# REVIEW OF EDITORIAL COMPLAINTS

# 5.3 Opportunity to Respond

Audience & Consumer Affairs
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# Background

The ABC reviews its own content as an ongoing exercise to gauge compliance with its editorial standards and identify opportunities for improvement. Typically, these reviews have been based on a specified sample of content – eg, all political media conferences broadcast live on the ABC News Channel within a one-week period, or ten randomly selected analysis pieces, or radio and TV news bulletins on ABC/SBS/commercial networks on one day a week for eight weeks. These reviews have yielded helpful observations about strengths and weaknesses in the ABC's editorial performance.

The information gleaned from editorial complaints can also provide a useful basis for reviews. Complaints highlight areas of specific concern amongst those affected by ABC content – whether as audience members, participants, or as the subject of ABC coverage – and provide an opportunity for editorial processes and judgements to be independently scrutinised and evaluated.

The ABC values the insights gathered from editorial complaints. It is good practice to review complaint findings to look for weaknesses in editorial processes, or patterns of non-compliance which could usefully be addressed. For this review, the ABC looked at its own complaints data to see what could be learned about compliance with the editorial requirement to provide a fair opportunity to respond. The sample is inherently limited to content which has been the subject of an investigated complaint, and the findings should be considered in that context.

### Editorial standard

The ABC's editorial standards for fair and honest dealing state:

#### Opportunity to respond

5.3 Where allegations are made about a person or organisation, make reasonable efforts in the circumstances to provide a fair opportunity to respond.

The fair and honest dealing standards are accompanied by the principles:

Fair and honest dealing is essential to maintaining trust with audiences and with those who participate in or are otherwise directly affected by ABC content. In rare circumstances, deception or breach of an undertaking may be justified. Because of the potential damage to trust, deception or breach of an undertaking must be explained openly afterwards unless there are compelling reasons not to do so.

The ABC <u>Guidance Note</u> on the provision of a fair opportunity to respond prior to disclosure of allegations notes that the ABC, in the course of fulfilling its statutory duty to provide independent news and information, reports allegations including about action or inaction

that may be unlawful, improper, incompetent, negligent, corrupt, dishonourable or antisocial. To make such disclosures in the public interest is a core function of the media in a free society. One of the recognised standards of journalism is the provision of an opportunity to respond to allegations. It is fundamental to fairness. Providing an appropriate opportunity to respond to allegations also requires adequately and fairly including that response in a story.

It is worth noting that a fact or opinion which may reflect adversely on a person or organisation will not necessarily amount to an allegation as understood by standard 5.3.

# Scope

The review was based exclusively on editorial complaints data. The review examined all complaints investigated by Audience & Consumer Affairs over the period July 2016 to June 2019 where at least one issue raised in each complaint had been assessed against standard 5.3. A total of 45 complaints were identified.

Audience & Consumer Affairs also receives 5.3 complaints where the complainant does not have a sufficient interest in the subject matter of the complaint. These complaints are not accepted for investigation and are therefore not in scope for this review.

# Methodology

Complaints that were identified as being in scope were extracted from the Audience & Consumer Affairs database for statistical analysis. Individual complaint records were also analysed in detail; this included final responses to complainants, investigation reports and, where necessary, examination of interactions between Audience & Consumer Affairs investigators and content makers / editorial policy advisors that formed part of the investigations.

# **Analysis**

45 complaints in the three year period that alleged a breach of standard 5.3 were investigated by Audience & Consumer Affairs.

The majority (35) were about content that was under the editorial responsibility of News, Analysis & Investigations. Five related to Regional & Local content and five related to Entertainment & Specialist content. Programs/content that attracted the greatest numbers of 5.3 complaints that required investigation were: 7.30 (13), Online News (6), Four Corners (5) and 7pm TV News (4).

#### **Outcomes**

38 complaints (85%) were not upheld

6 complaints (13%) were upheld

1 complaint (2%) was resolved\*

Two of the upheld complaints were from separate complainants for the same piece of content and these represent one distinct editorial breach. Distinct breaches are the most useful and meaningful measure of editorial compliance, so the table below reflects this measure. (Multiple complaints for the same content are retained in brackets).

