

## Investigation report no. BI-631

| Summary                      |   |
|------------------------------|---|
| <b>Broadcaster [Service]</b> | Australian Broadcasting Corporation [ABC]   |
| <b>Findings</b>              | <p>No breach of Standard 2.1 [accuracy]</p> <p>Breach of Standard 2.2 [materially mislead]</p> <p>No breach of Standard 4.1 [due impartiality]</p> <p>No breach of Standard 4.5 [unduly favour one perspective]</p> <p>Breach of Standard 5.1 [inform participants of the nature of their participation]</p> <p>No breach of Standard 5.2 [do not override refusal to participate]</p> <p>No breach of Standard 5.3 [opportunity to respond]</p> <p>No breach of Standard 5.8 [secret recordings and deception]</p> |
| <b>Relevant code</b>         | ABC Code of Practice 2019   |
| <b>Program [description]</b> | <i>Four Corners</i> ('Fox and the Big Lie') [current affairs]   |
| <b>Dates of broadcast</b>    | 23 and 30 August 2021   |
| <b>Date finalised</b>        | 19 December 2022  |
| <b>Type of service</b>       | National—television   |
| <b>Attachments</b>           | <p><b>A</b> – extracts from the complaint to the ABC and to the ACMA</p> <p><b>B</b> – extracts from the ABC's response to the complainant and submission to the ACMA</p> <p><b>C</b> – relevant Code provisions and principles and the ACMA's approach to assessing content</p>  |

## Background

In December 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the broadcast of two episodes of *Four Corners* (**Episode 1** and **Episode 2**, together the **Episodes**) by the Australian Broadcasting Corporation (the **ABC**) at 8:30 pm on 23 and 30 August 2021.

*Four Corners* is a current affairs program. The Episodes, titled 'Fox and the Big Lie', looked at the history of the United States cable news network Fox News, including in the aftermath of the 2020 US presidential election, and argued that Fox News had broadcast material supporting former US President Donald Trump (**former President Trump**), including claims of election fraud.

The presenter introduced Episode 1 as follows:

Fox News didn't send the mob [to the 6 January 2021 riots at the US Capitol] but its worst outrage generators certainly fuelled its anger. Trump wasn't alone in his assault on the truth but he could never have spread the big lie [of election fraud] so widely without his most reliable echo chamber, the Murdoch-owned and run Fox News. Tonight on Four Corners, how America's number one cable news network became a propaganda vehicle for Donald Trump and helped destabilise democracy.

Episode 2 was introduced as follows:

The second part of our Four Corners' special will focus on the role of the powerful Murdoch cable news network, in the critical period after the 2020 election, when Fox News hosts embraced and spread the big lie.

While both introductory statements indicated that a central focus of the Episodes would be on Fox News' broadcasting of claims of election fraud following the 2020 US election, large parts of the content were also concerned with exploring the context within which this occurred, namely, the management of Fox News by the Murdoch family, the relationship between Fox and former President Trump during the course of his presidency, the impact of the editorial direction of Fox News on the relationship between Rupert, James and Lachlan Murdoch, and the significance of the support of Fox News' audience for former President Trump.

In response to a complaint received by the ACMA, the ACMA has investigated the ABC's compliance with standards in the ABC Code of Practice 2019 (the **Code**) relating to impartiality, fair and honest dealing, and accuracy.

The complainant was concerned about a wide range of claims and statements made in the Episodes. The ACMA assessed all of these but has focused its full investigation on those that it considered potentially problematic under the Code.

The ACMA's overall assessment is that the Episodes came close to, but did not breach, the high bar set by the impartiality standards in the Code.

However, the ACMA has found there were elements of the Episodes where omissions of relevant material meant that factual content was presented in a way that materially misled the audience and that a participant was not dealt with in the way envisaged by the Code.

The Episodes also included a considerable range and number of opinions, several of which were expressed in strident terms and were subjective personal accounts. These expressions of opinion are not subject to the accuracy standards of the Code.

## Issue 1: Accuracy

### Standard 2

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

2.2 Do not present factual content in a way that will materially mislead the audience.

In considering compliance with a Standard under the Code, the ACMA also takes account of the related Principles set out in the Code in respect of each Standard or set of Standards.

The complaint to the ACMA alleged seven inaccuracies:

1. Fox News' coverage led to the January 6 riots [at the US Capitol] – the complainant observed that social media platforms, not Fox, played a critical role in encouraging rioters. This should have been included in the Episodes.
2. Fox News tacitly endorsed employees to campaign for former President Trump – the complainant observed that Fox issued a statement denouncing two of its presenters appearing at former President Trump rallies, which should have been included in the Episodes.
3. Fox News retaliated against employees involved in the decision to call Arizona for [presidential candidate Joseph] Biden (Joe Biden) – the complainant observed that no pressure was exerted on employees to reverse the call and they could not have lost their job as a result of refusing to bow to such pressure.
4. Fox News lost in the ratings to competitors after the election – the complainant observed that Fox achieved its highest ratings in 2020.
5. Fox News promoted the narrative about election fraud – the complainant observed that Fox accurately reported the election results and scrutinised former President Trump's fraud claim.
6. The Episodes featured Fox News 'insiders' – the complainant observed that all but one employee had left Fox prior to the time period that was the focus of the Episodes.
7. Fox News published propaganda on former President Trump's behalf – the complainant observed that former President Trump was highly critical of Fox in many tweets and Fox was the first network to call the crucial state of Arizona against [former President] Trump on election night.

These 7 allegations have been assessed below under Standard 2.1.

The complainant also submitted to the ACMA that the Episodes materially misled the audience because they did not provide relevant contextual information, alleging the following:

1. The ABC never included any information about the prominent role of social media in the January 6 riots on Capitol Hill, even though that information is documented in a number of different indictments.
2. The ABC failed to include the statement that Fox News issued after Sean Hannity and Jeanine Pirro appeared at former President Trump's rally in 2018.
3. The ABC failed to refer to Arnon Mishkin, still employed by Fox News and the decision maker in relation to the Arizona call.
4. The ABC failed to accurately report the ratings to which they had access after the election.
5. The ABC failed to include any information about Fox News' pleadings or arguments in the [voting machine company 1] lawsuit or in a similar lawsuit involving an entity

named [voting machine company 2]. Instead, the ABC allowed only one person to provide any defence, but they were a completely separate defendant in those lawsuits and has asserted separate defences independent of any press privileges to report newsworthy events.

6. The ABC failed to refer to Fox News' motion to dismiss the lawsuit as unarguable.

These 6 allegations have been assessed below under Standard 2.2.

There is some overlap between the allegations made under Standards 2.1 and 2.2. Accordingly, the ACMA has grouped the above allegations and where relevant made an assessment against Standard 2.1 and then, if also relevant, against Standard 2.2.

## Finding

The ABC did not breach Standard 2.1. The ABC breached Standard 2.2 of the Code on two occasions.

The 2 breaches are due to the ABC materially misleading the audience by omitting relevant contextual information when presenting factual material about the appearance of 2 Fox News presenters at a campaign rally for former President Trump, and the January 6 riots at the US Capitol.

## Reasons

### **Standard 2.1 – Make reasonable efforts to ensure that material facts are accurate and presented in context**

To assess compliance with Standard 2.1 of the Code, the ACMA generally considers:

- > What was the meaning conveyed to the ordinary reasonable viewer by the particular content?
- > Was the particular content complained about factual in character?
- > If so, did it convey a material fact or facts in the context of the relevant segment?
- > If so, were those facts accurate?
- > If a material fact was not accurate (or its accuracy cannot be determined), did the ABC make reasonable efforts to ensure that the material fact was accurate and presented in context?

### **Standard 2.2 – Do not present factual content in a way that will materially mislead the audience**

To assess compliance with Standard 2.2 of the Code, the ACMA generally considers:

- > Was the particular content complained about factual in character?
- > If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?

## **The 6 January 2021 riots at the US Capitol**

### ***Statements assessed under Standard 2.1 – Fox News' coverage led to the January 6 riots***

The complainant identified the following statements:

Presenter: “Fox News didn’t send the mob but its worst outrage generators certainly fuelled its anger.”

Carl Cameron: “Fox certainly has participated in the destruction of democracy by promoting the types of things that Donald Trump did. Now, that’s a pox on Fox.”

Presenter: “Congress has finally begun investigating the actions of the disgraced former President around the January 6th insurrection. But Trump’s staunchest media allies will face no serious scrutiny here [...].”

The complainant submitted to the ACMA:

The Episodes state that Fox News’ coverage led to the January 6 riots on Capitol Hill. [The Presenter] asserted on the First Episode that Fox News “worst outrage generators certainly fuelled [the rioters’] anger.” Sarah Ellison claimed that “Fox is on the wrong side of . . . the most stunning event in modern American history, a siege on the Capitol, an insurrection, violent riots.” And Carl Cameron contended that it is a “pox on Fox” for having “participated in the destruction of democracy.”

If any business entities are to blame for the January 6 riots, social media companies like [name of company] are. [...]

The ABC submitted:

We observe that the reporter did not state that Fox News’ coverage led to the 6 January riots. The reporter stated [...] *Fox News didn’t send the mob but its worst outrage generators certainly fuelled its anger* [...].

We are satisfied it was accurately reported that Fox News’ coverage of the stolen election lie fuelled anger and outrage amongst the supporters of President Trump [...].

We are satisfied there was no editorial requirement for the program to examine the role of social media in the 6 January insurrection, given the editorial focus of the reporting was the role of Fox News. There was no relevant reason for the program to pursue that particular issue within the context of these reports. [...]

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that these statements did not convey to an ordinary reasonable viewer that Fox News caused the 6 January 2021 riots at the US Capitol (the **US Capitol riots**). Rather, they conveyed that some Fox News’ presenters had contributed to the anger among some of the rioters by promoting former President Trump’s claims of election fraud.

*Was the particular content complained about factual in character?*

The qualification ‘Fox News didn’t send the mob’, and the negative and imprecise phrases ‘outrage generators’, ‘destruction of democracy’ and ‘pox on Fox’ in the first two statements suggest that they are, in part, expressions of opinions rather than statements of fact. The use of ‘certainly’ in both statements further indicates that they advance an argument, suggesting there may be differing opinions on the issue. The first statement unambiguously asserted that Fox News had not directly instigated the US Capitol riots, but that Fox News’ presenters had contributed to the rioters’ anger. The ACMA considers that this second part of the statement, although it drew on the earlier factual assertion that Fox News had broadcast claims of election fraud, conveyed an argument and an opinion. Episode 2 concluded with statements by Adam Kinzinger, a Congressman investigating the Capitol riots, James Murdoch and Chris Stirewalt, who expressed similar views.

The third statement referred to by the complainant only stated that Fox would not face scrutiny for its potential role in the US Capitol riots and did not explicitly allege that it was responsible in some form.

The statements were imprecise and conveyed judgements and opinions about Fox News' role in the riots. As such, they were not factual statements and are not subject to the accuracy provisions of the Code. It is, therefore, not necessary for the ACMA to further assess the accuracy of the statements against Standard 2.1 of the Code.

***Assessment under Standard 2.2 – the ABC did not include any information about the prominent role of social media in the January 6 riots on Capitol Hill***

The content relevant to this aspect of the complaint was the statement by the presenter during the introduction to Episode 1 that 'Fox News didn't send the mob [to the US Capitol riots] but its worst outrage generators certainly fuelled its anger'. In Episode 2, the presenter noted that:

Fox News sent Four Corners a statement about earlier enquiries into January 6th. It said, "Congressional hearings and the Biden Justice Department not only did not implicate Fox, but other media companies were cited as platforms for inciting and coordinating the Capitol riots".

The complainant submitted to the ACMA:

If any business entities are to blame for the January 6 riots, social media companies like [name of company] are. [...]

The ABC submitted:

We are satisfied there was no editorial requirement for the program to examine the role of social media in the 6 January insurrection, given the editorial focus of the reporting was the role of Fox News. There was no relevant reason for the program to pursue that particular issue within the context of these reports. [...]

The ABC further submitted:

... the program's audience would have been well aware of the complexity of the factors contributing to the January 6 riots [...]

Fox News, as evidenced in the program, was able to amplify and spread President Trump's message to a wide national audience. It is a mainstream media outlet relied upon by its numerous viewers as a trusted source of news and commentary. Its role in spreading the 'stolen election' lie, and fuelling the anger of Trump supporters, was completely different to the role of social media platforms [...]

[T]he program did in fact flag to its audience that there were other factors contributing to the events of January 6. It prominently quoted Fox News' statement saying exactly that, pointing to "other media companies" which had been "cited as platforms for inciting and coordinating the Capitol riots". [...] The statement was not presented in close proximity to the introduction to the first episode, but this did not detract from its prominence or the audience's ability to judge the claims being made.

***Was the particular content complained about factual in character?***

As noted above in the discussion under Standard 2.1, the relevant statement to this aspect of the complaint, while not itself factual in character, included reference to the fact of the US Capitol riots when the presenter asserted that Fox News' 'outrage generators' had 'contributed to the anger of the rioters'. The statement about Fox News' fueling the anger of the mob related to the presentation of factual material about the riot itself, therefore warranting an assessment of the complaint that omission of other factual content, about the role of other media platforms, may have materially misled the audience.

***If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?***

The ACMA considers that factual information about the role of social media companies was contextually relevant, as its absence invited the viewer to discount their role relative to that of Fox News in propagating allegations of election fraud and hence opposition to the confirmation of Joe Biden as president-elect. Whilst the Episodes included the statement by Fox News quoted above about the involvement of other media platforms in inciting the riots

attributed to Fox News, not to the ABC, the ACMA maintains that this was not sufficiently proximate to the statements considered here to fully inform the audience of the complexity of the issue regarding the role the different media companies played in contributing to the anger of US Capitol Hill rioters. Consequently, the ACMA considers that the omission of contextualising information in Episode 1 meant that the ABC presented factual content in a way that materially misled the audience and breached Standard 2.2 of the Code.

## **Employees campaigning for former President Trump**

### ***Statements assessed under Standard 2.1 – Fox News tacitly endorsed employees to campaign for [former President] Trump***

The complainant identified the following statements:

Presenter: “Chris Stirewalt is no bleeding heart liberal, he now works at a conservative think tank which reveres Margaret Thatcher and Ronald Reagan. But when still a senior political journalist at Fox News, he was appalled at the sudden shift to the right under Rupert Murdoch’s direct leadership.”

