

Investigation report no. BI-612

Broadcaster [Service]	Australian Broadcasting Corporation [ABC]
Finding	No breach of Standard 4.1 [due impartiality] No breach of Standard 4.2 [diversity of perspectives] No breach of Standard 4.5 [unduly favour one perspective]
Relevant codes	ABC Code of Practice 2019
Date finalised	15 March 2022
Program [description]	Q+A [panel discussion]
Date of broadcast	27 May 2021
Type of service	National—television
Attachments	A – extracts from the complaints to the ABC and the ACMA B – extracts from the ABC’s response to the complainants and submission to the ACMA C – relevant ABC Code provisions and the ACMA’s approach to assessing content

Background

In August 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into an episode of Q+A (the **Program**).

The Program was a live panel discussion program. It was broadcast by the Australian Broadcasting Corporation (the **ABC**) on 27 May 2021 at 8.30pm.

The Program was broadcast during reconciliation week. It was titled 'Trauma and Truth-Telling' and covered topics including the Covid-19 vaccination roll-out, Indigenous reconciliation issues, a by-election, First Nations artists, the legacy of colonisation, the conflict in West Papua, as well as the Israel-Gaza conflict. The panellists were Jennifer Robinson, human rights lawyer; Mitch Tambo, singer and songwriter; Dave Sharma MP, Liberal Member for Wentworth; Ed Husic MP, Labor Member for Chifley; and Randa Abdel-Fattah, author and academic.

The ACMA received complaints concerning the segment of the program discussing the conflict between Israel and Palestinians in Gaza, which comprised around 12 minutes of the 57-minute program (the **Segment**). All complaints alleged a lack of impartiality due to the composition of the panel.

Three of the complainants also alleged inaccuracies in comments made by Ms Abdel-Fattah. Based on the ACMA's considerations for determining factual content (at **Attachment C**), the ACMA considers that the relevant comments were statements of opinion, rather than factual statements. Accordingly, the ACMA has considered these aspects of the complaints under the impartiality standards of the ABC Code of Practice 2019 (the **ABC Code**).

Two complainants also alleged that the ABC breached Standard 5 [fair and honest dealing] because it had only invited the Israeli ambassador and subsequently, a representative of a Jewish community organisation, to participate as audience members rather than as panellists. This standard relates to how the ABC must deal with actual and not merely prospective participants or those referred to in ABC content. As the complaints do not raise any issue of the ABC's dealings with actual participants or people otherwise referred to in the Program, Standard 5 does not apply and the ACMA has therefore not investigated this aspect of the complaints.

One complainant also alleged a breach of Standard 7 [harm and offence]. The relevant provision in the ABC Code relates to exacerbating 'serious threats' and does not preclude the ABC from reporting newsworthy allegations, in this instance allegations and discussion regarding the actions of the Israeli government. Accordingly, the ACMA has not investigated this aspect of the complaint.

Issue: Impartiality and diversity of perspectives

Standard 4

4.1 Gather and present news and information with due impartiality.

4.2 Present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

[...]

4.5 Do not unduly favour one perspective over another.

The ACMA also takes account of the related Principles set out in the ABC Code (relevant extracts at **Attachment C**).

Finding

The ACMA finds that the ABC did not breach Standard 4.1, Standard 4.2 or Standard 4.5 of the ABC Code.

Reasons

To assess compliance with Standard 4, the ACMA has considered the following:

- > contextual factors
- > the ABC's hallmarks of impartiality.

The Principles underpinning the ABC's impartiality obligations in Standard 4, which include a range of 'hallmarks' for impartiality (listed in **Attachment C**), do not operate as a checklist but rather inform the way in which the ABC must discharge its obligation to gather and present information impartially. These Principles also assist news, current affairs and factual content producers in making considered editorial judgements about the nature of the content they produce, and the context in which it appears. The ACMA's approach to assessing the meaning of content is also explained in Attachment C.

Contextual factors

The ABC Code requires news and information to be gathered with 'due' impartiality and not to 'unduly' favour one perspective over another. The inclusion of the words 'due' and 'unduly' recognises that news and information programs will differ in their nature, often have a core subject focus but touch on related matters and have formats that create differing associated audience expectations. Under the ABC Code, impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented within a single program. A program that presents a perspective that is opposed by a particular person or group is not inherently partial. The Principles in Standard 4 of the ABC Code further note that assessing whether a breach of impartiality has occurred will involve considering all relevant contextual factors, including:

- > the type, subject and nature of the content;
- > the circumstances in which the content is made and presented;
- > 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 in 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.

Accordingly, the extent to which the inclusion of certain information or perspectives will be necessary to meet the ABC Code's impartiality and diversity of perspective obligations may differ having regard to these contextual factors.

The ACMA's assessment

The ACMA has considered the subject and nature of the content, including the degree to which it is contentious, the circumstances in which the content was made and presented in the context of the Program, and the likely audience expectations. These considerations are described below.

The ACMA has then considered whether the Program complied with the requirements of Standard 4 by demonstrating due impartiality (4.1), not unduly favouring one perspective over another (4.5) and whether a diversity of perspectives had been presented over time (4.2).

The type, subject and nature of the content and likely audience expectations in the context of the Program

The Program is a discussion panel program in which participants are encouraged to express their opinions on a number of political and social issues, in response to questions from members of the audience. It covers issues about which there are opposing perspectives. The audience would be aware that panellists are selected for their particular expertise and political and professional backgrounds, and often represent a particular perspective on an issue to be discussed. Panel members may also bring a fresh perspective outside their areas of expertise to a debate with well-established major positions. In line with the program's aim to generate informed discussion, the audience would expect that members of the panel would be proponents of opposing views on contentious issues, including, for example, representatives of both major political parties, spokespeople for non-government organisations or lobbyists.

As noted above, the Program covered a range of topical issues, including the then current violent conflict between Israel and Palestinians in Gaza (the **Subject Matter**). The conflict had caused numerous fatalities in the period preceding broadcast of the Program, with a ceasefire coming into effect only six days prior to the broadcast.¹ The conflict had been extensively covered in news media. This meant that the broadcast occurred during a period of heightened sensitivity, including among the audience of the Program.

Subject and nature of the content – the Subject Matter

The complaints concerned a segment of the Program (the **Segment**) that discussed the Subject Matter. As noted above, the Segment made up around 12 minutes of the 57-minute program.

One of the complainants submitted to the ABC:

The conflict is undeniably complex and the competing narratives are objectively contentious. [...]

There is a clear objective expectation that a panel show format such as Q&A, when covering a contentious issue such as the conflict between Hamas and Israel, would balance the discussion of the issue with at least one panellist from each side. [...]

The ABC submitted to the ACMA:

Reasonable viewers do not expect every viewpoint expressed on the program to be countered by someone holding an opposing viewpoint. [...]

The full range of principal relevant viewpoints on these subjects could not reasonably be expected to be presented on a single program. [...]

¹ https://en.wikipedia.org/wiki/2021_Israel%E2%80%93Palestine_crisis, accessed 10 November 2021.

The ACMA agrees with the complainant that against the background of the wider historical and ongoing Israeli-Palestinian conflict, the Subject Matter was contentious, with polarised views on who was primarily responsible and whether actions by the parties were proportionate. Further, there were associated debates about what gave rise to the conflict, as well as potential paths to resolution. The ACMA considers that the audience would expect the polarised views on the Subject Matter to be presented, in some form, within the Program.

The circumstances in which the content was made and presented – composition of the panel

All complainants alleged that the composition of the panel demonstrated a lack of balance in relation to the issue of the Israeli-Palestinian conflict, with the majority of panellists representing a Palestinian perspective. Most complainants also acknowledged that Mr Sharma presented, to a degree, an Israeli perspective on the issue.

Submissions from complainants to the ABC included:

The panel selection was biased in favour of those with pro-Palestinian views. Only Dave Sharma was able to give a balanced view of the issues. [...]

There were three, if not four anti-Israel panellists, and only one panellist - Dave Sharma MP – moderately defending Israel's position. There were no panellists who directly represented a pro-Israel perspective. [...]

The panel [...] did not include anyone who is an Israel advocate or who speaks for the Australian Jewish community or its views on Israel. [...]

The ABC responded to the complainants:

While Randa Abdel-Fattah and Jennifer Robinson criticised aspects of Israeli government policy, Australia's former Ambassador to Israel, Dave Sharma MP eloquently addressed and contested the claims of Ms Abdel-Fatah and provided an informed perspective on Israel's actions and decisions. [...]

We cannot agree with your claim that there was an editorial obligation on the program to present the perspective of an "Australian Jewish pro-Israel advocate". The editorial obligation on the program was to present a diversity of relevant perspectives on the issue, and to not unduly favour any one of those perspectives over any other.

The ABC submitted to the ACMA:

For practical reasons, there is naturally a limit on the number of panellists who can appear on any program. [...]

This panel was carefully composed with a view to providing a rich conversation and a diversity of perspectives across the full range of subjects that were to be discussed. Panellist Dave Sharma MP played a key role in the program across many of the subjects, including the discussion of the conflict between Israel and Hamas. [...]

