



**Australian Government**  
**Australian Communications  
and Media Authority**

## Investigation Report Nos. 1418, 1474

<b>File No.</b>	2004/0965, 2004/2141/1
<b>Broadcaster</b>	Australian Broadcasting Corporation
<b>Station</b>	ABC TV
<b>Type of Service</b>	National Broadcaster
<b>Name of Program</b>	<i>Four Corners</i> – ‘Lords of the Forests’
<b>Date of Broadcast</b>	16 February 2004
<b>Relevant Code</b>	Clauses 4.1, 4.2 and 4.3 of the <i>ABC Code of Practice 2002</i>

### Investigation Findings

The Australian Communications and Media Authority (ACMA) finds that the Australian Broadcasting Corporation (ABC), in relation to the *Four Corners* program, ‘Lords of the Forests’ broadcast on 16 February 2004:

- breached clause 4.1 of the ABC Code of Practice (the code), in that it failed to make every reasonable effort to ensure that factual content of the program was accurate in relation to the discovery of Tasmania and the nature of Huon Pine, and failed to correct the errors in a timely manner. Accordingly, the complaint was justified (see pages 6-7);
- breached clause 4.2 of the code, in that it failed to make every reasonable effort to ensure that the program was impartial. Accordingly, the complaint was justified (see pages 16-25);
- did not breach clause 4.1 in relation to certain contested facts (see pages 8-9), where the alleged factual inaccuracies relate to statements of opinion (see page 9) and in relation to the claim that the Regional Forest Agreement exempts Tasmania from Commonwealth threatened species laws (see pages 10-11);
- did not breach clauses 4.2 or 4.3 of the code in relation to balance (see pages 11-16).

## The Complaints

On 13 May 2004, 23 December 2004 and 13 January 2005 the former Australian Broadcasting Authority (the ABA) received three separate complaints regarding 'Lords of the Forests', a *Four Corners* program broadcast by the Australian Broadcasting Corporation (ABC) on 16 February 2004.

The complainants are hereafter referred to as Complainant A, Complainant B and Complainant C. The Australian Communications and Media Authority (ACMA) has dealt with all three complaints together as they cover similar issues.<sup>1</sup>

All of the complainants alleged that the program was not accurate, balanced or impartial and that it breached clauses 4.1, 4.2 and 4.3 of the *ABC Code of Practice 2002* (the code), being the relevant code at the time of the broadcast. Complainant A raised 63 separate matters, Complainant B raised 15 matters and Complainant C raised 21 separate complaints. The complaints by Complainants B and C were reviewed together by the ABC's Independent Complaints Review Panel (ICRP).

In summary, the complainants allege that:

- the program contained factual inaccuracies;
- the program did not provide evidence to support the claims of corruption and intimidation in the forestry industry;
- the program was not balanced or impartial as it favoured the anti-forestry perspective;
- information for the program was sourced mostly from persons opposed to the forestry industry. Their accusations were given undue weight, were not challenged or put to forestry industry representatives for a response;
- representatives of the forestry industry were presented in a poor light, quoted selectively and given unequal treatment. The material presented immediately before or after their opinions reduced their credibility; and
- the program used sensationalist and emotive language to present the forestry industry in a poor light.

## The Program

*Four Corners* is a current affairs program broadcast on Monday nights at 8.30pm and typically repeated on Wednesdays at 11.00pm.

*Four Corners* is described on the ABC website as follows:<sup>2</sup>

*Four Corners* is Australia's premier television current affairs program.

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<sup>1</sup> The investigation commenced by the ABA was continued by ACMA in accordance with cl.11 of schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.

<sup>2</sup> <http://www.abc.net.au/4corners/about.htm> (accessed by ACMA on 20 May 2005)

It has been part of the national story since August 1961, exposing scandals, triggering inquiries, firing debate, confronting taboos and interpreting fads, trends and sub-cultures.

Its consistently high standards of journalism and film-making have earned international recognition and an array of Walkleys, Logies and other national awards. The program's current team of reporters...maintain a proud tradition of investigative journalism and rigorous analysis.

'Lords of the Forests' reported on the forestry industry in Tasmania. Key themes explored in the program were:

- The alleged close connection between the Tasmanian government and the forestry industry, in particular the connection between Gunns Limited and Forestry Tasmania.
- Allegations that the Tasmanian forestry industry is exempt from legislative oversight in favour of state-based monitoring by bodies with close connections to the industry.
- Allegations that the Tasmanian government is allowing the forests, a public asset, to be sold to a private company at the expense of the environment and the economic development of Tasmania.

## Investigation Process

### Relevant Material

In assessing the complaints, the Australian Communications and Media Authority (ACMA, formerly the ABA) has had regard to the following material:

- a video recording of the broadcast provided to the former ABA by the ABC on 14 July 2004;
- a transcript of the *Four Corners* broadcast from the ABC website;<sup>3</sup>
- the complainants' original complaints to the ABC and the ICRP and the ABC's responses;
- the complainants' letters of complaint to the former ABA;
- correspondence provided to ACMA by the complainant in an earlier complaint<sup>4</sup>;
- material accessed via the ABC website; and
- the ICRP's report into the complaints made by Complainants B and C.

### Matters Investigated by ACMA

Complainant A has complained about 63 individual matters, and has referred in detail to the program's transcript. Complainant B has asked ACMA to investigate 15 separate matters. Complainant C has raised 21 individual complaints. There is substantial overlap in the substance of the complaints and ACMA has therefore investigated the complaints together. ACMA has assessed the complaints by grouping related matters together as they relate to issues raised under the ABC Code, rather than considering each matter individually. In particular, the issues of balance and impartiality must be assessed over the program as whole.

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<sup>3</sup> <http://www.abc.net.au/4corners/content/2004/s1132778.htm> (accessed by ACMA on 20 May 2005)

<sup>4</sup> ABA Investigation number 1397

## **Issues Raised under the ABC Code**

- ACMA has assessed the complaints under the following clauses of the ABC code: accuracy (clause 4.1), impartiality (clause 4.2) and balance (clauses 4.2 and 4.3).

## **Matters Not Investigated by ACMA**

### ***Clause 5.2***

In its original complaint to the ABC, Complainant C alleged that the program breached clause 5.2 of the code<sup>5</sup>. Section 5 of the code applies to ‘all programs with significant factual content *which do not comprise* both news and information relation to current events’ (emphasis added). ACMA considers that clause 5.2 does not apply to *Four Corners* as *Four Corners* is a news and information program relating to current events. For current affairs programs, the relevant section of the code is section 4, and the relevant accuracy provision is clause 4.1. ACMA has therefore not investigated the complaints under clause 5.2.

### ***Allegation of unattributed vision***

Complainant B claims that the ABC used unrelated or unsourced footage in three instances, in breach of clause 6.10 of the ABC’s Editorial Policy. ACMA does not have jurisdiction to investigate matters under the ABC’s Editorial Policy and is only able to investigate matters under the ABC Code. ACMA considers that this matter does not raise any issues under the ABC Code and has not investigated this issue.