Content team	Not Upheld	Resolved	Upheld	Total
Entertainment & Specialist	5			5
News, Analysis & Investigations	29 <i>(31)</i>	1	2 (3)	32 <i>(35)</i>
Regional & Local	2		3	5
Total	36 <i>(38)</i>	1	5 <i>(6)</i>	42 (45)

Summaries of all complaints <u>upheld</u> and <u>resolved</u> by Audience & Consumer Affairs are publicly available on the ABC's website. More serious or noteworthy complaints are also reported to the ABC Board. In the case of the 5.3 investigations in scope for this review, all of those that were upheld or resolved were reported to the Board.

#### Observations on upheld complaints

Why was a response not sought or not presented appropriately?

#### <u>Inadequate efforts</u>:

#### **ABC Radio Drive**

An interview included allegations against a media organisation in relation to its dismissal of a staffer. Previous public statements on the issue by the media organisation were not included in the broadcast and in this respect, the interview was not in keeping with the ABC's editorial standards for accuracy. Further, greater efforts should have been made to offer the media organisation an opportunity to respond.

In this case, the program team made a call to the relevant party to see if they would participate in the discussion, but that call went unanswered. Given the circumstances, further efforts should have been made prior to the program going to air to ensure that the relevant party was aware of the offer to participate. Additionally, once allegations were aired in some detail during the interview, further efforts should have been made to offer an opportunity to respond. There was no indication as to why this did not occur in this instance.

\* In accordance with the ABC Complaint Handling Procedures, a complaint is resolved where the division takes steps to remedy the cause of complaint usually prior to or within 30 days of the ABC receiving the complaint, and the steps are considered by Audience and Consumer Affairs to be appropriate such that further processes to uphold, partly uphold or not uphold the complaint would add nothing of substance.

#### <u>Failure to recognise an allegation</u>:

#### **ABC News Online article**

A story included an allegation by an Aboriginal elder about a decision made several years ago by a federal minister at the time. Audience & Consumer Affairs found that more context was needed to advise readers about the complex history of the decision. Further, the allegations included in the story were not put to the former minister to provide him with an opportunity to respond.

Editorial remedy: The article was amended to provide further context and ABC Regional subsequently extended an invitation to the former minister to provide comments in response to the allegations against him for inclusion in the story. An Editor's Note was added to explain the additional context and to acknowledge that allegations were not put to the former minister. A link to the investigation finding was included in the Editor's Note. The former minister did not provide further comments.

In this case, the reporter did not seek a response because he did not consider that comments in his story could be construed as allegations and standard 5.3 was therefore not triggered. However, the reporter's line manager, the content area's editorial policy advisor and Audience & Consumer Affairs all agreed that the comments constituted an allegation.

#### 7.30

A story investigated the reasons for an underspend in a federal government program, which was highly newsworthy and of considerable public interest. The story included allegations that the scheme was unnecessarily behind schedule and that people were not receiving adequate support or that their support was delayed. Given the allegations made in the story, there was a requirement for 7.30 to provide a fair opportunity to the relevant agency to respond.

Editorial remedy: An Editor's Note was added to the online story and the agency was subsequently provided with an opportunity to respond to the story, which was declined.

The reporter believed that previous comments by a minister, which were included in the story, fully covered the issues in the story as they related to a government agency. However, fresh, specific issues were raised in the report. The program requested an interview after broadcast to give the relevant agency a substantial opportunity to respond to the issues raised in the story. That agency declined and directed the program to the relevant minister's office. However, the program did not consider the minister to be the appropriate person to approach given that his response would likely be more politically focussed, especially on the eve of an election. Whilst the program attempted to resolve the matter by offering the agency an interview after the story was aired, Audience & Consumer Affairs noted that it remained the case that there was no response to criticisms made in the story. Audience &

Consumer Affairs accepted that it was the program's prerogative whether or not to interview the minister, but pointed out that he was the minister responsible for the agency and that the story was in fact political.

#### Failure to include response to allegation:

#### Television news

A special report on the environmental impact of a by-product of coal fired power stations implied that an industry was in some way abusing its market position to stifle the repurposing of the by-product.

Editorial remedy: An acknowledgement of this breach was published on the ABC Corrections & Clarifications webpage.

For this story, the reporter did provide a fair opportunity for a relevant party to respond prior to broadcast and that party did so with a statement. However, no part of the statement was included in the story. Whilst a line from the statement was included in an online story, it was cut from the TV story due to story-length constraints.

#### AM and ABC News Online

Reports included the accounts of three people who claimed to have had a negative experience using a government scheme and alleged that they were disadvantaged by it. The relevant minister and the local MP made themselves available for an extensive interview the day before the reports were aired and published. During the interview only the specific claims of one participant in the trial were put to the minister and local MP. The local MP refuted the claims but this was not included in the reports. Other participants' claims of being disadvantaged by the scheme were not put to the minister or relevant department.