Chris Stirewalt: “The company went through a rebranding several months later. And we were stunned to see that the phrase Fair and Balanced, which had been our core, had been removed.”

Presenter: “Nowhere was the shift more obvious than when two of the main Fox News anchors left their broadcast box at a Trump election rally in 2018 and went on stage to campaign for him.”

Chris Stirewalt: “We would have never been in a place where Sean Hannity could appear onstage at a rally with Donald Trump. It’s bad for business, it’s bad for the country, it’s bad for everything when you become an arm of a political party.”

Presenter: “Former judge Jeanine Pirro was so closely aligned with Trump she made a guest appearance at one of his rallies.”

The complainant submitted to the ACMA:

[...] the Episodes asserted that appearances by Sean Hannity and Jeanine Pirro, two Fox News hosts, at a Trump rally in 2018 reflected a decline in standards at the network. According to [the Presenter], these appearances made it “*obvious*” that Fox News had “*shift[ed]*” toward its role as a Trump mouthpiece and had abandoned its duty to provide fair and balanced journalism.

The ABC submitted:

The program has confirmed how it reviewed footage of a President Trump rally at Cape Girardeau, Missouri, on 5 November 2018, from which Sean Hannity broadcast his program that evening. He was joined on air by another Fox News anchor, Jeanine Pirro, and Mr Hannity also interviewed Mr Trump backstage before his on-stage appearance. We observe how part two of the *Four Corners* report presented footage of this event in the context of Chris Stirewalt, former Fox News political editor, and Lt. Col. Ralph Peters (Ret.) offering their opinions about the direction of the network under the leadership of Rupert Murdoch.

Mr Stirewalt’s comments clearly relate to standards for opinion hosts at Fox News [...]

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that these statements conveyed to an ordinary reasonable viewer that two Fox News’ presenters, Sean Hannity and Jeanine Pirro, had appeared on stage at a rally

in 2018, supporting former President Trump, which, according to Chris Stirewalt, reflected poorly on the network and indicated a partisan shift to the right.

*Was the particular content complained about factual in character?*

The presenter's statement that two Fox News presenters had appeared on stage at a political rally for former President Trump was specific, independently verifiable, and is not in dispute. The assertion by Chris Stirewalt that this indicated that Fox News was 'becoming an arm of a political party', which was 'bad for everything', was an expression of his opinion. The presenter's statement referred to the argument of a 'shift to the right' and argued that this shift was reflected in the rally appearances. Alleging such a shift lacks specificity and is incapable of independent verification, notwithstanding the presenter's claim that Mr Hannity's appearance at the rally made it 'obvious'.

Given that the accuracy of the factual component of the statement – that Mr Hannity and Ms Pirro had appeared at the rally – has not been questioned by the complainant, and the remaining component was based on the observations and opinions of an interviewee and the presenter, it is not necessary to further assess the accuracy of the statements.

**Assessment under Standard 2.2 – the ABC failed to include the statement that Fox News issued after Sean Hannity and Jeanine Pirro appeared at [former President] Donald Trump's rally in 2018**

The complainant submitted to the ACMA:

Fox News issued a public statement in November 2018 censuring Mr. Hannity and Ms. Pirro for this conduct, emphasising that it "*does not condone any talent participating in campaign events*" and explaining that it had addressed the matter internally. [...]<sup>1</sup>

The complaint is that failing to include the statement was misleading because it incorrectly conveyed that Fox News 'tacitly endorsed employees to campaign for former President Trump'.

The ABC submitted that the program had asked Fox News questions prior to the broadcast, including if the presenters were 'censured' and whether the network applied 'a different set of standards or code of conduct to opinion hosts and news reporters, and that Fox News responded by referring to its public statement, but did not respond to the ABC's 'specific' enquiries. The ABC argued that it was:

[...] satisfied there was no editorial requirement for the program to include a 3 year old press statement that did not include any new information or respond to the specific relevant question.

The ABC further submitted:

Fox News' 6 November 2018 statement was not, in fact, relevant contextual information, nor was it germane to the audience's understanding of, or capacity to evaluate, the claim that Fox News had exhibited a shift to the right. [...]

There was no explicit reference in the statement to Mr Hannity or Ms Pirro and no details about what or how the incident had been "addressed", including internally. [...]

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<sup>1</sup> The full statement, as submitted by the complainant, was : 'Fox News does not condone any talent participating in campaign events. We have an extraordinary team of journalists helming our coverage tonight and we are extremely proud of their work. This was an unfortunate distraction and has been addressed.'



Crucially, the statement offered no meaningful context or relevant details for the programs' audience to consider. [...]

*Was the particular content complained about factual in character?*

As noted above, the ACMA has found that the presentation of information about the two hosts' appearance at the rally for former President Trump was factual in character.

*If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?*

The ACMA disagrees with the ABC's submissions and considers that inclusion of information about the public statement would have provided viewers with important and different factual information about Fox News' response to the rally appearances. Omitting any reference to its public statement left it open to viewers to conclude that Fox News had either endorsed or at least did not object to the appearances, neither of which would have been accurate based on the content of the public statement. While the statement did not mention the two presenters, it would have been clear to viewers that it was issued in response to their appearance, and that some action had been taken to 'address the matter'. The statement indicated that Fox News did not condone the appearances and took some action in response.

This was a material omission because it raised doubts as to whether Fox News condoned or ignored the appearances, when the statement made clear that it did not.

Consequently, the ACMA considers that the omission of any reference to the Fox News statement meant that the ABC presented factual content in a way that materially misled the audience and breached Standard 2.2 of the Code.

## **Actions following the decision to call Arizona for Joe Biden**

### ***Statements assessed under Standard 2.1 – Fox News retaliated against employees involved in the decision to call Arizona for [Joe] Biden***

The complainant identified the following statements:

Presenter: "The Decision Desk prized its independence but Stirewalt and his team knew that this would be an election like no other."

Presenter: "To satisfy the mob, the Murdochs needed scapegoats. They chose the two senior journalists on the Election Decision Desk. Fox News's managing editor in Washington was forced to retire. Chris Stirewalt was sacked."

The complainant submitted to the ACMA:

The First Episode stated that Chris Stirewalt played a "critical role" on Fox News' Decision Desk, that Fox News executives pressured the Decision Desk to reverse the call on Arizona, and that Mr. Stirewalt lost his job for refusing to comply. [...]

Any reasonable viewer of the Episodes would come away with the impression that Stirewalt led the Decision Desk and had final say over election calls. In its broadcasts, Four Corners asserted that "the Decision Desk prized its independence" but "Stirewalt and his team" were on their guards. A reasonable viewer would understand this to mean that it was "Stirewalt's team" in the sense that he was the leader or that he was responsible. [...]

The notion that Mr Stirewalt was thereafter terminated for a decision that he did not even make was preposterous and false to the ABC's knowledge at the time of broadcast. [...]

In its submission, the ABC responded to the complainant:

We cannot agree with your claim that Four Corners claimed that Chris Stirewalt “led the decision desk”. The program accurately stated that “Chris Stirewalt had a critical role on the Fox decision desk”, based on the fact that he was a long-time political editor at Fox News and a prominent and senior member of the Decision Desk. Four Corners’ research established that Mr Stirewalt had an important role on election night, evidenced by on-camera appearances he made after the call to answer questions about it and to report generally on developments in the election. [...]

We cannot agree that Four Corners reported that Mr Stirewalt lost his job for refusing to respond to pressure to reverse the call of Arizona for Joe Biden. We observe how the report’s narrative detailed how members of the Trump administration contacted people at Fox News “to demand they reverse the Arizona call” and that amidst the outcry over the Arizona call in the following days, Fox ratings dropped dramatically and scapegoats were identified to appease the critics [...]

Four Corners has advised that in addition to Chris Stirewalt confirming as a first-person source that he was dismissed, it also spoke to other sources who confirmed the accuracy of this statement before it was broadcast

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that the statements conveyed to an ordinary reasonable viewer were that Chris Stirewalt worked in the team at the Fox News election Decision Desk, that he was dismissed from his employment and another senior member of Fox News’ editorial staff was forced to retire. The viewer would have understood the reporting to indicate that Mr Stirewalt had been involved in calling the state of Arizona on-air on the night of the election and this involvement led him to be dismissed as a ‘scapegoat’.

However, the ACMA does not consider that the content conveyed to the ordinary reasonable viewer that Mr Stirewalt’s employment had been terminated as a result of his refusal to reverse the call, as alleged by the complainant, as opposed to making the call in the first place. Mr Stirewalt was specifically asked by the presenter whether he was pressured to reverse the call, but did not respond, leaving this particular suggestion unconfirmed.

*Was the particular content complained about factual in character?*

The assertion that Fox News dismissed Chris Stirewalt from his employment and forced another senior journalist on the election Decision Desk to retire as a result of their decision to call the state of Arizona for Joe Biden is specific, unambiguous and therefore factual in character.

*If so, did it convey a material fact or facts in the context of the relevant segment?*

The decision to call Arizona for Joe Biden was presented in Episode 1 as a turning point and the reason former President Trump ‘turned on the network’, which prompted a change of Fox News’ editorial direction. In this context, the assertion that Fox News dismissed Chris Stirewalt from his employment and forced another senior journalist to retire conveyed a material fact.

*If so, were those facts accurate?*

The ACMA notes the complainant’s submissions that the statements were inaccurate because Mr Stirewalt did not lead the Decision Desk, and therefore could not be terminated because of a decision he did not make. The ACMA does not agree with this assertion and agrees with the ABC’s submission that the program did not convey that Mr Stirewalt ‘led’ the Decision Desk, or that he was responsible for the call. As noted above, the ACMA considers the program conveyed that Chris Stirewalt *worked in the team* at the election Decision Desk.

The fact that Mr Stirewalt was *involved* in the decision and lost his employment with Fox News following the 2020 election was presented by Mr Stirewalt himself in Episode 1 and is

not disputed by the complainant. However, the ACMA is unable to determine the accuracy of the assertion that Mr Stirewalt, or the other senior journalist referred to, were dismissed or forced to retire as a result of their involvement in the decision to call the State of Arizona for Joe Biden.

*If a material fact was not accurate (or its accuracy cannot be determined), did the ABC make reasonable efforts to ensure that the material fact was accurate and presented in context?*

The presenter's assertion that 'the Murdochs needed scapegoats' and [as a result] 'Chris Stirewalt was sacked' was in part re-stated in the Episodes by former Fox News employee Susan Estrich, when she claims that 'the guys who made the right call on election night get fired in the aftermath because people are complaining'.

The ACMA notes the ABC's submission that other sources had confirmed Mr Stirewalt was dismissed, though these sources are not named and do not appear in the broadcast.

The ACMA considers that in relying on Ms Estrich's statement and other unnamed sources, the ABC made reasonable efforts to determine the accuracy of the assertion that Fox News terminated Mr Stirewalt's employment and forced another senior journalist to retire as a result of their involvement in the decision to call Arizona for Joe Biden. This was done by putting the matter directly to Mr Stirewalt, presenting a relevant source and seeking confirmation from other sources.

Accordingly, the ACMA considers that in broadcasting statements about repercussions for Fox News employees involved in the Arizona call, the ABC did not breach Standard 2.1 of the Code.

### ***Assessment under Standard 2.2 – the ABC failed to refer to Arnon Mishkin, still employed by Fox News and the decision maker in relation to the Arizona call***

The complainant submitted to the ACMA:

At no point in either episode did *Four Corners* even allude to the existence of Arnon Mishkin, the actual head of the Decision Desk who made the Arizona call. [...]

The ABC submitted:

We cannot agree with your claim that *Four Corners* claimed that Chris Stirewalt "led the decision desk". The program accurately stated that "*Chris Stirewalt had a critical role on the Fox decision desk*", based on the fact that he was a long-time political editor at Fox News and a prominent and senior member of the Decision Desk. *Four Corners'* research established that Mr Stirewalt had an important role on election night, evidenced by on-camera appearances he made after the call to answer questions about it and to report generally on developments in the election. [...]

*Was the particular content complained about factual in character?*

As noted above, the ACMA considers that the relevant content – that Fox News dismissed Chris Stirewalt from his employment at the Fox News election Decision Desk and forced another senior journalist to retire as a result of the decision to call the state of Arizona for Joe Biden – was specific, unambiguous and therefore factual in character.

*If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?*

The fact that Mr Stirewalt had a senior role at the Fox News election Decision Desk and was involved in the decision to call Arizona is not in dispute. As noted above, the Episodes did not convey that Mr Stirewalt 'led' the Decision Desk, nor did they convey that he was responsible for the decision. The Episodes did not present factual content in relation to any retaliation by Fox News against the head of the election Decision Desk.

Therefore, the ACMA considers that omission of the information referred to by the complainant did not materially mislead the audience and did not place the ABC in breach of Standard 2.2 of the Code.

## **Fox ratings**

### ***Statements assessed under Standard 2.1 – Fox News lost in the ratings to competitors after the election***

The complainant identified the following statements:

Presenter: Fox's ratings plunged as Trump loyalists turned off in disgust and switched to rival far-right networks...

Sarah Ellison: "The audience was punishing them, their own audience that they had courted and created and built over these many years, was leaving them in droves."

Gretchen Carlson: "And if you look at the ratings, just from that particular week, you will see that the 7:00 PM Eastern time show on [name of network], came close or did beat the 7:00 PM Eastern show on Fox News. I mean, that was completely unheard of. And I guarantee you that that sent a shockwave inside of Fox News."

The complainant submitted to the ACMA:

The Episodes asserted that Fox News' ratings decreased dramatically because of the network's decision to call the election for Joe Biden and that viewers flocked to competing networks. [...]

Those assertions are not correct. Fox News achieved its highest ratings in its history in 2020.

The ABC submitted:

We are satisfied the program's reference to ratings were [sic] accurately presented, in context, referring specifically to the post-election period and presented within the context of the network calling Arizona for Joe Biden on election night. [...]

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that the meaning conveyed to an ordinary reasonable viewer was that Fox News lost viewers to rival news networks following the 2020 US election, noting that Gretchen Carlson made a claim about ratings for a rival news network that 'came close or did beat' those of Fox News.

*Was the particular content complained about factual in character?*

The statement that Fox News lost viewers following the 2020 US election was specific and verifiable, and therefore factual in character.