The ACMA notes the ABC's submission quoting the Q+A website that the program aims to 'create discussion [...] that reflects a diversity of views' and to 'represent both sides of politics as well as voices from business, the arts, media, lobby groups, academia and the broader community'. Panel members are selected, in part, for their expertise and known positions on at least one of the issues being discussed.

The ACMA considers that there could be no exact 'balance' in the Program's panel, particularly as multiple issues with a range of perspectives (such as the Subject Matter) were being discussed.

However, under the Code, the ABC is required to gather and present news and information with due impartiality. The ACMA considers that, in the context of a panel discussion program, this involves consideration of the composition of the panel, the likely perspectives of the

panellists chosen and the information they may present during the Program. The ACMA notes the ABC's submissions on its efforts to invite other panellists or audience members:

[the program] approached the Israeli Embassy to invite Ambassador Jonathan Peled to participate in the program, but he was unable to travel to Sydney for the recording. The Embassy recommended the program contact [...], who also declined an invitation to participate as an expert audience member, who would be invited to contribute to the Segment by asking a question and expressing his perspective from the audience. [...]

These submissions indicate that some efforts were made by the ABC to include Israeli perspectives at the time of preparing the program. The ACMA notes that some complainants alleged there was conflicting information about the manner of these invitations and some questioned whether an invitation to be an audience member was sufficient.

Perspectives presented in the Segment

Relevant perspectives in the Segment were expressed by the audience, the panellists and the host, whose main role was to facilitate and moderate the discussion. These are considered in turn below. Whether due impartiality was achieved, and any one perspective was unduly favoured, will depend on the range and nature of perspectives presented, as well as moderation and any contributions by the host.

Contributions from the audience

Audience questions

The Segment was introduced by a question from the mother of a Red Cross worker in Israel. She stated that her son and his wife had experienced rocket attacks from the Gaza strip, but were able to shelter in a safe room, before asking 'why is the suffering of innocent Israeli civilians attacked and Hamas being ignored?'

Later in the Segment, a questioner asserted that Hamas was the likely winner of a recently cancelled election, and 'is an acknowledged terrorist organisation which is committed to the destruction of Israel and either the removal or killing of all Jews from Israel'. The questioner asked Mr Husic how the Australian Labor Party could reconcile its policy of recognising a Palestinian state and supporting a two-state solution and the aim for peaceful coexistence, 'with the likely government being Hamas'.

Submissions from complainants to the ABC included:

The choice of question that was allowed to be asked by Q&A of the Jewish lady in the audience was so transparently mild, that it insults the viewer. [...]

Inviting people to be in the audience to ask a question, or suggesting that requesting people to ask a question provides balance is tokenistic. [...]

The two questions effectively allowed the panellists to display their bias, especially without an opportunity for the audience member to challenge the answer. [...]

The ABC submitted to the ACMA:

Significant contributions are made through audience questions and through the incorporation of tweets as the program is broadcast live. It is the entirety of the program, and not simply the make-up of the panel, that is relevant to assessing compliance with standards for impartiality and diversity of perspectives. [...]

Both questions articulated an Israeli perspective on events. [...] It was these questions which established the outline of the discussion, and guided the presenter's efforts to elicit relevant responses.

The ACMA notes that some of the complainants criticised the questions as inadequate or as merely allowing panellists to present their own views. However, the ACMA accepts the ABC's

submissions that both questions articulated an Israeli perspective, because they drew attention to Israeli suffering and were critical of the actions and policies of Hamas towards Israel, and because audience questions are central to the Program's format. Questioners do not usually make extensive contributions to the topic of discussion. However, they often articulate a perspective and, to an extent, frame the debate. This was the case with the two questions asked during the Segment, and viewers would take these perspectives into account as part of the overall discussion on the Subject Matter.

Audience Tweets

The ABC submitted that audience tweets featured as part of the broadcast were also relevant in assessing the Program's impartiality, as they added to the diversity of perspectives presented. Tweets related to the subject of the discussion broadcast during the Segment were:

- > What about innocent Palestinian citizens?
- > If only Hamas spent their money protecting their people instead of on rockets
- > Hamas are not representative of all Palestinians
- > The 'both sides' rhetoric holds no regard for the disproportionate nature of this conflict
- > Not indiscriminate – Hamas is a terrorist organisation [referring to a comment by Ms Robinson about Israel's military response]
- > Really disappointed in those responses! There are innocents on both sides!
- > I'm Jewish and Israel does not speak in my name
- > Huge parallels between the plight of Indigenous Australians and Palestinians
- > I want one state where every human being is treated equally: right on [quoting a comment by Ms Abdel-Fattah]
- > The UN recognises the State of Palestine. Why doesn't the Australian Government?

While noting that tweets appearing briefly on screen were unlikely to receive the same degree of attention from the viewer as a question from the audience, the ACMA agrees with the ABC's submission that including audience tweets in the program increases the overall diversity of perspectives presented, and notes that the audience tweets broadcast during the Segment represented perspectives that were critical of Hamas, as well as Israel.

The panellists

Submissions from complainants to the ABC included:

Dave Sharma, who the producers knew would be the only panellist prepared to argue in support of the Jewish people in Israel was, in his own words, not invited on the panel as an advocate for Israel but as a politician. His was the solitary voice of reason and fact. [...]

Randa Abdel-Fattah said: that Gaza has 'been under a blockade by Israel for 14 years' [...] 'Israel is targeting civilians' [...] Israel is a state that is based on a racial apartheid system. It is an apartheid state that preferences one racial group over another. [...]

The ABC submitted to the ACMA:

Randa Abdel-Fattah did not say 'the people of Gaza suffer because Israel controls its borders'. She described Gaza as having been 'under a blockade by Israel for 14 years, cut off from the rest of Palestine'. An alternative perspective was voiced by Dave Sharma [...]

Randa Abdel-Fattah took issue with Dave Sharma's characterisation [...] She was interrupted by Dave Sharma, who sought to redirect the conversation towards solutions. [...]

The first reference to apartheid arose when Randa Abdel-Fattah described Israel as ‘an occupier and a coloniser, a state that is based on a racial apartheid system’. This characterisation was immediately rejected by Dave Sharma [...]

This remark [‘Israel is targeting civilians’] was made early in Randa Abdel-Fattah’s response to a question asking why attacks on ‘innocent Israeli citizens’ and the actions of Hamas were being ignored. [...] While the questioner is not in shot at this part of the program, it is clear from Randa Abdel-Fattah’s phrasing and emphasis that the questioner had indicated that she rejected the claim that Israel is targeting civilians. In her further statements Randa Abdel-Fattah explained the basis for her belief that Israel is targeting civilians – that is, that Israel knows where Palestinian civilians live.

The Segment included a number of strongly articulated perspectives on the Subject Matter, the wider Israeli-Palestinian conflict and possible solutions. Relevant contributions are assessed in turn below.

Ms Abdel-Fattah’s response to a question about Israeli suffering

Ms Abdel-Fattah responded:

There are children who were massacred and slaughtered. Nine Palestinian families have been wiped off the civil registry. Just yesterday, there was a tweet about that. Nine Palestinian families no longer exist – obliterated – and you’re talking to me about Israeli safety?

Israel has a state-of-the-art weapons defence system, missile defence system. Where do Palestinians go when they are being bombarded by the IDF, by one of the most powerful nuclear powers in the world? Where is their protection? Where are the people there to protect them from that onslaught? And Israel is targeting civilians. Israel... Yes, it IS targeting civilians. Israel has access to, because it is the occupier, the population registry for Palestine, so it has the names, the ages, the residential addresses of every single Palestinian in Gaza, which is why it can make a phone call to say, “We’re going to bomb this residential tower at so-and-so time”.

In contrasting the situation described by the questioner with the loss of life and lack of security experienced by Palestinians in Gaza, Ms Abdel-Fattah made a forceful argument about what she considered to be the disproportional nature of the suffering. She accused Israel of ‘targeting civilians’, but qualified this assertion by noting that civilian residents of apartment towers are warned by Israel prior to attacks.

Mr Sharma’s response to the question

Look, I mourn the loss of life on both sides of this conflict, innocent civilians on both sides of this conflict. Every loss of life is regrettable, on the Israeli side and on the Palestinian side, and many people have suffered through this conflict, in my view, needlessly. This wasn’t a conflict that needed to happen.

In response to a question by the host about the reasons for the current violence, Mr Sharma continued:

The proximate cause was that Hamas started to fire rockets at Israeli civilian populations.

There have been five conflicts... Since Israel withdrew from Gaza in 2005, there have been at least five conflicts between Hamas and Israel, and they’ve almost invar... One started because an Israeli soldier was kidnapped and abducted – Gilad Shalit. Many others have started because of rocket fire from Hamas. I can’t understand why Hamas does this, because it knows the response, as the response of any nation would be if its own population was taking rocket fire, would be to hit back at the sources of the rocket strikes. In Australia, if we were taking rocket fire here, I expect our population would be calling our political leadership and saying, “What are you doing to stop this?”

It’s that Israel has a right to self-defence. They don’t choose to initiate a conflict with Hamas. They didn’t initiate this conflict with Hamas. I think it’s regrettable Hamas did so, but it’s been to the detriment, certainly, of the Gazan civilian population, without doubt, and the Israeli population too.

Mr Sharma clearly stated that he considers Hamas to be responsible for the current, as well as past outbreaks of violence, and that Israel is justified in its actions as it is acting in self-defence.

