

1.3 ABC COMPLAINTS

LEAD/SUPPORT: CATHY RAINSFORD | JENNY ALLEN

The Australian Communications and Media Authority (ACMA) oversees escalated complaints about the Australian Broadcasting Corporation (ABC) content, and is keeping across developments relating to the implementation of the independent review's recommendations, including implementation of the Ombudsman's revised complaint-handling procedures.

KEY ISSUES

- The ACMA has a responsibility and a discretion to investigate complaints about ABC content when the complainant is dissatisfied with the ABC's response and escalates their complaint for consideration by the ACMA.
- Our role is not to make judgements regarding the subject matter the ABC chooses to investigate and on which it reports.
- Our role is to assess complaints solely against the ABC's Code of Practice, which is approved by the ABC's Board.
- In all our broadcast content investigations we consider what an 'ordinary reasonable viewer or listener' would have taken from the content. This means we are looking at content from the audience's point of view – not our own and not a journalist's.
- As we take a different perspective, we may make decisions with which program makers disagree.
- However, part of a co-regulatory framework is that there is an independent umpire that provides an additional layer of transparency and accountability when public concerns about the ABC's content arise.
- We are disappointed in the ABC's reactions to the ACMA's findings in some previous investigations. We consider that the ABC could be more open and responsive to feedback and findings made through the ACMA's independent reviews. This includes acknowledging the legitimacy of our findings as the independent content regulator that assesses what audiences would take from a program and how that content complies with the ABC's Code.
- We have also raised issues with the ABC about its Code. One particular challenge we have in delivering on our responsibility regarding investigations of ABC content is that the ABC's Code is, in our view, primarily focused on providing guidance to editorial and production staff.
- It is the ACMA's long-standing view that the ABC's Code, as established by the ABC Board, should provide clear and unambiguous advice to the ABC's audiences as to the standards against which the ABC will be held accountable.
- We will continue to work with the ABC and would welcome an open and constructive discussion between our two organisations on these matters, with a view to aligning our expectations for the future. On 4 April 2023, the ACMA Chair and Deputy Chair met with the ABC Managing Director and ABC Ombudsman and had a positive discussion about the respective roles and ways to work together while effectively discharging our respective responsibilities. Staff have also had discussions with ABC staff on the application of aspects of its Code.

Recent ACMA assessments of ABC content

The Voice Referendum

- As of 21 September, the ACMA received 14 complaints and enquiries regarding broadcasts about the Voice referendum:
 - 4 complainants had not been to the broadcaster and we referred them to the ABC in the first instance
 - we assessed 10 complaints and decided to take no further action.¹ In making this assessment we noted that the accuracy provisions apply to material facts and not statements of opinion and impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented.

ABC Coronation coverage – broadcast on 6 May 2023

The complaint

- The ACMA received 5 complaints about the ABC's coverage of the Coronation of King Charles III. Complaints referred to inaccuracy, a lack of impartiality and harm and offence.

The ABC response

- The ABC Ombudsman investigated and found that complaints about accuracy and harm and offence were best captured by an assessment of the broadcast against the following impartiality standards: standard 4.1 [gather and present news and information with due impartiality] and standard 4.5 [do not unduly favour one perspective over another].

The broadcast

- The ACMA considered the relevant broadcast to be the 3 hours of continuous 'scene setting' coverage of the Coronation from 5-8pm. For an hour of the coverage (5-6pm), while footage was shown of guests arriving at Westminster Abbey, panellists discussed issues such as the role of the Monarchy in modern Australia, the appropriateness of King Charles III as Australia's head of State and whether Australia should remain a constitutional monarchy or become a republic. During the rest of the coverage panellists discussed royal traditions, the role of the monarchy and details of the ceremony.

