

Investigation Report No. 2872

File No.	ACMA2012/1211
Broadcaster	Australian Broadcasting Corporation
Station	ABS South Australia
Type of Service	National broadcasting
Name of Program	7:30
Date of Broadcast	22 August 2012
Relevant Code	Standard 4.1 of the <i>ABC Code of Practice 2011</i>

Investigation conclusion

No breach of standard 4.1 of the *ABC Code of Practice 2011*.

The complaints

The Australian Communications and Media Authority (ACMA) received two complaints regarding the program 7:30, broadcast on 22 August 2012 by the Australian Broadcasting Corporation (the ABC). The complainants were concerned that the program was partial and showed bias on the part of the ABC and the program's presenter.

This investigation has considered the ABC's compliance with standard 4.1 of the *ABC Code of Practice 2011* (the Code).

The program

7:30 is a half-hour current affairs program broadcast nationally by the ABC on weeknights. On 22 August 2012, the program was presented by Leigh Sales (the presenter). The ABC website states that '7:30 provides the best analysis of local, national and international events from an Australian perspective'.

On 22 August 2012, the presenter interviewed the Leader of the Opposition, Tony Abbott, about BHP Billiton's decision to suspend the Olympic Dam project, 'illegal asylum boats' and the Prime Minister's employment history with Slater & Gordon.

The interview was introduced as:

Presenter: To discuss the BHP announcement today and other issues I was joined moments ago from Parliament House in Canberra by the Opposition Leader, Tony Abbott.

Tony Abbott, welcome to the program.

A full transcript of the interview is at Attachment A.

Assessment

This investigation is based on two letters from complainants (Attachment B), the ABC's response to the complainants (Attachment C), and a copy of the broadcast provided to the ACMA by the ABC.

Ordinary, reasonable viewer

In assessing content against the Code, the ACMA considers the meaning conveyed by the relevant material broadcast. This is assessed according to the understanding of an 'ordinary, reasonable' viewer. That is, the assessment is made against what message the ordinary, reasonable viewer would have understood was being conveyed by the material that was broadcast.

Australian courts have considered an 'ordinary, reasonable' viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person 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 affairs¹.

The ACMA considers the natural, ordinary meaning of the language, context, tenor, tone and inferences that may be drawn.

¹ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at 164–167 (references omitted).

Once this test has been applied to ascertain the meaning of the broadcast material, it is for the ACMA to determine whether the material has breached the Code.

Issue 1: Impartiality

Relevant Standard

The relevant standard within the Code provides that the ABC must:

- 4.1 Gather and present news and information with due impartiality.

The Code requires that the standards are interpreted and applied in accordance with the Principles applying in each Section.

Relevant Principles in relation to impartiality and diversity of perspectives include the following:

Judgements about whether impartiality was achieved in any given circumstances can vary among individuals according to their personal and subjective view of any given matter of contention. Acknowledging this fact of life does not change the ABC's obligation to apply its impartiality standard as objectively as possible. In doing so, the ABC is guided by these hallmarks of impartiality:

- a balance that follows the weight of evidence;
- fair treatment;
- open-mindedness; and
- opportunities over time for principal relevant perspectives on matters of contention to be expressed.

[...]

Assessing the impartiality due in given circumstances requires consideration in context of all relevant factors including:

- the type, subject and nature of the content;
- the circumstances in which the content is made and presented;
- the likely audience expectations of the content;
- the degree to which the matter to which the content relates is contentious;
- the range of principal relevant perspectives on the matter of contention; and
- the timeframe within which it would be appropriate for the ABC to provide opportunities for the principal relevant perspectives to be expressed, having regard to the public importance of the matter of contention and the extent to which it is the subject of current debate.

Finding

The ABC did not breach standard 4.1 of the Code.

Reasons

Attachment D sets out the considerations to which the ACMA generally has regard in assessing compliance with standard 4.1 of the Code. In assessing whether content is presented with due impartiality, a key consideration is whether the content has been gathered or presented in such a way that it conveys a prejudgment or gives effect to the affections or enmities of the presenter or reporter.

