expect the ABC's journalism to operate as a rigorous fourth estate, holding governments and other responsible parties to account. As long as content meets editorial standards, a properly functioning ABC complaints process will not restrain or sanction content makers – even when the content complained about is confronting, uncomfortable or unpopular for some, and even when pressure is brought to bear by powerful voices. Audiences expect the ABC's complaints process to recognise, respect and robustly defend the ABC's independence.

Audiences also expect the ABC to operate efficiently, directing resources towards content wherever possible. To meet this expectation, the ABC's complaints handling procedures necessarily take a proportionate approach which recognises that not all complaints warrant a detailed or substantive response and that some complaints can be appropriately handled by those with editorial responsibility for content. A proportionate, risk-informed approach to complaint handling serves the interests of all of the ABC audience.

Audience and Consumer Affairs' submission seeks to inform the reviewers about the current operation of the ABC's editorial complaints process and the principles and history which have underpinned its development. We have also included some recommendations for changes to practice.

#### 2. Response to specific terms of reference

- i. The suitability of the ABC complaint process for receiving and managing complaints relating to ABC editorial standards.*
- ii. Whether complaints relating to ABC editorial standards are dealt with efficiently, fairly and reasonably.*

The ABC's complaints handling procedures have been through many iterations over the Corporation's history. Over the last two decades, the complaints handling process has evolved from one in which complaints were overwhelmingly handled directly by content makers to one of shared responsibility for complaint handling, incorporating rigorous independent decision making at critical stages.

This shared responsibility for complaint handling is well-suited to the needs of ABC audience members. It has been designed with knowledge of the volume and nature of editorial complaints received by the ABC and the proportionate handling that is appropriate for different kinds of complaints.

There are a range of accountability avenues available to audience members dissatisfied with the ABC's handling of their complaint – including the statutory broadcasting regulator, the Australian Communications and Media Authority (ACMA). Examination of the volume and outcomes of ABC complaints considered by ACMA indicates that the ABC's complaint process deals with matters fairly, reasonably and efficiently.

The sections below examine the independence, accountability and efficiency of the ABC's editorial complaints process.

## **Independence**

### *How is independence built into the ABC complaint handling process?*

The ABC's current model of complaint handling authorises a team of specialist complaint handlers in Audience and Consumer Affairs to investigate editorial complaints and determine compliance with the ABC's editorial standards. Audience and Consumer Affairs is responsible to the Managing Director and is independent of all content teams within the ABC.

Under this model, all editorial complaints are required to be referred to Audience and Consumer Affairs on receipt. Audience and Consumer Affairs conducts an initial assessment to determine whether the complaint should be retained for independent investigation or handled in some other way. This initial assessment routinely includes review of the relevant content and a preliminary assessment of whether it complies with editorial standards. If the Audience and Consumer Affairs investigator considers there is a risk that the complaint, if investigated, may reveal non-compliance with editorial standards, in almost every case the complaint will be retained for independent investigation. It is only in exceptional cases – where Audience and Consumer Affairs is satisfied that a content team is better placed to respond – that a complaint which is likely to identify non-compliance will be referred to a content team for direct handling. Less serious matters may be referred by Audience and Consumer Affairs to content teams for their direct handling, taking into account criteria which include seriousness, proximity of the complainant to the content, scale of audience response, and degree of risk of damage to public trust and confidence in the ABC. This approach integrates independent decision making with a proportionate approach to the handling of complaints.

Where Audience and Consumer Affairs retains a complaint for investigation, it is authorised to determine whether the relevant content complies with the ABC's editorial standards. Investigations will routinely consider material provided by content teams – in order to establish the facts and ensure procedural fairness – but it is for Audience and Consumer Affairs to determine how much weight to give to this material. These determinations are informed by Audience and Consumer Affairs' independent research into the relevant issues.

In the unusual event that a content team disagrees with an Audience and Consumer Affairs preliminary finding and wishes to formally escalate the matter, it can be referred to the divisional director who can either accept the finding or provide further submissions to Audience and Consumer Affairs. Audience and Consumer Affairs must consider any material provided and, to the extent that

the preliminary finding is maintained, it must give reasons for doing so. However, in all cases, Audience and Consumer Affairs remains the ultimate decision maker in matters that it investigates.

The unit currently sits within the Editorial Policies division. However, it operates independently and the Editorial Director has no authority over – and nor does he seek to influence – Audience and Consumer Affairs’ decision making. While the ABC’s complaints handling procedures acknowledge that the Managing Director can intervene to determine any matter at any time by any process the Managing Director sees fit, this is separate to and distinct from processes employed by Audience and Consumer Affairs in its assessment of complaints. The Managing Director does not influence or dictate the outcomes of Audience and Consumer Affairs investigations.