### ***Allegation that a forestry industry person was invited to appear in silhouette and make derogatory comments about the industry***

Complainant C claims that the reporter invited a person in the forestry industry to appear on screen in silhouette and make derogatory comments about Forestry Tasmania and the industry. The ABC denies that such a person was approached. ACMA is only able to investigate matters that were actually broadcast. In this case, as no such interview broadcast on the program, ACMA considers that this matter does not raise any issues under the ABC Code and has not investigated this issue.

### ***The ABC’s response to the ICRP’s findings***

Complainants B and C allege that the ABC did not publish an appropriate on-air or on-line apology or correction in response to the ICRP findings. As stated above, ACMA can only investigate matters arising under the ABC Code. The ABC’s response to the ICRP’s findings does not raise any issues under the ABC Code and ACMA has not investigated this issue. If ACMA finds that the ABC has breached the accuracy provisions of the Code, ACMA will consider the manner and timeliness of the corrections, as they relate to those particular breaches.

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<sup>5</sup> Clause 5.2 applies to factual programs which do not comprise both news and information relating to current events and requires that ‘every effort must be made to ensure that the factual content of such programs is accurate and in context and does not misrepresent viewpoints.’

## **Accuracy**

### **Relevant Code provision**

#### **4. News and Current Affairs Programs**

This section applies to all programs produced by the News and Current Affairs Division of the ABC and other information programs that comprise both news and information relating to current events. ABC programs with significant factual content, which do not comprise both news and information relating to current events, are dealt with in section 5 below.

- 4.1 Every reasonable effort must be made to ensure that the factual content of news and current affairs programs is accurate. Demonstrable errors will be corrected in a timely manner and in a form most suited to the circumstances.

### **Interpretation of Code provision**

The Code requires that every reasonable effort be made to ensure that factual content in news and current affairs programs is accurate. In determining whether the requirements of the Code have been met, ACMA considered what an 'ordinary reasonable viewer' would have understood the program concerned to have conveyed. Courts have considered an ordinary reasonable listener or viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. An ordinary, reasonable listener does not live in an ivory tower, but can and does read between the lines in the light of that person's general knowledge and experience of worldly affairs.<sup>6</sup>

Where ACMA has found that programs did not convey inaccuracy to an ordinary reasonable viewer, ACMA has found that the requirements of the code have been met. Where ACMA has found that programs did convey inaccuracy, to an ordinary reasonable viewer, ACMA has considered this fact and such other relevant material as is available to it, including material provided by way of submission, in determining whether or not every reasonable effort was made to ensure the code requirement was met.

The requirement for accuracy applies to factual content only. Expressions of opinion, implications and inferences do not constitute factual content and are not subject to the requirement to make every reasonable effort to ensure accuracy.

There is a need to ensure that the manner in which facts are presented is not misleading. In this regard, the omission of certain facts does not automatically render a report inaccurate. However, where a report selectively presents factual information that supports only one viewpoint, there is a risk this may result in inaccuracies.

Minor factual errors such as an insignificant misdescription of some kind may not amount to a breach of the code. What is considered 'minor' and where a line should be drawn between an inaccuracy that is significant to the extent that it does amount to a breach of

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<sup>6</sup> *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at 164-167

the code and an inaccuracy that does not amount to a code breach are not matters that are subject to prescribed rules and need to be considered on a case-by-case basis.

### **Issue 1: Matters where the ABC has acknowledged factual inaccuracies**

The ABC has acknowledged that ‘Lords of the Forest’ was inaccurate in relation to three matters:

- The report incorrectly stated that Tasmania was ‘discovered’ by Van Dieman, when it was ‘discovered’ by Abel Tasman.
- The report incorrectly stated that huon pine is a hardwood and mingles with common eucalypts. Huon pine is not a hardwood.
- A map of Tasmania gave the false impression that only part of south-west Tasmania is reserved from timber harvesting. The ABC acknowledged that the map was oversimplified and misleading. It was not detailed enough to indicate smaller areas outside south-west Tasmania which also form part of the reserve.

The issue concerning the map of Tasmania was considered by the former Australian Broadcasting Authority (ABA) in its investigation report no. 1397 dated 3 February 2005 and is not reconsidered in this investigation.

The ABC has not asserted that such inaccuracies occurred despite it making reasonable efforts to ensure the program was accurate.

#### ***Did the ABC correct the errors in a timely manner in a form most suited to the circumstances?***

Clause 4.1 of the ABC Code requires that ‘demonstrable errors will be corrected in a timely manner in a form most suited to the circumstances’. The ABC advised<sup>7</sup> that *Four Corners* published corrections to the ‘Lords of the Forests’ report on its website on 11 May 2004. The errors were also acknowledged in the ABC’s *Public Report on Audience Comments and Complaints (January to March 2004)*<sup>8</sup>, which is also available on the ABC website. The date of the report is unknown. When ABA staff accessed the ABC website on 12 May 2004<sup>9</sup> it was noted that the page included errata relating to the discovery of Tasmania, the incorrect statement regarding Huon pine and the map of Tasmania.

In the ABA’s investigation<sup>10</sup>, the ABC advised the ABA that it had published a corrected version of the Tasmania Map on the *Four Corners* website for the following reasons:

- the very detailed reserves area map was more suited to being displayed on the website, which would allow the true location of the reserves to be accurately and clearly represented to audiences, rather than in a quick televised graphic.

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<sup>7</sup> The ABC advised a complainant who had lodged an earlier complaint (investigation number 1397) by way of a letter dated 21 April 2005 that the errata were published online on 11 May 2004. The earlier complainant then forwarded a copy of that letter to the ABA. This information was received by the ABA on 3 May 2005.

<sup>8</sup> See letter from ABC to ABA dated 9 July 2004

<sup>9</sup> [http://abc.net.au/4corners/content/2004/20040216\\_forests/default.htm](http://abc.net.au/4corners/content/2004/20040216_forests/default.htm)

<sup>10</sup> ABA investigation 1397

- the *Four Corners* website has become an authoritative reference for those interested in the program. It features story updates, forums for audience participation, feedback from viewers and transcripts of extended interviews which may feature only briefly in the program.
- the *Four Corners* website is one of the most visited resources on ABC Online.

#### **ACMA's assessment**

ACMA has considered whether a website correction, as opposed to an on-air correction, was a form most suited to the circumstances. Given the nature of the inaccuracies and the fact that they go to fine detail together with the widespread reach of the *Four Corners* website, ACMA is satisfied that a website correction was a form most suited to the circumstances.

ACMA has considered whether the errors regarding the discovery of Tasmania and the nature of Huon pine were corrected in a timely manner. The ABC acknowledged the errors (to the complainant in the earlier investigation) on 8 April 2004.<sup>11</sup> However, the website corrections were not made until 11 May 2004, almost 3 months after the date of broadcast. Two of the errors were acknowledged in the *Public Report on Audience Comments and Complaints (January to March 2004)*, but this report does not have the widespread audience reach of the *Four Corner's* website. Given the delay in publishing the website corrections, ACMA is not satisfied that the errors were corrected in a timely manner.