Presenters can and do play a key role in setting the tone of a program through their style and choice of language. The manner in which a presenter presents a report can influence the conclusions that an ordinary, reasonable viewer draws from a broadcast. The ACMA accepts that

the nature of current affairs reporting can require presenters to be questioning, and at times sceptical in their analysis of issues. However, the presenter's open-mindedness and willingness to include alternative perspectives without prejudice will be relevant to the question of impartiality.

Viewers of 7:30 would be familiar with the presenter's presentation style and may expect her to conduct probing interviews, particularly when dealing with a significant and experienced politician such as Mr Abbott.

The presenter employed a robust questioning style in her interview of Mr Abbott. She also put several very direct and challenging questions to him during the course of the interview. However, the presenter provided several opportunities for Mr Abbott to respond to her questions and to put his views across at some length. To this end, Mr Abbott's perspective was included in such a way that viewers had the opportunity to evaluate the matters raised for themselves. In this regard, Mr Abbott noted during the interview:

Mr Abbott: And I've given you answers to demonstrate that what I've said is entirely justifiable.

While the interview demonstrated an element of scepticism on the part of the presenter about Mr Abbott's recent statements about BHP Billiton's suspension of the Olympic Dam project, 'illegal asylum boats', and the Prime Minister's employment history with Slater & Gordon, her queries were reasonably supported by the information put to Mr Abbott during the interview. The ACMA does not consider that the presenter conveyed a prejudgement about Mr Abbott, or her affections or enmities in respect of the content of the interview. Rather, she presented to Mr Abbott material suggesting what appeared to be differences between current events and his public statements and asked him to respond, thereby permitting viewers to evaluate the issues raised having regard to both the presenter's questions and Mr Abbott's responses.

For example, at one point the presenter challenged Mr Abbott on whether he was fully informed about the matters on which he was commenting:

Presenter: Have you actually read BHP's statements?

Mr Abbott: No, but I've also got again the statement of Jacques Nasser, who says, "While we're still evaluating the impact of the carbon tax, but it just makes it more difficult."

Presenter: But hang on, no, no, you haven't read their statements today, but you're commenting about what they've announced today and how the Federal Government's to blame for that.

The presenter's challenge does not mean that the program was partial or that the presenter was conveying prejudice against Mr Abbott. A particular viewpoint or line of questioning may be quite appropriately favoured while being impartial if the context (including the weight of evidence and the significance and identity of the interviewee) supports it. It is only where the favouring is undue in some way that the Code is breached.

The ACMA notes that the presenter put the following matters to Mr Abbott:

- > information from BHP Billiton's announcement regarding the suspension of the Olympic Dam project and quotes from the CEO of BHP Billiton outlining the reasons for the suspension:

The decision is almost wholly associated with in the first instance capital costs. [...]

As you know, the tax environment for this particular project has not changed at all since we started working on it six or seven years ago. The [Mineral Resources Rent Tax] only

covers coal and iron ore, not copper, not gold and not uranium, so the tax situation for this project has not changed.

- > Mr Abbott's claim that BHP Billiton's decision to suspend the Olympic Dam project was partly due to the Federal Government's Mineral Resources Rent Tax and carbon pricing mechanism;²
- > that Mr Abbott had in fact not read BHP Billiton's statement regarding the suspension of the Olympic Dam project or the BHP Billiton CEO's statement regarding the reasons for the suspension;
- > that Mr Abbott's references to 'illegal asylum boats' was inaccurate as 'it's legal to come to Australia to seek asylum by any means – boat, plane'; and
- > Mr Abbott's unwillingness or inability to specify what questions the Prime Minister should answer about her prior employment with Slater & Gordon even though Mr Abbott and the Shadow Ministry are calling for the Prime Minister to answer such questions.