Ms Abdel-Fattah's assertion that Israel is an occupying power practicing apartheid

When you say Israel has a right to self-defence, what you're actually asking us to embrace as a proposition is that an occupier and a coloniser, a state that is based on a racial apartheid system [...]

Mr Sharma interrupted, stating he did not accept those characterisations. Ms Abdel-Fattah replied that 'the most prestigious human rights organisation, Human Rights Watch, found, in its report last month, that Israel is practising apartheid'. At this point, the host interjected to qualify the use of the term in the report as 'a form of apartheid', before Ms Abdel Fattah continued:

Palestinian intellectuals, activists, lawyers have, for years, been recording – and Israeli human rights organisations – that Israel is a settler apartheid state. It is an apartheid state that preferences one racial group over another. It is infused in every single aspect of its legal processes, its ethnic cleansing, its depopulation processes, its military occupation, its brutal military occupation in the West Bank, in East Jerusalem, in Gaza, its brutal siege on Palestinians in Gaza.

Ms Abdel-Fattah went on to illustrate why she considered that Israel practised apartheid by speaking about the example of her father, who could not return to his house in the former Palestine, while Jewish Australians had a right to return. In this part of the Segment, Ms Abdel-Fattah presented a critique of Israel's treatment of Palestinians and used terms associated with state-perpetrated discrimination and violence, such as 'apartheid' and 'ethnic cleansing'.

Ms Robinson's criticism of Israel's actions

Arguing from her perspective as a human rights lawyer, Ms Robinson supported some of Ms Abdel-Fattah's statements, including the use of the term 'apartheid':

I have to agree with Randa. I mean, it's one thing, Dave, to say that Israel has the ability to respond to rocket strikes, but in such a disproportionate and indiscriminate manner... If we look at the figures just from the most recent conflict in the past month, something like 248 Palestinians have been killed, including 66 children. [...]

It is not correct to say that Israel is right and is using the appropriate use of force in response to what Hamas has been doing. This is an unlawfully occupied people who have suffered great disadvantage, discrimination and human rights violations. It does... There is a definition under international law of apartheid. Human Rights Watch, B'Tselem, other Israeli human rights groups agree that it meets that definition.

Ms Robinson continued by criticising the Australian Government for its failure to support measures to address the actions of both Israel and Hamas in international forums.

Response by Mr Sharma

Ms Robinson's contribution prompted the host to invite a response from Mr Sharma, in which he stated:

Israel has not been in Gaza since 2005. They withdrew from Gaza. Shortly after Israel withdrew, Hamas took over Gaza. Hamas has committed to...in its own charter, to the destruction of the state of Israel and to imposing Islamic law upon what was historically the territory of Palestine. They're perfectly free to do that, but they're a listed terrorist organisation. Now, in my own experience, and this is certainly true of the Palestinian political leadership in the West Bank, Fatah, they would like to have a two-state solution, and they support a negotiated two-state solution. But Hamas does not in Gaza. They've never accepted Israel's right to exist.

In this contribution, Mr Sharma provided further context by noting different positions within Palestinian groups and repeating his strong criticism of Hamas as a fundamental obstacle to any resolution to the conflict.

Mr Husic's response to a question about the role of Hamas

Mr Husic was asked by an audience questioner about the Australian Labor Party's policy of recognising a Palestinian State and favouring a two-state solution. He responded, in part, by stating:

Randa and I have different opinions on this, but certainly from my perspective, a two-state solution where Israeli families and Palestinian families can actually have a space to lead peaceful and happy lives [...]

In response to the question about how this all started... My understanding was that settler activists had, during the holy month of Ramadan, been requiring people to leave their homes, and you can appreciate how that would make people feel. I do not condone rockets being fired into Israelis but, at the same time, the response that we saw, I have to say, was disproportionate. You saw over 200 Palestinians killed. And the thing that got me was the nearly 70 children who lost their lives in that, and also the stories of families deciding to sleep as one in their basements, worried that they would...that would be the last time they would be together. Now, I am sure there are equally human stories as well on the Israeli side. [...]

Like Ms Robinson, Mr Husic criticised Israel's actions as 'disproportionate' and provided a contrasting explanation to Mr Sharma's about what gave rise to the violence. While both these points were aligned with a Palestinian perspective, Mr Husic also noted that both Israelis and Palestinians were suffering as a result of the conflict, and suggested that a two-state solution, as supported by his party, would benefit both Israelis and Palestinians.

The host

As noted above, the host plays a central role in the Program's live discussion format by inviting questions, seeking or providing clarification about a speaker's assertions, and re-focussing or re-directing the discussion.

This is reflected in the ABC's editorial policy guidance for live current affairs content, which advises:

Be prepared, during live content, to ask questions, challenge interviewees on anything which sounds doubtful or contested, and seek additional information on sources and supporting evidence.²

Submissions from complainants to the ABC included:

[...] The panel was biased and unbalanced and Hamish MacDonald made no attempt even to query the misinformation being broadcast unchallenged and uninterrupted. [...]

Host Hamish MacDonald facilitated a lengthy discussion involving accusations by Ms Abdel Fattah and Ms Robinson that Israel is an apartheid state.

The ABC submitted to the ACMA:

The presenter's moderation which ensured that all panellists had a fair opportunity to contribute to the discussion, and questioners could participate in a meaningful way [...]

The presenter intervened in order to draw other panellists into the conversation. This is entirely consistent with the presenter's role and the nature of panel programs and does not evidence any favouring, undue or otherwise, of Randa Abdel-Fattah's perspective. [...]

² <https://edpols.abc.net.au/guidance/accuracy/> accessed 26 October 2021.

The host's actions in the Segment included:

- > Following Ms Abdel-Fattah's outlining of Palestinian suffering from Israeli airstrikes, directing the panel back to the question 'about the role of Hamas and the impact on Israeli civilians', then seeking a response from Mr Sharma.
- > Querying Ms Abdel-Fattah's assertion that Human Rights Watch 'found in its report last month that Israel is practising apartheid' by saying, 'to be clear, they talked about a form of apartheid, I mean, they weren't calling it an apartheid state'.³
- > Inviting Mr Sharma to respond to Ms Robinson's assertion that Palestinians' human rights are being violated and criticism of the Australian Government's related actions.
- > Intervening in an adversarial discussion between Mr Sharma and Ms Abdel-Fattah when Mr Sharma asked Ms Abdel-Fattah 'what's your solution?' by inviting Mr Tambo's broad perspective.
- > Interrupting Ms Abdel-Fattah when that discussion resumed by throwing to another question from the audience.
- > Challenging Mr Husic by stating 'I can see you're changing this to a discussion about the government, but it was a question about Labor's position', before asking for a further response on the question from Ms Robinson.

By inviting additional responses and different views on contentious points and interrupting panellists engaging in a narrow, two-way debate, the host played an active role in broadening the discussion and allowing a diversity of perspectives to be expressed. The host also directed panellists to return to the focus of the questions that had been asked and questioned one assertion by Ms Abdel-Fattah. While the host's querying of Ms Abdel-Fattah's interpretation of the Human Rights Watch's report did not reject her use of the term 'apartheid', his intervention signalled that this was a contentious issue and may have raised some doubts about her understanding in the minds of some viewers.

Discussion - Standard 4.1, Standard 4.5 and Standard 4.2

Standard 4.1

The Standard requires the ABC to 'gather and present news and information with due impartiality'. The ACMA considers that this needs to be considered in the context of the Program.

In the context of a panel discussion program, the ABC is gathering a group of people to present information to the audience. Standard 4.1 does not require the composition of the group in and of itself to present every perspective on the issues to be discussed, independent of what the panellists might then go on to say. Notwithstanding this, the composition of the panel is an important consideration for the ABC in a program such as Q&A, because it is that group of people, including the information they bring to the panel and are willing to share, that will enable the ABC to meet the requirements of the Standard.

As the Program was a panel program discussing a number of current social and political issues, the audience would have reasonably expected a range of perspectives about these issues to be presented. As noted above, the ABC's standards for impartiality do not require

³ See <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>, accessed 26 October 2021.

that perspectives receive equal time, nor 'balancing' panels by selecting panellists of particular backgrounds. Consequently, neither the fact that Mr Sharma was the only panel member presenting a predominantly Israeli perspective, nor the time Mr Sharma was afforded to present his perspective (which, in any case, was substantial) relative to other panel members was determinative of compliance with the ABC Code's impartiality provisions.

In the context of a live hosted program that regularly involves heated discussions on contentious issues, the ACMA considers that satisfying the impartiality requirements of the ABC Code crucially entails the host facilitating the presentation of a diversity of perspectives, challenging any doubtful claims, and not favouring any perspective. In this instance, viewers would have been aware that the Subject Matter was both contentious and sensitive, given the extensive media coverage of the then current conflict involving numerous fatalities.

The ACMA considers that the numerous interventions of the host described above allowed for a range of perspectives on the Subject Matter to be presented. By inviting additional perspectives and comment in a neutral manner using open questions, the host demonstrated some of the 'hallmarks of impartiality' noted in the ABC Code, namely, fair treatment, open-mindedness and opportunities over time for principal relevant perspectives on matters of contention to be expressed.