ACMA notes the decision of the former ABA<sup>12</sup> which found that the error regarding the map was corrected in a timely manner. However, ACMA declines to follow the ABA's decision. In this regard, it is noted that the former ABA's decision was made in February 2005. At the time of that decision, the actual date of the correction posting was not known. Subsequently, the ABA received written confirmation via the complainant in the earlier investigation (see footnote 6 above) that the ABC had posted the website correction on 11 May 2004. ACMA considers that at the time of the breach in relation to the map, the ABA focused on the knowledge that the correction was on the website at the time of the ABA investigation and paid insufficient attention to when the actual posting had been made.

#### **Finding**

ACMA is of the view that the ABC breached clause 4.1 of the code in that it failed to make every reasonable effort to ensure the factual content of the program was accurate in relation to the discovery of Tasmania and the nature of Huon Pine and that it failed to correct the errors in a timely manner. Accordingly, the complaint is justified.

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<sup>11</sup> See letter from ABC to earlier complainant dated 8 April 2004

<sup>12</sup> Investigation number 1397

## **Issue 2: Alleged factual inaccuracies regarding contested facts**

The complainants allege that a number of statements in the program were factually inaccurate. For example, the complainants dispute the accuracy of the reporter's claims that:

- some trees in Tasmania are 90 metres tall and were present when Tasmania was 'discovered';
- 'up to three quarters of the forest [is] pushed into windrows';
- the footage of plantation sites inferred that these were ex-native forests;
- the life-cycle of regenerated native trees is 'short', as many trees are grown on a 90 to 100 year cycle and are bred to clear fell;
- 5 million tonnes of wood chips are exported to Japan each year ;
- 'to qualify as old growth, forests must have been undisturbed since white man's arrival';
- 'every year, plantations creep closer to St Helens';
- the 'go-ahead' for clear-felling was given in 1997;
- Tasmania had planned to pull out of old growth clear felling and chipping by 2010
- Forestry Tasmania is exempt from Freedom of Information laws; and

The ABC submits that the statements were accurate and were based on the available evidence.

### **ACMA's assessment**

The above statements relate to complex and technical matters where the facts are open to interpretation. Both the complainant and the ABC contend that their version of the facts is correct. In circumstances where the facts are contested by both parties, the issue for ACMA is whether the ABC made every reasonable effort to ensure that the factual content of the material presented was accurate. It is not necessary for the ABC to present every available fact on a particular issue.

The ABC has reviewed its evidence and continues to maintain that the relevant statements are accurate. There is no independent evidence before ACMA to demonstrate that the reporter's statements were inaccurate and breached clause 4.1 of the ABC Code. ACMA finds no evidence upon which it could conclude that the program did not make reasonable efforts to ensure accuracy. For example, the program relied on information from two local councillors and information provided by Forestry Tasmania at a land use inquiry, to support the claim that forest plantations are creeping closer to St Helens.

In relation to the claim that Forestry Tasmania is exempt from Freedom of Information laws, this is a complex and contested legal issue that is open to interpretation. It is beyond the scope of this investigation for ACMA to make a firm finding on the interpretation of this legislation. Based on the available evidence and the specific exemption in section 32A of the Tasmanian *Freedom of Information Act 1991*, it was reasonable for the ABC to conclude that Forestry Tasmania is exempt from freedom of information laws. ACMA finds no evidence upon which it could conclude that the ABC failed to make every reasonable effort to ensure that the factual content of the program was accurate.

### ***Finding***

ACMA is of the view that the ABC did not breach clause 4.1 of the code in relation to the above matters.

### **Issue 3: Whether the alleged factual inaccuracies relate to factual content or statements of opinion**

The complainants dispute the accuracy of a number of statements made by interviewees on the program. For example:

- The statements by Senator Bill Heffernan that Forestry Tasmania is exempt from the Tasmanian *Freedom of Information Act*.
- The statements by Graham Green<sup>13</sup> that the number of hardwood sawmills in Tasmania had diminished since the advent of wood chipping and that clear-felling and wood-chipping had increased.
- The statement by Naomi Edwards that Forestry Tasmania had damaged the value of the forest estate.
- The statement by Malcolm Ryan disputing the employment generated by the forestry industry.
- The statement by Alec Marr that Edmond Rouse, former chairman of Gunns, had used \$100 000 to prevent the Greens from gaining the balance of power.
- The reporting of Bill Manning's claim that members of the Forest Practices Board are 'shadowy figures'.

### ***ACMA's assessment***

The requirement for accuracy under clause 4.1 only applies to 'factual content'. Expressions of opinion, implications and inferences do not constitute factual content and are not subject to the requirement for accuracy.

In this case, the ordinary, reasonable viewer would understand that the above statements were opinions expressed by the interviewees, not 'factual content' under the code. ACMA considers that the ABC was entitled to present these statements of opinion, as they were made by those with knowledge of the forest industry. For example, Senator Heffernan's statements were made in the context of his role in the Senate Inquiry into the plantation forests industry.

### ***Finding***

ACMA is of the view that the ABC did not breach clause 4.1 of the code in relation to the above matters.

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<sup>13</sup> Spokesperson, Timber Workers for Forests.

#### **Issue 4: Accuracy of the claim that the Regional Forest Agreement (RFA) exempts Tasmania from Commonwealth threatened species laws**

The program claims that Forestry Tasmania is exempt from national threatened species laws, which ‘leaves the industry to self-regulate’. The claim relates to one of the key themes explored in the program - that the Tasmania forestry industry is exempt from legislative oversight in favour of state-based monitoring by bodies with close connections to the industry. For this reason, this particular issue has been specifically examined.

The reporter states the following:

**Reporter:** But Manning alleges breaches in coupes that were the obvious habitats of endangered species like the giant freshwater crayfish and the wedge tail eagle. His allegations are serious because the deal done under the RFA exempts Tasmanian Forestry from national threatened species laws...and leaves the industry to self-regulate.

[The reporter then puts the alleged exemption to the then Deputy Premier, Paul Lennon, who denies them.]

**Reporter:** The truth is that Tasmanian Forestry is exempt from national threatened species laws. There are State threatened species laws, but these too can be ignored, provided approved forest plans are followed. In Tasmania, forestry runs under a code of practice which the industry itself regulates through the Forest Practices Board. This board failed to prosecute over any of Manning’s alleged 100 breaches.

#### ***Complainants’ submissions***

The complainants allege that this information is incorrect as the Tasmanian Regional Forestry Agreement (RFA) has a sophisticated framework in place for the management of threatened species. Complainant A states that the framework includes the Forest Practices Codes, a legally enforceable document under the Tasmanian *Forest Practices Act 1985*. Complainants B and C claim that a Regional Forestry Agreement must satisfy a number of conditions and the Tasmanian system was accredited by the Commonwealth as meeting or exceeding national standards.