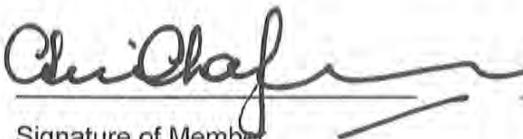
The presenter offered Mr Abbott fair opportunities to respond to all these matters.

Having regard to the foregoing, the ACMA finds that the ABC did not breach standard 4.1 of the Code.

Decision

The Australian Communications and Media Authority determines for the above reasons that the Australian Broadcasting Corporation, in relation to the broadcast by ABS of 7:30 on 22 August 2012, did not breach standard 4.1 of the *ABC Code of Practice 2011*.

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



Signature of Member

Chris Chapman

Name (please print)



Signature of

Richard Lancelot Bean

Name (please print)

Dated this 17th day of December 2012

² <http://www.liberal.org.au/latest-news/2012/08/22/tony-abbott-joint-doorstop-interview>, accessed by the ACMA on 29 October 2012.

Attachment A

Transcript, 7:30, 22 August 2012

Presenter: To discuss the BHP announcement today and other issues I was joined moments ago from Parliament House in Canberra by the Opposition Leader Tony Abbott. Tony Abbott, welcome to the program.

Mr Abbott: Evening, Leigh.

Presenter: You were pretty loose with the truth today, weren't you, when you said that BHP's decision to put the Olympic Dam project on hold was partly due to the Federal Government's new taxes?

Mr Abbott: Not at all, Leigh. For months BHP have been warning that the carbon tax and the mining tax are making Australia a less competitive place to invest. And Marius Kloppers himself said back in June that the carbon tax and so on are all conspiring to turn Australia from a low cost to a high cost environment.

Presenter: Well let me read you exactly what Marius Kloppers had to say today when he was asked if the decision on Olympic Dam was related to Australian taxes. He said, "The decision is almost wholly associated with in the first instance capital costs." He goes on to say "As you know, the tax environment for this particular project has not changed at all since we started working on it six or seven years ago. The MRRT only covers coal and iron ore, not copper, not gold and not uranium, so the tax situation for this project has not changed."

Mr Abbott: And, Leigh, let me read you what Jacques Nasser said back in May. He said, "I cannot overstate how the level of uncertainty about Australia's tax system is generating negative investor reaction." Sure, today, today, Marius Kloppers didn't want to make a very bad situation worse by directly blaming the Federal Government. Of course he didn't want to directly blame the Federal Government. But for months, for months BHP has been sending signals to the Government this build-up of tax, this build-up of high costs is making it much more difficult for this investment to go ahead.

Presenter: But, today, if you're right, then why does it say nowhere in the BHP statement that there's anything to do with the Federal Government? If you go through the documents they blame weakness in commodity markets, industry-wide cost pressure, instability in the Eurozone, the slowdown of growth in China. They haven't been backwards in criticising the Federal Government before, but they certainly haven't today.

Mr Abbott: And, Leigh, they didn't need to say it today because they've said it so often in the recent past.

Presenter: Well they listed everything else that was to blame.

Mr Abbott: You're not seriously - you're not seriously telling me, Leigh, that the mining tax and the carbon tax have made Australia an easier place to invest in.

Presenter: I'm going on the facts that Marius Kloppers said today when he was directly asked if the decision on Olympic Dam was affected by Australia's tax situation and I'm going on the facts that are outlined in their results statement that they've issued. Have you actually read BHP's statements?

Mr Abbott: No, but I've also got again the statement of Jacques Nasser, who says, "While we're still evaluating the impact of the carbon tax, but it just makes it more difficult."

Presenter: But hang on, no, no, you haven't read their statements today, but you're commenting about what they've announced today and how the Federal Government's to blame for that.

Mr Abbott: Leigh, I didn't say that the carbon tax and the mining tax were solely to blame. I said that the carbon tax and the mining tax have created an environment where it's much more difficult for investments like this to go ahead. I bleed for the people of South Australia tonight because there's 8,000 construction jobs, 4,000 production jobs and 13,000 associated jobs that are at the very best on indefinite hold because of this decision.