Accordingly, the ACMA finds that the ABC presented information in the Segment with due impartiality, and therefore did not breach Standard 4.1 of the Code.

Standard 4.5

The Segment included two audience questions communicating the questioner's perspectives, a range of perspectives in audience tweets, as well as strong and contrasting perspectives articulated by panellists on the Subject Matter and a number of related issues, including alleged causes of the violence and potential solutions to the overall conflict.

Mr Sharma was the only panellist who consistently put forward what could be characterised as an Israeli perspective, including identifying Hamas as being responsible for the current and past violence, justifying Israel's actions on the basis of self-defence.

Ms Abdel-Fattah presented a Palestinian view by highlighting the power imbalance between Israel and Palestinians, referring to the significantly higher loss of life among Palestinians, as well as what she described as occupation and systematic oppression.

Ms Abdel-Fattah's response to an audience question, strongly challenging the perspective of the questioner, was moderated by the host returning to the question and inviting a further response from Mr Sharma. Forceful contributions by Ms Abdel-Fattah in the remainder of the segment were challenged by Mr Sharma and interrupted by the host, again inviting another panellist to comment and throwing to a further audience question. Ms Abdel-Fattah's use of terms 'apartheid' was expressly rejected by Mr Sharma and queried by the host.

Ms Robinson was also strongly critical of Israel's actions, but brought a wider human rights-focussed perspective to the debate, which included criticism of the actions of Hamas. Both Mr Husic and Mr Tambo expressed their general dismay at the suffering and loss of life, acknowledging both Israeli and Palestinian suffering due to the conflict.

In considering the above, the ACMA notes that perspectives reflecting both Israeli and Palestinian positions on the Subject Matter were presented during the Segment, with panellists able to express their views in some detail and broaden the scope of discussion to include the wider historical and political context. In particular, the ACMA is of the view that the combination of the host's active approach in seeking responses from Mr Sharma on

contentious matters and Mr Sharma's persuasive articulation on these matters, meant that no one perspective was being favoured over another.

Accordingly, the ACMA finds that the ABC did not breach Standard 4.5 of the Code.

Standard 4.2

In addition to the requirements to present news and information with due impartiality, and not unduly favour any perspective, Standard 4.2 of the ABC Code requires the ABC to present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

One of the complainants submitted to the ABC:

In the last five years, Q&A has not had an Israel advocate, nor anyone representing a mainstream Australian Jewish organisation, on the show. As such, a significant strand of thought within the community has been knowingly excluded.

The ABC submitted to the ACMA:

It is reasonable to expect that principal relevant perspectives on the conflict between Israel and Hamas would be presented across the ABC over the timeframe of this conflict and its immediate aftermath. [...]

Through the contributions of panel members, the selection of audience questions, and the presentation of a range of opinions in tweets, the program demonstrably presented a diversity of perspectives. It contributed to the range of perspectives the ABC has presented, over time, about the long-running conflict between Israelis and Palestinians as well as the recent outbreak of hostilities. Whether or not Q+A has featured 'an Israel advocate' or 'anyone representing a mainstream Australian Jewish organisation' over the past five years is immaterial to an assessment of compliance with this standard.

As noted above, the composition of panels and the background of panel members is not determinative of compliance with the ABC Code's impartiality standards. The ABC Code refers only to the presentation of perspectives, not representation of people from certain organisations or backgrounds.

As noted in the ACMA's assessment of compliance with Standard 4.5, the Segment exposed a diversity of perspectives on the Subject Matter, as well as the wider Israeli-Palestinian conflict, and thus contributed to the presentation by the ABC of a diversity of perspectives on these issues.

The ACMA notes the complaint refers to only one program and on the basis that the ACMA has assessed a diversity of perspectives was presented in the Program, Standard 4.2 is not relevant in this case.

Accordingly, the ACMA finds that the ABC did not breach Standard 4.2 of the Code.

Attachment A

Complaints

Complaint 1

To the ABC 30 May 2021

[...] The panel was biased and unbalanced and Hamish MacDonald made no attempt even to query the misinformation being broadcast unchallenged and uninterrupted. [...]

This violates the ABC's Charter to provide an even-handed, evidence-based discussion and to call out views that are misinformed, misguided, incomplete and unsupportable. It also violates the ABC's Charter to provide balance in panel member selection, in audience selection and in question selection in a program like Q&A. [...]

When invited to "defend" Israel, Dave Sharma, quite rightly stated he was on the panel as a Liberal MP and not there as an Israeli spokesperson. If having him on the panel was the Q&A producers' idea of "balance" for this topic, it was a grave and I suspect, deliberate error.

Such appalling failure by a flag-ship ABC current affairs program to tackle a serious topic responsibly carries severe consequences. There has been a major up-surge in anti-Semitic hate speech, postings on social media and behaviour on the streets. Programs like this help to spread the false narrative of Israeli "war crimes" with the inevitable flow-on to verbal and physical attacks on the Jewish community. [...]

Follow-up (undated) to the ABC

[...] the Israeli ambassador was invited to be an audience participant only, not to serve on the panel, where his information might have been much more effective and beneficial for the audience [...].

As Mr Sharma said on the night, he was on the panel as an Australian Member of Federal Parliament. He was not there to be a spokesperson for Israel. There was no spokesperson for Israel or for the local Jewish community. Again, this indicates an overwhelming selection bias.

[...] from the Jewish Board of Deputies, was in the audience, with a lapel microphone and an "accepted" question. She was never invited to submit it. Once more, this indicates an overwhelming selection bias. [...]

Complaint 2

To the ABC 30 May 2021

Randa Abdel-Fattah is a very eloquent and clever speaker. She certainly spoke from the Palestinian's peoples point of view. It's always easy to agree with a speaker who says what you already believe and enjoy hearing. I watched the episode twice - did I miss the spokesperson from the Israeli side? Dave Sharma was the Coalition spokesperson just as there was a Labor Party spokesperson. Neither are Israeli spokespeople! Did Q&A forget to invite an Israeli spokesperson? The choice of question that was allowed to be asked by Q&A of the Jewish lady in the audience was so transparently mild [...]

Follow-up (undated) to the ABC

[...] you go on to say that the two people you approached to speak from the Israeli point of view, were only asked to be an "expert audience member". One has to ask themselves the

question: Why were they not asked to be on the actual panel? Why just as an audience member? I don't consider Dave Sharma to be a spokesperson for Israel, just as the Labor politician that was on the program was not a spokesperson for the Palestinians. [...]

Complaint 3

To the ABC 28 May 2021

[...] The choice of panellists ensured there would be sustained, vociferous criticism of Israel and its people. Randa Abdel Fatah is a passionate advocate for her people and that is to be admired. However she was given free reign [...]; and did so with the support of lawyer Jennifer Robinson. The Q & A producers would have been aware of their viewpoint when they were selected to appear.

Dave Sharma, who the producers knew would be the only panellist prepared to argue in support of the Jewish people in Israel was, in his own words, not invited on the panel as an advocate for Israel but as a politician. [...]

To the ACMA 1 July 2021

[...] It is unreasonable to argue that a question from the audience can be equated with a lengthy monologue presented by a panellist. The questions serve as a platform from which the panellists are permitted to espouse their views. It is noteworthy that the audience questioners were not offered an opportunity to respond, hence there was clearly no balance of opinions in this regard. [...]

Mr Dave Sharma MP [...] was offered limited opportunity (and time) in which to contest the claims of both of the anti-Israel critics. It is also worth noting that Mr Sharma attended in his capacity as an Australian politician. He acknowledged that he was not present as an advocate for Israel. There was no panellist invited to speak in favour of Israel and to provide an opposing point of view! [...]

[...] There were two panellists who were clearly espousing a harsh and critical view of Israel. One of the other panellists admitted to knowing little about the subject.

Whilst the remaining panellist, Mr Ed Husic MP, was relatively moderate in his statements, it worth noting that he is the member for the electorate of Chifley; which is located in Western Sydney. It is noteworthy that a significant proportion of Greater Western Sydney nominates their religious affiliation as "Islam" (9.1% in 2016; as compared to 0.1% Jewish). It was unlikely that Mr Husic would be outspoken in his support of Israel, or that he would be strongly critical of the Palestinian point of view.

Hence there were two panellists strongly opposing Israel, one who knew little but identified with the popular concept of the Palestinians as the "oppressed" and one who was likely to favour the Palestinian point of view. A total of 4 panellists opposed to the one, Mr Sharma, who would predictably support the Israeli viewpoint.

Hence it is false to claim that "no one view was unduly favoured over any other in the broadcast". It is also worth noting that there was an inequitable distribution of time devoted to the two "sides" of the issue. Whilst the two panellists critical of Israel were able to speak for a total time in excess of 9 minutes (Ms Abdel-Fattah for 5 minutes 9 seconds; Ms Robinson for 3 minutes 57 seconds), Mr Sharma was allowed a total time of only 3 minutes 7 seconds. [...]

The [...] at the NSW Jewish Board of Deputies [...] was invited to attend and submit a question. She was told she'd be called upon to ask her question and also to interact with the panel for a longer discussion. That never happened. [...]

[...] only one voice, not from the Jewish community, to oppose their views. There was grossly unequal distribution of time for the opposing views to be expressed. [...]