#### ***ABC’s submission***

The ABC submits that the statement was fair and accurate and was based on legal advice. Section 38, Part 3 of the Commonwealth *Environmental Protection and Biodiversity Act 1999* (the EPBA) specifically exempts RFAs from the requirements for environmental approvals. The reporter qualifies her claim by acknowledging that there are state threatened species laws, but these can be ignored, provided forest plans are followed.

#### ***ACMA’s assessment***

ACMA understands that there is a complex system in place between the Commonwealth and Tasmanian governments for forest management. While there is a specific exemption in the EPBA for RFA forestry operations, some of the principles in the EPBA have been incorporated into the RFAs. An RFA must satisfy a number of conditions. There also

appears to be a system of state based monitoring which includes a system of forest practices plans.

In this context, the reporter's claims that the industry is allowed to 'self regulate' may have presented an oversimplified view of the legislative framework. However, ACMA is not satisfied that there is sufficient evidence to find that every reasonable effort to ensure accuracy was not made for the following reasons:

- The ABC had legal advice and based on the available evidence and the specific exemption in the EPBA, it was reasonable for the ABC to conclude that Tasmanian forestry is exempt from national threatened species laws.
- The reporter subsequently acknowledged the existence of a state regulatory system and forest plans and gave Paul Lennon an opportunity to deny the exemption.
- There was sufficient material presented in the program to indicate that, while this was not a clear-cut issue, viewers could make an assessment and form their own views.

### ***Finding***

ACMA is of the view that the ABC did not breach clause 4.1 of the code in that the reporter's statement that Tasmania is exempt from national threatened species legislation was not inaccurate and that every reasonable effort was made to ensure accuracy of other statements.

## **Balance**

### **Relevant Code provision**

#### **4. News and Current Affairs Programs**

This section applies to all programs produced by the News and Current Affairs Division of the ABC and other information programs that comprise both news and information relating to current events. ABC programs with significant factual content, which do not comprise both news and information relating to current events, are dealt with in section 5 below.

4.1 ...

4.2 Every reasonable effort must be made to ensure that programs are balanced and impartial. The commitment to balance and impartiality requires that editorial staff present a wide range of perspectives and not unduly favour one over the others. But it does not require them to be unquestioning, nor to give all sides of an issue the same amount of time.

4.3 Balance will be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of importance. This requirement may not always be reached within a single program or news bulletin but will be achieved as soon as possible.

### **Interpretation of Code provision**

Clause 4.2 of the Code requires that every reasonable effort be made to ensure that news and current affairs programs are balanced and impartial. Clause 4.3 of the Code requires that balance be achieved as soon as possible, though not necessarily within a single

program or bulletin. The requirements are mandatory. In determining whether the requirements of the Code have been met, ACMA considered whether an ‘ordinary reasonable viewer’<sup>14</sup> would have considered the program to be balanced.

Achieving balance in news and current affairs programs requires that the principal relevant perspectives on an issue be presented. However, the requirement does not impose an obligation to provide equal time to all participants. In previous investigations related to this requirement of the Code, ACMA has decided that balance can be achieved by the presentation of countervailing viewpoints in different programs, even though one report or program may promote a particular point of view.

## **Balance – whether principal relevant viewpoints on matters of importance were presented**

### ***Complainants’ submissions***

The complainants have raised concerns that the program was not balanced as it favoured the perspective of those opposed to the forestry industry and the logging of old growth forests. The complainants claim that information for the program was sourced mostly from forestry industry opponents. The veracity of the information they provided was not tested or challenged and was given undue weight. For example:

- There was no evidence presented to support Bill Manning’s<sup>15</sup> claims to the Senate inquiry of intimidation, deception and lack of transparency in the forest industry. His claims were not fully investigated or put into context. The Forest Practices Board was not given an opportunity to comment on Manning’s claims that his breach findings were not prosecuted.
- There was no evidence to support Senator Heffernan’s claims of intimidation and death threats to forest industry critics, skilled workers being locked out and workers being intimidated.
- Allegations of waste by the Timber Workers for Forests were put to air without questioning.
- The interview with Graham Green did not reveal that Timber Workers for Forests is affiliated with green groups.
- Alec Marr (Wilderness Society) was not asked to justify his ‘inflammatory’ comments about Evan Rolley.
- Christine Milne’s (Tasmanian Greens) claims about the Tasmanian ‘people are being ripped off in favour of’ Gunns’s profits were not questioned.
- Naomi Edwards was not introduced as an actuary with green sympathies and was not an independent expert. Alternative statistics from Complainants B and C were not presented to counter Ms Edwards’ claim that Forestry Tasmania incurred an \$11 million loss.

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<sup>14</sup> See definition of ‘ordinary reasonable viewer’ on page 5

<sup>15</sup> Former forestry officer and whistleblower

- The program only used figures from Graham Green to cast doubt on forestry industry employment figures and discredited other available figures.
- Complainant A questions Frank Strie's credentials and the description of him as a 'master forester'.
- Frank Strie's statements about 'saving' the myrtle trees were misleading.
- The reporter's claim that 'farmers are under threat' was not balanced. David Reid, a farmer who expressed this view, was not representative of most farmers in the area and is a well-known opponent of the forestry industry.
- The claim that the forest industry is subsidised because it does not pay for water was oversimplified and not balanced, as information was sourced from forest industry opponents. Payments are only required for irrigated crops, which do not include plantation forestry. Information presenting an alternative view was not shown.
- David Leaman and Senator Heffernan claimed that forestry practices had resulted in loss of water from Launceston's water catchments. An alternative view, such as a report by the Launceston City Council, was not presented.
- The allegations of bribery and corruption by the Break O'Day councillors and the allegation that Paul Lennon had attempted to block a land use inquiry were used to reinforce the reporter's preconceived view. A counter view was not presented.

The complainants allege that representatives of the forestry industry were presented in a poor light, quoted selectively, were unnecessarily challenged and were given unequal treatment. For example:

- The description of Evan Rolley (Managing Director, Forestry Tasmania) as a 'communications guru' portrayed him in a negative light.
- The questioning of Evan Rolley regarding the performance of Forestry Tasmania was 'shallow' and did not highlight Forestry Tasmania's legitimate costs or the benefits it provided.
- John Gay (Managing Director, Gunns Ltd) was questioned as if he was trying to deceive the public.
- Evan Rolley's statement that no harvesting occurs where there are endangered species was not corrected and attempted to portray him in a negative light.
- The interview with Paul Lennon and the reference to the bribery conviction of a former Gunns chairman, Edward was not balanced. The 'devil's advocate' interviewing technique was not applied equally to both sides.

#### ***ABC's submission***

The ABC submits that the program canvassed a range of views on the significant issues raised, both from forest industry advocates and forest industry opponents. It was not possible to canvass all viewpoints on every issue raised.