Audience and Consumer Affairs has previously reported directly to the Managing Director and that structure worked effectively and could be reinstated. It would be useful to maintain a ‘dotted line’ relationship to a director for administrative matters.

Recommendations:

- To further emphasise the independence of Audience and Consumer Affairs, the unit should report to the Managing Director.
- The ABC Complaints Handling Procedures should clarify that the Managing Director’s authority to intervene and determine any matter is separate to and distinct from Audience and Consumer Affairs processes, and that the complainant should generally be advised when this power is being exercised.

*How does the ABC’s model compare to other broadcasters?*

As noted in the Consultation Paper, there are limits on the independent authority of both the SBS Ombudsman and the BBC Executive Complaints Unit: in both those models an unliked decision made by an independent decision maker can be overruled. The ABC’s model has greater independence than either of these comparable examples.

Furthermore, the ABC’s complaints handling model is well adapted to the ABC’s particular circumstances. Unlike SBS, the ABC process retains a role for content teams in responding to complaints. This promotes content teams’ engagement with complaint handling and fosters accountability, while ensuring that independent decision making is applied where there is a risk that content may be found not to comply with editorial standards. Unlike the BBC, access to an independent decision maker is not limited only to those who are dissatisfied with the way their complaint has been handled by a content team; rather, independent decision making determines how complaints are handled in the first instance.

Audience and Consumer Affairs apply proportionality criteria to decide whether a complaint assessed as editorial will be referred to a content team for direct handling or retained for investigation. These criteria could be revised to more explicitly incorporate consideration of the likelihood that a complaint, if investigated, would identify a breach of editorial standards or a need for further resolving action. At present, Audience and Consumer Affairs retain for investigation a significant number of complaints which on assessment are considered to pose a low risk of demonstrating non-compliance. This could be coupled with amending the ABC Complaints Handling Procedures to include a process allowing a complainant dissatisfied with a response provided by an ABC content team to seek review from Audience and Consumer Affairs. While this escalation process



currently occurs on an ad hoc basis, it is not formally outlined in the ABC's complaints handling procedures. These adjustments would slightly rebalance the ABC model, taking it in a risk-aware way a little further towards the BBC model. It would have consequences for content teams who would be referred greater numbers of complaints for direct handling.

Recommendations:

- Review the proportionality criteria in the ABC's Complaints Handling Procedures to incorporate a broader assessment of risk.
- Amend the ABC's Complaints Handling Procedures to formalise a process for complainants to seek review from Audience and Consumer Affairs if they are dissatisfied with a content team's direct handling of an editorial complaint.

*Should all complaints be handled independently of the ABC?*

There has been commentary that it is inappropriate for the ABC to deal with complaints about its content and suggesting that all complaints be handled by a body completely external to the ABC.

This commentary misunderstands the independent decision making that is brought to bear at crucial points in the ABC's complaints handling process – both when complaints are being initially assessed and when complaints are investigated for compliance with editorial standards. The ABC has an independent and rigorous approach to these matters.

It is in any case difficult to understand how a wholly external process would provide a superior experience for the ABC audience. A wholly external system would be slower, more cumbersome, and more costly. The opportunity to build trust with audiences through responsiveness to complaints would be diminished. Remedies and corrections would necessarily be provided more slowly. The opportunity to use insights from complaints to quickly build continuous improvement would be degraded. Accountability and editorial control would be undermined.

To illustrate, it is useful to consider the 19 ABC content matters that have been investigated by ACMA since 2017 where ACMA found no breach of the ABC Code of Practice – that is, the ACMA investigation process reached the same conclusion as the Audience and Consumer Affairs investigation in the first instance. Of these 19 matters, the average time taken by Audience and Consumer Affairs to initially respond to complaints was 27 days and the range of response times was between one and 57 days. When these same matters were considered by ACMA, the average time between the ABC being advised of the investigation and the conclusion of the investigation was 78 days and the range was between 15 and 223 days.

Audience and Consumer Affairs is unaware of any Australian or international broadcaster which utilises a fully external complaint handling model. Where external avenues are available – such as the CBC Ombudsman, ACMA, the UK's OFCOM – they exist in conjunction with complaint handling processes incorporating various levels of independence operating within the broadcasters they regulate. That is the case because no responsible broadcaster can excuse itself of responsibility for accepting and answering complaints that it has not complied with its editorial standards. Proposing such a model for the ABC would be detrimental to the interests of all Australians who fund the ABC.