Responses provided to the reporter addressing the specific concerns of the participants should have been incorporated into the reports. The minister was not provided with a fair opportunity to respond to the concerns of two of the trial participants. Additionally, a statement in *AM* was inaccurate.

Editorial remedy: The program posted substantive Editor's Notes on both reports which included the minister's response to allegations. A correction was also published on the ABC Corrections & Clarifications webpage. In response to further contact by the complainant, *AM* broadcast a correction in a subsequent program.

In this coverage, the program team felt that multiple perspectives were aired in the course of the story and that the relevant party's view was given adequate airtime. The program considered that a broad statement from the relevant party that "those facing issues can seek help at dedicated support centres" was an adequate form of response. However, as

part of the investigation process, the program area conceded that specific responses to specific allegations should have been included in the story.

While the number of cases where a breach was identified is small, we observe:

- Recognising when a claim amounts to an allegation is fundamental. Including a
  person or organisation's general perspective will not necessarily satisfy the
  requirements of 5.3. Where there is a specific allegation, a specific response should
  be sought and, where provided, included in the broadcast or publication.
- The more serious the allegations, the greater effort required to provide a fair opportunity to respond. An unsuccessful attempt at contact prior to publication may not be sufficient.
- Providing a fair opportunity to respond can help to protect against inaccuracy.

#### Observations on not upheld complaints

The majority (84%) of complaints investigated against standard 5.3 resulted in not upheld findings because Audience & Consumer Affairs was satisfied that the content which was the subject of the complaint complied with the standard.

There were several complaints where Audience & Consumer Affairs considered that there was no requirement for efforts to be made to provide an opportunity to respond. These included cases where remarks in question did not amount to an allegation or made no reference to any person or organisation.

#### <u>Decision not to seek a response reasonable in the circumstances:</u>

There were also cases where allegations were made in content, but Audience & Consumer Affairs considered that it was reasonable *not* to seek comments. For example, a *Background Briefing* story included the personal story of a man who made allegations about his expartner's threatening behaviour. The program did not disclose the man's identity nor identify the alleged perpetrator. Although the story was found to require more context to make clear that this was the man's account of what he said happened to him, in the circumstances and considering concerns the man expressed about his safety, Audience & Consumer Affairs considered that it was reasonable not to seek comments from the other party to include in the report. In another example, the executor of the estate of a deceased man complained that news reports included claims that the man was suspected of criminal activity, despite never being charged. The deceased man had no immediate next of kin, he had never married and had no children. In ABC News' view, it would have been inappropriate to approach more distant family members for comment and ABC News also

considered that his estate, charged with dealing with his financial affairs, was not in a position to comment on alleged criminal offending. Audience & Consumer Affairs was satisfied that this approach was reasonable and in keeping with the editorial standards.

#### Reasonable efforts made, but no response provided:

In some cases, content areas made reasonable requests for parties to participate but those requests were declined or the relevant party did not respond to the specific allegations put to them. There were different ways of handling this and remaining compliant with standard 5.3. One example is a *Four Corners* program that looked at serious misuse of taxpayers' money and included a case study of a corporation in the Northern Territory. The program contacted the organisation a week in advance of heading to the location and made no less than six further attempts to offer the CEO an interview to gain her detailed perspective on the issues canvassed in the segment. She did not make herself available for interview. Nonetheless, the program did include the CEO's perspective in a voiceover which stated that she had later sent a statement saying that whilst the organisation was not perfect, it works hard for the most disadvantaged people in the region. Further, two relevant letters were posted on the *Four Corners* website and referred to in the broadcast.

In another example, a *Four Corners* program examined some of the dangers of some surgeries. It included allegations from a patient that she suffered negative effects following a procedure from a particular doctor. The reporter made several telephone calls to the doctor's office to inform her that one of the case studies being included in the episode would focus on her patient and requested the doctor's participation in the report and offered an on-camera interview. The doctor's office requested further details in writing, which the reporter provided; the email specifically identified the nature of the program and the reasons why it sought her participation. The doctor's office later contacted the reporter and advised that she did not want to be interviewed or to respond to the program's written questions. The broadcast informed viewers that the doctor did not wish to speak with the program. Audience & Consumer Affairs was satisfied the program exhibited openmindedness and fair treatment in engaging with the doctor's office on multiple occasions, including the offer of an on-camera interview and sending an email specifically identifying the issues that would be examined in the report, affording her a fair opportunity to respond and to present her version of events.