Action taken by the ACMA

- After careful assessment of the matters raised, the ACMA decided not to investigate the matter further.
- The ACMA considered complaints about accuracy and harm and offence were generally limited to concerns about a lack of alternative views and a lack of impartiality and were more suitably assessed against the impartiality standards.
- The ACMA acknowledged that the panel discussion between 5-6 pm contained critical perspectives on the role of the Monarchy in modern Australia. However, the impartiality standards do not preclude interviewees from providing strong views on a matter. Further, the ACMA found that the program provided an adequate range of perspectives including information on Australia's British foundations and the benefits of having an apolitical monarch as a head of state.

¹ 5 of the 10 complaints were from the same complainant.

Four Corners (Purity: An Education in Opus Dei) – broadcast on 31 January 2023

The broadcast

- The episode used the testimony of past students at 2 secondary colleges in Sydney to examine aspects of the colleges' approach to education and their links to the Catholic religious organisation Opus Dei and senior members of the then NSW state government, within the context of the themes of indoctrination, sexual morality and political influence.

The issue

- The complainant made a series of allegations, including that the ABC broadcast contained factual inaccuracies [REDACTED]

Action taken by the ACMA

- After careful assessment of the matters raised, the ACMA decided not to further investigate the matter.
- In making this decision, the ACMA found that:
 - several allegations of inaccuracy did not deal with factual content or dealt with factual content that appeared to be accurate
 - an allegation that a correction was required concerned factual content that was not material
 - allegations that the audience was misled concerned material in which appropriate context appeared to have been provided.
- Within the framework of a series of personal reflections and recollections from former students, the ACMA found the program provided:
 - an appropriate diversity of perspectives

AM – ABC – broadcast on 31 January 2023

The issue

- The complainant [REDACTED] alleged that the ABC's reporting of an Alice Springs town meeting was biased, lacked accuracy and was offensive.

The ABC response

- The ABC Ombudsman conducted an investigation and found that the *AM* report breached impartiality standard 4.5 of its Code by unduly favouring one perspective over another and breached accuracy standard 2.1 of its Code by not making reasonable efforts to ensure that material facts were accurately presented in context. The report included a recommendation that an editor's note and correction to the *AM* report, previously published on the ABC website, be updated to reflect the Ombudsman's accuracy and impartiality breach findings. The findings have been accepted and the recommendation has been implemented by the ABC.

Action taken by the ACMA

- The ACMA carefully considered the *AM* report, as well as a range of other broadcasts that covered the meeting, the ABC Ombudsman's investigation report, and the actions taken

by the ABC. The ACMA considered that the Ombudsman had assessed the same matters that the ACMA would consider in an investigation of its own. The Ombudsman specifically and publicly stated that these were breaches of the ABC's Code, which the ABC has accepted. We also consider that the ABC took actions which would likely have been suggested by the ACMA in response to the breach findings. Given these outcomes, the ACMA did not further investigate this matter.

Four Corners (Psyched up) – broadcast on 22 July 2022

The broadcast

- The episode explored the current use of psychedelic drugs and the potential benefits and challenges of use in treating mental health disorders.

The issue

Action taken by the ACMA

- After careful assessment of the matters raised, the ACMA decided not to further investigate the matter.
- In making this decision, the ACMA found that:
 - many of the statements claimed to be inaccurate were expressions of opinion or personal experiences and did not deal with factual content or dealt with factual content that appeared to be accurate
 - an appropriate correction was made by the ABC and published on the ABC corrections and clarification website page
- the private information disclosed in the program was justified by the public interest.

ABC complaints and investigations

- In 2022–2023 FY the ACMA:
 - received 49 complaints²
 - completed 27 complaint assessments³ resulting in 1 investigation (4%) being opened
 - finalised 4 investigations into ABC content of which 3 investigations resulted in a ‘breach finding’ and one investigation resulted in a ‘no breach’ finding.⁴
- In 2023–2024 (as at 31 August 2023) the ACMA:
 - received 13 complaints
 - completed 14 complaint assessments resulting in zero investigations being opened
 - no investigations have been finalised.
- A full comparison of complaints received and complaint assessments across other broadcast sectors in the same period is available at Attachment A in **Executive Brief 1.5**.