*If so, did it convey a material fact or facts in the context of the relevant segment?*

The Episodes presented an argument that following the 2020 US election, Fox News broadcast material supporting former President Trump's claims of election fraud, and that this occurred as part of an attempt to win back viewers unhappy with the network calling the state of Arizona for Joe Biden. In this context, the assertion that Fox News lost viewers following the election conveyed a material fact.

*If so, was that fact accurate?*

The ABC cited published evidence, which the ACMA has viewed<sup>2</sup>, that supports the statement that Fox News' ratings dropped following the election. The statement is not contradicted by the complainant's assertion that Fox News achieved its highest ratings in its history in 2020.

Accordingly, the ACMA considers that the statement that Fox News lost viewers following the 2020 US election was accurate and consequently, that, in broadcasting the statement, the ABC did not breach Standard 2.1 of the Code.

### ***Assessment under Standard 2.2 – the ABC failed to accurately report the ratings to which they had access after the election***

The complainant submitted to the ACMA:

Fox News achieved its highest ratings in its history in 2020. And today, Fox News remains the number one news broadcaster in the United States — and far ahead of [name of network], which has never beat Fox News in total viewership during any given week in any time slot, [original emphasis] per Nielsen Media Research. Fox News provided this information to [...] in time to be included in the Episodes. [...]

The ABC submitted:

We are satisfied the program's reference to ratings were accurately presented, in context, referring specifically to the post-election period and presented within the context of the network calling Arizona for Joe Biden on election night. *Four Corners* made no claims about the network's overall ratings for 2020, the network's position in the news broadcast market or the position of one of its rivals. [...]

*Was the particular content complained about factual in character?*

As noted above, the ACMA considers that the relevant content concerning Fox News' ratings was factual in character.

*If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?*

The material presented related specifically to Fox News' ratings in the post-election period, after 3 November 2020. The ACMA considers that it was therefore not materially misleading to omit information about Fox News' ratings for the whole of 2020.

Accordingly, the ACMA finds that in omitting Fox News' ratings information for the whole of 2020, the ABC did not breach Standard 2.2 of the Code.

## **The narrative about election fraud**

### ***Statements assessed under Standard 2.1 – Fox News promoted the narrative about election fraud***

*The complainant identified the following statements:*

Presenter: "When the facts didn't suit Donald Trump, he simply made up his own. After November 3rd, Trump ramped up his stolen election lies and Fox News helped him spread them."

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<sup>2</sup> For example: <https://www.bloomberg.com/news/articles/2021-03-02/fox-news-finds-itself-back-in-familiar-spot-no-1-in-prime-time>, accessed 9 September 2022; <https://www.latimes.com/entertainment-arts/business/story/2021-01-19/fox-news-political-editor-chris-stirewalt-out-in-company-restructuring>, accessed 9 September 2022

Presenter: “For weeks after the election, high profile Fox anchors peddled the lie that the election had been stolen.”

Presenter: “That the Murdochs’ Fox News joined the effort to spread lies and propaganda for Donald Trump was no surprise to the insiders who spoke to us.”

Conor Powell: “For all the other smaller conservative news outlets that are out there that were promoting the big lie, Fox News was the biggest promoter because they had the biggest platform, they had the biggest megaphone.”

The complainant submitted to the ACMA:

Instead of perpetuating Trump’s narrative that he won the White House, Fox News accurately reported the results of the 2020 election. [...]

The fact is that all news outlets in the U.S and elsewhere (including Australia) were reporting on the claims being made by Donald Trump and his supporters about the election outcome. It was newsworthy that he was making such claims. [...] The suggestion that the entire organisation was acting in a manner to perpetuate the “big lie” is insupportable.

The ABC submitted:

The program’s research confirmed that two days after the network called the election for Joe Biden, [Fox presenter] promoted the President’s stolen election theory on-air, telling viewers - “Coming up we have even more evidence of suspicious ballot counting, whistle blower accounts of what has happened behind the scenes, Republican observers being blocked from monitoring vote counting...”

We observe how Four Corners presented an excerpt of the Fox News’ presenter [presenter’s] first post-election interview with President Donald Trump, broadcast by Fox on 29 November 2020. In the excerpt President Trump argued “thousands of votes” had been moved from his “account” to Joe Biden’s “account” and “glitches” were “theft” and “absolute fraud”. On 16 December 2020, [Fox presenter] told her Fox viewers that an “intel source” told her “President Trump did in fact win the election”.

The fact that some Fox News anchors tested the claims of election fraud or pushed back against outlandish allegations does not erase the fact that prominent Fox News anchors pushed the conspiracy and actively supported the claims of President Trump. We note how the fact there were exceptions was made clear by Four Corners [...]

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that these statements conveyed to an ordinary reasonable viewer that in the aftermath of the US presidential election, Fox News’ broadcast material that supported former President Trump’s claims of election fraud.

*Was the particular content complained about factual in character?*

The assertion that Fox News’ broadcast material that supported claims of election fraud following the US presidential election was specific and capable of independent verification. It is therefore factual in character.

*If so, did it convey a material fact or facts in the context of the relevant segment?*

In the context of a report alleging that Fox News perpetuated claims of election fraud, claims of such conduct convey a material fact.

*If so, were those facts accurate?*

The ACMA notes that Episode 2 included examples of Fox News’ presenters making statements referring to alleged election fraud, as well as former President Trump advancing this claim on Fox News:

Sean Hannity: Coming up we have even more evidence of suspicious ballot counting, whistleblower accounts of what has happened behind the scenes, Republican observers being blocked from monitoring vote counting.

Maria Bartiromo, interviewing Donald Trump: Mr President you've said many times that this election was rigged, that there was much fraud and the facts are on your side. Let's start there.

Donald Trump: We had glitches where they moved thousands of votes from my account to Biden's account, and these are glitches, so they're not glitches, they're theft. They are fraud, absolute fraud.

Lou Dobbs: This whole fraud is an insult against this country.

The complainant noted that Fox accurately reported the results of the election, that claims of election fraud were newsworthy and that some presenters were critical of the election fraud narrative. None of these matters negates the assertion that Fox News' broadcast material in support of claims of election fraud. Based on the evidence presented in the Episodes, the ACMA considers that the assertion that Fox News' broadcast material that supported claims of election fraud following the US 2020 presidential election was accurate.

Accordingly, the ACMA finds that, in broadcasting statements that Fox News' broadcast material that supported former President Trump's claims of election fraud, the ABC did not breach Standard 2.2 of the Code.

## **Fox News 'insiders'**

### ***Statements assessed under Standard 2.1 – the Episodes feature Fox News 'insiders'***

The complainant identified the following statements by the presenter:

Now the inside story of Fox News from those who were there.

That the Murdochs' Fox News joined the effort to spread lies and propaganda for Donald Trump was no surprise to the insiders who spoke to us.

All of our Fox News insiders point to a dramatic drop in editorial standards.

The complainant submitted to the ACMA:

The ABC premised the Episodes on the theory that they offer unvarnished accounts from Fox News "insiders." [...]

Fox News did not at the time of broadcast employ any of these individuals. Moreover, although Fox News previously employed them, all but one left the network at least three years ago – and two left before Donald Trump even won the election in 2016. As a result, those interviewees could not possibly have shared insider knowledge about many of the issues that the Episodes purported to address, such as the "big lie" – i.e., Trump's assertions that he, in fact, won the 2020 election.

Although the Episodes fleetingly identified these individuals as former Fox News employees, the ABC never provided any specifics.

The ABC's response to the complainant stated:

We are satisfied that it was accurate for the program to refer to the participants that you identify as "insiders". The program has explained how these six former Fox News employees/contributors' association with Fox covered the period from its establishment in 1996 to January 2021. With the exception of former foreign correspondent Conor Powell, who worked at Fox for nine years, each of the insiders spent more than a decade at Fox News, with former chief political correspondent Carl Cameron spending more than two decades at the

network. We observe how the program accurately identified these participants as “former” employees.

Part one of the report covered the story of Fox News from 1996 to the 2020 election, and each of the insiders worked at the network when Roger Ailes was CEO and throughout the 2016 election primaries. Gretchen Carlson left the network a month or so prior to Donald Trump securing the Republican nomination in 2016. Susan Estrich left the network in January 2017 after Trump’s election and Carl Cameron left in August 2017, six months into Trump’s presidency. Ralph Peterson and Conor Powell were with the network for more than 12 months of the Trump presidency and Chris Stirewalt was with Fox for the duration of the Trump presidency.

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The Episodes were introduced as ‘the inside story from those who were there’. Captions identified the interviewees as former employees, indicating that the ‘insiders’ were no longer employees of the network. In Episode 2, the presenter stated [...] ‘former Fox News insiders level blame at the powerful organisation they worked for’.

The ACMA notes that the relevant interviewees were clearly identified as *former* Fox News employees. The ACMA considers that, collectively, these statements conveyed to an ordinary reasonable viewer that the Episodes featured accounts from people who had worked at Fox News during the extended time period examined in the Episodes, and this provided the editorial basis for their inclusion.

*Was the particular content complained about factual in character?*

The statements conveying that the Episodes featured people who worked at Fox News, at least in part during the relevant period, were factual statements. The meaning conveyed was specific, unequivocal and capable of independent verification.

*If so, did it convey a material fact or facts in the context of the relevant segment?*

In the context of a report outlining editorial practices and developments at Fox News, during the period 1996 to 2021, the assertion that the people featured were Fox News employees during that time was a material fact, because it established their capacity to comment on these matters, drawing on first-hand experience.

*If so, were those facts accurate?*

The Episodes did not contain a claim that the interviewees were commenting on events that had occurred only during the time they were employed at Fox News, although they often relied on their first-hand experience as Fox News employees. The fact of the interviewees’ employment with Fox News is not disputed by the complainant. The ABC submitted that the interviewees were employees of Fox News for substantial periods, including the periods covered in the Episodes.

The ACMA considers that, in this context, it was accurate to refer to them as ‘those who were there’ and ‘insiders’, and accordingly, the ABC did not breach Standard 2.1 of the Code.

## **Fox News published propaganda**

### ***Statements assessed under Standard 2.1 – Fox News published propaganda on former President Trump’s behalf***

The complainant identified the following statements:

Gretchen Carlson: “I think that they allowed the former President to dictate what news they put out to the American people.”



Presenter: "Tonight on Four Corners, how America's number one cable news network became a propaganda vehicle for Donald Trump and helped destabilise democracy."

Presenter: "To understand how Fox News effectively became the Trump Network we need to go back to its beginnings."

Lt. Col. Ralph Peters: "And it went from being a conservative voice, if a sometimes unruly one, to being a propaganda organ for Donald Trump."

Presenter: "Allowing Fox News to become a propaganda vehicle for Trump was too much for James Murdoch to put up with."

Conor Powell: "By the time that Trump becomes the nominee and is elected, Fox News has jumped on the bandwagon. They understand that they're gonna live and die with Donald Trump, that his fans, his supporters, were essentially rabid, and that they couldn't cross him, that they had to go with him."

The complainant submitted to the ACMA:

The Episodes suggested that Donald Trump controlled Fox News or, in the alternative, that Fox News served as a Trump propaganda arm. [...], each of these assertions are stated as fact - not expressed as opinion.

The complainant did not agree with these statements and noted that:

In over 400 messages, Trump has vociferously attacked Fox News as "Fake News" [...]

The ABC submitted:

We are satisfied that the specific statements you refer to from the broadcast were accurately presented, in context, as the first part of the report charted the trajectory of Fox News from its establishment in 1996 through to the departure of its founding CEO Roger Ailes in 2016, the election of Donald Trump and the 2020 election. We are satisfied that the perspectives of the former Fox staff were clearly presented as their own personal opinions, not as statements of fact.

While acknowledging that President Trump has publicly criticised Fox News and certain presenters, and expressed his disappointment with the network at times, we are satisfied it is a recognised fact, widely and consistently held amongst political and media commentators and observers in addition to documentary evidence of Fox News' own programming, that President Trump favoured the network and that the network promoted his views on certain issues. We observe that Four Corners also made clear to its audience that Trump turned on the network [...]

*What was the meaning conveyed to the ordinary reasonable viewer by the particular content?*

The ACMA considers that the statements identified by the complainant conveyed to an ordinary reasonable viewer that Fox News was influenced by and broadcast information that was favourable to former President Trump.

*Was the particular content complained about factual in character?*

As noted in the ACMA's considerations for determining factual content, such material will usually be specific, unequivocal and capable of independent verification. The preface to Gretchen Carlson's statement, 'I think', marks it as an expression of opinion, rather than a factual statement. The remaining statements noted by the complainant included the imprecise terms 'propaganda organ', 'effectively', 'Trump network', 'bandwagon' and 'had to go with him'. These statements also suggest negative judgement and were employed to express an opinion.

Considering the imprecise nature of the statements and their lack of capacity to be independently verified, the ACMA considers that they were not factual statements, but expressions of opinion. The presenter's statements referred to by the complainant, occurring approximately five minutes after the start of Episode 1, followed a number of statements made by interviewees. Formally introducing the central argument of the Episodes, the presenter's statements paraphrased, evaluated and summarised the opinions of interviewees, rather than made factual assertions.

Accordingly, as the accuracy Code provisions do not apply to expressions of opinion, it is not necessary for the ACMA to further assess the accuracy of the statements.

## **The voting machine company lawsuit**

### ***Assessment under Standard 2.2 – the ABC failed to include any information about Fox News' pleadings [... and its] motion to dismiss the lawsuit***

The complainant submitted to the ACMA:

The ABC failed to include any information about Fox News' pleadings or arguments in the [voting machine company 1] lawsuit or in a similar lawsuit involving an entity named [voting machine company 2]. Instead, the ABC allowed only [one person] to provide any defence, but [they are] a completely separate defendant in those lawsuits and has asserted separate defences independent of any press privileges to report newsworthy events.

The ABC submitted:

We observe that Four Corners did not refer specifically to any of the 16 defamation or disparagement claims [voting machine company 1] makes against Fox News in its legal complaint, but covered the case in general terms including the fact that the case had been brought, the damages sought and some of Fox News' coverage of the company. That information was conveyed primarily by Erik Connolly, [voting machine company 1]'s lawyer. [...]

*Four Corners* did not include detailed pleadings or defences from any other parties to the defamation lawsuits including [voting machine company 1], [voting machine company 2], I [names of individuals]. We are therefore satisfied there was no editorial requirement for the program to include any information about Fox News' pleadings or arguments in those cases. [...]

