



Submission to the Senate Standing Committee on Environment and Communications Inquiry into ABC and SBS Complaints Handling.

Executive Summary

Australians have access to two national broadcasters - the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS).

Established in 1932, the ABC is one of Australia's oldest public institutions¹, and through its various portals - TV, Radio, and online - has the potential to reach the overwhelming majority of the Australian population.

Established in 1980², SBS also offers a range of news and current affairs content through TV, Radio, and online platforms.

Whilst it is true that most mainstream news organisations in Australia profess a commitment to abide by the basic tenets of journalism - accuracy, balance and impartiality - as publicly funded bodies, the ABC and SBS have a statutory duty to actually do so.

The *Australian Broadcasting Corporation Act 1983* Section 8(1)b states³:

It is the duty of the board...to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism.

The *Special Broadcasting Service Act 1991* Section 10 lists the "Duties of the Board", which includes⁴:

(c) to ensure, by means of the SBS's programming policies, that the gathering and presentation by the SBS of news and information is accurate and is balanced over time and across the schedule of programs broadcast.

¹ <https://www.legislation.gov.au/Details/C1932A00014>

² <https://www.sbs.com.au/aboutus/our-history>

³ *Australian Broadcasting Corporation Act 1983*, Cwlth.

<https://www.legislation.gov.au/Details/C2020C00015>

⁴ <https://nla.gov.au/nla.obj-799114145/view?sectionId=nla.obj-964253531&partId=nla.obj-799374821#page/n23/mode/1up>

As two organisations that receive considerable sums of taxpayer money and have a proactive legislative imperative to ensure news and current affairs content is accurate and balanced, both broadcasters have in place formal complaints procedures⁵.

Both the ABC and SBS insist they welcome complaints and that the complaints system is totally independent from interference by management or editorial staff⁶.

But it is the belief of the Australia/Israel & Jewish Affairs Council (AIJAC) and other Australian stakeholders who have dealt with the respective organisations' complaints procedures that the current system is broken and that complainants are not able to receive a fair hearing because the process is not genuinely independent.

Relevant internal ABC and SBS documentation⁷ shows that their Managing Directors are the ultimate arbiters of whether to accept or reject a complaint. This demonstrates that the claim of independence of their complaints handling procedures is a fiction.

Furthermore, the ABC and SBS fund and operate the complaints procedures inhouse. The complaints handling guidelines have been developed inhouse. The staff who process the complaints are appointed by ABC and SBS management and operate inhouse.

The system is also broken because it is clear that dissatisfied complainants wanting to exercise their right to appeal ABC and SBS findings to the Australian Communications and Media Authority (ACMA) are stymied by a range of limitations preventing what is a genuinely independent body from adequately handling complaints.

This submission makes the case why the time has come for the ABC and SBS to each adopt a genuinely independent complaints process and highlights a number of different overseas models that might assist in the development of an appropriate replacement complaints process to serve in the Australian context.

⁵ <https://www.abc.net.au/contact/complain.htm>; <https://help.sbs.com.au/hc/en-au/articles/360002027575-How-do-I-make-a-complaint->

⁶ *ibid*

⁷ www.abc.net.au/news/backstory/2021-11-15/abc-craig-mcmurtrie-on-abc-complaints-handling-inquiry/100620738; https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/sbs_code_of_practice_july_2021.pdf

INTRODUCTION

The Australia/Israel & Jewish Affairs Council (AIJAC) presents this submission to the Senate Standing Committee on Environment and Communications Inquiry into ABC and SBS Complaints Handling. This submission will focus on summarising AIJAC's own experiences with the complaints handling mechanisms at both the ABC and SBS. AIJAC has had extensive experience, over a long period of time, with the ABC's complaints process (see appendix 2). It will also make recommendations and expand on these recommendations in the context of comparing the ABC and SBS processes to complaints handling mechanisms of public broadcasters in other jurisdictions.

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 and independent ABC. Similarly, AIJAC is a long-time supporter of SBS, especially as an important multicultural broadcaster. AIJAC has always been a strong advocate for Australian multiculturalism. SBS plays an important role in promoting, supporting and connecting with Australia's diverse communities in the spirit of Australian multiculturalism.

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 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

It is important that the Committee understands 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 Arab world) has regrettably lasted decades, but in comparison to other global conflicts, death tolls have been relatively low. 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."⁸ 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."

⁸ 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>.

Citing examples contemporary 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, they have one Middle East correspondent. That correspondent is not based in Dubai, Riyadh or Amman, but in Jerusalem. Please note, the ABC also funds a Beirut-based Middle East correspondent, but he returned in June 2020 to Australia due to the Covid-19 pandemic.

ABC COMPLAINTS 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*⁹ and on AIJAC's website¹⁰. From time to time, AIJAC has written about or been interviewed on the subject by media outlets.

AIJAC also has direct experience with the ABC through attempting to offer 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 has also written opinion pieces that have been published on the ABC website¹¹.

AIJAC also has decades of intimate experience of 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 the ABC's Audience and Consumer Affairs unit has always agreed to consider our complaints, those complaints - carefully prepared and extensively footnoted - have enjoyed limited success. This is particularly true where complaints address questions of bias, balance, and lack of context in ABC content. Blatant factual errors are mostly conceded by ACA.

⁹ <https://aijac.org.au/category/australia-israel-review/>

¹⁰ <https://aijac.org.au/tag/abc/>

¹¹ <https://www.abc.net.au/news/2010-06-15/34976>

In early 2019, AIJAC decided due to the time and effort involved in preparing complaints that would inevitably be rejected, to institute a policy of only making complaints about blatant factual errors. AIJAC revised this policy in 2021 and returned to lodging more detailed complaints where we identified breaches of the ABC Editorial Policies.

