

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

## **Executive Summary**

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

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

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

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

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

AIJAC makes four substantive recommendations to the Independent Review:

**Recommendation 1**

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

**Recommendation 2**

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

**Recommendation 3**

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

**Recommendation 4**

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

## Introduction

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

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

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

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

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

## Israel and the Australian Media

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

---

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

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

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

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

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

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

---

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

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

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

Date	Program	Topic	Summary of concern	Outcome
03/01/19	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 "Israel considers hard lockdown amid vaccination roll out"	The reports left listeners with a false impression that Israel was acting illegally towards Palestinians. The reports included factual inaccuracies	Complaint rejected.  AIJAC has appealed to ACMA.



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

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

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

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

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

Similarly, in the Independent Review of ABC Complaint Handling Public Consultation Paper, McMillan and Carroll wrote that:

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

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

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

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

---

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

<sup>11</sup> 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>

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

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

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

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

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

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

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

These include:

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

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

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

### **RECOMMENDATION 1**

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

AIJAC also notes the two books<sup>17</sup> penned by Executive Editor of ABC News and Head of Investigative Journalism, John Lyons, about his time as Middle East correspondent for the *Australian* newspaper. 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, which AIJAC rejects<sup>18</sup>.

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

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

## **RECOMMENDATION 2**

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

---

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

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

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

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

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

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

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

### **Point (1)**

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.<sup>20</sup> But, with respect to both McMurtrie and the ANAO's review (neither of which canvassed the views of complainants), these assessments of the fairness of the ABC complaints process do not consider one of the two main requirements of procedural fairness: the rule against bias.

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

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

---

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

<sup>20</sup> 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>

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

#### Point (4)

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

#### Point (5)

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

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

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

---

<sup>21</sup> *ibid*

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

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

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



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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

### **RECOMMENDATION 3**

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

---

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

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

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

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

#### **RECOMMENDATION 4**

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

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

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

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

**Table 2: Public broadcaster complaints processes**

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

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

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

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



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

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

## RECOMMENDATIONS

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

### Recommendation 1

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

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

### Recommendation 2

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

### **Recommendation 3**

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

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

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

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

### **Recommendation 4**

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

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

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

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

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

**Submitted by Dr Colin Rubenstein AM**

Executive Director, AIJAC

---

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

## Appendix 1

### 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

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.***

## **Your ABC's complaints process might surprise you**

**Jul 13, 2021 | Jamie Hyams**

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

Jul 8, 2021

### Dr Colin Rubenstein on Sky News

*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=OmUZAzl8cOQ>



<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 Rychin 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.**