The ABC submits that it was legitimate to include the allegations by Senator Heffernan and Bill Manning as these were matters in the public interest, based on the evidence they

provided at a Senate inquiry. The claims made by Senator Heffernan were supported by confidential sources who refused to be named for fear of reprisals.

In relation to the credentials of those who expressed an anti-forestry view, the ABC claims that Timber Workers for Forests' anti-logging affiliations were revealed in a later interview with Paul Lennon. The ABC maintains that Frank Strie had the appropriate credentials to comment on forestry practices.

In relation to the actuary, Naomi Edwards, the ABC states that she was introduced in the context of green groups 'wheeling in' their own actuaries, but acknowledges that the program gave inadequate background relating to the development of her position in the forestry debate.

#### **ACMA's assessment**

ACMA has considered the issue of balance over the program as a whole, rather than assessing each complaint individually. In a current affairs program where complex issues are explored, it is legitimate for the reporter to present a range of views supporting a particular perspective before exploring the counter view. It is not necessary for the reporter to present all possible views on a particular issue. The issue under the Code is whether the program as a whole is balanced and presents 'principal relevant viewpoints **on matters of importance**' (emphasis added).

ACMA is satisfied that the program reflected a wide range of viewpoints from individuals and groups representing both sides of the forestry debate, including:

Bill Manning	Former Forest Practices Officer - Forest Practices Board
The Hon. Bill Heffernan	Liberal Party Senator for NSW
Graham Green	Spokesperson, Timber Workers for Forests
Malcolm Ryan	Burnie resident
David Reid	Farmer
Bill Daly	Councillor, Break O'Day
John Gay	Managing Director, Gunns Ltd
Paul Lennon	Former Tasmanian Deputy Premier and current Premier
Alec Marr	Spokesperson, Wilderness Society
Christine Milne	Former Leader, Tasmanian Greens
Rene Hidding	Tasmanian Liberal Opposition Leader
Evan Rolley	Managing Director, Forestry Tasmania
Naomi Edwards	Actuary
Frank Strie	Master Forester
Barry Chipman	Tasmanian State Coordinator, Timber Communities, Australia

Some of the specific issues raised by the complainants are discussed below.

#### **Treatment of forest industry 'advocates'**

ACMA finds no evidence upon which it could conclude that the forest industry 'advocates' were not given an adequate opportunity to deny and address the allegations made by the forest industry 'opponents'. For example:

- Evan Rolley was questioned about Bill Manning’s claims of intimidation and deception in the forest industry.
- Evan Rolley presented a counter view to Christine Milne’s opinion of Gunns’ profits.
- Barry Chipman presented a counterview to the claim that ‘farmers are under threat’.
- Paul Lennon was given an opportunity to explain why Bill Manning’s alleged breaches were not prosecuted.

It was relevant to the program’s key themes to explore the allegations that arose at the Senate inquiry and the allegations of bribery and corruption raised by the Break O’Day councillors. In the context in which they were presented, the views of forest industry ‘opponents’ were their own and were balanced by the opinions expressed by others on the program, such as Evan Rolley, Paul Lennon and John Gay.

***Credentials of ‘forest industry opponents’***

Complainant A has questioned the credentials of some of the interviewees who expressed their opinions, such as Naomi Edwards (actuary), Frank Strie (‘master forester’) and David Reid (farmer). However, there is no independent evidence before ACMA to demonstrate that these individuals were not qualified to express an opinion.

In relation to Naomi Edwards’ views, there is no evidence that she was not a qualified actuary. ACMA is satisfied that the reporter gave adequate background on her association with green groups, by stating that green groups are ‘now wheeling in actuaries’. It was clear from the context that Ms Edwards was sympathetic to the green movement. It is not problematic that she had been engaged by green groups, as each side the forestry debate is entitled to seek the opinion of experts. Evan Rolley was also given an opportunity to refute Ms Edwards’ comments about Forestry Tasmania’s profits.

***Treatment of ‘forest industry advocates’***

ACMA finds no evidence upon which it could conclude that the views of the forest industry were presented in a manner detracting from the balance of the program. Significant allegations regarding practices in the forest industry were raised at the Senate inquiry and by green groups. In these circumstances, the reporter was entitled to critically question key figures about these allegations and give them an opportunity to respond. To achieve balance, the code does not require the program to be unquestioning or to give all sides of an issue the same amount of time.

***Evidence to support Senator Heffernan’s allegations***

In relation to Senator Heffernan’s allegations of intimidation, the ABC claims they were supported by confidential sources who refused to be named for fear of reprisals. Clause 4.4 of the ABC code states that ‘editorial staff will not be obliged to disclose confidential sources which they are entitled to protect at all times’. In these circumstances, ACMA is satisfied that it was not necessary for the program to reveal the source of Senator Heffernan’s allegations of worker intimidation for all reasonable efforts to have been made by the ABC to ensure the program was balanced.

### ***Whether balance was achieved in subsequent programs***

The complainant alleges that the report was not balanced in reporting:

- the claims by David Leaman and Senator Heffernan that forestry practices had resulted in loss of water from Launceston's water catchments; and
- the allegations by Break O'Day councillors of bribery and corruption and that Paul Lennon had attempted to block a land use inquiry.

Clause 4.3 of the ABC Code states that 'balance may not always be reached within a single program or news bulletin but will be achieved as soon as possible'. ACMA understands that the ABC News (Tasmania) included an item the following night (17 February 2004), which canvassed a number of issues raised in the *Four Corners* program. In the news item, Paul Lennon and the Break O'Day Mayor denied that Paul Lennon had put pressure on the council to cancel a land use inquiry. A spokesperson for Esk Water was also quoted stating that there were no problems in satisfying water demand in Launceston. ACMA is satisfied that the ABC aired a counter view to the program's allegations the following day, and that balance was achieved as soon as possible. The *Four Corners* program also aired the mayor's denial of blackmail.

### ***Finding***

ACMA is of the view that the ABC did not breach clauses 4.2 or 4.3 of the code in relation to balance regarding the above matters.

## **Impartiality**

### **Relevant Code provision**

#### **4. News and Current Affairs Programs**

This section applies to all programs produced by the News and Current Affairs Division of the ABC and other information programs that comprise both news and information relating to current events. ABC programs with significant factual content, which do not comprise both news and information relating to current events, are dealt with in section 5 below.

4.1 ...

4.2 Every reasonable effort must be made to ensure that programs are balanced and impartial. The commitment to balance and impartiality requires that editorial staff present a wide range of perspectives and not unduly favour one over the others. But it does not require them to be unquestioning, nor to give all sides of an issue the same amount of time.

### **Interpretation of Code provision**

The Code requires that every reasonable effort be made to ensure that news and current affairs programs are balanced and impartial. The requirement is mandatory. In determining whether the requirements of the Code have been met, ACMA

considered what an ‘ordinary reasonable viewer’<sup>16</sup> would have understood the program to have conveyed.