With far 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 Audience and Consumer Affairs and the outcomes for 2019-2021. Please see the articles in Appendix 2 which cite some specific and detailed examples of historic AIJAC complaints that the ABC's Audience and Consumer Affairs rejected and which explain the various methods and rationales it has used to reject complaints.

Date	Program	Topic	Summary of concern	Outcome
03/01/19	Radio National - Breakfast	"Superbugs on the rise in war zones"	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	The reports left listeners with a false impression that Israel was	Complaint rejected.

		“Israel considers hard lockdown amid vaccination roll out”	acting illegally towards Palestinians. The reports included factual inaccuracies and omitted important context.	AIJAC has appealed to ACMA.
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.

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.

INEFFICIENT

From a practical point of view, 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 a high-quality complaint.

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. Audience and Consumer Affairs (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 undermines the basic concept of procedural fairness.

RECOMMENDATION

- (1) A reform to the ABC's online complaints form to make it easier to lodge complaints with hyperlinks or attachments, where required, and increase the word limit. This would improve the user experience for complainants and improve the fairness of the process.

LARGELY UNACCOUNTABLE AND LACKING INDEPENDENCE

While the ABC maintains that its Audience and Consumer Affairs Unit is “separate to and independent of content making teams”¹² and that “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”¹³, ACA operates *within* the ABC and its staff members have spent time during their careers working in content areas at the ABC.

In a blog post following the announcement of this inquiry, ABC editorial director Craig McMurtrie outlined the process of the complaints handling Audience and Consumer Affairs unit, 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”¹⁴. This procedure also allows content divisions to disagree with a preliminary finding of the ACA and for any disputes between ACA and the content divisions to be remedied by the Managing Director - who is neither independent nor external to the ABC's content divisions.

In view of the above, it must be acknowledged that the claim that ACA is separate from the content divisions in the complaints procedure lacks logic. This is 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.

The lack of independence and external accountability of the ABC's complaints procedure has led AIJAC to have little faith in its integrity and our ability to receive a fair hearing when we have identified violations of ABC Editorial Guidelines.

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, devote 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 from time-to-time.

¹² “Complaints Process”, ABC Website, <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/complaints-process/>.

¹³ McMurtrie, C (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-craig-mcmurtrie-on-abc-complaints-handling-inquiry/100620738>

¹⁴ “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>.

As per the table at the beginning of this section, AIJAC has had cause to lodge complaints regularly in 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, AIJAC lacks confidence in the ability of the ABC to independently assess these complaints.

Two recent issues which have arisen at the ABC, and which exemplify some long standing concerns, will help to indicate why:

- ***The Role of John Lyons***

The Executive Editor of ABC News and Head of Investigative Journalism John Lyons published a short book in 2021 titled *Dateline Jerusalem: Journalism's Toughest Assignment*. In 2017, he had published a book, *Balcony Over Jerusalem* covering his time as *The Australian's* correspondent in Jerusalem. In both publications, Lyons 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.

While Lyons is entitled to his opinions (opinions with which AIJAC respectfully disagrees - as do some of his journalistic peers)¹⁵ the point is that Lyons, who has strongly held and widely published opinions on a particularly newsworthy topic, not only has significant influence over news and current affairs programming at the ABC, but, as the Executive Editor of News and Head of Investigative Journalism, has the potential to be directly involved in the ABC's complaints process at the point where the ACA refers complaints to the content division.

AIJAC acknowledges he likely does not directly assess complaints, but Lyons and/or staff who report to him will be provided with the complaint in the first instance, and invited to provide a response, including any other information or material that assists in the investigation of the complaint.

Given his clearly articulated views, Lyons' potential involvement in responding to complaints brings the independence and integrity of the ABC's complaints process into question in adjudicating matters relating to Israel - especially complaints from the pro-Israel groups he so openly disparages.

¹⁵ <https://aijac.org.au/fresh-air/some-points-everyone-should-understand-about-john-lyons-new-booklet-dateline-jerusalem-journalisms-toughest-assignment/>, <https://plus61j.net.au/featured/has-the-pro-israel-lobby-beaten-australian-media-into-submission/>, <https://www.theage.com.au/national/dealing-with-the-lobby-is-not-the-toughest-gig-20211005-p58xbq.html>, <https://thesydneyinstitute.com.au/blog/issue-563/#editorial>

- ***“Do Better on Palestine” Open Letter***

John Lyons’ widely publicised antagonism towards pro-Israel advocates is not the only clear example of challenges to the independence and accountability of the ABC’s complaints process.

Following the conflict between Israel and Hamas in Gaza in May 2021, an open letter was circulated among Australian journalists calling for media to “do better on Palestine”, including to prioritise Palestinian voices in their reporting and to be allowed to openly express solidarity with the Palestinian cause, despite their profession as news media.

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 no disciplinary action was taken.

We note this is different from SBS, where journalists were reportedly advised¹⁶ that it was incompatible with their professional responsibilities to sign this open letter.

Again, AIJAC respects the rights of all people to express their views. In this instance, however, a number of ABC editorial staff were among signatories to an open letter that was proudly one-sided on a major issue of public controversy, and urged the dismissal of foundational tenets of journalism, such as accuracy, objectivity and impartiality in covering this issue. These same employees are members of the content divisions, which are forwarded complaints by the ACA, including those made by AIJAC, and asked to dispassionately respond.

These two recent controversial issues show the challenge in uncritically accepting a claim by the ABC that its complaints process is independent and accountable - especially given that, in the overwhelming majority of cases, it is clear that the ACA accepts the response of content makers to any complaint without much further investigation. Moreover, even when ACA does not, the content makers can dispute the ACA findings - with the Managing Director then having the final say.