ABC’s complaints-handling arrangements

- On 1 August 2022, the ABC announced it appointed a new Ombudsman following the independent review of complaints handling procedures initiated by the ABC in October 2021 (the independent review).
- The independent review report, released in May 2022, recommended that the ABC retain an in-house process for complaints resolution, and appoint an Ombudsman. This approach is similar to other national broadcasters such as SBS and the BBC in the United Kingdom.
- The new Ombudsman is Ms Fiona Cameron, a previous full-time Authority member of the ACMA. Ms Cameron commenced in the role on 19 September 2022.
- The review also recommended some updates to the complaints processes including a review or reconsideration process for a dissatisfied complainant and for the ABC to lead a review of its editorial standards in the next 12 months.
- The ACMA wrote to the ABC in October 2022 seeking advice about how the new role of ABC Ombudsman will intersect with the ACMA’s responsibilities for assessing unresolved complaints, updates on any changes in process and the most efficient and appropriate avenues for communications going forward.
- On 22 November 2022, the ACMA met with the Ombudsman and members of her team, the Editorial Complaints Unit. The Ombudsman is leading an expanded Complaints Unit and has the power to review an internal complaint finding. External review by the ACMA will continue to be available for complainants who refer unresolved complaints to us. We will continue to liaise with the Complaints Unit in relation to unresolved ABC complaints as it settles in updated complaints-handling procedures.
- The Ombudsman met again with ACMA staff on 26 April 2023 to discuss the revised ABC Complaints Handling process. This was included in updates to the ABC Code that were published 8 May 2023.

² A complaint may be made to the ACMA if a complaint made to the ABC is not resolved in the first instance.

³ The ACMA conducts a complaint assessment to determine whether a formal investigation should be commenced under the *Broadcasting Services Act 1992*. This involves evaluating any readily available information including the complaint, the initial response from the ABC to the complainant, and a copy of the broadcast.

⁴ The three breach investigations were: *Four Corners* (Fox and the Big Lie), *Newshour* (Dating App), *ARN/Mornings/Breakfast* (Vic Forests) and the ‘no breach’ investigation was *ABC News* (election coverage of Tweet by Kathrine Deves).

- Further changes to the ABC code of practice may also be indicated going forward, subject to the outcomes of any review of the ABC's editorial standards. The independent review suggested that the review of editorial standards specifically address clarification of the 'diversity of perspectives over time' standard and include complaint-handling commitments to the public.
- On 8 May 2023 the ACMA Deputy Chair and other ACMA staff met with ABC Editorial staff to discuss recent updates to the ABC Code, potential further revisions and the application of the impartiality provisions in the ABC Code.
- ACMA staff understand that the ABC has revised its Code with the changes to take effect from 1 January 2024. The ACMA has not had input to the proposed changes. We trust that the ABC has taken account of feedback provided in our May 2023 meeting and recent ACMA investigation findings.

BACKGROUND

ACMA role in relation to the ABC

- The *Broadcasting Services Act 1992* (BSA) establishes a broadcasting co-regulatory framework where broadcasting content is regulated by industry developed codes of practice that are registered by the ACMA. This framework also provides for the ACMA to assess and investigate complaints where the complainant has not received a response from the broadcaster, or the complaint has not been resolved to their satisfaction.
- The ACMA has no role in developing and registering the national broadcasters' codes of practice. 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 can assess unresolved complaints and conduct formal investigations about compliance with the ABC's code in relation to its broadcast content only. It does not have jurisdiction to consider complaints about the ABC's print or online content, which are also covered by the code.
- Enforcement actions for breach findings of the ABC code are limited to issuing a notice recommending certain actions the broadcaster should take. If the broadcaster does not act on the ACMA's recommendation, the ACMA can report the matter to the Minister for Communications, who must table the report in Parliament.
- The ABC's complaint procedures, although set out in the same document, do not form part of the current ABC code.
- On 21 December 2022, the ABC wrote to the ACMA advising that it had made some minor updates to its code of practice taking effect from 1 January 2023. The updates included replacing a reference to Audience and Consumer Affairs with the Ombudsman's Office and noting that the start time for ABC TV Plus had moved from 7.30pm to 6:30pm.
- On 8 May 2023, the ABC again wrote to the ACMA advising that it had made some updates to its code of practice taking effect from 8 May 2023. Key changes included:
 - changing the ending time for ABC Kids and starting time for ABC TV Plus back to 7:30pm from 6.30pm
 - changing the timeframe for acceptance of complaints from 6 weeks to 3 months
 - the requirement for fair and honest dealing and privacy complainants to have sufficient interest in the subject matter of their complaints was removed