Presenter: How do you know more what's to blame though?

Mr Abbott: And the mining tax and the carbon tax make a bad investment environment much, much worse.

Presenter: How do you know more what's to blame than Marius Kloppers, who I presume has read his own documents?

Mr Abbott: And, Leigh, I've been reading what they've been saying for the last few months.

Presenter: Tony Abbott, on the carbon tax you've been saying that it would be a wrecking ball through the economy, but if you look at the latest jobs figures, more people are in employment, the economy continues to grow solidly, inflation is low. Are you once again being a little bit loose with the facts there?

Mr Abbott: Leigh, 1st July wasn't the end of the pain; 1st July is the beginning of the pain. And the carbon tax, don't forget, just goes up and up and up. It's \$29 a tonne in 2015, it's \$37 a tonne in 2020, it's \$350 a tonne in 2050, if it's not repealed. Now, it is, as I've been saying, a python squeeze, not a cobra strike, but it starts to hurt from day one.

Presenter: But where is the evidence if it's hurting from day one of a wrecking ball through the economy?

Mr Abbott: Well, I think that we can say that in some ways at least the postponement of Olympic Dam is the biggest victim so far of the new taxes that this government has put in place.

Presenter: Marius Kloppers said - I don't want to quote it again - but that, "... the tax environment for this particular project has not changed and that it has associated this decision to delay with capital costs."

Mr Abbott: And capital costs are obviously more difficult in a situation where the company is massively impacted by the mining tax and the carbon tax. Let's not forget for a second, Leigh, BHP with Rio is Australia's biggest iron ore producer. BHP is one of Australia's biggest coal producers. They are all impacted big time by the mining tax.

Presenter: They've announced a \$15 billion profit today.

Mr Abbott: About one third down on last year and in any event, that's a profit based on past results, it's not a profit based on the results of the future. That's what they're looking at now; they're looking at future prospects, not past results.

Presenter: Why have you referred repeatedly to illegal asylum boats coming to Australia? Do you accept that that's illegal and that seeking asylum by any means is legal?

Mr Abbott: Most of the people who are coming to Australia by boat have passed through several countries on the way and if they simply wanted asylum they could have claimed that in any of the countries through which they'd passed.

Presenter: But I don't believe that it's actually illegal to pass through countries on your way to somewhere where you want to have asylum.

- Mr Abbott:** You try turning up in America without documents, without a visa, without a passport; you'll be treated as very, very much illegal, Leigh. The other point I make, from recollection at least, is that the very term that the Government has officially used to describe these vessels is "suspected illegal entry vessel".
- Presenter:** Do you - I'm asking you though, not about the Government. I'm asking: do you accept that it's legal to come to Australia to seek asylum by any means - boat, plane - that it is actually legal to seek asylum?
- Mr Abbott:** I think that people should come to Australia through the front door, not through the back door. If people want a migration outcome, they should go through the migration channels.
- Presenter:** That's an answer to the question if I asked you: how do you think people should seek asylum?, it's not an answer to the question: is it legal to seek asylum?
- Mr Abbott:** And Leigh, it's the answer I'm giving you because these people aren't so much seeking asylum, they're seeking permanent residency. If they were happy with temporary protection visas, then they might be able to argue better that they were asylum seekers, but obviously the people who are coming to Australia by boat, they want permanent residency; that's what they want and this government has given the people smugglers a business model by putting permanent residency on the table. And even though the Government has adopted just one of the Howard Government's successful policies, it won't adopt temporary protection visas or the willingness to turn boats around where it's safe to do so.
- Presenter:** Do you think that the nature of politics allows politicians to be a little bit free with the facts in their statements just as part of the game of politics?
- Mr Abbott:** I certainly think that we had an example today in the Parliament of the Prime Minister caught out misleading the Parliament, but typically of this prime minister she just tries to brazen her way through it by refusing to answer the question. She said ...
- Presenter:** But how about - speaking of answering the question, how about you? I mean, what do you think? Are you absolutely scrupulous about making sure what you say in public is accurate?
- Mr Abbott:** Of course I am. What we had in the Parliament today was the Prime Minister clearly caught out. She said in the Parliament last year that it had been the industrial registrar who'd called her office about the Health Services Union and the Craig Thomson matter. It was exposed in the report that we got yesterday that in fact her office had called the industrial registrar. Now, in terms of this Prime Minister's looseness with the truth, maybe not her worst offence, maybe nothing to rank up there with, "There will be no carbon tax under the government I lead," but certainly yet another example of a Prime Minister who is seriously ethically challenged.
- Presenter:** But on questions of being loose with the truth, I've run you through three examples there on BHP, on the carbon tax and on asylum seeker boats where people would say you've been a bit loose with the truth.
- Mr Abbott:** And I've given you answers to demonstrate that what I've said is entirely justifiable.
- Presenter:** When we scratch beneath Tony Abbott's criticism of the Government, what's there? Is there an industrial relations policy, for example? Are you going to tell us if you're going to do what businesses want in terms of introducing flexibility into the workplace?
- Mr Abbott:** Well, I've told you that we will certainly address the flexibility problem, the militancy problem, the productivity problem and we'll do so in good time before the next election, Leigh.