In other words, activist content makers like Lyons and the signatories to the “Do Better on Palestine” letter have a great deal of input and even control over the outcome of complaints to the ACA.

RECOMMENDATION

- (2) Introducing a new independent and external complaints process for both ABC and SBS that can request information from ABC and SBS content staff would assist in

¹⁶ <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

creating a more independent and accountable complaints process. Complaints would be assessed by an individual or panel jointly appointed by government and the ABC and SBS boards, supported by expert professional staff.

LACKING PROCEDURAL FAIRNESS

According to the Commonwealth Ombudsman's *Better Practice Complaint Handling Guide*, a complaint handling process must adhere to the following structure to be considered to have 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*
- (5) *There is a process for complainants to seek review of how their complaint was handled.*¹⁷

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

Point (1)

McMurtrie 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.¹⁸ But, with respect to both McMurtrie and the ANAO's review, 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 maker 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) 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 - yet is nonetheless able to act objectively to adjudicate a complaint stretches the concept of procedural fairness.

¹⁷ Commonwealth Ombudsman, "Part 8: Key terms and principals", *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>.

¹⁸ McMurtrie, C (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-craig-mcmurtrie-on-abc-complaints-handling-inquiry/100620738>

Point (4)

When assessing the validity of a complaint, the 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 respond¹⁹. 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. Moreover, as noted, 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.

Point (5)

The appeals authority for ABC complaints is the Australian Communication and Media Authority (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 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%²⁰ and 6%²¹.

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

The 2012 Report of the Independent Inquiry into the Media and Media Regulation²² 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).

¹⁹ *ibid*

²⁰ <https://thesydneyinstitute.com.au/blog/issue-535/>

²¹ See pg. 101, <https://about.abc.net.au/wp-content/uploads/2021/02/Annual-Report-2019-2020-UDATED.pdf>

²² 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>.

Justice Ray Finkelstein QC concluded that “where the complaint is that a statement about a person is inaccurate, that period is much too long.”²³

Similar to 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.”²⁴

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 some standard. There have been two instances in recent years that AIJAC is aware of, where the ABC has completely disregarded ACMA’s finding against it while noting that it “respectfully disagrees” with ACMA’s finding. It is, to be blunt, scandalous, that the public broadcaster can choose to “respectfully disagree” with ACMA and simply dismiss its findings.²⁵

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.”²⁶ Despite this possibility, AIJAC is not aware of any occasion where this occurred with respect to ACMA findings against the ABC or SBS.

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.”²⁷

²³ 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.

²⁴ 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.

²⁵ 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/>.

²⁶ 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.

²⁷ 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.

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, the 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.

RECOMMENDATIONS

- (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.

- (4) If ACMA is to continue functioning as a viable avenue for complainants to appeal decisions made by the ABC's Audience and Consumer Affairs unit, it must be resourced to adjudicate referrals in a timely manner and assessed in line with the recommendations of the Report of the Independent Inquiry into the Media and Media Regulation. Furthermore, its finding must be made enforceable on the ABC and SBS.

SBS COMPLAINTS HANDLING

Background to SBS's coverage of Israel and the Palestinians

The bulk of content relating to Israel on SBS is to be found on SBS TV's nightly 6.30 pm and 10.30 pm bulletin "World News".

As the name indicates, the bulletin has a global focus and there are frequent reports involving Israel, the Palestinians and the Middle East.

SBS does not have a dedicated Middle East correspondent and it mostly relies on SBS reporters producing their own scripts and using externally sourced video footage.

In AIJAC's experience, SBS news and current affairs, in the main, genuinely attempts to implement the SBS Act's stipulation that "news and information is accurate and is balanced over time".

This observation does not only apply to the qualities of SBS's reports. It is not uncommon to find SBS reporting on breaking events that the ABC, despite having a dedicated Jerusalem-based Middle East correspondent does not, particularly involving major internal Palestinian developments not directly involving Israel.

A recent example of this phenomenon was seen in the contrasting coverage of the murder of Palestinian activist Nizar Banat by Palestinian President Mahmoud Abbas' security forces on the West Bank in May 2021 which triggered weeks of mass rolling protests involving thousands of Palestinians against the Palestinian Authority.

SBS TV "World News" covered the story on June 26 and on June 28²⁸.

In contrast, although an ABC correspondent was in situ at the time, it took ten weeks for this major event to be covered by the ABC on an obscure Radio National program ²⁹which is not even technically part of the news and current affairs department.

SBS's appreciation of its statutory responsibilities is also evident in its use of reports produced by the controversial Al-Jazeera news network that was established by the Qatari Royal Family which is committed to the ideology of the Muslim Brotherhood.

There is little doubt that the management of Al-Jazeera Arabic and its English arm are required to adhere to an editorial policy that is unquestionably anti-Israel and sometimes spills over into antisemitism.

The veracity of this policy has been confirmed repeatedly through leaks and disgruntled former employees. A summary of Al-Jazeera's blatant editorial bias can be found here³⁰ and here³¹.

²⁸ <https://aijac.org.au/australia-israel-review/noted-and-quoted-august-2021/>

²⁹ <https://www.abc.net.au/radionational/programs/religionandethicsreport/protests-continue-to-roil-the-palestinian-west-bank/13522216>

³⁰ <https://aijac.org.au/op-ed/abc-and-sbs-have-no-business-using-al-jazeera/>

³¹ <https://aijac.org.au/fresh-air/al-jazeeras-muslim-brotherhood-links-exposed/>

To its credit, many years ago SBS management accepted that Al-Jazeera content on the Arab-Israeli issue is problematic and SBS has adopted a policy of avoiding its use with respect to Arab-Israel issues.