Episode 2 presented information that Fox News had broadcast claims that the voting machine companies [voting machine company 1] and [voting machine company 2] had facilitated election fraud in the 2020 US presidential election, and that a defamation lawsuit was brought by [voting machine company 1] against Fox News and lawyers acting for former President Trump who had featured in Fox News broadcasts. Episode 2 included an interview with a lawyer acting for [voting machine company 1], who commented on some of the broadcast material that would be presented as evidence and alleged that several inaccuracies had been broadcast by Fox News, including that [voting machine company 1] was founded by former Venezuelan President Hugo Chavez, was funded by corrupt dictators, conspired to rig the 2020 election, that [voting machine company 1] owned [voting machine company 2], sent votes overseas and allowed security breaches. He further alleged that some co-ordination had occurred between Fox News' anchors and lawyers acting for former President Trump, and stated that [voting machine company 1] voting machines were used in only one US county during the election. This latter claim was put to one of the defendants, who rejected it, and stated that evidence would be produced to prove that election fraud had in fact occurred.

#### ***Was the particular content complained about factual in character?***

The information presented about a lawsuit brought by [voting machine company 1] as a result of claims of election fraud broadcast on Fox News was specific and capable of independent verification. It was factual in character.

*If so, was the factual content presented in a way that would materially (that is, to a significant extent) mislead the audience?*

Episode 2 referred broadly to the reasons for and the substance of the defamation lawsuit but did not discuss detailed pleadings in the case. It included a statement by the presenter that 'Fox has rejected the cases against them [...]'. As noted above, an argument presented by [voting machine company 1]'s lawyer, contradicting claims of widespread election fraud, was rejected by one of the defendants in Episode 2.

Considering the above, the ACMA is of the view that omission of the information referred to by the complainant did not materially mislead the audience and accordingly, the ABC did not breach Standard 2.2 of the Code.

## Issue 2: Impartiality and diversity of perspectives

### Standard 4

4.1 Gather and present news and information with due impartiality

[...]

4.5 Do not unduly favour one perspective over another

In considering compliance with a Standard under the Code, the ACMA also takes account of the related Principles set out in the Code.

## Finding

The ABC did not breach Standard 4.1 or 4.5 of the Code.

## Reasons

The ABC Principles which underpin the ABC's impartiality obligations, include a range of 'hallmarks' of impartiality that do not operate as a checklist but inform the way in which the ABC discharges its obligation to gather and present news and information impartially.

The ABC Principles include the following statement:

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.

The Code requires the ABC to follow the hallmarks of impartiality, namely a balance that follows the weight of evidence, fair treatment, open-mindedness and presenting a diversity of perspectives on contentious matters. The hallmarks also assist news, current affairs and factual content producers to make considered editorial judgements about the nature of the content they produce, and the context in which it appears.

### Due impartiality and contextual factors

Under the 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 ABC can legitimately prosecute an argument as long as it adheres to the principles of due impartiality and does not unduly favour one perspective over another. As noted above, audiences should be provided with information that allows them to form their own views based on the material they are presented with.

The inclusion of the words 'due' and 'unduly' recognises that news and information programs will differ in their nature. Whether a breach of the Code has occurred will depend on a range of factors including the type of content, the likely audience expectations of that content and the degree to which the content is contentious and the range of principal relevant perspectives on matters of contention.

Most viewers would be aware of *Four Corners*' history and the way it investigates and examines controversial issues in detail, which often entails presenting a particular perspective on an issue and reaching a particular conclusion on an issue. The ABC Code does not preclude a program from doing this, including by a presenter, host, or reporter.

In the case of the Episodes, key perspectives included the assertion that in the aftermath of the 2020 US election, Fox News had broadcast material that supported former President Trump's false claims of election fraud, and, in doing so, had 'helped destabilise democracy'. Further, the Episodes explored the management of Fox News by the Murdoch family, the relationship between Fox News and former President Trump during the course of his presidency, the impact of the editorial direction of Fox News on the relationship between Rupert, James and Lachlan Murdoch, and the significance of the support of Fox News' audience for former President Trump

## **The ACMA's assessment**

The complaint to the ACMA alleged that the Episodes lacked impartiality because of:

- > omission of contextualising information/failure to include material which contradicted the claims made in the Episodes, as provided by Fox News to the ABC prior to broadcast.
- > the questioning style of the reporter and her use of language
- > the presentation of interviews and opinions as unchallenged assertions, and
- > the reliance on interview subjects who had no personal knowledge of events as witnesses of truth

In response to the preliminary investigation report, the ABC submitted that the allegations of omissions of relevant contextual information are more appropriately assessed under the accuracy standards, as any such omissions may have the effect of materially misleading the audience. The ACMA has accepted this submission and consequently assessed those aspects of the complaint above against Standard 2.2.

The remaining aspects of the complaint have been assessed against Standard 4.1 (gather and present news and information with due impartiality).

The complaint also alleged a failure to present a diversity of views. This will be assessed against Standard 4.5 (do not unduly favour one perspective).

## **Standard 4.1 – Gather and present news and information with due impartiality**

### ***The questioning style of the reporter and her use of language***

The complainant submitted to the ACMA:

Little if any attempt was made by the reporter to temper her language or tone whilst making serious, broad-ranging allegations for which there was no basis. Emotive language and unnecessary adjectives were used throughout each of the Episodes for no other purpose than to condemn Fox News and portray it as negatively as possible to the viewing audience.

The ACMA notes that the complainant did not refer to this issue in the complaint to the ABC. In the absence of an ABC response to this allegation, the ACMA makes the following observations.

There were instances where the presenter used emotive and strident language, such as when she described rioters at the US Capitol as a 'mob', or negative terminology, for example, when she referred to Fox News' hosts as 'outrage generators' and used the term 'propaganda vehicle'. All of these terms were used in the opening introduction to Episode 1, to establish the central themes to be considered in detail later in the Episodes.

In Episode 1, the presenter referred to Fox News as a 'propaganda vehicle' immediately after a short clip was played of former President Trump, describing himself as a 'friend of the show' and thanking three *Fox & Friends* hosts on-air for treating him 'very fairly'. This followed Chris Stirewalt arguing that Fox News had become 'an arm of a political party' and Ralph Peters describing Fox as a 'propaganda organ for Trump'.

The ACMA considers that, while the presenter's use of 'propaganda vehicle' functioned as a summation of the material that preceded it, the audience of the Episodes may have benefited from greater clarity by the presenter, where opinions of others were used in her narration.

The term 'outrage generator' in Episode 2 was used to present recordings of content broadcast by Fox News that could arguably be described as encouraging outrage about alleged election fraud among Fox News' audience. For example, host Jeanine Pirro stated:

[...] and the President's lawyers alleging that American votes in a presidential election are actually counted in a foreign country. The media has no interest in any of this, but you and I do, as we should....Consequences be damned!

The presenter asked probing questions during interviews but overall maintained a measured tone. Her style of presentation was in keeping with viewers' expectations of the style of an investigative current affairs program such as *Four Corners*, where the audience would expect the robust presentation of an argument involving contentious issues.

Accordingly, the ACMA considers that the ABC demonstrated due impartiality with respect to the questioning style of the presenter and her use of language and did not breach Standard 4.1 of the Code.

### ***The presentation of opinions as unchallenged assertions and reliance on interview subjects who had no personal knowledge of events***

The complainant submitted to the ACMA:

The Episodes presented interviews and opinions as unchallenged assertions for which no evidence was presented, or used unjustified superlatives; the persons selected to be interviewed including reliance on persons who had no personal knowledge of events as witnesses of truth.

There is no impartiality requirement in the Code for interviewees to provide only factual evidence or possess first-hand knowledge for the perspectives they present, nor a general requirement for interviewers to challenge claims made by interviewees. In relation to accuracy, the Principles in the Code refer to a requirement for the ABC to:

... make reasonable efforts, appropriate in the context, to signal to audiences gradations in accuracy, for example by querying interviewees, qualifying bald assertions, supplementing the partly right and correcting the plainly wrong.

The complainant did not identify specific statements by interviewees in relation to this aspect of their complaint. However, the ACMA notes that the complaint raised substantially identical issues to those raised in relation to the allegation that interviewees were inaccurately described as 'insiders', as addressed above.

The ACMA noted in the discussion under accuracy, above, that the relevant interviewees were clearly identified as former Fox News employees. The ACMA considered that, in this context, it was accurate to refer to them as 'those who were there' and 'insiders'.

While some interviewees put their views forcefully, those views were directly relevant to the subject matter of the Episodes. An ordinary reasonable viewer would have been aware that the interviewees were, in most cases, expressing an opinion drawing on their personal experience as former employees of Fox News, rather than making factual assertions requiring qualification. Where the complainant has made allegations about factual assertions made by interviewees, the ACMA has found that the factual assertions were accurate (see above).

The ACMA is of the view that the ABC did not make an unfair selection of interview subjects, particularly in circumstances where Fox News had declined interview requests.

The ACMA notes that it may have assisted viewers in assessing the weight of the opinions of the former employees to be aware of the timeframe of their employment with Fox News. This information could have been conveyed as part of captions identifying the employees as 'former' employees. However, the ACMA considers that the ABC did not materially misrepresent their experience, and there was no requirement to challenge the accuracy of their statements based on their tenure at Fox News.

Accordingly, the ACMA considers that the ABC demonstrated due impartiality with respect to its selection and presentation of former employees of Fox News and did not breach Standard 4.1 of the Code.

#### **Standard 4.5 – Do not unduly favour one perspective over another**

As noted above, the Code 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. However, achieving impartiality requires that one perspective is not unduly favoured over another.

The ACMA notes that this aspect of the complaint (alleging 'a failure to present a diversity of views'), while using the language of Standard 4.2 [diversity of perspectives], is articulated as a complaint that the Episodes provided views that were 'one-sided', that is, they favoured one perspective. The ACMA considers this to be an allegation that the Episodes unduly favoured a critical perspective of Fox News and has accordingly assessed this aspect against Standard 4.5 of the Code.

The complainant submitted to the ACMA:

The premise of the Episodes is flawed given that the “Lie” was not one told by Fox News - it was reported on by the network and commented on. The conduct of Fox News was not remarkable in this regard when one considers that all media in the United States at the time were also reporting on and commenting on the statements being made by Mr Trump and others on his behalf. The conflating of those matters throughout the Episodes evidences the unfairness with which the ABC approached the preparation of the programmes - it was plainly a biased approach, lacking impartiality and ignoring facts that did not suit the ABC’s narrative. [...]

The presenter [...] makes no attempt to temper the assertions made by the interviewees - which are edited together to paint an overwhelmingly one-sided picture of impropriety in the conduct of Fox News by Rupert Murdoch [...]

The ABC submitted:

Given the newsworthy focus of the reports was a critical examination of Fox News, we are satisfied it was relevant and reasonable that this critical focus would dominate the report. Fox News was repeatedly afforded opportunities to participate in the reports but declined. [...]

The ACMA accepts the ABC’s submission that it was newsworthy to report on, and to critically examine whether Fox News had broadcast material supporting claims of election fraud. The Episodes presented evidence to support their argument in the form of broadcast content and commentary from former employees. The critical focus of the Episodes was justified and in keeping with the ABC’s first hallmark of impartiality of a balance that follows the weight of evidence.

The relevant assessment in relation to Standard 4.5 concerns the remaining hallmarks: open-mindedness and fair treatment of a diversity of perspectives.

Although the majority of perspectives presented in the Episodes were critical of Fox News, the ACMA notes the ABC’s submission that Fox News was offered opportunities to present its perspective, including by inviting Fox News’ defamation lawyers to be interviewed and seeking written answers to questions when interview requests were denied. Three statements by Fox News were included in the Episodes:

[...] We stand by our coverage with our millions of viewers who make us the most-watched cable television network. [...]

Fox has rejected the cases against them saying, “Fox News covered the election in the highest tradition of the First Amendment”.

Congressional hearings and the Biden Justice Department not only did not implicate Fox, but other media companies were cited as platforms for inciting and coordinating the Capitol riots.

The ACMA considers that to the extent that Fox News’ perspectives were made available and were relevant to the issues covered, they were included in the form of these on-air statements.

The presenter noted that Fox News’ hosts’ support for the claims of election fraud was not universal, when she stated in Episode 2 that ‘some [Fox] anchors didn’t buy into the big lie’, presenting two on-air examples of Fox News’ anchors questioning the claims.

The ABC demonstrated open-mindedness, for example by putting a question representing a Fox News perspective to [voting machine company 1]’s lawyer.

Episode 2 featured an interview with Sidney Powell, a former lawyer for former President Trump, as well as excerpts of on-air appearances on Fox News, during which she alleged ‘a massive influence of communist money through Venezuela, Cuba and likely China’, that [voting machine company 1] and [voting machine company 2] machines had facilitated the manipulation of votes and ‘an attempted bloodless coup where they took over the presidency

of the United States'. Another lawyer, referred to as part of the 'legal team brought together on Trump's behalf to challenge the election result', was also interviewed by the ABC, stating 'Fox was very important for the message' [of election fraud]. Whilst not representing Fox News, these perspectives contributed to the overall diversity of perspectives presented in the Episodes

The Episodes focussed on newsworthy allegations, presented evidence to support these allegations, and demonstrated open-mindedness by seeking and, where available, including relevant perspectives.

Accordingly, the ACMA finds that the ABC did not unduly favour one perspective over another and, therefore, did not breach Standard 4.5 of the Code.

## Issue 3: Fair and honest dealing

### Standard 5

5.1 Participants in ABC content should normally be informed of the general nature of their participation.

5.2 A refusal to participate will not be overridden without good cause.

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

5.8 Secret recording, misrepresentation or other types of deception must not be used by the ABC or its co-production partners to obtain or seek information, audio, pictures or an agreement to participate [...]

In considering compliance with a Standard under the Code, the ACMA also takes account of the related Principles set out in the Code.

## Finding

The ABC breached Standard 5.1 and did not breach Standards 5.2, 5.3 and 5.8 of the Code.

## Reasons

The complainant submitted to the ACMA that the following footage in Episode 2 was an 'ambush' and a 'form of deception in order to obtain footage':

[...] [the presenter] attended the outside of the offices of Fox News in New York with a camera crew. [...] [the presenter] does not identify who she is - she just states "we're from Australia". She then, with cameras rolling, asks Ms Pirro (a host on Fox News) questions about her views on the election outcome. [...]