Presenter: Well when exactly because business, I'm sure, would like certainty. You spoke about BHP being worried about uncertainty earlier.

Mr Abbott: And I'm offering them the certainty of the abolition of the carbon tax, the certainty of the abolition of the mining tax. I want to see an end to sovereign risk questions over Australia.

Presenter: You've said that it's in the public interest for Julia Gillard to answer some questions regarding her history with Slater & Gordon. What are the questions she needs to answer?

Mr Abbott: Look, these are questions that have been put to her by The Australian, which has run I think a very proper investigative analysis of her period with Slater & Gordon.

Presenter: And what are those questions? What are the questions?

Mr Abbott: But look, this isn't the main game for us. The main game for us is the cost of living pressures that this government has inflicted on the Australian public. It's not really ...

Presenter: Well sure, but a string of your - I'm sorry to interrupt, but a string of your frontbench have come out on this Slater & Gordon issue so I'm just wondering what are the questions that you want answered?

Mr Abbott: Well, the issue here is not whether she was an unethical lawyer. The issue surely is she is an unethical Prime Minister. And that's the main game for us, Leigh.

Presenter: No, but your - members of your frontbench keep saying she should give a statement to the Parliament. You said you would assist her to do that because you thought it was in the public interest. What are the questions you want to hear her answer in the Parliament?

Mr Abbott: And the point I'm making is that various reputable media bodies have put questions to her. I think the ...

Presenter: I'm just asking what those questions are.

Mr Abbott: I think the circumstances of her departure from a previous employer are of public interest, but in the end it's not whether she was an unethical lawyer that matters, it's the fact that this is an untrustworthy Prime Minister that counts, and that's the main game for us.

Presenter: But if you can't put to me - if you can't put to me specific questions that you want answered, then why are members of your frontbench running with it as an issue?

Mr Abbott: Well, look, don't forget it was Robert McClelland, Leigh, who first raised this recently.

Presenter: Sure, but you've run with it.

Mr Abbott: It was then raised again by Andrew Wilkie in the Parliament just a couple of days ago. Bill Shorten himself, in a sense, dumped the Prime Minister in it when he said that in recent times he was confident that the AWU had been legitimately and ethically run.

Presenter: Tony Abbott, there's always lots of things to ask you, but I'm afraid we're out of time. Thank you very much for making time to speak to us.

Mr Abbott: Thank you.

Attachment B

Complainant's submissions

In a letter of complaint dated 29 August 2012, the complainant stated:

[...]

I wish to complain about the ABC's unprofessional and political bias.