In 2018, after AIJAC alerted SBS that *SBS TV* “World News” had broken this policy, then SBS Managing Director Michael Ebeid restated in an email dated August 31 2018 that “World News attempts to avoid using Al-Jazeera in reports directly about the Arab – Israeli conflict.”

Furthermore, to SBS’s credit, media reports indicate that SBS management in May 2021 had warned staff not to sign the “do better on Palestine” petition³².

This petition called on journalists covering Israeli-Palestinian issues to avoid “both-siderism” and prioritise the Palestinian perspective demands completely incompatible with the editorial and statutory obligations of both SBS and ABC.

The SBS remit on news and current affairs

As with the ABC, AIJAC has been a keen observer of SBS news and current affairs content including on TV, Radio and the SBS website and when required, has submitted complaints relating to SBS news and current affairs.

Consequently, AIJAC believes it can speak with authority on the experience of dealing with the complaints process environment of the two public broadcasters.

According to the *Special Broadcasting Service Act* 1991³³, SBS has a statutory duty to ensure its news coverage is accurate and balanced over time.

The Act places this proactive responsibility on the SBS Board of Directors as set out in Section 10 of the Act “Duties of the Board”, which states:

(c) to ensure, by means of the SBS’s programming policies, that the gathering and presentation by the SBS of news and information is accurate and is balanced over time and across the schedule of programs broadcast.

SBS’s Code of Practice³⁴ lists the editorial principles that SBS content must strive to meet.

SBS complaints procedure

³² <https://www.theaustralian.com.au/inquirer/censorship-dressed-as-a-plea-for-fairness-in-media-reporting/news-story/15dcb5ec847ca58c2952cbf4307012c0>

³³ <https://nla.gov.au/nla.obj-799114145/view?sectionId=nla.obj-964253531&partId=nla.obj-799374821#page/n23/mode/1up>

³⁴

https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/sbs_code_of_practice_july_2021.pdf

Like the ABC, SBS has a formal complaints procedure in place³⁵.

Complaints lodged with SBS are received by the SBS Ombudsman.

The SBS Code of Practice July 2021 (pg.18)³⁶ asserts that received complaints are “investigated and managed *independently* by the SBS Ombudsman” (emphasis added).

Despite the SBS Code of Practice’s stated commitment to a genuinely independent complaints procedure, there are three potential limitations on the independence of the SBS Ombudsman.

First, like the ABC, the office is appointed by SBS management and funded inhouse.

Second, SBS Code of Practice 6.2³⁷ explicitly states that the “SBS Ombudsman reports directly to the Managing Director.”

Third, a source of potential interference to the SBS Ombudsman’s independence is starkly apparent from the SBS Code of Practice (July 2021), which states:

1. The SBS Ombudsman or the relevant SBS Divisional Director may refer a Code complaint to the SBS Complaints Committee for further consideration. The Complaints Committee will review the Code complaint and any recommendations by the SBS Ombudsman and make an independent determination as to whether to uphold or dismiss the complaint.

The Complaints Committee will decide how to inform itself at its discretion.

The Complaints Committee is composed of the Managing Director (Chair), the SBS Ombudsman, the SBS Content Directors, and the Director of the Corporate Affairs Division (or such equivalent positions as exist from time to time).

In other words, despite the Code of Practice’s stated commitment to the independence of the Ombudsman, SBS management, including content directors, are still potentially heavily involved and invested in the complaints process.

AIJAC’s experience with complaints to SBS

In AIJAC’s experience, on balance, unlike the ABC’s Audience and Consumer Affairs unit, the SBS Ombudsman will uphold complaints that involve questions of bias, lack of context, and unprofessional reporting, and not merely clear factual inaccuracies.

³⁵ <https://www.sbs.com.au/aboutus/sbs-code-of-practice-complaints>

³⁶

https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/sbs_code_of_practice_july_2021.pdf

³⁷ *ibid*

To give one such example, the SBS Ombudsman upheld an AIJAC complaint relating to an *SBS TV* “World News” story from February 2018, finding that “the report was imbalanced and appeared to display a partiality.”³⁸

Other examples of successful AIJAC complaints in recent years include:

- The SBS Ombudsman upheld³⁹ an AIJAC complaint re SBS TV “World News” report (July 10, 2019) that incorrectly claimed Israeli PM Netanyahu had threatened to strike Iran.
- The SBS Ombudsman upheld an AIJAC complaint lodged against an online item (Sept. 4, 2019) that incorrectly claimed that a Lebanese Palestinian came from “Palestine”.

Two examples of the SBS Ombudsman partly upholding AIJAC complaints are:

- The SBS Ombudsman partly upheld an AIJAC complaint regarding an SBS podcast from June 8, 2017 that covered the events of the Six Day War. In this instance, the sections of the complaint that were rejected were done so under the Code of Practice 2014 amendment that stated, “The decision as to whether it is appropriate for a range of views or particular views to be included within a single program or story is a matter for editorial discretion.” This would possibly suggest the involvement of SBS editorial management in the process.
- The SBS Ombudsman partly upheld an AIJAC complaint regarding an online article from Nov. 7, 2018 titled “The Israeli-Palestinian conflict explained.”⁴⁰

AIJAC has also secured corrections from SBS through direct contact with the editorial management or SBS journalists. Some recent examples include:

- SBS amended an online article (May 19, 2021) that contained factual errors relating to the Sheikh Jarrah property dispute in east Jerusalem⁴¹.
- SBS amended an online article (June 8, 2021) that incorrectly claimed Egypt had called for a lifting of the Gaza blockade⁴².