Complaint 4

To the ABC undated

[...] I felt that the panel was extremely biased towards the Palestinian side and Dave Sharma was ambushed by the other panellists. It was unfair for there not to be another qualified panellist who could give an informed response about Israel's situation in the conflict. [...] I feel in this episode, Dave Sharma, who stated that he was not a spokesperson for Israel but had lived there, did not have a chance or any other person supporting what he was saying. Having Jewish people in the audience was not adequate enough to challenge what the others were saying. [...]

Follow up to the ABC 27 June 2021

[...] It was not clear at all that Randa AF's view was strongly contested and the audience would have definitely not received an informed perspective. How could they when there was no equivalent representative for the other side.

Complaint 5

To the ABC 29 May 2021

[...] Firstly, the panel selection was biased in favour of those with pro-Palestinian views. Only Dave Sharma was able to give a balanced view of the issues. He was naturally guarded in his comments. I wondered about whether the moderator knew the question that the Jewish lady would ask, I have had it confirmed to me that "questions are submitted in the days leading up to the program and are selected on merit on the day of the show". To my mind this question was deliberately selected to put the Jewish people/Israel in a bad light. [...]

To the ACMA 5 July 2021

[...] neither the Israeli ambassador nor the co-CEO of [...] were invited to be panellists only "experts in the audience". Whilst Dave Sharma was on the panel, he was naturally guarded in his comments. The makeup of the panel was clearly biased "4-1" [...].

Complaint 6

To the ABC 28 May 2021

[...] There were three, if not four anti-Israel panellists, and only one panellist - Dave Sharma MP – moderately defending Israel's position. There were no panellists who directly represented a pro-Israel perspective. [...]

To the ACMA 12 July 2021

[...] There was no Jewish or Israeli panellist, nor even a panellist representing a Jewish or Israeli perspective. (Note: Dave Sharma does not qualify for either.)

Therefore, there were four panellists supporting the Palestinian case – ranging from moderate to outspoken – and just one panellist who was a moderate supporter of both Israel and the Palestinians. [...]

Thus, the panel cannot be assessed as being even remotely "reasonably balanced."

Also, the selection of tweets from the audience that were screened was similarly skewed. It seems that numerous tweets were excluded that were made by the many people supporting Israel or critiquing the Palestinian arguments. [...]

Other articulate Jewish MPs or representatives of recognized organisations in Australia could have readily been approached to sit on the panel.

Therefore, the ABC program did not take reasonable steps to seek diverse representatives from the community to be on the panel.

For the ABC to simply argue that “two audience questions from the Israeli perspective” suffices to demonstrate impartiality, is fallacious if not ridiculous:

- a) The two questions effectively allowed the panellists to display their bias, especially without an opportunity for the audience member to challenge the answer.
- b) Given there was no panellist directly representing those two questioners' views, but there were several panellists representing the views of audience members who expressed anti-Israel views, it is blatantly untrue for the ABC to claim that “no one view was unduly favoured over any other in the broadcast.”
- c) Therefore – and fundamental to this issue - the ABC program did not provide equal opportunity for balance or impartiality of responses by panellists from a reasonable cross-section of views to audience questions.
- d) By simple contrast, it would not be considered reasonable balance if the ABC's Q+A panel had the reverse composition for this debate, thus:

an Israeli Jew and an Australian Jew strongly favouring Israel, two other people more sympathetic to Israel than Palestine, and one middle-of-the-road politician – with no Palestinian or Muslim representative. [...]

In particular with regard to the Q+A program [...] because its format involves a powerful panel responding to questions from essentially-muted audience members, genuine impartiality requires properly balanced representation on the Q+A panel from diverse groups, not simply questions from diverse opinions in the program's audience. [...]

Complaint 7

To the ABC 28 May 2021

[...] The panel consisted of a Palestinian activist (Randa Abdel-Fattah) and a ‘human rights lawyer’ (Jennifer Robinson) who is actively involved in the Palestinian cause. It did not include anyone who is an Israel advocate or who speaks for the Australian Jewish community or its views on Israel.

The outcome of this panel imbalance was that the human rights abuses of Hamas (against Palestinians) and war crimes of Hamas (against Palestinians and Israelis) were not explored, and that easily-disproven libels against Israel went unchallenged.

While Dave Sharma is sympathetic to Israel, he represents a political party, not the Jewish or pro-Israel community. Further, he was balanced by Ed Husic, who represents a different political party, and who is sympathetic to the Palestinians.

While two questions were asked by people sympathetic to Israel, this cannot be considered balancing. Questions on Q&A spark conversation; the questioners are not involved in the

conversation. They have very limited time to speak, whereas the panellists can speak at length.

The [...] understands that Israeli diplomats or pro-Israeli people were invited to be in the audience and refused. This cannot be considered balance; if these Israeli representatives or pro-Israeli people were invited to be on the panel, that would be balance. Inviting people to be in the audience to ask a question, or suggesting that requesting people to ask a question provides balance is tokenistic.

A balanced panel would have seen Abdel-Fattah balanced by a representative of one of the mainstream pro-Israel Jewish organisations on the panel (not in the audience), and for Jennifer Robinson to either be excluded, or advertised as someone involved in the Palestinian cause (and balanced by a second non-politician that is active in Israel advocacy). [...]

Jennifer Robinson is involved in the Palestinian cause. She represents Palestinians in the International Criminal Court. [...]

However, her presence on the show was billed merely as a 'human rights lawyer'. Neither in her bio nor when she was introduced on the show was her role in the Palestinian cause raised. The ABC thus gave the impression that she is a neutral human rights specialist. That she came out so strongly against Israel in the show was unsurprising to anyone who knows her involvement in the Palestinian cause, but the average viewer would not have known her involvement, and would have been more convinced by a supposedly neutral human rights lawyer than Abdel-Fattah, who was at least billed as a Palestinian advocate.

When a Jewish person is pro-Israel, it is unsurprising. When a Palestinian person is pro-Palestine, it is unsurprising. But when a neutral person is pro- one side or the other, people will often take more notice of their views. That the ABC didn't reveal that she was an advocate for the Palestinian cause is an example of unfair and dishonest dealing. [...]

In the last five years, Q&A has not had an Israel advocate, nor anyone representing a mainstream Australian Jewish organisation, on the show. As such, a significant strand of thought within the community has been knowingly excluded.

The last time a Q&A episode was aired during ongoing Hamas-Israel violence (21/5/18), Abdel-Fattah was a panellist. As such, a strand of thought within the community has been disproportionately represented.

Q&A has included an Israeli voice in three shows over the last five years (as well as other Palestinian voices and people who are highly sympathetic to the Palestinian cause). The Israeli voices were two Israeli politicians [...], 25/11/19; [...], 11/9/17) and a journalist [...], 22/2/16). Two of these shows touched on Israeli–Palestinian relations, but a) the role of these politicians and journalist isn't to advocate for Israel (whereas Abdel-Fattah is an advocate for the Palestinian cause); the Israelis on the show provide an Israeli perspective, but they are not professional advocates and b) they weren't on the show during a period of violence, when interest in and emotions about the situation are concentrated.

The episode with [...] was an example of a balanced panel. It also included an academic from the [...]. The Israeli-Palestinian dispute wasn't discussed, but Israel was raised in another context; the journalist and the academic discussed the issue dispassionately, with nuance. [...]

To the ACMA 15 July 2021

[...] If the ABC considers that Mr Sharma's presence provided a pro-Israel balance to the show, then it remains that Mr Husic, Dr Abdel-Fattah and Ms Robinson all provided the pro-

Palestinian view. The ABC's response noted (correctly) that 'the editorial obligation on the program was to present a diversity of relevant perspectives on the issue, and to not unduly favour any one of those perspectives over any other'. Clearly, the make-up of the panel unduly favoured one of those perspectives, as did the cumulative time provided to them when the Israeli–Palestinian dispute was being discussed.

Further, by not mentioning Mr Husic or Ms Robinson in its suggestion that Mr Sharma balanced Dr Abdel-Fattah, the ABC's response was disingenuous, by implying that one person (Sharma) balanced one other person (Abdel-Fattah). [...]

In my complaint, I specifically noted that the ABC invited Israeli or pro-Israeli people to be in the audience (as opposed to the panel), and this could not be considered as balancing the obviously pro-Palestinian panel. In its response, the ABC noted that it had invited an Israel advocate [...] and [...] to be in the audience. (The ABC's response disingenuously states that [...] was invited 'to participate in the program', which implies 'appear on the panel', when he was actually only invited to sit in the audience and ask a question.) [...]

Further, given that the ABC argued that the panel was not imbalanced, why did it feel the need to invite Israeli or pro-Israeli people to the audience? That Q&A's producers invited these people to be in the audience is an implicit acknowledgement that the ABC knew the panel was imbalanced.

Similarly, in my complaint I noted that (pro-Israel) questions from the audience don't act to balance the (pro-Palestinian) perspectives on the panel. [...]

Complaint 8

To the ABC 30 May 2021

[...] As you know, the ABC editorial policy requires impartiality and diversity of perspectives, independence, integrity and responsibility, and accuracy in reporting. Whilst not a news program, I nonetheless believe that Q&A and ABC as our national broadcaster have an obligation to fairly represent a debate on a controversial topic and to ensure that either inaccurate and vitriolic statements are not made, or they are challenged so viewers do not necessarily take them as fact. [...]