[The presenter's] treatment of Tony Abbott, like him or not, was very bad. She made it very obvious that she does not like him and is a Gillard supporter. This is unforgivable for a program on the ABC.

[...]

In a letter of complaint dated 31 August 2012, the complainant stated:

[...]

I believe [the presenter's] personal left wing views are showing through in her interviews thus making it impossible for her to be an impartial interviewer.

[...]

I would like this investigated further, I also believe the ABC is responsible for a great deal of left wing bias which shows up in the commentators and interviewers they employ... which is not good for an authority which is paid for out of tax payers' money.

[...]

Attachment C

Broadcaster's response to the complainants

In response to the complainants the ABC stated:

[...]

The adversarial or 'devil's advocate' style of interviewing, employed at times by [the presenter], can generate a strong and mixed reaction from the public. Part of the technique of the 'devil's advocate' approach is to take major points of criticism from various sources and put them to the interviewee. This can sometimes give the audience the impression that these are the personal views of the interviewer. This is not the case.

When she is doing a one-on-one interview she has a duty to conduct a testing interview that does not allow the interviewee to use the occasion as a political platform. It is her duty to put other points of view to the interviewee and her responsibility to make reasonable efforts to ensure that the questions are answered.

We do not believe that posing testing questions to an interviewee and then allowing them to respond to those questions is biased or bad mannered. It is in fact a recognised standard of objective journalism.

[...]

Attachment D

Considerations relevant to standard 4.1 of the Code

In determining whether or not material complained of is compliant with the ABC's obligations under standard 4.1 of the Code, the ACMA generally has regard to the following considerations:

- The meaning conveyed by the relevant material is assessed according to what an ordinary reasonable viewer (as to which, see pages 2-3 of this report) would have understood the program concerned to have conveyed.
- Achieving impartiality requires a broadcaster to present content in a way which avoids conveying a prejudgement, or giving effect to the affections or enmities of the presenter or reporter in respect of what is broadcast. In this regard:
 - The ACMA applies the ordinary English meaning of the word 'impartial' in interpreting the Code. The *Macquarie Dictionary* (Fifth Edition)³ defines 'impartial' as: 'not partial; unbiased; just'. It defines 'partial' to include: 'biased or prejudiced in favour of a person, group, side, etc., as in a controversy'. 'Bias' is defined as: 'a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question'.
 - The ACMA considers that a helpful explanation of the ordinary English usage of the term 'bias' is set out by Hayne J in *Minister for Immigration and Multicultural Affairs v Jia Legeng*⁴ as follows:

'Bias' is used to indicate some preponderating disposition or tendency, a 'propensity; predisposition towards; predilection; prejudice'.⁵ It may be occasioned by interest in the outcome, by affection or enmity, or, as was said to be the case here, by prejudgement. Whatever its cause, the result that is asserted or feared is a deviation from the true course of decision-making, for bias is 'anything which turns a man to a particular course, or gives the direction to his measures'.
- The relevant provision requires the ABC to 'gather and present news and information with due impartiality'. Inclusion of the word 'due' indicates an element of flexibility depending on the particular context: for example, the gathering and presentation of factual information for a news bulletin may be materially different from an interview of a political figure, where challenging questions are ordinarily appropriate.
- A program that presents a perspective that is opposed by a particular person or group is not inherently partial. Whether a breach of the Code has occurred will depend on the themes of the program, any editorial comment, the overall presentation of the story and the circumstances in which the program was prepared and broadcast.
- Presenters and 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 or reported can influence the conclusions that an ordinary reasonable listener would draw from a broadcast.
- 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 and challenging questions may be used to explore an issue, programs must demonstrate a willingness to include alternative perspectives without prejudgement.

³ Online edition at <http://www.macquariedictionary.com.au>

⁴ (2001) 205 CLR 507 at 563 [183] Gleeson CJ and Gummow J at 538 [100] agreeing.

⁵ *Oxford English Dictionary* (Second Edition), meaning 3(a).