- complaints which are anonymous, offensive or abusive were expressly excluded from the scope of the Code
- in the explanatory 'How to make a complaint' section, contact details for the ABC and ACMA were updated, and a paragraph on complaint handling timeframes was added.

ATTACHMENTS

Attachment A	QoN - Senate Estimates Hearing 14 February 2023 – Four Corners episode 'The big lie' Report
Attachment B	QoN - Senate Estimates Hearing 14 February 2023 – Condemnation of ACMA by the ABC
Attachment C	QoN - Senate Estimates Hearing 14 February 2023 – ABC's Four Corners program - Communications b/w ACMA and the ABC
Attachment D	QoN – Senate Estimates Hearing 24 May 2023 – ABC Code complaints

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Date 3/10/2023

Environment and Communications
QUESTION ON NOTICE
Budget Estimates 2022 - 2023
Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003190

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 57-58 (14 February 2023)

Topic: ACMA - Four Corners episode 'The big lie' Report

Senator Sarah Hanson-Young asked:

Senator HANSON-YOUNG: When did you get the report, and when was the summary finalised?

Ms O'Loughlin: I'd have to take that on notice.

Senator HANSON-YOUNG: Was it a particularly long period?

Ms O'Loughlin: The investigation report had been through various iterations along the way, in terms of coming to the authority and going back to the ABC and getting further advice from the ABC. I'm happy to take those—

Senator HANSON-YOUNG: I would like to know when you got the final report—which you were not involved in—

Ms O'Loughlin: Well, the final report was agreed by the authority, so, yes, I was involved in the settling of the final report.

Senator HANSON-YOUNG: I'd like to know when you received the draft before you signed off—

Ms O'Loughlin: There may have been multiple drafts, but we're happy to take that on notice.

Senator HANSON-YOUNG: when the summary was settled, and when the press release was drafted. Also, how many versions of the press release were there?

Ms O'Loughlin: I'd have to take that on notice. I don't think—

Senator HANSON-YOUNG: Were there more than one?

Ms O'Loughlin: I don't think there were many.

Senator HANSON-YOUNG: Who originally drafted the press release?

Ms O'Loughlin: I'd have to take that on notice. It would usually—

Senator HANSON-YOUNG: Did you draft it?

Ms O'Loughlin: No, it would have been drafted by our media team.

Senator HANSON-YOUNG: Do you remember editing it? Did you change any of it?

Ms O'Loughlin: I've said that I will take that on notice.

Senator HANSON-YOUNG: Do you remember editing it?

Ms O'Loughlin: I remember reviewing it and I remember clearing it.

Senator HANSON-YOUNG: And do you remember making changes to it?

Ms O'Loughlin: I make changes to most of the media releases that come to me.

Senator HANSON-YOUNG: Could I have a copy of the original press release you were presented as a draft and the final version that you sent off.

Ms O'Loughlin: Certainly. We'll take that on notice.

Senator HANSON-YOUNG: Thank you.

Answer:

This investigation commenced in December 2021. From then until September 2022, substantial work was done by Australian Communications and Media Authority (ACMA) staff and the Authority to review the broadcasts and consider the issues it raised under the Australian Broadcasting Corporation's (ABC) Code of Practice. This was an iterative process that resulted in the Authority settling a preliminary view which was conveyed to the ABC on 12 September 2022.

Following receipt of the ABC's submissions in response to that preliminary view, further work was done to consider the ABC's submissions. Consistent with the earlier work, this was an iterative process between ACMA staff and the Authority.