³⁸ <https://www.australianjewishnews.com/sbs-admits-to-errors/>

³⁹ <https://www.jwire.com.au/aijac-complaint-to-sbs-upheld/>

⁴⁰ <https://www.jwire.com.au/sbs-corrects-article-but-misreporting-remains/>

⁴¹ Email correspondence between AIJAC and SBS.

⁴² See item “Blockade blackout” <https://aijac.org.au/australia-israel-review/noted-and-quoted-july-2021/>

Summary

Although, in the main, SBS's news and current affair content and its complaints procedure are run professionally, this cannot be taken for granted.

Despite the largely effective performance by the Ombudsman in recent years, the complaints process is not genuinely independent, and there is considerable scope for management to control the outcome of complaints should they wish to. Moreover, there is evidence that they may have done so on certain occasions. In addition, AIJAC's experience was that SBS complaints handling was much less effective prior to the last few years.

Therefore, as in the case of the ABC, it is highly desirable for the SBS complaints procedure to be reformed and become genuinely independent and external.

RECOMMENDATIONS

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

Recommendation 1

That the ABC reform its online complaints form to make it easier to lodge complaints with hyperlinks or attachments, where required, and increase 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 both the ABC and SBS that can request information from ABC and SBS content staff would assist in creating a more independent and accountable complaints process. Complaints would be assessed by an individual or panel jointly appointed by government and the ABC and SBS boards respectively, 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 actually the ABC's Managing Director. For this reason, and many others outlined previously, AIJAC recommends introducing a new truly independent and external complaints process for both the ABC and SBS.

Based on AIJAC's own experience with both the ABC and SBS complaints procedures and extensive research into the complaints processes of public broadcasters in a range of other jurisdictions (available in Appendix I), AIJAC believes that the following attributes must be incorporated into a new independent, external complaints process.

- (1) Complete independence from the ABC and SBS, but 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 boards of the ABC and SBS.

Each 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, each panel should also be given the powers to initiate wider investigations of its own into matters it determines deserve scrutiny. The panel would be provided with sufficient resources to initiate investigations, either based on 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.⁴³ Under a reformed ABC and SBS 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 noting 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.⁴⁴ While AIJAC is not suggesting a penalty system be imposed on the public broadcasters (ultimately it would be 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.

⁴³ 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/>.

⁴⁴ “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, p2.

As detailed earlier, the current ABC and SBS 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.

In Appendix 1, AIJAC has attached a summary of models implemented in other countries for handling complaints about public broadcasters to assist the Committee in identifying what a best practice model might look like for Australia. While none of the models appear to be perfect, AIJAC calls the Committee's attention to the Public Broadcaster Ombudsman in the Netherlands 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 and SBS complaints, it must be sufficiently resourced 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 both the ABC and SBS. There are two major challenges currently facing ACMA in its capacity to adequately and impartially handle complaints.

The first is resourcing. ACMA must 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.

The second 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 or SBS, is outlined in Section 153 of the *Broadcasting Services Act 1992*.⁴⁵ 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 finding in two instances.

Submitted by Dr Colin Rubenstein AM
Executive director, AIJAC

⁴⁵ *Broadcasting Services Act 1992*, Cwlth.

Appendix 1 - COMPARING PUBLIC BROADCASTER COMPLAINTS PROCESSES

BROADCASTER	COUNTRY	SUMMARY OF EDITORIAL COMPLAINTS PROCESS	INDEPENDENT COMPONENT	REPORTING FREQUENCY
ABC	Australia	Complainant can lodge an online complaint, this complaint is referred to the Audience and Consumer Affairs (ACA) team, 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. (https://about.abc.net.au/talk-to-the-abc/editorial-complaints/complaints-process/)	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. (https://www.sbs.com.au/aboutus/complaints)	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	Limited, but Ofcom can direct	Fortnightly

		<p>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.</p> <p>(https://www.bbc.co.uk/contact/sites/default/files/2020-06/BBC_Complaints_Framework.pdf)</p>	the BBC to remedy the failure or prevent a recurrence and can impose fines of up to 250,000 Pounds.	
NPR	United States	<p>There does not seem to be a complaints process, just an online form to request a correction.</p> <p>(https://help.npr.org/contact/s/contact?request=Submit-a-correction).</p> <p>The US has a Corporation for Public Broadcasting Ombudsman. It is unclear whether individuals can made referrals to the CPB Ombudsman. It was also reported recently that the term of the current CPD Ombudsman has expired and a new one will not be appointed.</p> <p>(https://current.org/2021/05/cpb-has-no-immediate-plans-to-recruit-new-ombudsman)</p>	There does not seem to be one.	There does not appear to be complaints reporting.
PBS	United States	<p>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.</p> <p>(https://www.pbs.org/publiceditor/about/)</p>	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	<p>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.</p> <p>(https://cbc.radio-canada.ca/en/ombudsman)</p>	The Ombudsman is independent of CBC program staff and management and reports to CBC’s president.	Annual

			<p>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 appoint independent advice panels to assist.</p>	
DR	Denmark	<p>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 (https://www.pressnaevnet.dk/media-liability-act/)</p> <p>(https://www.pressnaevnet.dk/)</p>	<p>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</p>	Twice a year

			<p>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 appointed as public representatives upon recommen</p>	
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			<p>ation 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.</p>	
Swiss Broadcasting Corporation	Switzerland	<p>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 ombudsmen'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. (https://www.ubi.admin.ch/en/ica-homepage)</p>	<p>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.</p>	<p>The ICA's proceedings are generally held in public.</p>
France Televisions	France	<p>The Conseil Supérieur de l'Audiovisuel (CSA)'s role is to</p>	<p>The CSA is an</p>	