Current affairs programs play an important role in promoting public analysis and debate about significant topical issues, and questioning decision-makers. It follows that current affairs programs need to ask difficult questions, cover sensitive issues and look at all sides of an issue.

ACMA does not interpret the requirement for impartiality so as to restrict or prohibit thorough examination of important questions. ACMA applies the ordinary English meaning of the word ‘impartiality’ in interpreting the Code.

The Macquarie Dictionary (Third Edition) defines ‘impartial’ as:

*adj.* Not partial; unbiased; just

It defines ‘partial’ as:

*adj.* biased or prejudiced in favour of a person, group, side, etc., as in a controversy.

‘Bias’ is defined as:

*noun* a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question.

While the demonstration of bias in respect of a court or tribunal involves consideration of functions which differ from those performed by a regulator, a helpful explanation of the ordinary English usage of the term ‘bias’ was set out by Hayne J in *Minister for Immigration and Multicultural Affairs v Jia Legeng*<sup>17</sup> as follows:

“Bias” is used to indicate some preponderating disposition or tendency, a “propensity; predisposition towards; predilection; prejudice”.<sup>18</sup> It may be occasioned by interest in the outcome, by affection or enmity, or, as was said to be the case here, by prejudgment. Whatever its cause, the result that is asserted or feared is a deviation from the true course of decision-making, for bias is “any thing which turns a man to a particular course, or gives the direction to his measures”.

Achieving impartiality in a program therefore requires a broadcaster to choose what is to be broadcast in a way which avoids conveying a prejudgment or giving effect to the affections or enmities of the reporter in respect of what is broadcast.

Whereas the code provides scope for balance to be achieved over a period of time, ACMA considers that a program must demonstrate impartiality at all times, including within a particular program.

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<sup>16</sup> See definition of ‘ordinary reasonable viewer’ on page 5

<sup>17</sup> (2001) 205 CLR 507 at 563 [183] Gleeson CJ and Gummow J at 538 [100] agreeing.

<sup>18</sup> *The Oxford English Dictionary* 2<sup>nd</sup> ed (1989), “bias” sense 3a

A report that presents a view that is opposed by a particular person or group is not inherently partial.<sup>19</sup> Whether a breach of this requirement has occurred will depend on the issue, any editorial comment, the presentation of the story and the circumstances in which the program was prepared and broadcast. Clause 4.2 of the Code does not require all sides of a debate to be given equal time.

Reporters can play a key role in setting the tone of a program through their style and choice of language. The manner in which a report is presented can influence the conclusions that ordinary reasonable viewers draw from a broadcast.

In its assessment of whether every reasonable effort was made to ensure that the program was impartial, ACMA has had regard to what an ordinary reasonable viewer would have understood from the broadcast concerned and whether what would have been understood conveys a prejudgement or the giving effect to the affections or enmities of the presenter or reporter. Where this has been the case, ACMA has considered, on the evidence available to it, whether every reasonable effort has been made to ensure impartiality.

ACMA recognises that the nature of current affairs reporting requires reporters and presenters to be questioning, and at times sceptical, in their analysis of important issues. However, while probing questions may be used to explore an issue, programs must present the relevant issues, not unduly favour one perspective over others, and demonstrate a willingness to include alternative viewpoints without prejudgement.

ACMA considers that the following factors are relevant in deciding whether the program was impartial:

- the range of issues canvassed;
- the choice of interview subjects and the range of perspectives canvassed; and
- the presentation style, including the language, tone and footage used.

Where, on the face of it, a program is partial and no reason for this is readily apparent, ACMA would need evidence from the broadcaster demonstrating that, nevertheless, *every* reasonable effort was made to ensure that the program was impartial, in order to find compliance with the Code. In this regard, the Code sets a high standard.

## **Factor 1 – The range of issues canvassed**

### ***Complainants' submissions***

The complainants allege that the issues raised in the program were not presented impartially and were designed to present the forestry industry in a negative light. The complainants claim that the themes of corruption, intimidation and lack of regulation in

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<sup>19</sup> For example, in relation to a complaint that a report about a proposal by the Israeli Cabinet to expel Yasser Arafat from the Palestinian territories demonstrated partiality in favour of Israel, the ABA found that while the report did not canvass the Palestinian perspective, this did not amount to partiality (ABA Investigation No. 1273: *AM* broadcast by Australian Broadcasting Corporation on 17 December 2002).

the forestry industry and the close connections between the forest industry and government were explored in a way that prejudged the outcome against the forestry industry. Examples include:

- The attempt to link ex-politicians Robin Gray and Rene Hidding with Gunns implied corruption.
- The program attempted to portray Gunns in a negative light by referring to their large profits and ignoring their other activities or costs.
- The statement that ‘Jobs are Government’s justification for its forest policy’ was used to support the program’s general theme that the forest industry is unsustainable.
- The assertion that Forest Practices Board members have close connections to the industry inferred that the board members lacked integrity and had a conflict of interest. The claim that the industry is self-regulating is misleading as the Forest Practices Board is an independent statutory authority.
- The reference to an attempted bribery conviction of former Gunns Chairman, Edmund Rouse, was misleading, as Gunns was not exporting woodchips and was a small sawmilling business at the time.

#### ***ABC’s submission***

The ABC submits that it was legitimate for the program to examine the history of the close relationship between the forestry industry and the Tasmanian Government. In this context, it was reasonable to explore the links between former politicians and Gunns, the membership of the Forest Practices Board and whether Tasmanians were receiving an adequate return for the use of state assets. The program did not attempt to imply that certain individuals were corrupt or lacked integrity. The statement that ‘Jobs are the government’s justification for its forest policy’ was supported by the interview with Paul Lennon.

#### ***ACMA’s assessment***

ACMA has considered the range of issues canvassed in the program. The impartiality provisions of the Code do not prevent reporters from asking difficult or controversial questions. The nature of current affairs reporting requires reporters and presenters to be probing, and at times, sceptical in their analysis of important issues. In this context it was legitimate for the program to explore important public interest issues, such as the economic benefits Tasmanians obtain from the forest industry, the attempted bribery conviction of a former Gunns Chairman and the alleged close relationship between Gunns, government, and regulatory bodies such as the Forest Practices Board.

ACMA considers that it is appropriate for a current affairs program to explore these controversial issues. The canvassing of these issues was fair in the context, and did not deliberately attempt to portray Gunns or the forest industry in a negative light. Code 4.2 does not require the ABC to be unquestioning or to give all sides of an issue equal time. In these circumstances, ACMA finds no evidence upon which it could conclude that the issues canvassed in the program were not reasonable or that they demonstrated bias or partiality against the forestry industry.