On a panel discussing political issues, it is reasonable to include politicians from both major political parties. In this case, having Dave Sharma (a Liberal member for a seat with 12.5% of the electorate Jewish) and Ed Husic (Australia's first Muslim member of Parliament and the member for a seat with 8.3% of the electorate Muslim) were good choices. [...]

There were 2 lobbyists/advocates for the Palestinian cause on the panel and none for the Israeli side. This was particularly troubling given that by referencing these panellists as an author/academic and lawyer, the viewer had no idea that the panel was unbalanced and that they would not be exposed to a range of views. [...]

The Arab-Israeli conflict inevitably results in different perspectives and a range of views on what is truth. That is understandable. If, however the ABC does not provide a balanced panel, then the moderator of the show should be obligated to either challenge statements [...] or provide alternative views. Whilst this did happen on some occasions, there were far too many [...]

Randa Abdel-Fattah said:

1) that Gaza has 'been under a blockade by Israel for 14 years' - in response to this statement it needs to be pointed out that Gaza also shares a border with Egypt, that Israel

sends 8,000-10,000 trucks into Gaza with aid per month [...] and that the 'blockade' (not an unusual state of affairs between countries who are at war) was only instituted after Hamas started to import rockets through the border.

2) '... and Israel is targeting civilians' [...]. Despite rockets being fired from civilian areas, Israel only targeted Hamas sites, called off strikes when civilians were found to be in the area, and called and letter-drops civilians beforehand to warn them to leave. [...], director of the United Nations Relief and Works Agency (UNRWA) in the Gaza Strip, told Israeli Channel 12 on 23/5/21 that Israeli airstrikes during the recent conflagration were "precise" and "sophisticated". [...]

3) that Israel is "a state that is based on a racial apartheid system" which "It is an apartheid state that preferences one racial group over another." ... Palestinians who are living as second-class citizens in Israel." [...] Arab Israelis who represent 25% of the population of Israel have. They vote in elections and have representatives in Parliament. They sit on the Supreme Court, represent 20% of doctors in Israel and 50% of pharmacists. They have the choice whether to serve in the military. Arabs, Jews, and Christians mix freely in workplaces, public transport, beaches, universities, and in all aspects of daily life.

[...] The ABC code of conduct also requires it to consider harm and offence caused to the community. There is a significant risk of harm and offence to the Jewish community, not by the ABC itself, but by the content which the ABC allows to be broadcast which misrepresents Israel, and this is evidenced by the social media contents on the Q&A Twitter and Facebook pages in response to the program.

It is perfectly valid to disagree with Israeli policies and these opinions should be broadcast as long as they are fair representations of events. [...]

Follow up to the ABC 29 June 2021

[...] I don't need to tell you that having 2 questions from the audience to allegedly reflect 'the Israeli side' does not in any way resolve the lack of balance on your panel. That can be demonstrated in the most basic way by the disproportionate airtime given to the Palestinian narrative on the program. I also don't need to tell you that audience questions do not allow a right of reply or an ability to interrupt a panellist which other panellists frequently did. To say that an Australian politician who happens to have knowledge of the issues 'balances' Palestinian advocates is disingenuous. Whilst it is comforting that some effort was made to invite a panellist to present the Israeli side, if one invited panellist who would have provided balance was unable to attend you have an obligation in your code of practice to find another who could present this perspective, not just to pick a token Jewish Australian to ask a question to a loaded panel. [...]

Complaint 9

To the ABC 7 June 2021

[...] The inclusion of Randa Abdel-Fattah, described on Q&A's website as an "Palestinian Egyptian Muslim writer, academic, anti-racism and Palestine advocate" should objectively give rise to the inclusion of an "Australian Jewish pro-Israel advocate" to provide balance to what is a complex and contentious issue. [...]

[...] believes that the lack of a Jewish, pro-Israel representative on the panel while a panellist of Palestinian descent was included, without an equivalent balancing view on such a contentious topic, breaches the objective standards of impartiality and diversity.

This equivalent view was not provided by the presence on the panel of non-Jewish Liberal MP Dave Sharma. While Sharma is known to have pro-Israel views, and to be knowledgeable about Israel as a result of his role as former Australian Ambassador to Israel, he is not an advocate for Israel in the way Abdel-Fattah is for the Palestinian cause.

It is not reasonable to expect that a former Australian Ambassador to Israel, no matter how knowledgeable, will provide counterbalance to semi-professional advocate Abdel-Fattah. Moreover, Sharma's presence on the panel was itself "balanced" by the presence on the panel of Ed Husic, an MP known to be more supportive of the Palestinian side and less sympathetic to the Israeli one. The problem was also exacerbated by the presence on the panel of Jennifer Robinson, who also strongly favours the Palestinian perspective.

The Code clearly sets out the objective standard of balance and fair treatment. [...] strongly believes that an objective viewer of this particular episode which covered the conflict in Israel and Gaza would have an expectation that both sides of this contentious conflict would be presented by the program.

Q&A failed to do this by allowing Randa Abdel-Fattah's strong advocacy for the Palestinian narrative to go unopposed and by its failure to include a pro-Israel Jewish panellist to provide the balance that the Code requires. Q&A objectively failed in its impartiality and balance requirements when it allowed only one perspective on this conflict to be heard while the other was silenced by the express absence of a pro-Israel Jewish panellist.

It is also our contention that the conflict is undeniably complex and the competing narratives are objectively contentious. [...] believes the lack of a pro-Israel Jewish voice on the panel goes against the "likely audience expectation of the content" given the "circumstance in which the content is made and presented" and "the type, subject and nature of the content" as stated in the Code due to the contentious nature of the Subject Matter as well as the format of Q&A as a panel show.

There is a clear objective expectation that a panel show format such as Q&A, when covering a contentious issue such as the conflict between Hamas and Israel, would balance the discussion of the issue with at least one panellist from each side. Q&A did not do this. It chose to include on the panel a high-profile Palestinian advocate to articulate the Palestinian narrative while effectively silencing the pro-Israel Jewish perspective.

The fact that two Jewish audience members were allowed to ask questions does not in any way fulfill Q&A's responsibilities under the Code. Asking brief questions is not at all equivalent to being on the panel because the ability to actually contribute to the discussion or pose follow up questions is severely limited. [...]

To the ACMA 22 July 2021

[...] The circumstances in which the program was prepared and broadcast.

The build-up to the May 27 broadcast was preceded by 11 days of fighting between Hamas and Israel which concluded on May 21. The conflict had attracted intensive coverage and scrutiny by radio, TV, print, online and social media platforms. Noisy demonstrations against Israel took place in Australia's capital cities.

It is therefore reasonable to assert that the topic qualified as a "contentious" subject under Section 4 of the Code, so, [...] the program needed to be scrupulous in ensuring both sides were included fairly and equally when it assembled the panel. [...]

[...] the May 27 2021 program was not advertised as focusing solely on a "Palestinian perspective" or, for that matter, an "Israeli perspective". [...]

Over the last decade, Q&A has singularly failed to include mainstream Australian pro-Israel Jewish speakers to debate the Israeli-Palestinian issue. [...]

The Palestinian side was represented by Randa Abdel-Fattah, who, as our original complaint noted, was accurately described on the Q&A website as a “Palestine advocate”, although on the program itself she was only introduced as “author and academic”. [...]

So, in effect, the program featured at least two known advocates for the Palestinian cause and, given the absence of a genuine pro-Israeli equivalent, the program did unduly favour one perspective. [...]

The ability to pose a single question with no follow up cannot possibly be considered equivalent to a panellist who has the ability to speak at length, and respond to what other panellists are saying.

Equally, claiming that Mr Sharma had discharged the show’s Code obligations is undermined by his own statement during the program that “I’m not here as the spokesperson for Israel, for that matter. I’m here as an Australian parliamentarian, who’s here as a representative of Australia”. [...]

Even if one accepts A&CA’s stance that the program’s only obligation was to “not unduly favour one perspective over another”, according to that metric the program still breached the Code. An analysis by media commentator [...] of the section dealing with Israel and Hamas shows the panellists’ speaking time as:

Randa Abdel-Fattah – 27%

Jennifer Robinson 21%

Dave Sharma – 20%

Ed Husic – 19%

Mitch Tambo – 13%

[...] With A&CA essentially conceding that Mr Sharma was the only panellist to present the Israeli perspective, in effect 80% of the discussion was dominated by speakers who expressed views that criticised Israel and, in many instances, they went unchallenged.

The consequence of not including a pro-Israel Jewish advocate was apparent when host Hamish MacDonald facilitated a lengthy discussion involving accusations by Ms Abdel-Fattah and Ms Robinson that Israel is an apartheid state.

In pro-Palestinian propaganda, Israel’s treatment of Palestinians on the West Bank and Gaza and even Israeli Arabs is analogised to the experience of Blacks during Apartheid South Africa, who had practically no legal rights. This is a grave and utterly baseless charge that needed to be challenged.

Yet, when asked by host Hamish MacDonald to respond, it was at this point that Mr Sharma explained he was not an Israeli spokesperson and proceeded to discuss other matters.