		<p>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.</p> <p>(https://www.csa.fr/Informer/Qu-est-ce-que-le-CSA/Le-fonctionnement-du-CSA)</p>	<p>independent public authority and its members are appointed by the President of France and members cannot hold any positions perceived as conflicts of interest.</p>	
NPO	Netherlands	<p>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.</p> <p>(https://ombudsman.npo.nl/)</p>	<p>The NPO Ombudsman is independent and impartial. The ombudsman follows and examines all journalistic programming and production by the Dutch Public Broadcasters. And the ombudsman examines and investigates complaints by the public.</p>	<p>Pronouncements and investigations by the ombudsman are published on the <u>website</u></p>

NRK	Norway	<p>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 public and also matters submitted by the head of broadcasting.</p> <p>(https://www.nrk.no/organisasjon/dette-er-kringkastingsradet-1.3911376)</p>	<p>The role of the Broadcasting Council is to discuss and comment on NRK's programming agenda 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.</p>	
YLE	Finland	<p>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</p>	<p>Independent authority, but not media specific, similar Australia.</p>	<p>Annual reports, investigations published on website</p>

		<p>organisation is upheld, the Council issues a notice of violation, which the party responsible for the violation must publish in a timely manner.</p> <p>http://www.jsn.fi/en/</p>		
NBT	Thailand	<p>Draft legislation has passed cabinet approval and would create an independent media council which would have the power to rule on complaints.</p>	<p>Soon to be independent authority</p>	

Appendix 2 – AIJAC in the media on ABC complaints process (2021)

<https://www.theaustralian.com.au/commentary/abc-shames-itself-with-its-bias-on-israel-and-hamas/news-story/a28225464e77e13e5f3e63f17623b48d>

ABC shames itself with its bias on Israel and Hamas

Jul 26, 2021 | Colin Rubenstein

The Australian – JULY 26, 2021

In a speech in March, ABC managing director David Anderson asserted: “Essential to the perception of the ABC’s independence and impartiality is the reality that we are independent and detached from government direction.” Equally important to that perception is that the ABC be seen as accountable to the public for how it uses the more than \$1bn in funding it receives annually.

While allegations of ABC bias are nothing new, overt activism by some staff has become increasingly brazen. This casts doubt on management’s commitment to the corporation’s statutory duty to ensure its presentation of news and information is accurate and impartial. Furthermore, there is no effective independent mechanism to scrutinise the ABC and determine whether it is fulfilling these statutory duties.

Perhaps if there had been, some notorious controversies over alleged bias could have been avoided. Examples include then communications minister Richard Alston’s many complaints about unfair ABC coverage of the second Gulf War in 2003; a Four Corners episode about beef that riled the National Farmers Federation in 2018; Catalyst episodes pushing questionable scientific claims in 2013, 2016 and 2018; and Emma Alberici’s error-strewn article on government tax cuts in 2018. The concentration of recent Four Corners episodes targeting conservative public figures – Scott Morrison, Christian Porter, George Pell – but no progressives has also caused concern.

The ABC’s multifaceted Middle East coverage, particularly the Israel-Palestine conflict, provides another useful case study. A previous Middle East correspondent, Sophie McNeill, had a record of pro-Palestinian reporting. She left the ABC to become the Australian researcher for Human Rights Watch, which engages in anti-Israel campaigning. During May’s Israel-Hamas hostilities, current Middle East correspondent Tom Joyner tweeted his intention to desist from using the word “clashes” after pro-Palestinian activists suggested he should. They argued “clashes” implies false equality between the sides.

Joyner was in the vanguard of a push by activist journalists and other media workers to supposedly “do better on Palestine”. In mid-May, some ABC staff, although not Joyner, signed a letter calling for the rejection of “both-siderism” and prioritising Palestinian perspectives in coverage.

This is part of an international campaign by pro-Palestinian activists to replace objective and fact-based reporting with an unashamedly partisan approach. It is hard to reconcile this

approach with ABC editorial standards that require impartiality and reject unduly favouring one perspective.

The ABC extensively covered the May conflict, with several items daily on one platform or another. While some were unexceptional, others misstated details such as the chronology of events, impacting the public's understanding of which side initiated aggression. Many items repeated the false narrative of Palestinian terror group Hamas – for example, in claiming Israeli forces fired on or “raided” Palestinian worshippers at the Al-Aqsa Mosque, or that tensions were inflamed by Israel's government having supposedly attempted to evict Palestinians from homes in Sheikh Jarrah, when this issue was actually a long-running private property dispute before the courts, with no government involvement.

Journalists are becoming activists by picking a side in Israeli-Palestinian conflicts, according to Sky News Digital Editor Jack Houghton. Mr Houghton said the ABC should not have rejected a complaint by the Australia Israel and Jewish Affairs Council about a QandA episode in May concerning the recent conflict.

That conflict set off protests and anti-Semitic violence around the world, underlining the heavy responsibility of media to report factually and objectively. Contrast this with ABC coverage of the widespread internal Palestinian violence in June, following the death in custody of a vocal critic of the Palestinian Authority, Nizar Banat. Mainstream media covering this included The Australian, SBS, The West Australian, Yahoo Australia, The Guardian, the BBC and Al Jazeera. But a search of the ABC website produces nothing. Why did the ABC decide there was nothing to see here?

Meanwhile, part of the May 27 edition of ABC's Q&A focused on the Israel-Hamas violence. The five-person panel comprised pro-Palestinian activist Randa Abdel-Fattah, lawyer Jennifer Robinson, who has represented Palestinians at the International Criminal Court, Indigenous singer and songwriter Mitch Tambo, Labor MP Ed Husic and Liberal MP Dave Sharma, a former ambassador to Israel of Indian heritage. His was the only voice to provide an informed perspective that was not anti-Israel in the ensuing pile-on; even Tambo was highly critical of Israel despite admitting limited knowledge of the subject.