## **Factor 2 – The choice of interview subjects and the range of perspectives presented**

### ***Complainants' submissions***

The complainants allege that the program was not impartial as it relied almost exclusively on the views of those opposed to the forest industry, such as Bill Manning, Graham Green, Alex Marr, Christine Milne, Frank Strie, David Reid and David Leaman. The complainants allege that the claims of these people were not tested by the reporter and no evidence was presented to support their assertions. The complainants claim that forest industry representatives were presented in a bad light. Their credibility was questioned and the reporter interviewed them in a more critical manner. For example:

- Alex Marr's comments that Evan Rolley was 'an excuse maker' were inflammatory. The reporter did not ask Marr to justify his comments.
- Christine Milne was not questioned about her claim that the Tasmanian 'people are being ripped off in favour of' Gunns.
- Naomi Edwards' claim that Gunns is being allowed to 'buy its wood cheap' was misleading.
- John Gay (Gunns Limited) was questioned as if he was trying to deceive the public.
- The reporter only used the 'devil's advocate' questioning technique when questioning forest industry advocates, such as the (then) Deputy premier, Paul Lennon.

### ***ABC's submission***

The ABC claims the program did not rely on information exclusively from people opposed to the forestry industry in Tasmania. The ABC claims that the reporter and producer spent a significant amount of time with Gunns Ltd and Forestry Tasmania, who provided background information which was used extensively in the program. Edited transcripts of extended interviews with forestry industry representatives, such as Evan Rolley, are available on the *Four Corners* website. Substantial air-time and reasonable right of reply was given to forest industry advocates. The ABC believes that the questions raised by the program were legitimate and that overall, the program was even-handed.

### ***ACMA's assessment***

ACMA has considered the choice of interview subjects and the range of perspectives presented. ACMA is satisfied that a broad range of views were represented in the program – both those opposed to, and supportive of, the Tasmanian forestry industry. Although significant allegations of corruption and intimidation were raised by Bill Manning and Senator Heffernan, these allegations were put to forestry industry advocates (such as Evan Rolley, Paul Lennon and John Gay), for a response (see previous discussion under 'Balance').

ACMA finds no evidence upon which it could conclude that the reporter's questioning of the forestry industry advocates was not impartial. To maintain impartiality, the code does not require the ABC to be unquestioning or to give all sides of an issue the same amount of time. The Senate inquiry into the forestry industry and green groups had raised significant allegations that were in the public interest. In these circumstances, in the context of an investigative current affairs program, the reporter was entitled to critically question forestry industry representatives. ACMA finds no evidence upon which it could conclude that the reporter did not give forest industry representatives an adequate opportunity to respond to the allegations and refute the claims made. For example, Evan

Rolley was given an opportunity to refute the reporter's claims about Gunns' profits. Paul Lennon was given an opportunity to refute Bill Manning's claims of corruption. The ordinary reasonable viewer would have understood that the reporter's questions were designed to critically explore the allegations raised and did not convey pre-judgement.

In relation to the questioning of forest industry opponents, ACMA is satisfied that the program gave adequate background on their affiliations. For example, Christine Milne was introduced as a former leader of the Tasmanian Greens. Alec Marr was introduced as a member of the Wilderness Society. Naomi Edwards was introduced in the context of green groups 'wheeling in their own acturaries'. In these circumstances, ACMA is satisfied that ordinary reasonable viewers would have understood the perspectives of these interviewees and would have been able to make up their own minds on the range of views presented. ACMA does not consider that this aspect of the program conveyed a pre-judgement or unduly favoured any perspective.

For the above reasons, ACMA is satisfied that the program was impartial in relation to the choice of interview subjects, the range of perspectives presented and the reporter's questioning of interviewees.

### **Factor 3 – The presentation style, including the language, tone and footage used**

#### ***Complainant's submissions***

The complainants have raised a number of concerns about the language and tone used in the program. The complainants allege that the reporter used sensationalist and emotive language in her voice-overs to present the forestry industry in a poor light. Examples include:

- The statement that the Tasmanian forestry industry is 'self-regulated, self-serving and unaccountable'.
- The statement:  
Vast tracts of this rich forest are now marked as timber coupes to be clear-felled. Over 80 per cent of the wood taken will fall under the indiscriminate blades of the wood chipper. Left behind as waste, up to three-quarters of the forest, pushed into windrows for burning. So intense are the fires, every autumn mushroom clouds dominate the horizon. These burns are designed to kill everything above and below the surface – a scorched earth policy in preparation for new planting.
- The complainants claim that the above statement was accompanied by misleading footage of mushroom clouds and mixed forest, of which there is only a limited extent of logging.
- '...when you walk through a coup like this, the devastation is overwhelming. It's an absolute assault on the landscape and the senses.'
- 'Government decisions in Tasmania has made life very comfortable for the forest industry.'
- 'So what drives such an aggressive forest policy?'
- 'Such is the rhetoric within the industry, that John Gay would have you believe that clear felling is a minor occurrence.'

- ‘Having devoured thousands of hectares in the South and the West, the industry is now ramping up in the East.’
- The reference to a ‘leaked memo’ from Forestry Tasmania instructing contractors to put sawlogs through the chipper was a ‘beat up’ and implied secrecy or wrongdoing.
- The statement that 40% of Tasmania was in locked up in reserves and ‘much...was of little use to loggers’ gave a distorted impression. The statement should have been qualified by stating that 40% of Tasmanian forests were reserved.
- The purpose of 1080 poisoning and Alec Marr’s claim that 1080 poisoning was killing wildlife was not adequately explained or put into context. It was accompanied by footage of dead and maimed animals.

#### ***ABC’s submission***

The ABC submits that the statements were reasonable in their context and were supported by the facts and range of opinions shown in the program. For example, the statement regarding jobs was justified, given the opinion expressed by Paul Lennon. The statement regarding John Gay reflected the fact that he initially downplayed the significance of clear felling. The statements regarding the use of 1080 poison were in the context of presenting Alec Marr’s views.

The ABC submits that the program showed a regulatory system with exemptions from Federal oversight in favour of state-based monitoring and Forest Practice board members with close connections to the industry. In this context it was reasonable to refer to the forestry industry as being ‘self-regulated, self-serving and unaccountable’ and to use language that demonstrated the close connection between government and the industry.

#### ***ACMA’s assessment***

ACMA has assessed the use of language over the program as a whole, rather than undertaking a line-by line analysis of each statement in the program. ACMA has concerns that the program appears to set out to prove a premise that the forestry industry is largely unregulated due to its close relationship with government. This tone is conveyed in the program’s title - ‘*Lords of the Forests*’, and in the opening moments where the reporter states ‘the fate of a national asset...now in the hands of an industry that is self-regulated, self-serving and unaccountable’. Whilst the program goes on to present examples to support this claim and presents alternative perspectives from forest industry advocates, such a strong statement at the start of the program would have conveyed to the ordinary reasonable viewer an anti-forestry industry perspective.

In the program (which was 45 minutes in duration), the reporter uses emotive language such as ‘aggressive forest policy’, ‘voracious appetite for timber’, ‘indiscriminate blades of the wood chipper’, ‘turning forest giants into woodchips’, ‘. It is noted that a number of the phrases quoted above occurred within the first 10 minutes of the program, while the statement, ‘John Gay would have you believe’, which indicated that the reporter was not willing to believe him and had preconceived views about his claims, occurred approximately mid-program.