The Authority agreed to the findings on 15 December 2022. Following this, the final report was provided to the ABC and a publication version of the report and a media release was settled. The ACMA Chair approved the final draft of media release on 20 December 2022 and it was released on 21 December 2022.

The iterative approach taken in the development of this report and associated public material, involving multiple drafts developed by ACMA staff with input from the Authority, is entirely consistent with its general approach in undertaking broadcasting investigations.

**Environment and Communications
QUESTION ON NOTICE
Budget Estimates 2022 - 2023
Infrastructure, Transport, Regional Development, Communications and the Arts**

Departmental Question Number: SQ23-003193

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 60-61 (14 February 2023)

Topic: ACMA - Condemnation of ACMA by the ABC

Senator Sarah Henderson asked:

Senator HENDERSON: In that letter to Mr Anderson, and I have already asked if those letters could be tabled, and I also ask that of you, did you express concerns about the public condemnation of ACMA made by the ABC, including by Sarah Ferguson, the reporter?

Ms O'Loughlin: I think we just reiterated to the ABC what our findings were and what they were not, as in we were not making any judgements about the subject matter that the ABC chooses to investigate. We were merely—as is our role and responsibility—testing their content against the ABC Code of Practice and looking at that through the view of an ordinary reasonable viewer. So that was the crux of the letter. I'm happy to take that on notice and table it.

Answer:

The letter sent to the Managing Director of the Australian Broadcasting Corporation is at Attachment A. The release of the responding letter is a matter for the Managing Director of the ABC.

Attachments

A: ACMA Chair letter to Managing Director of the ABC

Attachment A: ACMA Chair letter to Managing Director of the ABC

Mr David Anderson
Managing Director
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By email: anderson.david.n@abc.net.au

ACMA file reference: BI-631

Dear Mr Anderson

RE: ACMA investigation into *Four Corners* (Fox and The Big Lie)

I would like to raise some issues directly with you following the ACMA's recent publication of its investigation into 2 episodes of *Four Corners* (Fox and the Big Lie). I would also welcome a dialogue with the ABC on these issues which are important to current and future regulatory arrangements.

At the outset, I would like to reiterate that the ACMA's role is not to make judgments regarding the subject matter the ABC chooses to investigate and on which it reports. Independent public interest journalism is fundamental to a vibrant, healthy democracy and the ABC plays an integral part in delivering news and current affairs services to the Australian community.

The ACMA's role is also important in providing an additional layer of transparency and accountability when public concerns about the ABC's content arise.

In relation to escalated complaints about ABC content, the ACMA assesses these matters solely against the ABC's Code of Practice. In doing so, we consider the content from the standpoint of what meaning an 'ordinary reasonable viewer or listener' would have taken from it, as distinct from what meaning a journalist or production team may have intended to convey.

Taking an audience-based view on whether the ABC (or any other broadcaster) complied with the Codes of Practice to which they have committed is entirely consistent with our statutory role and has been the long-standing approach taken by the ACMA and its predecessors.

As outlined in our report, the ACMA investigation found that the ABC in two instances omitted relevant contextual information in a way that materially misled the audience. In addition, the ACMA found that the ABC did not appropriately inform a Fox News host about the nature of her participation in the program.

The ACMA investigation did not determine that the ABC had breached its Code in relation to the overall narrative and arguments it put forward in relation to the actions of Fox News. However, it did find that by omitting relevant information in two specific components of the argument, the ABC did not give its audience the opportunity to make up its own minds about Fox News.

A particular challenge that we have in delivering on our responsibility regarding investigations of ABC content is that the ABC's Code is, in our view, primarily focused on providing guidance to editorial and production staff.

It is the ACMA's long-standing view that the ABC's Code, as established by the ABC Board, should provide clear and unambiguous advice to the ABC's audiences as to the standards against which the ABC will be held accountable. We most recently raised this issue in our submission to the ABC's *Independent review of ABC complaints handling procedures* (the Independent Review).