### *What about complaints about personal use of social media?*

The ABC's editorial complaints procedures are applied to all editorial complaints about ABC content. The ABC's official social media accounts – such as the Facebook pages operated by each local radio station and the ABC News twitter account – all constitute ABC editorial content and the editorial standards and complaints handling procedures apply. As set out above, these complaints handling procedures incorporate independent decision making both at initial assessment and in determining whether ABC editorial standards have been breached.

ABC workers also use social media in their private capacity, as do millions of others in the Australian community. The ABC cannot exercise editorial control over personal social media accounts. However, the ABC's editorial standards are not, and have never been, the only policy governing ABC workers. The ABC Code of Conduct is perhaps the most significant non-editorial policy, setting standards for the conduct expected of ABC workers. It is the Code of Conduct that underpins the ABC's [guidelines for personal use of social media](#).

Concerns raised about an ABC worker's personal use of social media are appropriately dealt with as employment matters. When complaints about such matters are received by Audience and Consumer Affairs, they are passed to the Director of the relevant content division along with the worker's manager. This ensures that any matters of compliance with the ABC's guidelines are considered at a very senior level; that there is a diversity of thought brought to bear on compliance questions; and that ABC People and Culture experts can be brought in to assist as required. This is appropriate. As these matters do not relate to ABC editorial content, they should remain outside the operation of the ABC's editorial complaints handling procedures.

While the process for handling these conduct complaints is appropriate, the information made publicly available about its operation could be improved. It would be useful if the ABC website provided information about how complaints can be made about personal use of social media and how those complaints will be dealt with, to allow potential complainants to gain a clear expectation of this process. At present, while the ABC's [guidelines for personal use of social media](#) are accessible to the public, it is a rather dense document for a casual reader and provides only a brief description of how relevant complaints will be handled.

#### Recommendation:

- Provide information on abc.net.au explaining how complaints about ABC workers' use of personal social media can be made and how those complaints are dealt with.

### **Accountability**

#### *How is the ABC held to account by external bodies?*

There are many ways that the ABC is held to account for its content that are not directly complaint related – for example, through the scrutiny of the Senate and via critical commentary in the media.

There are also well-established avenues external to the ABC through which complaints about the ABC can be pursued. These include:

- The [Australian Communications and Media Authority](#) (ACMA) can investigate complaints alleging that the ABC has not complied with its Code of Practice. This animates the co-regulatory scheme

for broadcasting complaints that is set out in the *Broadcasting Services Act 1992*.

- The [Commonwealth Ombudsman](#) can investigate complaints about the ABC, including examining how the ABC has handled a complaint.
- The [Australian Human Rights Commission](#) can receive and enquire into complaints about the ABC and its content. A recent [incident](#) involving Sky News which resulted in the broadcast of a 4-minute apology demonstrates how effective this avenue can be for complainants.

Where issues of compliance with ABC editorial standards are raised with these bodies, Audience and Consumer Affairs is the point of contact and represents the ABC.

*Are the ABC's decisions on complaints regularly overturned by the regulator ACMA?*

Where a complaint relates to the ABC's Code of Practice and the complainant is dissatisfied with the ABC's response (or the ABC does not provide a response within 60 days), a person can refer their complaint to the Australian Communications and Media Authority (ACMA). This co-regulatory scheme applies to all public, commercial, subscription and community broadcasters in Australia.

In the period since 2011 when the ABC's complaints handling procedures were substantially revised, the ABC's records indicate that ACMA has considered just over 400 complaints about the ABC. Of these 259 were accepted for investigation and in nine investigations ACMA found breaches of the ABC Code of Practice. This is an investigation breach rate of 3.5%. It demonstrates that meritorious complaints are not being unfairly rejected by the ABC and indicates that the ABC's complaints processes are working effectively. Furthermore, as ACMA routinely requests and reviews content before deciding whether to accept a complaint for investigation, a decision not to accept a complaint for investigation is effectively a conclusion that the ABC has already acted appropriately to address a complaint or that the relevant content does not breach the Code. If these complaints which do not proceed to investigation are also taken into account, the regulator's breach rate can be calculated at around 2.2%.

It is also relevant to note that none of the ACMA breach findings referred to above arose from matters that had been assessed by Audience and Consumer Affairs and referred to content teams for direct handling. This indicates that the preliminary assessment process, and the involvement of content teams in responding to certain complaints, is not resulting in poor outcomes.