In this case, ACMA considers that in many instances, the program’s tone and choice of language was emotive and carried negative connotations against the forestry industry.

ACMA considers that overall, the tone and choice of language would convey to the ordinary reasonable viewer an unduly negative view of some perspectives as opposed to others presented in the program.

### **Impartiality – overall assessment**

ACMA considers that that the Code sets a high test in relation to impartiality. It requires that ‘every reasonable effort must be made to ensure that programs are impartial’. *Four Corners* promotes itself as the ABC’s flagship current affairs program, maintaining a tradition of rigorous analysis. ACMA considers that to be impartial as required by the Code, the program must be impartial in relation all three elements discussed above – the range of issues canvassed, the choice of interview subjects and perspectives presented and the program’s language and tone. While the first two elements, to some extent, overlap with some of the features considered in relation to balance, the program’s language and tone is critical to an assessment against the impartiality requirements.

In this case, ACMA has found that the range of issues canvassed, the choice of interview subjects and the wide range of perspectives presented were impartial. ACMA accepts that the nature of current affairs reporting requires reporters to ask probing questions and cover sensitive issues. Reporters, however, can play a key role in setting the tone of a program through their style and choice of language. Voice-overs, language and footage can influence the conclusions viewers draw from the broadcast and their perception of the issues. In this case, ACMA considers that the manner in which the report was presented would have given an ordinary reasonable viewer the impression that the program favoured the anti-forestry, anti-logging perspective.

Whilst one instance of emotive or subjective language in isolation would not be sufficient to amount to a breach of the code, the many instances of subjective and emotive language over the course of the program are sufficient to find that the program was not impartial. Further, where, on the face of it, a program is partial, ACMA would need evidence to be persuaded that, nevertheless, every reasonable effort had been made to ensure that the program was impartial. Given the high test established by the code, ACMA is not satisfied by the submissions of the ABC in this matter that every reasonable effort was made to ensure that the program was impartial

### ***ABC Response to the Preliminary Finding***

In response to the preliminary finding,<sup>20</sup> the ABC requested that ACMA reconsider its finding that a lack of impartiality resulted from the tone of the report. The ABC said that in its view ‘(t)he narration should be seen in the context of the program as a whole, a complex look at the management and economics of Tasmanian forestry’.

Specific points that the ABC made in support of its submission included the following:

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<sup>20</sup> Letter from the ABC to ACMA dated 14 June 2006.

- the phrases highlighted by ACMA, as the examples which it finds together constitute a lack of impartiality, are either taken out of context or represent reasonable journalistic descriptions of subject matter.
- ACMA has not given adequate weight to the nature of the report and the journalist's role in reporting from location – television journalists in the field also have a responsibility, not just to analyse, but to convey the sensation of being on location – this is most clearly seen in the piece-to-camera by the reporter which is mentioned in the preliminary finding – she conveys what, for most people, would be a reasonable first impression of a large-scale clear-felling – its profound impact on the landscape – in her own words, 'overwhelming devastation' – ACMA does not acknowledge the full context of the piece-to-camera which goes on to ask whether such resource use, whatever the initial impression, is reasonable and in the financial interests of those who own the trees – this central question forms the heart of the documentary that follows – the introduction is therefore not an example of an emotional or unbalanced pre-judgment. Instead, it reports an initial impression and indicates that analysis will follow.
- the ABC Code of Practice requires factual accuracy and impartiality but does not require journalists to be unquestioning (clause 4.2) – some of the phrases cited in the preliminary finding as examples of emotive language are better described as questioning the status quo – similarly, a phrase like 'voracious appetite for timber' is reasonably supported by evidence that detailed the volumes of timber felled and the large percentage of that timber – such a phrase while colourful, is neither inaccurate nor prejudices whether the appetite is good or bad for Tasmania.
- the narration should be seen in the context of the program as whole, a complex look at the management and economics of Tasmanian forestry - ACMA identifies three key themes explored in the program: government/industry connections; industry exemption from legislative oversight; and the management of the forests as a public asset – these are all important matters of public interest.

ACMA has considered the ABC's arguments and is unconvinced that the preliminary breach finding in relation to impartiality should change. In this regard, it notes the following:

- ACMA recognises that the nature of current affairs reporting and a reporter's role in analysis and probing difficult issues. ACMA also recognises the role of journalists in reporting from location. In this regard, ACMA acknowledges that the reporter's comment, approximately 11 minutes into the segment: 'So, when you walk through a clear-felled coupe like this one, the devastation is overwhelming. It's an attack on the landscape and on the senses' - may have amounted to a legitimate description of the reporter's impression particularly given the qualifying question which immediately followed the statement: 'But, whether you're a tree-hugger or not, the question for Tasmanians is, is it economically justifiable?'. However, on balance, ACMA is of the view that the report includes sufficient emotive and subjective phrases over the course of the program to find that it was not impartial. ACMA has earlier noted that a number of emotive phrases occurred within the first 10 minutes of the program. In

this regard, ACMA reiterates that reporters can play a key role in setting the tone of a program through their style and choice of language – this is a balance that the individual reporter has to achieve in every case. In this matter, ACMA is not convinced that this balance was achieved.

**Finding**

ACMA is of the view that on balance the ABC breached clause 4.2 of the code in relation to impartiality and, accordingly, that the complaint was justified.

**DECISION**

The Australian Communications and Media Authority determines, for the above reasons, that the Australian Broadcasting Corporation), in relation to the *Four Corners* program, ‘Lords of the Forests’ broadcast on 16 February 2004::

- breached clause 4.1 of the ABC Code of Practice (the code), in that it failed to make every reasonable effort to ensure that factual content of the program was accurate in relation to the discovery of Tasmania and the nature of Huon Pine, and failed to correct the errors in a timely manner. Accordingly, the complaint is justified.
- breached clause 4.2 of the code, in that it failed to make every reasonable effort to ensure that the program was impartial. Accordingly, the complaint is justified.
- did not breach clause 4.1 in relation to certain contested facts, where the alleged factual inaccuracies relate to statements of opinion and in relation to the claim that the Regional Forest Agreement exempts Tasmania from Commonwealth threatened species laws.
- did not breach clauses 4.2 or 4.3 of the code in relation to balance.

ACMA recommends that the ABC:

- In relation to the breach finding regarding timeliness, the ABC should make specific reference in the code to what it considers to be ‘timely’ when correcting errors when the code is next reviewed to prevent a recurrence of timeliness breaches.
- In relation to the breach finding regarding impartiality, the ABC should review its procedures for preparing television current affairs programs so that every reasonable effort is made to ensure the impartiality of those programs.

The Common Seal of the  
Australian Communications and Media Authority  
was affixed to this document in  
the presence of:

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Dated this 20<sup>th</sup> day of July 2006