

ZFA Submission to the Independent Review of ABC Complaint Handling

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

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

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

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

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

REPRESENTATION. ADVOCACY. CONNECTION.

• President Jeremy Leibler • Chief Executive Officer Ginette Searle •

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

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

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

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

A lack of transparency

The ABC publishes summaries of the complaints it upholds¹ or resolves². It also publishes a statistical overview of its responses to the complaints it has received.³ This statistical overview is provided as yearly statistics (e.g. in 2020, the ABC received 3701 editorial complaints and upheld 87 issues raised therein).

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

That in the first three-quarters of 2021, the ABC complaints department upheld only 0.29 per cent of the 1024 allegations of bias made in complaints⁵ suggests either an inadequate complaints process or a material disconnect between community expectations and ABC reporting. It is impossible to determine which is the case because, without being able to view the complaints and responses, one cannot judge whether or not the Audience and Consumer Affairs (ACA) team have responded fairly to the complaints.

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

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

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

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

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

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

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

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

Recommendation 1

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

A lack of independence

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

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

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

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

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

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

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

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

Recommendation 2

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

A public media compliance office

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

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

Recommendation 3

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

A lack of oversight

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

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

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

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

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

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

Behind the News

In June 2021, the ZFA made complaints to the ABC regarding two separate *Behind the News* programs.⁸ The programs sought to explain the May 2021 Hamas–Israel violence. In its complaint, the ZFA showed how, even though both Israeli and Palestinian perspectives of the violence had been presented, the episodes remained deeply biased, due to the way they were presented. Among other observations, the ZFA noted that:

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

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

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

Q&A

ACA made a similar response to the ZFA’s complaint⁹ about the 27 May 2021 Q&A episode, which aired both Israeli and Palestinian perspectives, but in a highly biased way (i.e. the Palestinian perspective was given more airtime and the panel included two people professionally involved in the Palestinian cause, but no people involved in the Israeli cause).

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

⁸ See “Behind the News complaint, 19 May 2021”, ZFA, 7 June 2021, <https://www.zfa.com.au/wp-content/uploads/ZFABTNComplaint19May.pdf> and “Behind the News complaint, 25 May 2021”, ZFA, 7 June 2021, <https://www.zfa.com.au/wp-content/uploads/ZFABTNComplaint25May.pdf>.

⁹ See “Q&A complaint, 27 May 2021”, ZFA, 24 June 2021, <https://www.zfa.com.au/wp-content/uploads/01ZFAComplainttoABCQandAJune2021.pdf>.

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

ABC News website

On 19 May 2021, the ABC News website published an article with three Palestinian Australians and three Jewish Australians offering their thoughts on the then-ongoing Hamas–Israel violence.¹⁰ On the face of it, this might appear to be balanced reporting. However, all three Palestinian Australians interviewed expressed strong support for the Palestinian narrative, and strong criticism of Israel. Of the three Jewish Australians interviewed, two expressed strong support for the Palestinian narrative, and strong criticism of Israel.

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

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

It is of note that, in 2021, several ABC journalists signed an open letter calling on Australian media to ‘do better on Palestine’.¹¹ The letter specifically called on media to drop ‘both siderism’ and emphasise the Palestinian narrative. What this shows is that the letter’s signatories know full well that *how* an issue is presented influences an audience, and that they wish to influence the Australian public *through their reporting* to be more sympathetic to the Palestinian cause.¹²

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

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

¹⁰ See “Australia's Palestinian and Jewish communities watch from afar as Palestinian-Israeli crisis escalates”, ABC, 19 May 2021, <https://www.abc.net.au/news/2021-05-19/australian-palestinian-and-jewish-community-react-to-conflict-/100138740>

¹¹ See “Open letter from Australian journalists, media workers, writers and commentators”, 14 May 2021, <https://dobetteronpalestine.com/>.

¹² The ZFA notes that the author of the previously mentioned “Australia's Palestinian and Jewish communities watch from afar as Palestinian-Israeli crisis escalates” article is **not** a signatory of the ‘Do better on Palestine’ letter.

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

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

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

Recommendation 4

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

An ineffective appeals mechanism

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

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

The ACMA is an independent body and adjudicates its investigations fairly, if extremely slowly. For instance, an ACMA investigation finalised in November 2020 was commenced in November 2019 (about a program broadcast in July 2019).¹⁴ Similarly, an investigation was finalised in July 2021 about a program that was broadcast in August 2020.¹⁵ The ZFA notes that an ACMA investigation, launched in August 2021 as a result of a ZFA appeal about a May 2021 program, is ongoing.

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

The ACMA opens relatively few investigations, and these take too long to be finalised. Further, that its findings can be—and are¹⁶—ignored by the ABC diminishes the ACMA's relevance as an appeals body.

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

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

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

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

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

Several news articles¹⁷ and commentary¹⁸ have cited a 2018 ANAO report into ABC complaints handling as finding that the ABC “effectively manages complaints”.

A citation of the ANAO report, with the much-quoted phrase “effectively manages complaints”, appeared in the ABC statement announcing the current review¹⁹ and in ABC Editorial Director Craig McMurtrie’s ‘backstory’²⁰, published 15 November 2021, which explained the ABC complaints mechanism.

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

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

The ANAO report clearly states:

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

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

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

¹⁷ For example, “ABC complaints process under review”, The Australian, 17 October 2021, <https://www.theaustralian.com.au/business/abc-complaints-process-under-review/news-story/81d4e9f8e5d88400b06ee733f88d5f05>

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

²³ See "Q&A complaint, 27 May 2021", ZFA, 24 June 2021, <https://www.zfa.com.au/wp-content/uploads/01ZFacomplainttoABCQandAJune2021.pdf>.