## **Efficiency**

*How does Audience and Consumer Affairs' productivity compare to other complaint units?*

With a full-time equivalent staff ratio of 4.56, in 2020 Audience and Consumer Affairs assessed 7,141 potentially editorial complaints (1,566 assessments per FTE) and investigated 1,530 complaints (336 complaints investigated per FTE).

Total staffing for the SBS Ombudsman is not known, but at least one full-time equivalent staff member is assumed. According to the [SBS annual report](#), in 2020-21 the SBS Ombudsman appears to have received 659 complaints: 279 complaints were assessed as not raising code issues and were referred to SBS divisions for direct handling; 231 complaints were investigated by the SBS Ombudsman as code complaints; and a further 149 complaints 'were resolved informally by the office of the SBS Ombudsman'.

A staff ratio of 7 for the BBC's Executive Complaints Unit has previously been [disclosed](#). According to the Consultation Paper prepared for this review, the ECU considers approximately 700 complaints per year on average.

While each of these broadcasters deals with different volumes of complaints and has established different models of complaints handling, these figures do not suggest that Audience and Consumer Affairs is operating inefficiently.

*Does Audience and Consumer Affairs provide timely responses to complaints?*

The ABC's complaints handling procedures state that the ABC seeks to deal with complaints as quickly as possible and aims to respond within 30 days of receipt, but acknowledges that some complaints may take longer to finalise.

In the twelve months ending 30 November 2021, Audience and Consumer Affairs had met the 30-day expected response time in 1,188 of the 1,589 complaints it investigated (75%). The average response time for investigated complaints was 23 days.

*What affects the timeliness of responses from Audience and Consumer Affairs?*

There are several factors which impact on the length of time taken to respond to complaints:

- **Availability of staff:** Audience and Consumer Affairs has a full-time equivalent staff ratio of 4.56. Due to the specialised nature of the work involved and the extent of training required to reach competence, it is difficult to quickly boost capacity in times of peak demand or to effectively back-fill when team members take routine leave.
- **Complexity of matters:** Complex complaint investigations require additional time and attention. There can be voluminous material to digest, multiple exchanges with content teams, and extended discussions within the Audience and Consumer Affairs team. Investigations of this nature are fundamental to the function of Audience and Consumer Affairs but can absorb significant resources.
- **Responsiveness of content teams:** Investigations routinely require the input of content teams to provide factual material and explain why a particular approach was taken. Content teams are busy and complaints are not always their highest priority. While the ABC's complaint handling procedures specify timeframes in which information should be provided to Audience and Consumer Affairs, these are not always observed.
- **Volume of complaints:** Factors external to Audience and Consumer Affairs govern the number of complaints received. While poorly made content can generate complaints, so too can excellent journalism and provocative (yet editorially compliant) comedy. There is no necessarily causal connection between content's compliance with editorial standards and the volume of complaints received.

*What could be done differently to improve Audience and Consumer Affairs' response times?*

In the 12 months ending 30 November 2021, Audience and Consumer Affairs assessed 7,278 potentially editorial complaints, determined that 2,159 should be redirected to content teams for direct handling (1,859 of which were editorial), and closed 2,983 complaints which did not warrant further response beyond the acknowledgement that had already been provided. Audience and Consumer Affairs retained 1,589 editorial complaints for investigation and provided responses to 547 complaints that did not warrant investigation.

This is a challenging workload and providing additional resources to Audience and Consumer Affairs would have a positive impact on timeliness.

It is also clear from these figures that significant numbers of complaints are referred to Audience and Consumer Affairs for assessment which are judged not to warrant further response of any kind. Complaints in this category are often general in nature (lacking the specificity required of an editorial complaint) or not in good faith. It would be helpful if fewer complaints of this nature were referred to Audience and Consumer Affairs.

More effective means for encouraging content teams to provide timely information for complaint investigations would also be of benefit. This could be achieved through additional training, or a process of upward referral within the content area's management. At present, considerable reliance is placed on Audience and Consumer Affairs investigators individually following up with content teams to remind them of outstanding matters.

Recommendations:

- Provide additional resources to Audience and Consumer Affairs.
- Exercise greater discrimination in referring potentially editorial complaints to Audience and Consumer Affairs for assessment.
- Improve content teams' responsiveness to Audience and Consumer Affairs' requests for information.

## **Adaptiveness to change**

### *Is the ABC complaints process adapting to rapid digital change in broadcasting?*

The ABC has consistently modified and extended its self-regulatory processes to keep pace with digital change. The ABC's Editorial Policies – and consequently its process for handling editorial complaints – extend across the entirety of the ABC's editorial content, making no distinction between content broadcast on television or radio, content published on abc.net.au or on official social media accounts, and streamed content such as iview and podcasts.