Q&A is an opinion program and, while opinions needn't be impartial, the point of such programs is as a forum airing diverse views. ABC editorial policy states “a democratic society depends on diverse sources of reliable information and contending opinions”, and it “aim(s) to equip audiences to make up their own minds”. Heavily stacking a panel like this is a derogation of ABC obligations. Yet, in response to the Australia/Israel and Jewish Affairs Council's complaint, the ABC insisted the segment did not breach its impartiality standard.

The reality is the ABC acts as its own judge and jury with respect to complaints, which are handled by Audience and Consumer Affairs. The ABC describes this as an “independent unit”, but this would be unlikely to pass the pub test. In 2019-20, of more than 6000 complaints received, A&CA upheld about 6 per cent.

While A&CA decisions can be appealed to the Australian Communications and Media Authority, in reality this is little help. ACMA lacks resources, so few decisions are reviewed, and it has no power to require change.

The ABC rightly values its independence from government intervention. Yet true editorial independence demands a genuinely independent complaints ombudsman – something public broadcasters have in countries including Canada, Norway and The Netherlands.

Dr Colin Rubenstein is executive director of the Australia/Israel & Jewish Affairs Council.

<https://www.smh.com.au/national/your-abc-s-complaints-process-might-surprise-you-20210706-p587ex.html>

Your ABC's complaints process might surprise you

Jul 13, 2021 | Jamie Hyams

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As our main taxpayer funded media network, the ABC is one of Australia's best known institutions. With its multi-platform presence, across multiple television and radio stations as well as the internet, it is our nation's most prominent source of news and current affairs.

As a taxpayer funded organisation, it is required to comply with the provisions of its Code of Practice, which, among other things, sets out the standards of journalistic professionalism, impartiality and fairness one would naturally expect of its news and current affairs programs.

These standards are set out under self-explanatory headings, such as "Accuracy" and "Impartiality". Anyone who feels that the ABC has fallen short of these standards may make a formal complaint. However, they may be surprised to find out who decides if the ABC has met its standards – the ABC does.

The ABC's Audience and Consumer Affairs unit (A&CA) is responsible for assessing complaints, but while it may be a separate unit within the ABC, it is still very much a part of the ABC.

Even worse, what it often seems to do so is take complaints back to the ABC employee who produced the item in question, get their response, and then pretty much send that to the complainant as the ABC's official response. So if a journalist who compiles a biased report says they weren't biased, then so does the ABC.

The Code is, by necessity, open to interpretation, but A&CA sometimes takes "interpretation" of the Code to extremes. For example, the Code requires a diversity of perspectives to be presented "over time". A&CA findings suggest this means a program can exclusively present one side of an argument as long as, somewhere on the ABC at some time, part of the opposite argument also gets air time, however brief.

Using the above techniques, the A&CA rejects almost all complaints. Of the 6057 complaints it received in 2019-20, it upheld, at least in part, six percent of those that it investigated!

A case in point was the May 27 "Q & A" episode that in part focussed on the recent Israel-Hamas conflict. It featured, on its panel, not only pro-Palestinian activist Randa Abdel-

Fattah, but also lawyer Jennifer Robinson, who has represented Palestinians at the International Criminal Court, and no equivalent advocate for Israel. According to the program, that perspective was to be given by Federal Government MP Dave Sharma, who was Australia's Ambassador to Israel. However, Sharma was there to discuss political matters, and was balanced by ALP MP Ed Husic, who also called for recognition of a Palestinian state.

Yet A&CA dismissed complaints that this imbalance blatantly breached the Code requirement that the ABC "Do not unduly favour one perspective over another," stating that Israel's acting Ambassador had been invited to "participate" (in fact, he was only invited to sit in the audience and maybe ask a question) and insisting Sharma provided the necessary balance.

To give another, earlier, example, in 2015, a *Radio National* program "Earshot" featured two unrelentingly one-sided anti-Israel documentaries, produced and narrated by an ABC producer who also happened to be an activist in the anti-Israel BDS movement. A&CA dismissed complaints about demonstrably false claims by saying they were "opinion" so any requirement for accuracy didn't apply. Furthermore, regarding complaints about bias, A&CA made the Orwellian finding that a belated acknowledgement of the producer's activism on the website and recording of the program contributed "to the overall impartiality of the program."

There doesn't even seem to be a requirement that ABC journalists abide by previous A&CA decisions on those rare occasions complaints are upheld. For example, A&CA found in 2016 that it was incorrect to describe Gaza as "occupied". However, a subsequent complaint in early 2021 that Gaza had once again been described as "occupied" was dismissed.

Beyond its Israel coverage, these problems apply right across the board. Other famous scandals involving ABC complaints include its unfair treatment of the National Farmer's Federation in a July 2019 episode of "4Corners"; the controversy over an anti-beef episode of "Catalyst" in 2018; and then Communication Minister Richard Alston's complaints about the ABC's frequently unprofessional coverage of the 2003 Gulf war, more than a dozen of which ended up being upheld on appeal.

The only remedy is for Australia's public broadcaster to have a genuinely independent complaints review body – as many public broadcasters in democracies do, for instance, in Canada and the Netherlands and Scandinavian countries.

While the Australia Communication and Media Authority (ACMA) has a theoretical capability to review complaints about the ABC, in practice it does not have the resources and dedicated expertise to fulfill this role, and has no power to impose remedial action. In 2019/20, ACMA finalised a total of two investigations into ABC complaints.

The Code of Practice correctly states that "The ABC belongs to the Australian people. Earning and retaining their trust is essential to fulfilling the ABC's charter and its responsibilities..."