#### Adequate time given to respond:

Some complainants raised specific concern that inadequate time was given to respond. The Guidance Note provides advice on this aspect, noting that the amount of time which is reasonable to allow for a response before an allegation is made public depends in every case on the circumstances. One complainant said that a story alleged that an energy enterprise prioritised profit over energy security and that the business was only offered a right of reply at 3:30pm on the same day the story was intended to air on the 7pm TV news.

ABC News advised that it "is not unusual and it is widely expected that a corporation of this size with a communications team would be able to make someone or some comment available. It was [by] no means a token last minute offer, it is part of our daily business that stories of interest sometimes occur later in the day and corporations respond." Given the size and prominence of the corporation in its market and that it has a dedicated communications team, Audience & Consumer Affairs agreed that the request from ABC News was not unreasonable. The corporation provided a written response to the reporter's questions at 4:16pm, which was included in the report, and confirmed that no interviews would be given.

# Australian Communications & Media Authority

During the three year period, the Australian Communications and Media Authority (ACMA) finalised four investigations – summarised below – that included consideration of compliance with standard 5.3. In each case, the ACMA found that the broadcasts complied with standard 5.3. A further four cases raising concern about compliance with standard 5.3 were referred to the ACMA, but were not accepted for investigation.

#### 7pm News

Complaint: A report contained information about allegations of criminal activity made against a man who was now deceased.

ACMA finding: The ACMA accepted that the report contained allegations of unlawful action which attracted the operation of standard 5.3, but found that the efforts made by the ABC had been reasonable in the circumstances, given that the man was deceased and had no immediate next of kin. The ACMA did, however, conclude that the requirement for due impartiality had not been satisfied, in part because the report did not explicitly include the man's earlier denials (both publicly and to ABC News) of these very serious allegations.

#### 7.30

Complaint: A company was given unreasonably limited time to respond to allegations and its comprehensive rebuttals were only referred to in two sentences towards the end of the report.

ACMA finding: The ACMA accepted that the report contained allegations of unlawful and improper action, triggering the operation of standard 5.3. The ACMA was satisfied that, having notified the company of the impending story more than 24 hours prior to broadcast and having included the company's stated position on the matters of contention canvassed in the report, the company was given a fair opportunity to respond.

#### 7.30

Complaint: A company which was the subject of allegations made by former and current employees about its workplace practices was not dealt with fairly. It complained that the placement of its response in the report compromised its effect and that it was not given the opportunity to view relevant footage prior to the broadcast.

ACMA finding: The ACMA considered that the allegations that the company's practices raised safety concerns were serious and related to potentially improper conduct with attracted the operation of standard 5.3. The ACMA noted that the allegations were presented in the report as being unproved and contestable. It observed that the ABC had provided the company with a reasonable opportunity to respond to allegations about the safety concerns examined in the report, and had included the company's statements in the report. In these circumstances, the ACMA considered that the ABC was not obliged to provide the company with footage prior to the broadcast.

#### 7.30

Complaint: The complaint was made by the same company referred to in the above summary.

ACMA finding: The ACMA considered that allegations that the company's practices raised safety concerns were serious and related to potentially improper conduct, attracting the operation of standard 5.3. The ACMA again noted that the allegations were presented in the report as being unproved and contested; the allegations were put to the company prior to broadcast and the company's response was included in the report. The ACMA noted that the ABC is not required to put all of the material it has supporting allegations to a party prior to broadcast, and in this instance there was no obligation to put certain matters to the company before broadcast. The ABC had reached the view that these final matters did not amount to allegations that would trigger standard 5.3.

### Conclusion

Given the significant, public interest journalism undertaken by the ABC during this three-year period, the number of complaints raising concerns about provision of a fair opportunity to respond is very low, and the number of instances where problems were identified is lower still. Compliance with standard 5.3 is, overall, sound.

There was no indication of any systemic failings by content areas around complying with this standard. It is notable, however, that content which fell under the editorial responsibility of the Regional & Local team was overrepresented in the number of breaches. While the overall numbers are very small, three out of the five complaints about Regional & Local content that were investigated were found to be non-compliant (60%). This compared to zero out of five for the Entertainment & Specialist content area and two (distinct breaches) out of 32 (6%) for News, Analysis & Investigations.

# Recommendation

Editorial Policies should work with Regional & Local to heighten awareness of standard 5.3, and review and refresh training strategies.