That no rebuttal of the apartheid smear was heard from any of the panellists directly resulted from the program failing to honour its Code obligations by including a pro-Israel Jewish advocate who would have easily explained the flaw [...].

The absence of a response also created an erroneous impression that there is no answer to the apartheid comparison and for many pro-Israel viewers, contributed to a justified perception that the program deliberately aimed to make it easier for the Palestinian perspective to be aired. [...]

Complaint 10

To the ABC 6 June 2021

[...] I watched a Segment of the Q& A program and it was clear that there was a total lack of balance in the panel members. There were apparently 3 anti-Israel members and only one member trying to defend the Israeli side. Dave Sharma is a parliamentarian and therefore limited in what he can say, [...]. There was no real analysis of the situation, for example Hamas and its 4000+ rockets fired, or its tunnels under civilian areas, were just mentioned in passing. [...]

To the ACMA 4 July 2021

[...] Although two of the panellists were politicians of opposite parties and views, one is a Muslim but the other is a non-Jew who represents an electorate with a significant Jewish minority representation. Not exactly equivalent. Two of the other panellists included a strong Palestinian advocate and someone who has represented Palestinians at the ICC. There was no direct representative of the Jewish community on the panel. As Mr Sharma is a government politician, he naturally must be more circumspect in what he says compared to the other two pro-Palestinian private citizens. [...]

Attachment B

Extracts of the broadcaster's response and submissions

Extracts of the ABC response to the complainants:

[...] We observe the Segment on the Middle East presented two audience questions from the Israeli perspective and that a range of views were presented by the panellists, each of whom rigorously and passionately debated the issues surrounding the recent outbreak of violence. While Randa Abdel-Fattah and Jennifer Robinson criticised aspects of Israeli government policy, Australia's former Ambassador to Israel, Dave Sharma MP eloquently addressed and contested the claims of Ms Abdel-Fattah and provided an informed perspective on Israel's actions and decisions.

We are satisfied it was made clear that Ms Abdel-Fattah's view was strongly contested, that the opposing view justifying Israel's actions was prominently presented and the challenging nature of the discussion would have been insightful and illuminating for the program's audience. For these reasons, we are satisfied that a range of principal relevant perspectives were presented on the issue, and that no one view was unduly favoured over any other in the broadcast.

We cannot agree with your claim that there was an editorial obligation on the program to present the perspective of an "Australian Jewish pro-Israel advocate". The editorial obligation on the program was to present a diversity of relevant perspectives on the issue, and to not unduly favour any one of those perspectives over any other.

Nevertheless, the program has explained to Audience and Consumer Affairs that it approached the Israeli Embassy to invite Ambassador Jonathan Peled to participate in the program, but he was unable to travel to Sydney for the recording. The Embassy recommended the program contact [...], who also declined an invitation to participate as an expert audience member, who would be invited to contribute to the Segment by asking a question and expressing his perspective from the audience. [...]

ABC submission to the ACMA dated 6 October 2021:

[...] Assessing the impartiality due in the given circumstances

Section 4 begins with principles which are intended to be a reference for those who are required to apply the standards in a wide variety of circumstances. These principles set out the main factors to consider in assessing the impartiality due in given circumstances.

The type, subject and nature of the content

The Q+A website provides relevant information about the type, subject and nature of the program, including:

Q+A is a television discussion program that focuses mostly on politics but ranges across all of the big issues that set Australians thinking, talking and debating.

It is driven by interaction: Q+A provides a rare opportunity for Australian citizens to directly question and hold to account politicians and key opinion leaders in a national public forum and Q+A is broadcast live so that not only the studio audience but also the wider audience can get involved.

We aim to create a discussion that is constructive, that reflects a diverse range of views and that provides a safe environment where people can respectfully discuss their differences.

It's impossible to represent every view on a single panel or in one audience but we're committed to giving participants a fair go. ...

Q+A generally has five panellists on a discussion moderated by our host.

Sometimes we vary the number, adding someone to cover a late breaking event or having smaller panels to provide more in depth discussion. Occasionally, we will set up a head to head debate on a major policy issue, highlight a special area like science, religion or business or focus on a major leader such as the Prime Minister.

But as a general rule, the aim is to represent both sides of politics as well as voices from business, the arts, media, lobby groups, academia and the broader community.

Q+A is designed to be an engaging and insightful range of views: not a simple breakdown into left versus right. It aims at a complex discussion where two or three panellists can agree on one issue, but be at odds on another. ...

Political decisions have a big impact on our lives and so Australian citizens should have every opportunity to be involved in the democratic process. For that reason, politicians will always be a significant presence on Q+A.

While there may only be very limited opportunities to express your view through a vote at election time, Q+A encourages people to get involved every week – find out the facts, form an opinion, talk politics to your friends, write a letter, send a #QandA Tweet, attend Q+A, submit a video, ask a question. Or simply watch Q+A on television, radio or Facebook: politics is important and we do our best to make the program entertaining and engaging because the more people are involved and paying attention – the better.

It is clear from this description, and from past episodes of the program, that Q+A seeks to encourage, promote and facilitate public discourse. For practical reasons, there is naturally a limit on the number of panellists who can appear on any program. However, the perspectives presented on the program are not limited to those of panellists. Significant contributions are made through audience questions and through the incorporation of tweets as the program is broadcast live. It is the entirety of the program, and not simply the make-up of the panel, that is relevant to assessing compliance with standards for impartiality and diversity of perspectives.

The ACMA has identified that all of the complaints which underpin this investigation allege lack of impartiality due to the composition of the panel. Some of these complaints dismiss as insignificant the contribution made to the discussion by those invited to ask questions. This misunderstands the nature of Q+A and the role of its audience. Q+A is the only ABC News program which incorporates a live audience. It is the only ABC News program in which audience members set the course of the conversation by posing questions to panellists. Questioners do not play a passive role; the program host will often return to the questioner to ask whether they are satisfied with the response that has been provided, providing further opportunity for challenge or extension of the conversation. This is especially the case where questioner has expertise or particular personal experience with the Subject Matter.

Further submissions about the composition of the panel for the 27 May program are provided below.

The circumstances in which the content is made and presented

Q+A is broadcast live. It has typically featured panellists in the studio, facing a live audience.

This edition of Q+A was broadcast during the COVID pandemic. This raised complex additional considerations for panellists and audience members considering whether they wished to participate, or indeed could travel to participate in light of concerns about personal safety and the challenges posed by various restrictions and border closures.

The likely audience expectations of the content

Q+A is a program that is familiar to the ABC audience and is now in its 14th broadcast season.

Viewers expect a conversation touching on a number of topical issues. Viewers expect the program to feature a diversity of views, typically representing both sides of Australian politics and a range of other informed voices. Viewers expect the conversation to be directed by questions put to the panel from the audience, with moderation provided by the program host.

Viewers understand that the discussion will be dynamic and lively, and panellists will often make a number of points before another contributor speaks. Reasonable viewers do not expect every viewpoint expressed on the program to be countered by someone holding an opposing viewpoint.

The degree to which the matter to which the content relates is contentious

This edition of Q+A addressed a range of matters, including:

- the COVID vaccination roll-out
- ALP policies and leadership
- the conflict between Israel and Hamas
- the conflict in West Papua and its independence movement
- colonisation and its impacts
- reconciliation and the truth of Australia's history
- the responsibilities of first nation artists.

All are contentious to some degree. COVID vaccinations, armed conflict, domestic politics, colonisation and truth telling are all highly contentious subjects.

The range of principal relevant perspectives on the matter(s) of contention

As noted above, numerous matters of contention were discussed on the program. There are a diversity of perspectives on each of these subjects. The range of principal relevant perspectives on these subjects is broad and not amenable to precise calculation. The full range of principal relevant viewpoints on these subjects could not reasonably be expected to be presented on a single program, particularly a live and unscripted program featuring a fixed number of panellists.

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

All of the major matters discussed on the program represent ongoing matters of discussion and debate. These subjects are covered across a diversity of ABC content in a diversity of ways, reflecting a diversity of experiences and perspectives.

In relation to the conflict between Israel and Hamas, the program was broadcast in the days after a ceasefire took effect to bring the 11-day armed conflict to a halt. The conflict and ceasefire were highly newsworthy and had been covered extensively across a range of ABC content, particularly news and current affairs content. It is reasonable to expect that principal relevant perspectives on the conflict between Israel and Hamas would be presented across the ABC over the timeframe of this conflict and its immediate aftermath.

Compliance with editorial standards

4.1 Gather and present news and information with due impartiality

The program observed the requirement to gather and present news and information with due impartiality. This was evident in:

- the selection of relevant and topical audience questions to put to the panel;
- the presenter's moderation which ensured that all panellists had a fair opportunity to contribute to the discussion, and questioners could participate in a meaningful way; and
- the selection and presentation of tweets reflecting a range of perspectives and further extending the conversation.

The ACMA has identified an alleged lack of impartiality due to the composition of the panel as common to all complaints. The ACMA's investigations of previous episodes of Q+A have acknowledged that 'the selection of panel members is not representative of whether a program demonstrates impartiality' (see, e.g., Investigation Report 3234). In any case, this panel was carefully composed with a view to providing a rich conversation and a diversity of perspectives across the full range of subjects that were to be discussed.