In previous volumes, the ABC's Editorial Policies have sought to apply different special policies to specific programming types – these were not platform specific but sought to distinguish between categories of content such as news, factual content and opinion content. While well intended, this system proved far too rigid. It was poorly adapted to the range of audience-focused, flexible and innovative content the ABC seeks to provide. Enormous time and energy was wasted seeking to categorise content into one program type or another, when the reality was that many kinds of content were already known to fluidly and effortlessly move between one content type and another – live flow radio being a classic example. As the ABC continues to adapt to rapid digital change and transformation, it will be best supported by flexible editorial standards which allow due consideration to be given to issues such as context and audience expectations. The ABC's current editorial standards have proved highly responsive and adaptive to digital change, having stood the test of time over a decade.

The ABC has consistently recognised the opportunities presented by digital change to make its complaints process more readily accessible. All ABC webpages include a Contact the ABC footer, leading to information about how complaints can be lodged and providing a link to the Lodge a Complaint page. Official ABC social media pages allow audiences to engage with the ABC and with

each other in ways scarcely imagined when the ABC was created. All of these pages provide information about how complaints can be lodged.

- iii. Measures taken by the ABC to ensure public transparency about complaints and complaint outcomes.*
- iv. Measures taken by the ABC to ensure the organisation and its staff are fully informed about complaints and complaint outcomes.*
- v. Measures taken by the ABC to ensure that the complaint process is tied to continuous improvement in ABC editorial standards, and feeds into standards-setting, training and day-to-day content-making.*

The ABC is the only Australian media organisation that routinely publishes information about the complaints it receives and the outcomes of complaint investigations.

In addition to this material, ABC staff have ready access to information about complaints and are advised appropriately of complaint outcomes.

Insights from complaint handling are embedded in the ABC's continuous improvement processes.

## **Transparency**

*What information does the ABC routinely make publicly available about complaints?*

Audience and Consumer Affairs publishes:

- a summary of every complaint [upheld](#) or [resolved](#) following investigation;
- [quarterly statistical reports](#) detailing the number and nature of complaints finalised by Audience and Consumer Affairs;
- an [annual summary](#) of the number of complaints assessed and investigated by Audience and Consumer Affairs, including the number of issues investigated and found to be resolved, upheld and not upheld;
- [analyses of editorial complaints](#) which contribute to the ABC's reviews of editorial performance;
- links to [reports](#) published by ACMA following investigation of complaints about ABC content; and
- editorial complaints management data in [ABC Annual Reports](#), detailing: the number and nature of complaints finalised by Audience and Consumer Affairs; the number of ACMA investigations and summary information on ACMA breach findings; and any relevant investigations conducted by the Commonwealth Ombudsman.

*Should additional information be published?*

The ABC is committed to respecting the confidentiality of complaints. However, the complaints handling procedures state that where the complaint is an organisation, or a complaint is a matter of public record, the ABC may elect to make the identity of the complainant and the ABC's response publicly available. While the ABC does occasionally release some details about its complaints handling in specific circumstances (usually in response to media enquiries), there is no systematic



release of complainant's identities or ABC responses where these criteria would permit the ABC to do so.

From time to time, there has been interest expressed in systematising the publication of further details about individual complaints – such as publishing entire responses to complaints including complaints which have not been upheld. This has occasionally occurred at the discretion of the ABC Managing Director (see, eg, <https://about.abc.net.au/press-releases/statement-from-abc-managing-director-on-catalyst-ruling/>).

Publication of summary information about complaints which have been upheld or resolved reflects the ABC's commitment to transparency and accountability. Publication of these details does not reflect adversely on complainants who have brought these matters to the ABC's attention and in almost every case the identity of the complainant is not discernible. While Audience and Consumer Affairs is open to systematically publishing additional information (resources permitting), we would caution against any measure that has the potential to deter people from using the ABC's complaints processes. Any decision to systematically publish additional information about complaints should be grounded in principles and clearly explained.

*What other information is available to ABC staff?*

All ABC staff are able to access a searchable log of audience complaints which have been submitted using the [Lodge a Complaint](#) form or otherwise referred to Audience and Consumer Affairs. Audience and Consumer Affairs will amend the text used on this page in the new year to clarify that it provides information about audience complaints and not other types of feedback. (This change arises from a 2018 restructure described in Appendix 1.)