The available footage shows that when the security guard approaches [the presenter], she becomes argumentative, clearly not accepting Ms Pirro's decision to decline an interview.

Further, the complainant submitted to the ACMA that:

At no point does the ABC inform Fox News that it intended to allege that it was primarily responsible for the promulgation [of] the "big lie" and also for the subsequent riots that occurred as a result. The main thesis of the Episodes is never put to Fox News (or Rupert or Lachlan Murdoch) for comment [...]

The ABC submitted:

Ms Pirro was not participating in ABC content, she was walking down the street. She ignored the reporter's polite questions so it was obvious she was not willing to participate, and therefore any editorial requirement to inform her of the general nature of her "participation" did not exist.



We are satisfied there was nothing misleading about the reporter's email of 5 July requesting to interview Lachlan Murdoch. [...]

Had Mr Murdoch expressed interest in participating, it would have been at that stage that further discussions about the nature and timing of the program would have been discussed. [...]

Audience and Consumer Affairs is satisfied that Four Corners exhibited open-mindedness and fair treatment in engaging with Fox News on multiple occasions, including sending written questions when the network refused all requests for interviews, and afforded Fox a fair opportunity to respond and to present its version of events. We note that, to the extent Fox News was willing to respond to the program and those responses were relevant, they were reported. [...]

## **Footage of Ms Pirro**

Episode 2 presented a segment which contains footage of Ms Pirro, a Fox News host, being approached by the presenter on a public street, with the presenter stating 'we're from Australia. I just wanted to ask you, do you still think that [voting machine company 2] and [voting machine company 1] stole the election from President Trump?'. Ms Pirro did not respond, smiled and walked away. She was then filmed from a distance while she waited at a traffic light.

The complainant alleged a breach of Standards 5.1, 5.2 and 5.8 of the Code in relation to this segment.

### **Assessment under Standard 5.1**

Standard 5.1 is a requirement that participants in ABC content should normally be informed of the general nature of their participation.

The key consideration in assessing compliance with this Standard is whether Ms Pirro was a participant in ABC content. The ACMA considers that in circumstances where the Episodes presented her actions, such as her appearance on stage at a campaign rally, as underpinning a central theme, namely that Fox News had become 'a propaganda vehicle' for former President Trump, the decision to include the footage of her being approached for comment meant the ABC turned her into a participant in ABC content. This is distinct from a situation where a story relies on existing footage of a public figure which is already in the public domain.

The ABC submitted:

[...] the question of whether Ms Pirro was a participant for the purposes of standard 5.1 ought to be determined solely with reference to what occurred during the encounter between Ms Pirro and the Four Corners reporter and crew.

[...] the ABC considers that Ms Pirro was not a participant in the program. She refused to participate, as is her right. She was a subject but not a participant.

The ACMA does not agree with this approach and considers that Ms Pirro's appearance in other parts of the Episodes is a relevant factor in determining whether she should be considered a participant in ABC content for the purposes of the Code.

The ACMA considers that the ABC was required to disclose to Ms Pirro that her participation was as part of a current affairs program examining Fox News and former President Trump. On this point, the ABC further submitted:

The obligation in the Standard is only to inform participants of the *general* nature of their participation. [...]

The inclusion of the word 'normally' in the standard indicates that different circumstances will warrant different approaches in terms of precisely how to discharge the obligation [...] it would have been apparent from the tone, nature and content of the questions, [the presenter]'s

manner, the introductory comment “we’re from Australia” (phrased and delivered in the common manner of a journalist’s self-identification prior to asking questions), and the obvious camera crew, that [the presenter] was an Australian television journalist asking questions about Ms Pirro’s false claims about [voting machine company 2] and [voting machine company 1] having stolen the 2020 election.

The ACMA recognises that inclusion of the terms ‘normally’ and ‘general’ in the Standard recognises that it is not always practical or required to provide extensive details about the nature of participation. However, the ACMA maintains that in the present circumstances, the ABC could have, and was obliged to, inform Ms Pirro in more detail about the nature of her participation.

Accordingly, the ACMA is of the view that the ABC did not adhere to the requirement to inform participants in ABC content of the general nature of their participation and considers that the ABC breached Standard 5.1 of the Code.

#### ***Assessment under Standard 5.2***

Standard 5.2 states that a refusal to participate will not be overridden without good cause. To the extent that Ms Pirro failing to answer the presenter’s question and walking away amounted to a refusal to participate, it cannot be argued that it was overridden by the ABC as the presenter and camera crew did not further pursue her. The ACMA considers that Standard 5.2 is more relevant where participants expressly state that they do not wish to participate but have content featuring them already recorded included in a broadcast, rather than in the present circumstances. Accordingly, the ACMA’s view is that the ABC did not breach Standard 5.2 of the Code.

#### ***Assessment under Standard 5.8***

The complainant also alleged a breach of Standard 5.8, which refers to ‘secret recording, misrepresentation or other types of deception’. The ACMA considers there was no secrecy or deception in obtaining the footage of Ms Pirro, as initially it would have been clear to her that she was being filmed when she was questioned and smiled in response, with the later footage of her in the distance being taken in a public place.

Accordingly, the ACMA’s view is that the ABC did not breach Standard 5.8 of the Code.

### **Interview requests and opportunity to respond**

#### ***Standard 5.1***

The complainant alleged that it was not sufficiently informed about the topics to be discussed in an interview requested with its chief executive. Standard 5.1 of the Code requires that participants in ABC content be informed about the *general* nature of their participation. The complainant submitted copies of correspondence between ABC producers and Fox News, including an interview request which broadly referred to the subject matter of the interview. The ABC submitted that further details would have been provided if the interview request had been agreed to. As none of the relevant interview requests were agreed to and the potential interviewees were not participants in ABC content, Standard 5.1 does not apply.

#### ***Assessment under Standard 5.3***

The complainant further alleged that the ABC did not provide Fox News with a fair opportunity to respond to allegations made in the Episodes, referring to Standard 5.3 of the Code. The ACMA notes that, in addition to requesting interviews with several senior Fox News staff and defamation lawyers, the ABC provided Fox News with detailed written questions. The complainant submitted these questions to the ACMA, and the ACMA notes that they cover the main allegations presented in the Episodes, including that Fox News had broadcast inaccurate information about election fraud, as well as about the involvement of its Chairman and Chief Executive Officer. As noted above, the Episodes included three statements supplied by Fox News. In these circumstances, the ACMA considers that Fox News was

provided with a fair opportunity to respond, and to the extent that relevant responses were provided, the ABC included them in the broadcast.

Accordingly, the ACMA's view is that in seeking interview requests with the Fox News Chief Executive Officer and providing opportunities for response, the ABC did not breach Standard 5.3 of the Code.

### Complaint

#### *Extracts of the complaint to the ABC dated 3 September 2021*

This is a formal complaint from [...] concerning two inflammatory episodes of Four Corners. [...]

The episode titles speak for themselves. The first episode, which aired on August 23, 2021, is titled “Fox and the Big Lie: How the network promoted Donald Trump's propaganda and helped destabilise democracy in America” (the **First Episode**). The second episode, which aired on August 30, 2021, is titled “Fox and the Big Lie – Part Two” (the **Second Episode**) (together, the **Episodes**).

The Episodes’ attack on Fox News is indefensible and cannot stand. The Episodes flout the letter and spirit of the Australian Broadcasting Corporation Code of Practice (the **ABC Code**) and run afoul of the Federal Parliament’s primary standards for the ABC, as codified in Section 8 of the *Australian Broadcasting Act 1983* (Cth) (**Section 8**). Those authorities make clear that the ABC has a duty to gather and present accurate information in an impartial manner.

As detailed below, the Episodes are the exact opposite of accurate and impartial. First, and most basically, the Episodes abandoned all semblance of impartiality and instead presented a one-sided political polemic against Fox News, the most-watched cable news organization in the United States for nearly two decades. The patent bias, second, led to programs riddled with basic factual errors, uncorrected even after Fox News presented contrary evidence. Those errors, third, stemmed from the ABC’s abject failure to abide by basic journalistic procedures. The end result is television programming that violates fundamental tenets of the ABC’s charter and is not worthy of the trust that the people of Australia have placed on the ABC. [...]

#### **1. The Episodes Reflect Patent and Unrelenting Bias Against Fox News.**

The ABC is obligated to present accurate information in an impartial manner. Section 8 and the ABC Code each confirm the point. Section 8 states that the ABC’s “gathering and presentation ... of news and information” must be “accurate and impartial according to the recognized standards of objective journalism.” Similarly, the ABC Code provides that the ABC should: “[m]ake reasonable efforts to ensure that material facts are accurate and presented in context” (standard 2.1); “present factual content in a way that [does not] materially mislead the audience” (standard 2.2); “[a]cknowledge and correct or clarify ... material errors ... or ... information that is likely to significantly and materially mislead” (standard 3.1); “[g]ather and present information with due impartiality” (standard 4.1); “[p]resent a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented” (standard 4.2); refuse to “state or imply that any perspective is the editorial opinion of the ABC” (standard 4.3); refuse to “unduly favour one perspective over another” (standard 4.5); “inform” “participants in ABC content” “of the general nature of their participation (standard 5.1); and “make reasonable efforts in the circumstances to provide a fair opportunity to respond” “[w]here allegations are made about a person or organisation” (standard 5.3).

The ABC erred in the most fundamental way here, as the Episodes exhibit patent bias against Fox News at every opportunity. The Episodes’ titles, for example, argue that Fox News “promoted Donald Trump’s propaganda” and “destabilise[d] democracy in America.” The Episodes’ advertisements similarly invited viewers to learn how “America’s number one cable news network became a propaganda vehicle for Donald Trump and helped destabilise democracy.” [...]

ACMA has emphasized that the “hallmarks” of impartiality include “a balance that follows the weight of evidence,” “fair treatment,” and “open-mindedness.” It strains credulity to believe

that the Episodes exhibited those hallmarks. Even where the network hand-delivered information that fatally undermined various different claims made on the Episodes (thus saving the ABC the trouble of having to engage in actual journalism), the ABC simply ignored that information. There is thus only one conclusion to draw: The ABC produced the Episodes not to allow viewers to make informed judgments based on objective facts, but rather to tilt the debate in one direction – against Fox News. That runs directly counter to the ABC’s “statutory duty to ensure that the gathering and presentation of news and information is impartial according to the recognized standards of objective journalism.” ABC Code Principle 4.

## 2. The Episodes Contain Numerous Provable Falsehoods

The touchstone of good and fair journalism is accuracy, as Section 8 and the ABC Code both underscore. The Episodes here, however, are wildly inaccurate. Seven of the Episodes’ factual errors are especially noteworthy and egregious: (1) that the Episodes are sourced from Fox News “insiders”; (2) that Fox News published propaganda on Donald Trump’s behalf; (3) that Fox News promoted Trump’s narrative about election fraud; (4) that Fox News retaliated against employees involved in the decision to call the state of Arizona for Joe Biden;

(5) that Fox News’ coverage led to the January 6, 2021 riots on Capitol Hill; (6) that Fox News allowed its hosts to campaign for Trump; and (7) that Fox News’ competitors overtook Fox News in the ratings in the election’s aftermath.

### **False claim 1: The Episodes are sourced from Fox News “insiders”**

The ABC premised the Episodes on the theory that they offer unvarnished accounts from Fox News “insiders.” The First Episode, for example, asserted that the ABC would provide “the inside story of Fox News from those who were there.” Likewise, the Second Episode asserted that the ABC would provide the “view from inside the network.” To support that narrative, the Episodes featured interviews with six individuals: Susan Estrich, Gretchen Carlson, Carl Cameron, Lt. Col. Ralph Peterson, Conor Powell, and Chris Stirewalt.

[...] As the chart below confirms, Fox News does not currently employ any of these individuals. Moreover, although Fox News previously employed these individuals, all but one left the network *at least three years ago* – and two left *before Donald Trump even won the election in 2016*. As a result, these individuals could not possibly have shared insider knowledge about many of the issues that the Episodes purported to address, such as the “big lie” – *i.e.*, Trump’s assertions that he, in fact, won the 2020 election:

| INTERVIEWEE             | DEPARTURE DATE |
|-------------------------|----------------|
| Susan Estrich           | January 2017   |
| Gretchen Carlson        | June 2016      |
| Carl Cameron            | August 2017    |
| Lt. Col. Ralph Peterson | March 2018     |
| Conor Powell            | August 2018    |
| Chris Stirewalt         | January 2021   |

Although the Episodes fleetingly identified these individuals as former Fox News employees, the ABC never provided any specifics. For example, the Episodes never mentioned any specific dates of departure. The Episodes did not provide any context about the circumstances that led to those departures (or at least not accurate context). And the Episodes never revealed that many of these individuals became outspoken Fox News critics

once they left the network. [...] In this way, the ABC violated standards 2.1, 2.2, 4.1, 4.2, 4.4 and 4.5 of the ABC Code.

### **False claim 2: Fox News published propaganda on Trump's behalf**

The Episodes suggested that Donald Trump controlled Fox News or, in the alternative, that Fox News served as a Trump propaganda arm. [The Presenter] described Fox News as a "reliable" Trump "echo chamber" and "propaganda vehicle" for Trump and that Fox News "effectively became the Trump Network." Gretchen Carlson stated that Fox News "allowed the former President to dictate what news they put out to the American people." Lt. Col. Ralph Peters argued that Fox News morphed into a "propaganda organ" for Trump. The list goes on.

[...] There is no better evidence than Trump's own Twitter feed. In over 400 messages, Trump has vociferously attacked Fox News as "Fake News," playing "right into the hands of the Radical Left Democrats," and "not watchable." In addition, Trump has insisted that Fox News should fire several of its journalists and political analysts. [...]

If any doubt existed about whether Fox News is Trump's puppet, the network's coverage of the 2020 election eliminates it. As is well-documented, and much to Trump's disappointment, Fox News made the highly consequential decision to call the state of Arizona *for Joe Biden* before any other network in the United States. In fact, only the [name of company] joined Fox News in making that critical call on election night, while other major news networks, including those that many would describe as comfortably left-wing, waited nine days before declaring Biden the victor in Arizona.

Although this evidence is readily available within a keystroke and mouseclick – if not common knowledge already– the ABC featured none of it. [...] In this respect, the ABC disregarded its obligations under standards 2.1, 2.2, 4.1, 4.2, 4.5, and 5.3 of the ABC Code.