Panellist Dave Sharma MP played a key role in the program across many of the subjects, including the discussion of the conflict between Israel and Hamas. As noted on his profile, his four-year stint as Australia's Ambassador to Israel focused on 'helping strengthen the relationship in the defence and technology sectors and ensuring strong Australian support for Israel in international forums'. He is deeply familiar with the conflict between Israelis and Palestinians and is sympathetic to the Israeli perspective – see, e.g. <https://www.lowyinstitute.org/the-interpreter/risk-and-reward-israeli-palestinian-conflict>. His selection ensured that the Israeli perspective would be strongly represented in the program and he demonstrably provided an articulate, informed perspective on Israel's actions and decisions. Importantly, the program team's expectation was that he would equally be able to contribute to the range of other important issues discussed in the program, representing the government's perspective on issues such as COVID vaccinations and reconciliation. [...]

The program demonstrated due impartiality in the gathering and presentation of news and information in the careful consideration it gave to the selection of questions for this portion of the discussion. The 27 May 2021 program included two audience questions in relation to Israel and Hamas. Both questions articulated an Israeli perspective on events. The first question was about the recent conflict. The questioner asked why innocent Israeli citizens were being attacked and why the role of Hamas in the conflict was being ignored. The second question went to prospects for peace. In circumstances where Gaza is controlled by Hamas, 'an acknowledged terrorist organisation committed to the destruction of Israel and the killing or removal of all Jews in Israel', the questioner asked how the ALP could 'reconcile its new policy of recognising a Palestinian state, with Hamas as its likely government, with its supposed support of a two-state solution involving Jewish Israel and Islamic Palestine co-existing peacefully'. It was these questions which established the outline of the discussion, and guided the presenter's efforts to elicit relevant responses.

The conversation that followed – along with the selected tweets – demonstrably presented a diversity of relevant perspectives on the recent conflict between Israel and Hamas, and the longer conflict between Israelis and Palestinians. Relevant tweets included: 'If only Hamas spent their money protecting their people instead of on rockets'; 'Not indiscriminate – Hamas is a terrorist organisation'; 'Really disappointed in these responses! There are innocents on both sides'.

There is no basis for concluding that the program did not gather and present news and information with due impartiality.

4.5 Do not unduly favour one perspective over another

[...]

Randa Abdel-Fattah did not say 'the people of Gaza suffer because Israel controls its borders'. She described Gaza as having been 'under a blockade by Israel for 14 years, cut off from the rest of Palestine'. An alternative perspective was voiced by Dave Sharma, who said: '... having lived in the region, I can tell you that the... Firstly, things are not as clear-cut as they might seem. Israel has not been in Gaza since 2005. They withdrew from Gaza. Shortly after Israel withdrew, Hamas took over Gaza. Hamas has committed to...in its own charter, to the destruction of the state of Israel and to imposing Islamic law upon what was historically the territory of Palestine. They're perfectly free to do that, but they're a listed terrorist organisation'.

Randa Abdel-Fattah took issue with Dave Sharma's characterisation, saying: 'And don't tell me that Israel withdrew. Gaza has been under military siege for 14 years. Nobody can leave, there is no freedom of movement, of medicine, of goods. It is...' She was interrupted by Dave Sharma, who sought to redirect the conversation towards solutions. Before further discussion could occur, the presenter intervened in order to draw other panellists into the conversation. This is entirely consistent with the presenter's role and the nature of panel programs and does not evidence any favouring, undue or otherwise, of Randa Abdel-Fattah's perspective. [...]

The first reference to apartheid arose when Randa Abdel-Fattah described Israel as 'an occupier and a coloniser, a state that is based on a racial apartheid system'. This characterisation was immediately rejected by Dave Sharma, who said 'I don't accept any of those characterisations'. Randa Abdel-Fattah referred to Human Rights Watch's recent conclusion that 'Israel is practising apartheid', and the presenter clarified: 'I think, to be clear, they talked about a form of apartheid. I mean, they weren't calling it an apartheid state'. Randa Abdel-Fattah explained what she meant by use of the word apartheid, using as an example how her father is treated when he returns to his birthplace. Jennifer Robinson also contributed, explaining that '[t]here is a definition under international law of apartheid. Human Rights Watch, B'Tselem, other Israeli human rights groups agree that it meets that definition ...'. She was critical of 'the conduct of the Australian government ... voting against every single attempt for human rights accountability for what Israel and Hamas are doing'.

Invited to respond, Dave Sharma outlined the problem from Israel's perspective. He said of Hamas: 'They've never accepted Israel's right to exist. They've never agreed to abide by previous peace agreements, such as the Oslo agreements. And they've never disavowed the use of terrorism as a...as a tool'.

The fluid and dynamic way in which this discussion progressed is characteristic of panel programs. There is no evidence of the program favouring, unduly or otherwise, the description of Israel as apartheid.

> 'Israel is targeting civilians' [...]

This remark was made early in Randa Abdel-Fattah's response to a question asking why attacks on 'innocent Israeli citizens' and the actions of Hamas were being ignored. The questioner had described how her son's family in Tel Aviv had sheltered from Hamas missiles in their safe room, and the family dog had been distressed.

Randa Abdel-Fattah contrasted the questioner's son's experience with that of nine Palestinian families who had been 'obliterated' in Israel's bombardment of Gaza. She said: 'Israel has a

state-of-the-art weapons defence system, missile defence system. Where do Palestinians go when they are being bombarded by the IDF, by one of the most powerful nuclear powers in the world? Where is their protection? Where are the people there to protect them from that onslaught? And Israel is targeting civilians. Israel... Yes, it IS targeting civilians. Israel has access to, because it is the occupier, the population registry for Palestine, so it has the names, the ages, the residential addresses of every single Palestinian in Gaza, which is why it can make a phone call to say, "We're going to bomb this residential tower at so-and-so time." While the questioner is not in shot at this part of the program, it is clear from Randa Abdel-Fattah's phrasing and emphasis that the questioner had indicated that she rejected the claim that Israel is targeting civilians. In her further statements Randa Abdel-Fattah explained the basis for her belief that Israel is targeting civilians – that is, that Israel knows where Palestinian civilians live.

In his remarks later, Dave Sharma commented: 'Israel has a right to self-defence. They don't choose to initiate a conflict with Hamas. They didn't initiate this conflict with Hamas. I think it's regrettable Hamas did so, but it's been to the detriment, certainly, of the Gazan civilian population, without doubt, and the Israeli population too'.

Again, the fluid and dynamic way in which this discussion progressed is characteristic of panel programs. There is no evidence of the program favouring, unduly or otherwise, the description of Israel as targeting civilians.

4.2 Present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

- > 'In the last five years, Q&A has not had an Israel advocate, nor anyone representing a mainstream Australian Jewish organisation, on the show. As such, a significant strand of thought within the community has been knowingly excluded. The last time a Q&A episode was aired during ongoing Hamas-Israel violence (21/5/18), Abdel-Fattah was a panellist. Q&A has included an Israeli voice in three shows over the last five years [...] but [...] they weren't on the show during a period of violence, when interest in and emotions about the situation are concentrated'. [...]

As explained above, an Israel advocate was invited to participate in the program but declined, and a representative of a mainstream Australian Jewish organisation did not respond to an invitation to participate. Notwithstanding this, both of the relevant questions discussed on the program were framed from the Israeli perspective. Dave Sharma gave voice to Israel's perspective in the program. Through the contributions of panel members, the selection of audience questions, and the presentation of a range of opinions in tweets, the program demonstrably presented a diversity of perspectives. It contributed to the range of perspectives the ABC has presented, over time, about the long-running conflict between Israelis and Palestinians as well as the recent outbreak of hostilities. Whether or not Q+A has featured 'an Israel advocate' or 'anyone representing a mainstream Australian Jewish organisation' over the past five years is immaterial to an assessment of compliance with this standard.

Relevant standards under the ABC Code of Practice 2019

Impartiality and diversity of perspectives

Principles: The ABC has a statutory duty to ensure that the gathering and presentation of news and information is impartial according to the recognised standards of objective journalism.

Aiming to equip audiences to make up their own minds is consistent with the public service character of the ABC. A democratic society depends on diverse sources of reliable information and contending opinions. A broadcaster operating under statute with public funds is legitimately expected to contribute in ways that may differ from commercial media, which are free to be partial to private interests.

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.

The ABC aims to present, over time, content that addresses a broad range of subjects from a diversity of perspectives reflecting a diversity of experiences, presented in a diversity of ways from a diversity of sources, including content created by ABC staff, generated by audiences and commissioned or acquired from external content-makers.

Impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented.

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.

Standards:

4.1 Gather and present news and information with due impartiality.

4.2 Present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

4.3 Do not state or imply that any perspective is the editorial opinion of the ABC. The ABC takes no editorial stance other than its commitment to fundamental democratic principles

including the rule of law, freedom of speech and religion, parliamentary democracy and equality of opportunity.

4.4 Do not misrepresent any perspective.

4.5 Do not unduly favour one perspective over another.

The ACMA's approach to assessing content

The ordinary reasonable viewer

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an 'ordinary reasonable' listener or viewer.

Australian 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. 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 affairs.⁴

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Code.

⁴ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.