Any significant or serious complaints are notified to content teams promptly. Where complaints are referred to content teams for routine handling, those teams are naturally advised of the complaint. Where complaints are investigated by Audience and Consumer Affairs, complaints are brought to the attention of content teams when information is sought or when a preliminary finding is provided. In some cases, where the complaint is of a minor or repetitive nature, preliminary findings are shared with editorial advisers rather than directly with content teams. This reflects the proportionate approach the ABC applies to complaints handling.

In addition to this sharing of information about individual complaints, Audience and Consumer Affairs provides a range of ad hoc and routine reports about complaints and outcomes. This includes a report shared each month with Directors of News, Analysis and Investigations, Regional and Local, and Entertainment and Specialist, as well as other staff which highlights some of the more noteworthy or serious investigation outcomes as well as drawing attention to clusters in editorial underperformance or issues that have recurred or may recur. The ABC convenes an Election Coverage Review Committee (ECRC) during each federal, state or territory election campaign to monitor ABC coverage and ensure ABC editorial standards are met. Audience and Consumer Affairs is represented on these committees and assists with the speedy identification of any issues of concern with the ABC's election coverage as raised in editorial complaints.

## **Continuous improvement**

*What role does Audience and Consumer Affairs play in continuous improvement?*

In addition to drawing attention to findings on individual complaints as described above, both the Head of Audience and Consumer Affairs and Investigations Manager are members of the ABC's Editorial Policies Group. This group meets monthly to discuss emerging issues, review editorial

standards and guidance, and report on training. The insights gained through complaint handling are actively fed into these discussions. For example, Audience and Consumer Affairs' observations about editorial performance in a cluster of stories giving victims' accounts was the catalyst for the creation of the ABC's guidance on [Dealing with trauma and survivors of trauma](#). Similarly, Audience and Consumer Affairs provided detailed feedback during the review of the ABC's guidance on [Impartiality](#).

Furthermore, as noted above Audience and Consumer Affairs provide analyses of editorial complaints to contribute to the ABC's [reviews of editorial performance](#). In 2021, this included an analysis of complaints about compliance with [impartiality standards](#) (4.1 and 4.5) and [violence, tragedy and trauma](#) (7.5). Preparing such reviews involves extensive examination of past complaints and investigations, seeking to identify any patterns of non-compliance and making recommendations for future practice.

Editorial complaints analyses are an appropriate activity for an independent investigative unit. This work complements the processes and resources already in place within content divisions to review editorial practices and strengthen editorial oversight. For example, ABC News has this year appointed an experienced journalist to the role of Standards Editor and ABC Entertainment and Specialist has appointed an experienced current affairs producer to the role of Managing Editor, Standards and Compliance. Both these positions sit outside of established content making teams and report to the Directors of their respective divisions. ABC Regional and Local have a Quality team. Not only is it unnecessary for the ABC's independent complaint handlers to duplicate these sorts of activities, it risks involving complaint handlers in editorial practice design and compromising independence.

## **Appendix 1 – A recent history of the ABC’s complaints process**

### **Pre-2002: Complaints largely handled by content teams**

#### *ABC*

In this era, complaints – including editorial complaints – were largely handled directly by content teams. The Corporate Relations division had a role in coordinating responses to complaints directed to the Managing Director and Board and at times intervened to provide an arms-length perspective on proposed responses. However, this was somewhat ad hoc and not supported by any authority or express policy.

Audience and Consumer Affairs was established in 2000 as an outcome of an Assessment of the Oral and Electronic Complaint Handling Arrangements within the ABC conducted by Baljorda Comprehensive Consulting. That assessment made a number of recommendations aimed at making the ABC’s complaints handling more accessible to audiences. It was not principally concerned with the handling of editorial complaints. When initially established, Audience and Consumer Affairs sat within the Corporate Relations and later Corporate Affairs divisions, and assisted with those audience contacts and complaints which were overseen at a corporate level.

#### *Independent Complaints Review Panel*

An Independent Complaints Review Panel (ICRP) had been established by the ABC Board in 1991 and was able to review written complaints alleging serious cases of bias, lack of balance or unfair treatment. Members of the Panel were appointed by the ABC Board for their knowledge of or experience in journalistic ethics and practices, media operations and program production, complaints handling and other review processes. ICRP reviews were conducted entirely independent of the ABC and findings published each year in the ABC’s annual report.

#### *Australian Broadcasting Authority*

Where a complaint related to compliance with the ABC’s Code of Practice, a dissatisfied complainant could also refer the matter to the Australian Broadcasting Authority (ABA). The Authority had little discretion to decline to investigate complaints made to it.