### **False claim 3: Fox News promoted the narrative about election fraud**

The Episodes asserted that Fox News perpetuated Donald Trump's false narrative about election fraud. As [The Presenter] put it on the First Episode, Trump "could never have spread the big lie so widely without his most reliable echo chamber, the Murdoch-owned and run Fox News." [...] doubled down on the second episode, stating that "Fox News hosts embraced and spread the big lie," and the Episodes' guests repeated such claims. [Interviewee] asserted that "Fox News was the biggest promoter" of the "big lie." [Interviewee] asserted that Fox News "anchors push[ed] lies as facts." And [interviewee] stated that "Fox certainly has participated in the destruction of democracy by promoting the types of things that Donald Trump did."

The facts contradict the ABC's false claim. Instead of perpetuating Trump's narrative that he won the White House, Fox News accurately reported the results of the 2020 election. Specifically, Fox News called Arizona for Biden before any other television network in the United States, and for nine days, it remained the only major television network to make that call. Further, Fox News ultimately projected and declared Joe Biden as the President-elect of the United States.

In addition, instead of encouraging Trump's claims of election fraud, several Fox News programs scrutinized and challenged those claims and emphasized that Trump and his surrogates lacked evidence to support them. [...]

Those commentators have noticed that which the ABC failed to include. Episode Two identified [...] as a large Fox News advertiser who was allowed on the air to promote his election fraud allegations. [...] At certain points [...] has even accused Fox News of being part of an anti-Trump election conspiracy, and Fox News refused to air ads about his fraudulent election claims. [The Presenter] was also made aware of this fact [...]. Fox News provided information to the ABC — and the ABC could have easily discovered much of it itself — but the ABC barely included any of it. The ABC thus breached standards 2.1, 2.2, 4.1, 4.2 and 4.5 of the ABC Code.

#### **False claim 4: Fox News retaliated against employees involved in the decision to call Arizona for Biden**

The Episodes assert that Fox News retaliated against certain employees for their involvement in the decision to call Arizona for Biden. In particular, the First Episode stated that Chris Stirewalt played a “critical role” on Fox News’ Decision Desk, that Fox News executives pressured the Decision Desk to reverse the call on Arizona, and that Mr. Stirewalt lost his job for refusing to comply.

None of this is accurate. Mr. Stirewalt did not lead the Decision Desk, and he never received an instruction from anyone to change the Arizona call – as Mr. Stirewalt himself confirmed on the First Episode and as Fox News confirmed in its responses to [The Presenter]’s written questions (a copy of which is attached hereto as **Appendix 2**). It follows that Mr. Stirewalt could not plausibly have lost his job for refusing to bow to pressure regarding the Arizona call. In reality, a Fox News employee [...] led the Decision Desk, and [...] has remained a Fox News employee ever since the Decision Desk made its independent (and accurate) call.

The ABC’s narrative to the contrary is nothing more than rank speculation and violates standards 2.1, 2.2, 4.1, 4.2, and 4.5 of the ABC Code.

#### **False claim 5: Fox News’ coverage led to the January 6 riots**

The Episodes state that Fox News’ coverage led to the January 6 riots on Capitol Hill. [The Presenter] asserted on the First Episode that Fox News “worst outrage generators certainly fueled [the rioters’] anger.” [Interviewee] claimed that “Fox is on the wrong side of . . . the most stunning event in modern American history, a siege on the Capitol, an insurrection, violent riots.” And [interviewee] contended that it is a “pox on Fox” for having “participated in the destruction of democracy.”

The evidence does not support these characterizations. [...] if any business entities are to blame for the January 6 riots, social media companies like [name of company] are: U.S. authorities have filed numerous criminal indictments against various January 6 rioters, and far from casting blame on Fox News, those indictments make clear that social media platforms played a leading role, even advertising body armor alongside incitement posts. As for television networks, the February 2021 Congressional hearing on disinformation and encouraging extremism had more negative references to [names of companies] than to Fox News.

On January 6, the rioters themselves repeatedly yelled epithets denouncing Fox News. On that day and those that followed, Fox News presenters and contributors repeatedly condemned the riots and Trump’s involvement.

The ABC’s failure to include this information resulted in breaches of standards 2.1, 2.2, 4.1, 4.2 and 4.5 of the ABC Code.

#### **False claim 6: Fox News allowed employees to campaign for Trump**

The Episodes asserted that appearances by Sean Hannity and Jeanine Pirro, two Fox News hosts, at a Trump rally in 2018 reflected a decline in standards at the network. According to [The Presenter], these appearances made it “obvious” that Fox News had “shift[ed]” toward its role as a Trump mouthpiece and had abandoned its duty to provide fair and balanced journalism.

To the contrary, Fox News issued a public statement in November 2018 censuring Mr. Hannity and Ms. Pirro for this conduct, emphasizing that it “does not condone any talent participating in campaign events,” and explaining that it had addressed the matter internally. Fox News provided a copy of this statement to the ABC before it broadcast the First Episode, but the ABC ignored it and proceeded with its false claim. The violations of standards 2.1 and 2.2 of the ABC Code are self-evident.

### **False claim 7: Fox News lost in the ratings to competitors after the election**

The Episodes asserted that that Fox News' ratings decreased dramatically because of the network's decision to call the election for Joe Biden and that viewers flocked to competing networks. More precisely, [The Presenter] stated that "Fox's ratings plunged as Trump loyalists turned off in disgust," "leaving in droves" to "far-right networks." And others made similar statements, including [interviewee], who asserted that, for a full "week" after the election, [name of network] beat Fox News in the television ratings during the 7:00 p.m. EST hour. Those assertions are not correct. Fox News achieved its highest ratings in its history in 2020. And today, Fox News remains the number one news broadcaster in the United States — and far ahead of [name of network], which has never beat Fox News in total viewership during any given week in any time slot [original emphasis], per Nielsen Media Research. Fox News provided this information to Ms. [...] in time to be included in the Episodes. Again, the ABC declined to present the facts to its viewers, in contravention of standards 2.2, 4.1, 4.2 and 4.5 of the ABC Code.

### **3. The Episodes' Procedural Errors Violated Basic Journalistic Practice.**

The substantive errors described reflect a more fundamental problem: In preparing the Episodes, the ABC neglected to follow first principles of journalism, which are reflected in Section 8 and the ABC Code. Again, although the procedural faults are many, three in particular deserve mention: (1) the ABC overwhelmingly featured anti-Fox News perspectives in the Episodes; (2) the ABC omitted relevant information in the Episodes, even when Fox News handed that information to them; and (3) the ABC failed to provide Fox News an opportunity to meaningfully respond to the allegations in the Episodes.

#### **Procedural error 1: The ABC overwhelmingly featured anti-Fox News perspectives in the Episodes**

Section 8 demands "impartial[ity]" from the ABC. In turn, the ABC Code reinforces the point (standard 4.1) and also makes clear that the ABC must "present a diversity of perspectives" (standard 4.2), "refuse to favour one perspective over another" (standard 4.5), and refuse to "state or imply that any perspective is the editorial opinion of the ABC" (standard 4.3).

The Episodes failed to honor those principles. Instead, the ABC chose to focus almost exclusively on anti-Fox News viewpoints. [...] former Fox News employees provided the overwhelming majority of the commentary during the First Episode. And although the ABC featured certain other guests during the Second Episode, the vast majority of them shared the same anti-Fox News bias too. [voting machine company 1] [...] viewers never received information adequately explaining the other side of the story. Rather, they heard a mere one-sentence statement from [the Presenter] noting that Fox News had "rejected the cases" — but [...] drowned out that statement herself by derogatorily describing Fox News as "the Trump Network," an "echo chamber," and a "propaganda vehicle."

#### **Procedural error 2: The ABC omitted relevant information in the Episodes**

The ABC Code requires the ABC to "[m]ake reasonable efforts to ensure that material facts are accurate and presented in context" (standard 2.1) and "[a]cknowledge and correct or clarify ... material errors ... or ... information that is likely to significantly and materially mislead" (standard 3.1). Those standards reflect the basic principle that the ABC should not exclude relevant information and that, if it does so, it should promptly correct the inaccuracy. The reason why is obvious. As ACMA has explained, "excluding information" "may render a presentation unfair."

The ABC excluded all manner of highly relevant information in the Episodes. Three examples of such exclusions are illuminating, but they are certainly not exhaustive. First, the ABC failed to include the statement that Fox News issued after Sean Hannity and Jeanine Pirro appeared at Donald Trump's rally in 2018. Second, the ABC failed to include any information about Fox News' pleadings or arguments in the [voting machine company 1] lawsuit or in a similar lawsuit involving an entity named [voting machine company 2]. Instead, the ABC allowed only [one person] to provide any defense, but [they are] a completely separate



defendant in those lawsuits and has asserted separate defenses independent of any press privileges to report newsworthy events. Third, the ABC never included any information about the prominent role of social media in the January 6 riots on Capitol Hill, even though that information is documented in a number of different indictments.

The ABC's decision to omit this information (and other information that provided necessary context and clarification) would be troubling under any circumstances. Here, the problem is worse: Fox News *gave* all this information to the ABC, and yet the ABC *still* proceeded with its one-sided narrative.

**Procedural error 3: The ABC failed to give Fox News an opportunity to meaningfully respond to the allegations in the Episodes**

The ABC Code provides that the ABC must “inform” “participants in ABC content” “of the general nature of their participation (standard 5.1) and “make reasonable efforts in the circumstances to provide a fair opportunity to respond” “[w]here allegations are made about a person or organisation” (standard 5.3).

The ABC did no such thing here — at least with respect to Fox News personnel. [The Presenter]’s treatment of Jeanine Pirro is particularly concerning. Instead of seeking to interview Ms. Pirro, Ms. [...] — identifying herself only as someone “from Australia” — ambushed and accosted Ms. Pirro in person outside her workplace [...]

### ***Extracts of the complaint to the ACMA dated 15 November 2021***

This is a complaint [...] concerning two episodes of Four Corners broadcast by the Australian Broadcasting Corporation (ABC):

(a) Four Corners aired on 23 August 2021, entitled “Fox and the Big Lie: How the network promoted Donald Trump's propaganda and helped destabilise democracy in America” (the First Episode);

(b) Four Corners aired on 30 August 2021, entitled “Fox and the Big Lie – Part Two” (the Second Episode) (together, the Episodes). Four Corners is a current affairs program. Fox News also complains about the manner in which the Episodes were promoted. [...]

The title of each episode is indicative of the angle that the ABC intended to present to the viewer - being an attack on Fox News. The programmes sought to hold Fox News accountable for the conduct and statements of others, namely the claims made by Donald Trump and his supporters after the 2020 election in relation to the outcome of that election.

The premise of the Episodes is flawed given that the “Lie” was not one told by Fox News - it was reported on by the network and commented on. The conduct of Fox News was not remarkable in this regard when one considers that all media in the United States at the time were also reporting on and commenting on the statements being made by Mr Trump and others on his behalf. The conflating of those matters throughout the Episodes evidences the unfairness with which the ABC approached the preparation of the programmes - it was plainly a biased approach, lacking impartiality and ignoring facts that did not suit the ABC’s narrative.

The Episodes were heavily promoted by the ABC in advance of broadcast including on the ABC News. The promotional videos, consistently with the Episodes, were all one-sided and demonstrate an utter disregard for obligations of impartiality and presenting all relevant views. [...]

#### **Episode 1**

[...] It is asserted that Rupert Murdoch caused “a great deal of harm” to the United States by reason of his association with Donald Trump. This assertion is made in different ways throughout Episode 1 by multiple “insiders”. These allegations were not presented as personal opinions, but as facts from “informed insiders” and the editorial view of Four Corners- “the inside story...by those who were there”.

[The Presenter] [...] makes no attempt to temper the assertions made by the interviewees - which are edited together to paint an overwhelmingly one-sided picture of impropriety in the conduct of Fox News by Rupert Murdoch.

One interviewee makes an outrageous allegation that “people could get killed” because of Fox News’ “buying into ... and selling” what is said by “Trump’s henchmen”.

Four Corners connects the January “insurgency” in Washington with the “spread of the big lie” by Fox News - directly making that allegation and highlighting it with dramatic footage and music. [The presenter] tells the audience that the episode will demonstrate “How America’s Number 1 cable news network became a propaganda vehicle for Donald Trump and helped destabilise democracy.”

The serious [...] tone used by [the presenter], interspersed with climactic music, historic images and footage and startling allegations by interviewees leaves the viewer in no doubt about the guilt of Fox News, Rupert Murdoch and Lachlan Murdoch. It is an entirely one-sided attack wholly inconsistent with the role and obligations of the ABC.

Lachlan Murdoch is demonised by [the presenter] for not responding to requests to release former employees of Fox News from non-disclosure obligations [...] Criticising persons for enforcing their legal rights in this way is divisive and unfair, particularly in circumstances where obligations of confidence exist in relation to these former employees (over and above any contract) and where the interviewees were plainly disclosing such information as part of the interviews in any event.

[...] puts propositions to these former employees knowing that they cannot answer them purely for the purpose of dramatic effect and to give the impression that the answers to her propositions are in the affirmative. For example her assertion (posed as a question) “Wasn’t there an executive who said you should stop making calls?”. Had [the presenter] had a proper source for such an allegation she no doubt would have identified that in the episode so that the viewers could judge the veracity of the claim for themselves. Instead, she asserts it as fact to an interviewee who apparently cannot answer so that the viewer is left in no doubt about the truth of the claim.

[The presenter] makes sweeping claims such as “all of our Fox News insiders point to a dramatic drop in editorial standards” in circumstances where some of the interviewees never worked for Fox News and others were not employed there at the relevant time. [...] Another interviewee described as a “Murdoch biographer” similarly makes statements as fact - even though this person was not present at Fox News at any relevant time.

Including near the end of Episode 1 a crying former employee was plainly in order to vilify Rupert and Lachlan Murdoch. The inclusion of that footage was a tabloid tactic inconsistent with the standards expected of the ABC. In particular Four Corners advertises itself as a serious programme that presents the results of investigative journalism. Gutter tactics of this calibre have no place in such a programme and are indicative of the lack of objectivity with which the Episodes were prepared.

The inclusion of the statement at the end of the programme by Fox News about the election coverage was insufficient response to the many serious allegations made throughout the episode about Fox News, Rupert Murdoch and Lachlan Murdoch.