The ABC's response to the outcome of this investigation is not the first in recent times where the ABC has disagreed with the ACMA's interpretation and application of its Code.

This would appear to be as a result of a continuing misunderstanding by the ABC of the ACMA's role and approach and results, in my view, in a poor outcome for both of us and, more critically, the ABC's audience in understanding any Code breaches found by the ACMA (or indeed the ABC itself).

The public response from the ABC about this matter has done little to address the concerns raised in the Independent Review about the ABC's dismissive response to criticism and its potential to impact on public trust of the ABC.

In the ACMA's view this is to the detriment of the broader Australian media landscape at a time when access to trusted news and information is more essential than ever.

I would therefore welcome an open and constructive discussion between us, potentially including the ABC Ombudsman, on these matters with a view to aligning our expectations for the future.

Yours sincerely

Nerida O'Loughlin PSM

20 January 2023

Environment and Communications
QUESTION ON NOTICE
Budget Estimates 2022 - 2023
Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003197

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 61 (14 February 2023)

Topic: ACMA - ABC's Four Corners program - Communications b/w ACMA and the ABC

Senator Sarah Henderson asked:

Senator HENDERSON: We had two 45-minute programs, and the ABC has the gall to argue that, over time, it was impartial in relation to the role of social media because it reported on those matters six months previously. I mean, that is a joke! Any credible journalist reading this transcript or listening to this hearing right now would agree with that. They are not the standards set by the ABC previously. They are not the standards that I had to comply with when I was an ABC current affairs journalist some 20 years ago. That's why I continue to say that I believe that ABC standards have slipped very considerably. Sarah Ferguson's justification is, in my view, absolute rubbish, and you were absolutely right to call them out on it. I'm very pleased to hear that ACMA is questioning that so-called test of impartiality because it has no foundation whatsoever. Following on from that, Ms O'Loughlin, could I ask you to provide, on notice, all correspondence and communications between ACMA and the ABC in relation to this matter? I understand that it was fairly intense in terms of the various positions taken by the ABC with regard to these alleged breaches. Could you please provide, on notice, all correspondence— messages, emails, submissions and the like—to the committee?

Ms O'Loughlin: We'll take that on notice, Senator. Thank you.

Answer:

In the course of investigations into potential breaches of broadcasting Codes of Practice, the Australian Communications and Media Authority (ACMA) and the regulated entity regularly exchange correspondence and communications. This generally includes information intended to be treated confidentially in order to ensure the proper framing and consideration of submissions and representations. This facilitates the making of defensible decisions by the ACMA under the *Broadcasting Services Act 1992* (the Act).

The ACMA is concerned that the disclosure of correspondence and communications between the ACMA and an entity being investigated about that investigation might reasonably be expected to prejudice the ACMA's investigative functions and have an adverse impact on the integrity of the functioning of the regulatory regime set out in the Act.

Relevant extracts from the ABC's submission to the ACMA in response to its investigation are included throughout the final report and at Attachment B to that report.

Environment and Communications
QUESTION ON NOTICE
Budget Estimates 2022 - 2023
Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003828

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 102 (24 May 2023)

Topic: ACMA - ABC breaching its code

Senator Malcolm Roberts asked:

Senator ROBERTS: How many times have you dealt with the ABC breaching its code?

Ms O'Loughlin: I probably have something in my pack. My colleagues will hunt it out. We can probably give you over a certain time period.

Senator ROBERTS: Say, the last 10 years?

Ms O'Loughlin: We probably don't have 10 years. We would probably have to take 10 years on notice.

Answer:

Between 1 June 2013 and 31 May 2023, the Australian Communications and Media Authority (ACMA) has conducted 175 investigations assessing ABC content against the ABC Code of Practice. Of these, 11 have resulted in breach findings.

The ACMA's regulatory framework changed during the reporting period referred to above. In October 2014 the ACMA acquired, under the *Broadcasting Services Act 1992*, a 'discretion' as to whether to investigate a broadcasting complaint. Of the 175 investigations referred to above, more than half (92) were commenced by the ACMA between June 2013 and October 2014.