### **2002: Independent investigation introduced**

#### *Audience and Consumer Affairs*

In 2002, the ABC’s complaints handling procedures were substantially revised to authorise Audience and Consumer Affairs to investigate complaints alleging that ABC content had not complied with the ABC’s editorial standards. An investigative function was established within Audience and Consumer Affairs to facilitate this. Separately, Audience and Consumer Affairs would continue to receive, record and assist with responses to non-editorial complaints through its Audience Liaison function. Audience and Consumer Affairs remained located within the Corporate Affairs division during this period, but its decision making was independent and not subject to the director’s review or approval.

Under this revised process, all written editorial complaints were required to be referred to Audience and Consumer Affairs, allowing the ABC to consistently collect information about the number and nature of complaints received and their outcomes. The ABC commenced publishing information about complaints received and summary details of upheld complaints. Audience and Consumer

Affairs contributed material for reports to the ABC Board and at various times attended Board meetings to discuss complaint handling matters.

#### *Complaints Review Executive*

A Complaints Review Executive (CRE) was established with three areas of responsibility:

- Investigate: In exceptional circumstances, the Chair, Managing Director or Head, Audience and Consumer Affairs could direct a complaint to the CRE for investigation in the first instance.
- Review: If a complainant expressed dissatisfaction with a response received from the ABC, the complaint would be referred to the CRE. The CRE had broad scope to independently review content and the manner in which the complaint was originally handled, and to determine whether the ABC had acted appropriately.
- Adjudicate: Where there was disagreement between Audience and Consumer Affairs and a content team regarding the appropriate response to a complaint, the issue was escalated to the CRE for determination.

The Independent Complaints Review Panel (ICRP) and the Australian Broadcasting Authority (ABA) remained available for complainants who were dissatisfied with the ABC's handling of their complaint. In 2005, the Australian Communications and Media Authority (ACMA) was formed through the merger of the Australian Broadcasting Authority and the Australian Communications Authority.

Under this model, with few exceptions all editorial complaints were expected to be independently investigated and receive a written response. A dissatisfied complaint could potentially activate three levels of review and it was not unusual for matters to remain unresolved for many months or even years. The process was inflexible and there was little discretion available to complaint handlers. The process was often frustrating to complainants, content makers and complaint handlers.

#### **2011: Independence strengthened, processes streamlined**

In 2011, the ABC's procedures for handling editorial complaints were substantially revised following a [Review of the ABC's Self-Regulation Framework](#). The process was made more flexible and adaptive. Key changes included:

- Introduction of the principle of **proportionality** to underpin all complaint handling activities. This recognised that not all complaints require the same treatment.
- Establishing a **shared responsibility** for the handling of editorial complaints amongst content teams and Audience and Consumer Affairs. All editorial complaints would continue to be assessed by Audience and Consumer Affairs but where it was appropriate to do so, specific complaints could be passed back to content teams for their direct handling. This ensured that content teams were actively engaged in dealing with complaints about their content, while continuing independent investigation where it was the most appropriate response.
- The process was **simplified** by removing layers of review and Audience and Consumer Affairs were authorised to determine all matters of editorial compliance. Where a content director disagreed with an Audience and Consumer Affairs preliminary finding, the matter could be referred to an Executive Editorial Complaints Adviser who would review the matter and comment on it. Audience and Consumer Affairs were required to take such comments into

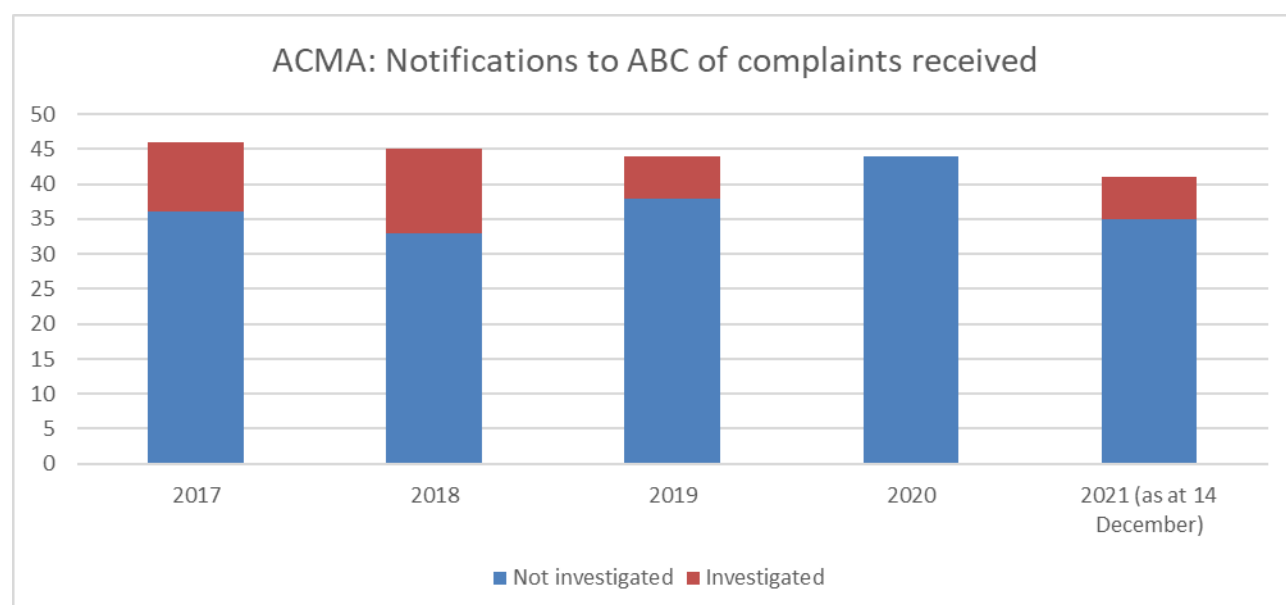
account before making a final decision.