## **Episode 2**

The broadcast of a second episode on the same topic is unusual for Four Corners - it served to emphasise the alleged importance of the story. Episode 2 opens with the assertion that a lawyer is “taking on Rupert Murdoch’s Fox News”. The lawyer makes a number of assertions as fact and [the presenter] backs up those claims.

The assertions made by Mr Trump in relation to the election and those acting for him or speaking in agreement with his views were covered by all media and repeated on social media. However, [the presenter] describes Fox News’ coverage as “pedd[ling] the lie”, “join[ing] the effort to spread lies and propaganda for Donald Trump” and by the interviewees, the so-called “insiders” as “doing direct harm to my country” and “the destruction of democracy” which according to [the presenter] “drove the raging mob invading the capital on January 6th”. Emotive music and footage is again deployed to dramatise the allegations and assign guilt.

[The presenter] interviews Trump voters and then actually holds Fox News responsible for the beliefs of those voters and supporters. The suggestion that Fox News should be held to account for the views of some 74 million persons “deforming their views, corrupting their views” is an absurd unsustainable accusation that is untestable and should not have been made. This allegation is demonstrative of the impermissible bias in the preparation and presentation of the Episodes in direct contravention of the ABC’s obligations of impartiality. It is particularly insidious because of the repeated references (accompanied by disturbing

footage) in both Episodes to the riots in January. The clear implication is that Fox News and Rupert and Lachlan Murdoch are responsible for or the cause of those violent riots. Attendees at a Trump rally are described by [the presenter] as “as a crazy side show” and “nutty”, suggesting that they are a mindless mob whose views were entirely dictated and controlled by Fox News. Again, this is another [...] accusation presented as fact that is untestable and should not have been made by the national broadcaster. Congressional hearings into this issue prior to the broadcast of the Episodes did not implicate Fox News.

Fox News is a large organisation which broadcasts 24 hours per day including programmes in which opinions are expressed on topical issues - a wide variety of persons are interviewed to inform the audience of the various views on different topics. Like other media, Fox News commentators expressed disparate views on the issues raised in relation to the election. For example a spokesperson from the electoral machine company [voting machine company 2] gave an interview refuting the allegations made by Sidney Powell and Rudy Giuliani and it was frequently pointed out during the coverage by Fox News that no evidence had been produced to support the claims being made by Mr Trump.

[The presenter] describes journalists at Fox as a group - as though they all have the same views and presented the same opinions in relation to Donald Trump’s election loss, describing them all as “propagandists”. She asserts that as a group they should be held “accountable for the assault on truth” and that Fox News “abandon[ed] its social contract to tell the truth...working to undermine the American democratic system”. The notion that every journalist at Fox News expressed the same views on the election outcome is patently false and misleading. Pointing to one or two employees who held one view as though they were representative of the 2100 employees at Fox News was a wholesale failure to engage in accordance with the standards the subject of this complaint. It was plainly for the purpose of misleading the viewer in order to impute impropriety against Fox News and Rupert and Lachlan Murdoch.

Like Episode 1, Episode 2 includes interviews from persons who purport to have first-hand knowledge of facts about which they could not possibly be so informed. Putting these interviewees forward as truth-sayers in circumstance where they plainly have no personal knowledge of the matters about which they are speaking is misleading and apt to mislead.

In Episode 2 extracts from interviews given in other contexts by Lachlan Murdoch are included and his words are then contradicted by [the presenter] - *suggesting that he is lying*. No such allegation was put to Mr Murdoch prior to broadcast for his response, in clear contravention of Standard 5.3.

The lengthy time during Episode 2 afforded to the lawyer acting for parties in litigation against Fox News [...]. [the presenter] was aware that Fox News had filed a motion to dismiss the claims against it and that motion was argued in open court on 17 August 2021, prior to broadcast. Despite that knowledge, she does not even inform the viewer that the proceedings are being vigorously defended by Fox News - having made an application for summary dismissal. The views of Sidney Powell and the allegations against Fox News by the lawyer are then conflated as though she is somehow an employee or representative of Fox News when she plainly is not.

The final minutes of Episode 2 incontrovertibly lay the blame for the January riots on Fox News and Rupert and Lachlan Murdoch. That is a serious allegation made without any basis whatsoever and is plainly non-sensical given the wide coverage of Donald Trump’s election claims on all media and on social media.

## **B. ACCURACY Standard 2 [...]**

[The complainant] says that the following statements /imputations in the First Episode were not accurate:

1. On repeated occasions, The Episodes claimed to feature the voices of Fox News “insiders.” [...]
2. Fox News published propaganda on Trump’s behalf. [...]
3. Fox News promoted the narrative about election fraud. [...]
4. Fox News retaliated against employees involved in the decision to call Arizona for Biden. [...]
5. Fox News’ coverage led to the January 6 riots: [...]
6. Fox News tacitly endorsed employees to campaign for Trump. [...]
7. Fox News lost in the ratings to competitors after the election. [...]

### **Statement 1**

The ABC premised the Episodes on the theory that they offer unvarnished accounts from Fox News “insiders.” The First Episode, for example, asserted that the ABC would provide “the inside story of Fox News from those who were there.” Likewise, the Second Episode asserted that the ABC would provide the “view from inside the network.” To support that narrative, the Episodes featured interviews with six individuals: Susan Estrich, Gretchen Carlson, Carl Cameron, Lt. Col. Ralph Peterson, Conor Powell, and Chris Stirewalt.

[...] As the chart attached to the Complaint confirms, Fox News did not at the time of broadcast employ any of these individuals. Moreover, although Fox News previously employed them, all but one left the network at least three years ago – and two left before Donald Trump even won the election in 2016. As a result, those interviewees could not possibly have shared insider knowledge about many of the issues that the Episodes purported to address, such as the “big lie” – i.e., Trump’s assertions that he, in fact, won the 2020 election.

Although the Episodes fleetingly identified these individuals as former Fox News employees, the ABC never provided any specifics. For example, the Episodes never mentioned any specific dates of departure. The Episodes did not provide any context about the circumstances that led to those departures (or at least not accurate context). Further, the Episodes never revealed that many of these individuals became outspoken Fox News critics once they left the network. [...] former employees who left Fox News long ago. In this way, the ABC violated standards 2.1, 2.2, 4.1 and 4.5 of the ABC Code. [...]

Four Corners introduced these former Fox News employees as “insiders” who could attest to a “dramatic drop in editorial standards” then subsequently had them speak to editorial decisions made after their departure from Fox News. The statements were, on nearly every occasion, not expressed as personal opinions but as fact. The combination of the various statements from the former employees (and others) together with the commentary by [the presenter] was plainly carried as fact and not opinion. It was impossible for the audience to understand that these were [...] former employees merely speculating about matters for which they had no direct knowledge.

For example, after being presented as a Fox News ‘insider,’ [interviewee] told ABC Viewers about Fox’s editorial standards after ‘Trump [Got] Elected.’ [...]

[Interviewee] left Fox News in January 2017, and therefore was in no position to provide 'inside' information about Fox's editorial standards after Trump Took Office. Immediately after [interviewee] frames the conversation around Fox's editorial standards after Trump's election, ABC presents [a further interviewee] as an 'insider.' A reasonable viewer would assume she was referring to the same time period, but [the further interviewee] also left before Trump's presidency – in 2016.

Other interviewees were repeatedly depicted as having insider knowledge even though they have never been employees of Fox News Media. A [...] reporter from the [newspaper] makes many assertions about the beliefs, knowledge and intentions of Rupert Murdoch and his sons. It is unclear how [they] could possibly have such knowledge or could in any way be described as an "insider". Similarly a "biographer" who was not present at Fox at any relevant time makes many allegations about which he could have no direct knowledge. Again, he would have been understood by the viewers as another "insider" when he was in no such position. [...]

## **Statement 2**

The Episodes suggested that Donald Trump controlled Fox News or, in the alternative, that Fox News served as a Trump propaganda arm. [The Presenter] described Fox News as a "reliable" Trump "echo chamber" and "propaganda vehicle" for Trump and that Fox News "effectively became the Trump Network". [Interviewee] stated that Fox News "allowed the former President to dictate what news they put out to the American people". [Interviewee] argued that Fox News morphed into a "propaganda organ" for Trump. Again, each of these assertions are stated as fact - not expressed as opinion.

[...] In over 400 messages, Trump has vociferously attacked Fox News as "Fake News" playing "right into the hands of the Radical Left Democrats" and "not watchable". In addition, Trump has insisted that Fox News should fire several of its journalists and political analysts. Appendix 1 to the Complaint contains an illustrative list of over 25 articles (issued by other news outlets) that recognize (among other things) that Trump declared "war" on Fox News.

Although this evidence is readily available, the ABC featured none of it. Instead, the ABC provided an outlet for [the presenter] and a collection of Fox News outsiders to make their attacks under a guise of journalism. In this respect, the ABC disregarded its obligations under standards 2.1, 2.2, 4.1, 4.5, and 5.3 of the ABC Code. [...]

Acknowledging that Trump was upset with Fox's Arizona call is not exculpatory, when the false claim is that Fox News was a propaganda outlet before the call and throughout the four years of his presidency.

The available evidence suggests hundreds of examples of Trump's anger toward Fox News preceded election night 2020. Among more than 400 tweets referenced by Fox News in its Complaint, under seven percent were sent after Election Day 2020.

## **Statement 3**

The Episodes asserted that Fox News perpetuated Donald Trump's false narrative about election fraud. As [The Presenter] put it on the First Episode, Trump "could never have spread the big lie so widely without his most reliable echo chamber, the Murdoch-owned and run Fox News." [The presenter] doubled down in the Second Episode, stating that "Fox News hosts embraced and spread the big lie" and the Episodes' guests repeated such claims. [Interviewee] asserted that "Fox News was the biggest promoter" of the "big lie." [Interviewee] asserted that Fox News "anchors push[ed] lies as facts." [Interviewee] stated that "Fox certainly has participated in the destruction of democracy by promoting the types of things that Donald Trump did."

The facts contradict the ABC's false claim. Instead of perpetuating Trump's narrative that he won the White House, Fox News accurately reported the results of the 2020 election. Specifically, Fox News called Arizona for Biden before any other television network in the United States, and for nine days, it remained the only major television network to make that call. Further, Fox News ultimately projected and declared Joe Biden as the President-elect of the United States.

In addition, instead of encouraging Trump's claims of election fraud, several Fox News programs scrutinized and challenged those claims and emphasised that Trump and his surrogates lacked evidence to support them.

Those commentators have noticed that which the ABC failed to include. Episode Two identified [...] as a large Fox News advertiser who was allowed on the air to promote his election fraud allegations. [...] At certain points [...] has even accused Fox News of being part of an anti-Trump election conspiracy, and Fox News refused to air ads about his fraudulent election claims. [The Presenter] was also made aware of this fact which was publicly known [...]

Fox News provided information to the ABC — and the ABC could have easily discovered much of it itself — but the ABC barely included any of it or did so in a misleading fashion. The ABC thus breached standards 2.1, 2.2, 4.1, 4.5 and 5.3 of the ABC Code. [...]

The fact is that all news outlets in the U.S and elsewhere (including Australia) were reporting on the claims being made by Donald Trump and his supporters about the election outcome. It was newsworthy that he was making such claims. [The presenter] was told this in no uncertain terms on 13 August 2021 during her conversations with the lawyers for Fox News in the [voting machine company 1] and [voting machine company 2] litigation. She had no reason to disbelieve these emphatic statements which were in fact repeated in open Court on 17 August. The assertion that Fox News only presented one side of this issue of public interest is false and unsupported by any evidence. The ABC has not identified any rational basis for the allegation, particularly in the context of the reporting by other media organisations who also widely covered the claims. The suggestion that the entire organisation was acting in a manner to perpetuate the “big lie” is insupportable.

#### **Statement 4**

The Episodes assert that Fox News retaliated against certain employees for their involvement in the decision to call Arizona for Biden. In particular, the First Episode stated that Chris Stirewalt played a “critical role” on Fox News' Decision Desk, that Fox News executives pressured the Decision Desk to reverse the call on Arizona, and that Mr. Stirewalt lost his job for refusing to comply.

The ABC's narrative to the contrary is nothing more than rank speculation and violates standards 2.1, 2.2, 4.1 and 4.5 of the ABC Code.

In response to the Complaint the ABC now asserts that Four Corners never claimed that Chris Stirewalt ‘led the Decision Desk.’ [...] Any reasonable viewer of the Episodes would come away with the impression that Stirewalt led the Decision Desk and had final say over election calls. In its broadcasts, Four Corners asserted that “the Decision Desk prized its independence” but “Stirewalt and his team” were on their guards. A reasonable viewer would understand this to mean that it was “Stirewalt's team” in the sense that he was the leader or that he was responsible. [...]

In another part of Episode 1, Four Corners immediately juxtaposed Fox host Bret Baier announcing the Arizona Call from the Decision Desk with Chris Stirewalt's explanatory

interview. Again, a reasonable viewer would come away with the impression that Stirewalt was responsible for the Arizona call. [...]

Four Corners asked Stirewalt whether he was asked by superiors to reconsider the Arizona call or asked by executives to stop making additional calls. A reasonable viewer would infer from those questions that Stirewalt had the power to make those sort of decisions, and that there was no superior above him with that power. [...]

At no point in either episode did Four Corners even allude to the existence of Arnon Mishkin, the actual head of the Decision Desk who made the Arizona call. Mishkin is still employed by Fox and will return to head the desk in future election cycles. (Director of Fox News decision desk, who called Arizona for Biden, will return in 2022, 2024: report, The Hill, 7/10/21). The ABC's failure to refer to Mr Mishkin must have been a deliberate omission because his role on election night, and the fact that he is still employed by Fox News did not fit within the false narrative that the ABC stubbornly adhered to.

Not only was Mr. Mishkin's role widely discussed prior to Election Day, but he was contacted by Four Corners to be interviewed for the program, which he declined. This is clear evidence that Four Corners depicted an individual as the head of the desk, carrying a role and responsibility they fully knew he did not have. The notion that Mr Stirewalt was thereafter terminated for a decision that he did not even make was preposterous and false to the ABC's knowledge at the time of broadcast. At the very least the ABC's conduct was misleading and did mislead viewers.