However, under the current, in house, complaints system, there are justifiable suspicions that those producing news and current affairs content for the ABC get away with either sloppy or agenda-driven reporting.

The ABC likes to say that it's our ABC, but until the complaints procedure for its news and current affairs is truly independent, suspicion will remain that they really think it's theirs.

Jamie Hyams is a senior policy analyst at the Australia/Israel & Jewish Affairs Council.

ABC complaints process needs reform – Dr Colin Rubenstein on Sky News
Jul 8, 2021

AIJAC Executive Director Dr Colin Rubenstein appeared on the Bolt Report on Sky News, July 6, arguing that a dispute over a recent episode of Q&A highlights the need to reform the ABC's complaints process.

<https://www.youtube.com/watch?v=OmUZA18cOQ>



<https://aijac.org.au/op-ed/auntys-complaints-process-is-an-absolute-farce/>

Aunty's complaints process is an absolute farce

Jul 1, 2021 | Allon Lee

Australian Jewish News, *July 1 2021*

In the best tradition of protecting its paymasters, the response to AIJAC's complaint by the ABC complaints unit – aka Audience & Consumer Affairs (A&CA) – finding that the May 27 episode of *Q&A* did not breach the ABC Code of Practice's "impartiality standard" proved yet again why a genuinely independent complaints system is long overdue.

To recap, one of the advertised topics for that episode was the "Israel-Hamas conflict".

High-profile pro-Palestinian advocate Randa Abdel-Fattah was included as a panellist with pro-Israel advocates relegated to the audience.

It's particularly galling that A&CA decided this deliberate choice constitutes balance under the code.

A&CA's response fudged the truth, saying acting Israeli ambassador Jonathan Peled was approached to participate but couldn't travel from Canberra to Sydney.

AIJAC understands he was not invited to be a panellist, merely an audience member who could potentially ask a question.

The Executive Council of Australian Jewry's Alex Ryvchin subsequently declined a similar offer.

The A&CA defended the program by saying its "editorial obligation ... was to present a diversity of relevant perspectives on the issue, and to not unduly favour any one of those perspectives over any other" and that former Australian ambassador to Israel, Dave Sharma, had challenged Abdel-Fattah by "provid[ing] an informed perspective on Israel's actions and decisions".

This sounds almost reasonable. Until you look at the other panellists, who included Jennifer Robinson, who has represented Palestinians at the International Criminal Court; Labor MP Ed Husic, an MP who stressed the need to recognise currently non-existent Palestinian statehood; and performer Mitch Tambo, who admitted he didn't know much about the conflict but felt Israel was at fault. So, Palestine – 4, Israel – 1.

The result is unsurprising – winning a complaint lodged with A&CA is practically impossible.

Out of 6057 complaints A&CA received in 2019-20, it upheld a pitiful six per cent!

The reason for this appalling rate is because the ABC has created a complaints system where the “house always wins”.

Contrary to ABC claims, A&CA is not separate and independent. It sits alongside ABC content providers who make the programs.

And the lofty sounding “Code of Practice” A&CA uses to evaluate complaints is an ABC document.

Over many years, AIJAC has learnt there are many ways A&CA can reject complaints.

Perhaps the most astonishing is that the code allows A&CA to refer complaints to the content provider who is the subject of the complaint to evaluate whether “the complaint makes a valid point” – turning the complainees into judge, jury and executioner.

And yet, according to the 2019/20 ABC annual report, this is what A&CA did in half the cases.

In the rare instances when A&CA partially or fully upholds complaints, an on-air apology or correction is not required.

Instead, it’s listed on the “resolved complaints” webpage and an editor’s note is placed on the program’s webpage – the wording decided at the ABC’s discretion.

Following a partially successful AIJAC complaint in early 2019, an editor’s note on the relevant Radio National *Breakfast* webpage acknowledged Egypt enforces the Gaza blockade, with the tart coda, “but Israel controls most of the border and also enforces a maritime blockade”.

And not unusually, this upheld complaint failed to achieve lasting change. Later that year, ABC Radio National’s *Correspondents Report* again talked only of Israel blockading Gaza.

And there is no consistency – A&CA can summarily overturn its own past decisions.

In early 2021, it allowed ABC Radio *AM* and *World Today* reports that said Gaza remains under Israeli occupation – contradicting its own 2016 finding against 7:30 that Gaza was not occupied.

Another “get out of jail free card” A&CA can use to reject complaints is the code’s balance “over time” test.

This means a one-sided report on a flagship program can be deemed to be “balanced” by a fleeting reference buried in an online story months later.

With the aforementioned *AM* and *World Today* reports, AIJAC also complained they did not explain why Israel said it was not obligated to vaccinate Palestinians against COVID. A&CA used the “balance” clause as one of the reasons why the programs hadn’t breached the code, yet did not cite a single balancing report!

It’s hardly surprising that dispirited complainants do not exercise their right of appeal to the Australian Communications and Media Authority (ACMA) – the only remotely independent part of the process.

Even if they do, there are major disincentives. In 2019/20, ACMA finalised only two investigations into ABC complaints, compared to seven in 2018/19. The turnaround is also painfully slow. In December 2020, ACMA finally partially upheld a National Farmers Federation complaint relating to a July 2019 episode of *Four Corners*.

The finding was publicised and that was that. No real action taken.

The current system is clearly broken. A bipartisan federal inquiry or initiative is urgently needed, leading to legislation creating a user-friendly, genuinely independent, properly funded, complaints process.

The ABC will likely resist change as an unjustified attack upon its editorial independence. It is nothing of the sort.

In fact, it has the potential to improve editorial standards across the board and confidence in our public broadcaster, something everyone should surely support.

Allon Lee is a senior policy analyst at the Australia/Israel & Jewish Affairs Council.