- The process no longer required that in each instance where a complaint was investigated, Audience and Consumer Affairs had to formally determine whether editorial standards had been met. Instead, the ABC would endeavour to **resolve** complaints. A complaint would be considered resolved where a content team took steps to remedy the cause of complaint (usually prior to or within 30 days of the ABC receiving the complaint) and the steps were considered by Audience and Consumer Affairs to be appropriate such that further processes to uphold, partly uphold or not uphold the complaint would add nothing of substance. Summary details of resolved complaints were added to the ABC's routine disclosure of information about its complaint handling.
- Audience and Consumer Affairs was moved into the **Editorial Policies division**.

In considering whether internal levels of review were of value, the review included observations about the *'lengthy and judicial nature of the system'* which could *'[result] in relatively minor consequences after months of deliberation, which "can be intensely frustrating for the complainant, does little to resolve the initial conflict, and does equally little for public confidence in the process"'*. Having considered the number of complaints accepted for review and the outcomes of those matters, the review concluded that *'demand does not justify the time and resources required to maintain and operate the layers'*. (In the context of this current review, it can also be observed that building in internal layers of review does nothing to satisfy critics who complain that the ABC's process is insufficiently independent.)

While internal layers of review were removed, where a complaint related to compliance with the ABC's Code of Practice, a dissatisfied complainant could continue to refer the matter to the Australian Communications and Media Authority (ACMA). In 2014, ACMA was granted discretion to determine whether it should investigate complaints about broadcasting matters.

The current evidence does not suggest that the removal of internal layers of review has created an unmanageable demand for ACMA investigations. Based on notifications provided by the ACMA regarding its receipt of complaints about ABC content, demand has remained very steady over the past five years and very few of the matters considered by ACMA are accepted for investigation.



There has been no perceptible increase in complaints raised with the ABC by the Commonwealth Ombudsman or Australian Human Rights Commission over the same period.

To put these ACMA figures in context, in the 2021 period depicted in the chart above, Audience and Consumer Affairs investigated and did not uphold 898 complaints covered by the Code of Practice. All of these complainants had the opportunity to pursue their concerns with ACMA. Only 24 – or 2.7% – sought to do so according to the notifications received by the ABC.

#### **2017: Abolition of Executive Editorial Complaints Adviser**

The ABC's complaint handling procedures were modified slightly in 2017. The most substantive change was the abolition of the Executive Editorial Complaints Adviser role. It had been very infrequently activated and was unnecessary. Instead, the complaints handling procedures provide that where a content team disagrees with an Audience and Consumer Affairs preliminary finding, the matter can be brought to the attention of the divisional director. The director can accept the Audience and Consumer Affairs finding or provide additional submissions. To the extent that those submissions do not change Audience and Consumer Affairs' view on a matter, Audience and Consumer Affairs must provide reasons.

#### **2018: Structural separation of handling of editorial and non-editorial complaints**

In 2018, a decision was made to consolidate audience support services within the ABC's Audiences division. Audience and Consumer Affairs' Audience Liaison function, which provided initial triage of incoming complaints and coordinated responses to non-editorial complaints and other audience feedback, was relocated in September 2018 and became part of the Audience Support team. The Audience Support team within the Audiences division now undertakes initial receipt of complaints submitted via the [Lodge a Complaint](#) form in order to identify potentially editorial complaints and refer these to investigators in Audience and Consumer Affairs.