#### **Statement 5**

The Episodes state that Fox News' coverage led to the January 6 riots on Capitol Hill. [The Presenter] asserted on the First Episode that Fox News "worst outrage generators certainly fuelled [the rioters'] anger." [Interviewee] claimed that "Fox is on the wrong side of . . . the most stunning event in modern American history, a siege on the Capitol, an insurrection, violent riots." And [Interviewee] contended that it is a "pox on Fox" for having "participated in the destruction of democracy."

[...] If any business entities are to blame for the January 6 riots, social media companies like [name of company] are: U.S. authorities have filed numerous criminal indictments against various January 6 rioters. Those indictments make clear that social media platforms played a leading role, even advertising body armour alongside incitement posts. As for television networks, the February 2021 Congressional hearing on disinformation and encouraging extremism had more negative references to [names of companies] than to Fox News.

On January 6, the rioters themselves repeatedly yelled epithets denouncing Fox News. On that day and those that followed, Fox News presenters and contributors repeatedly condemned the riots and Trump's involvement. The ABC makes no reference to this at all. The notion that Fox News was responsible for the group thinking of the persons who participated in the riots is a serious allegation made without any basis whatsoever. It is repeatedly presented as fact and not opinion and is alleged against Rupert and Lachlan Murdoch.

The ABC's conduct in making these allegations together with the failure to include relevant exculpatory information resulted in breaches of standards 2.1, 2.2, 4.1 and 4.5 of the ABC Code.

#### **Statement 6**

As Fox previously noted, the Episodes asserted that appearances by Sean Hannity and Jeanine Pirro, two Fox News hosts, at a Trump rally in 2018 reflected a decline in standards



at the network. According to [the Presenter], these appearances made it “obvious” that Fox News had “shift[ed]” toward its role as a Trump mouthpiece and had abandoned its duty to provide fair and balanced journalism.

To the contrary, Fox News issued a public statement in November 2018 censuring Mr. Hannity and Ms. Pirro for this conduct, emphasising that it “does not condone any talent participating in campaign events” and explaining that it had addressed the matter internally. Fox News provided a copy of this statement to the ABC before it broadcast the First Episode, but the ABC ignored it and proceeded with its false claim. The violations of standards 2.1 and 2.2 of the ABC Code are self-evident. This is also a breach of 5.3 in the ABC’s failure to include Fox News’ response to this allegation.

ABC claims Four Corners was justified in leaving out Fox News’ response to their question about Jeannine Pirro and Sean Hannity’s appearances at Trump rallies, because Fox News did not ‘respond to the specific inquiry’ by indicating whether Hannity and Pirro were ‘sanction[ed].’ [...]

Fox News was asked specifically whether Hannity and Pirro were ‘censured,’ and in response provided a statement indicating that they were. Fox News was never asked if they faced formal sanctions. [...]

As was previously noted, Fox News PR provided a public statement issued shortly after the rally rebuking Hannity and Pirro. At the time, [media company]reported that ‘Fox News censured its biggest star.’ [...]

Any fair reporter would understand that when Fox News provided evidence of public censure, that also served as a response to the accusation Hannity and Pirro were being held to a different code of conduct. Four Corners’ question was therefore answered in full. In addition, the ABC’s dismissal of ‘a 3 year old press statement’ when the question was about an event 3 years ago is bizarre. Four Corners asked if Fox hosts were censured at the time, Fox provided evidence they were publicly censured at the time. By any standard that the 2018 rally is still newsworthy, Fox’s response must be newsworthy.

The ABC’s inappropriate and evasive response to this complaint is further evidence of its lack of impartiality towards Fox News. The failure to include the timely public censure in the programme is inexcusable.

### **Statement 7**

The Episodes asserted that Fox News’ ratings decreased dramatically because of the network’s decision to call the election for Joe Biden and that viewers flocked to competing networks. More precisely, [the Presenter] stated that “Fox’s ratings plunged as Trump loyalists turned off in disgust,” “leaving in droves” to “far-right networks.” And others made similar statements, including [Interviewee], who asserted that, for a full “week” after the election, [name of network] beat Fox News in the television ratings during the 7:00 p.m. EST hour.

[...] Fox News achieved its highest ratings in its history in 2020. [...]

Again, the ABC declined to present the facts to its viewers, in contravention of standards 2.2, 4.1 and 4.5 of the ABC Code. Given they had the information that contradicted the claim this is also a contravention of standard 5.3. [...]

### **Standard 2.2 Omission of information leading to materially misleading presentation [...]**

[...] on a number of occasions during the Episodes, the ABC materially misled the audience by failing to provide key contextualising information which resulted in the audience being misled:

- The ABC failed to include the statement that Fox News issued after Sean Hannity and Jeanine Pirro appeared at Donald Trump's rally in 2018.
- The ABC failed to accurately report the ratings to which they had access after the election.
- The ABC failed to refer to Arnon Mishkin, still employed by Fox News and the decision maker in relation to the Arizona call.
- The ABC failed to include any information about Fox News' pleadings or arguments in the [voting machine company 1] lawsuit or in a similar lawsuit involving an entity named [voting machine company 2]. Instead, the ABC allowed only [one defendant] to provide any defence, but [they are] a completely separate defendant in those lawsuits and has asserted separate defences independent of any press privileges to report newsworthy events.
- The ABC failed to refer to Fox News' motion to dismiss the lawsuit as unarguable.
- The ABC never included any information about the prominent role of social media in the January 6 riots on Capitol Hill, even though that information is documented in a number of different indictments.

### **C. IMPARTIALITY AND DIVERSITY OF PERSPECTIVES Standard 4 [...]**

[...] impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented within a single program. However, 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.

[...] the themes in the Episodes, the editorial comment, the overall presentation of the story, and the circumstances in which the programmes were prepared and broadcast lacked impartiality.

This lack of impartiality was demonstrated by:

- > The questioning style of the reporter and her use of language;
- > Omission of contextualising information / Failure to include material
- > A failure to present a diversity of views;
- > The Episodes presented interviews and opinions as unchallenged assertions for which no evidence was presented, or used unjustified superlatives;
- > The persons selected to be interviewed including reliance on persons who had no personal knowledge of events as witnesses of truth;
- > The failure to include the material provided by Fox News to the ABC prior to broadcast which contradicted the claims made in the Episodes.
- > The promotional material used to advertise the Episodes.

## **Style of the reporter and the use of language**

The Episodes have been summarised above. The assertions of fact made by [the presenter], the music and editing of the interviews with emotive footage was all designed to impugn Fox News and Rupert and Lachlan Murdoch.

Little if any attempt was made by the reporter to temper her language or tone whilst making serious, broad-ranging allegations for which there was no basis. Emotive language and unnecessary adjectives were used throughout each of the Episodes for no other purpose than to condemn Fox News and portray it as negatively as possible to the viewing audience.

## **Omission of contextualising information / Failure to include material**

This is discussed above.

No contextualising information was included by the ABC, despite having said information in its possession. The omission of key material provided by Fox News to the ABC prior to broadcast is objectively inexplicable. It can be inferred that the reason it was excluded is because Four Corners had no interest in accurately reporting facts. The producers had plainly made a decision to “hold power to account” irrespective of what in fact occurred. Such conduct falls squarely outside the realm of investigative journalism and outside the standards imposed on the ABC.

## **Presentation of a diversity of views**

The views provided were wholly one-sided. The interview [...] did not represent the interests or views of Fox News.

As noted above, in relation to the litigation referred to in Episode 2, Fox News has filed defences, which were available to the ABC and not referred to at all in the programmes. The ABC were able to attend the hearing on 17 August to dismiss the claims against Fox News and report on the arguments put in answer to the claims. Instead, a lengthy monologue from the lawyer representing the plaintiffs was included without any attempt at all to present the opposite side of the arguments in so far as Fox News was concerned.

## **Interviewees with no personal knowledge**

Promotional material [...]

The promos for the Episodes painted a picture of guilt in so far as Fox News was concerned. The ABC did not even attempt to engage in the pretense of objectivity in promoting the Episodes.

## **D. DEALING WITH PARTICIPANTS/DECEPTION [...]**

The Editorial Guidance Notes in relation to the standards in obtaining interviews are very clear. They require journalists seeking interviews to “Be transparent: Interviewees are entitled to know what you want to talk to them about and how the interview will be used, so be transparent and honest”. Transparency includes informing the interviewee how the interview is intended to be used. [...]

On 14 July 2021 [the presenter] attended the outside of the offices of Fox News in New York with a camera crew. A filmed exchange then occurred that is found in Episode 2 at about the 17-minute mark. [The presenter] does not identify who she is - she just states “we’re from Australia”. She then, with cameras rolling, asks Ms Pirro (a host on Fox News) questions

about her views on the election outcome. Even worse, is that the ABC then uses this footage in Episode 2, it can be inferred, to cast Ms Pirro in a negative light.

This conduct was in contravention of Standard 5.1 - in that she makes no attempt whatsoever to inform Ms Pirro of “the general nature of her participation”. [The presenter] does not identify herself, or the fact that she is filming for the ABC. It is also further evidence of the lack of impartiality of the ABC in the preparation of the Episodes in that it deliberately disregarded this standard in order to impugn Fox News.

This conduct also contravenes Standard 5.8 in that her ambush of Ms Pirro, and her failure to identify herself or what she was doing, was a form of deception in order to obtain footage for the Episodes. There does not appear to have been any justification whatsoever for this conduct.

The available footage shows that when the security guard approaches [the presenter]], she becomes argumentative, clearly not accepting Ms Pirro’s decision to decline an interview. This was in contravention of Standard 5.2.

## **E. OPPORTUNITY TO RESPOND [...]**

The Editorial Guidance Note to this standard describes its purpose as necessary in fulfilling the ABC’s statutory duty to provide independent news and information and also one of the recognised standards of journalism which is fundamental to fairness. It is not sufficient to merely seek a response - that response should be fairly and adequately included in the publication. In order to comply the ABC should provide sufficient information to the person the subject of the story to allow that person or organisation to understand the allegation and its basis. It is also preferable to tell the person the source of the allegation to allow a more detailed and accurate response. It is not generally sufficient to tell the person that the ABC wishes to speak to them about some general topic. [...]

At the outset the ABC sought an interview with Lachlan Murdoch and claimed that it was preparing a programme on Rupert Murdoch’s career “and the influence of his media outlets”. [the presenter] wrote (from a proton email address) in July without giving any real detail about the intended broadcast. At no point in that correspondence seeking the Lachlan Murdoch interview does the ABC refer to the election or Donald Trump.

The allegations that were to be made against Fox News or any of Lachlan or Rupert Murdoch were not identified in the many requests for interviews. It is not incumbent on a person to agree to an interview requested by the ABC. However, the ABC still has an obligation to give fair warning before broadcasting serious allegations in order to obtain relevant information and response from the person the subject of the broadcast. [...]

As to the specific allegations put to Fox News for response, at no point does the ABC inform Fox News that it intended to allege that it was primarily responsible for the promulgation the “big lie” and also for the subsequent riots that occurred as a result. The main thesis of the Episodes is never put to Fox News (or Rupert or Lachlan Murdoch) for comment – namely that the network acted as a propaganda arm for Donald Trump, deforming and corrupting the views of voters, abandoning editorial standards after his election and causing harm to democracy and the American people.

The ABC failed to put all relevant allegations to Fox News (and other relevant persons) and, in relation to the questions that were asked, failed to fairly include the responses and information that it did have. This resulted in inaccurate and misleading reporting and also amounted to an abject failure to comply with a basic tenet of journalism. The ABC’s conduct was in contravention of standard 5.3.

## Attachment B

### **ABC submissions to the ACMA dated 14 December 2021**

[...] please consider our initial response to [the complainant] as our submissions.

### **[ABC response to complaint from ABC dated 31. October 2021]**

Four Corners has explained to Audience and Consumer Affairs how the program conducted extensive, comprehensive research when preparing the report, speaking to a broad range of people who work at Fox News, formerly worked at Fox News or who had a relevant connection or professional association with the network, or other Murdoch media outlet or the Murdoch family. The program has advised that it relied upon dozens of sources for the reporting.

### **Accuracy, impartiality and diversity of perspectives, and fair and honest dealing**

#### **The episodes are sourced from Fox News “insiders”**

We are satisfied that it was accurate for the program to refer to the participants that you identify as “insiders”. The program has explained how these six former Fox News employees/contributors’ association with Fox covered the period from its establishment in 1996 to January 2021. With the exception of former foreign correspondent Conor Powell, who worked at Fox for nine years, each of the insiders spent more than a decade at Fox News, with former chief political correspondent Carl Cameron spending more than two decades at the network. We observe how the program accurately identified these participants as “former” employees.

Part one of the report covered the story of Fox News from 1996 to the 2020 election, and each of the insiders worked at the network when Roger Ailes was CEO and throughout the 2016 election primaries. Gretchen Carlson left the network a month or so prior to Donald Trump securing the Republican nomination in 2016. Susan Estrich left the network in January 2017 after Trump’s election and Carl Cameron left in August 2017, six months into Trump’s presidency. Ralph Peterson and Conor Powell were with the network for more than 12 months of the Trump presidency and Chris Stirewalt was with Fox for the duration of the Trump presidency.

We note how all were well placed to speak about the culture and practices at the network, offering first-hand accounts of events they were involved in or witnessed while they were at Fox News, and expressing their view about Fox based on their lengthy associations with the network. We are satisfied these contributors represented principal relevant perspectives on the issues being examined in the reports, and we are also satisfied it was clear to the program’s audience that they were expressing their own personal opinions.

#### **Fox News published propaganda on Donald Trump’s behalf**

We are satisfied that the specific statements you refer to from the broadcast were accurately presented, in context, as the first part of the report charted the trajectory of Fox News from its establishment in 1996 through to the departure of its founding CEO Roger Ailes in 2016, the election of Donald Trump and the 2020 election. We are satisfied that the perspectives of the former Fox staff were clearly presented as their own personal opinions, not as statements of fact.

While acknowledging that President Trump has publicly criticised Fox News and certain presenters, and expressed his disappointment with the network at times, we are satisfied it is a recognised fact, widely and consistently held amongst political and media commentators and observers in addition to documentary evidence of Fox News’ own programming, that

President Trump favoured the network and that the network promoted his views on certain issues. We observe that Four Corners also made clear to its audience that Trump turned on the network [...]

We also note how the program prominently reported that Fox's decision desk called Arizona for Biden and the immediate ramifications of that call.

Four Corners has confirmed for Audience and Consumer Affairs how Fox News was afforded a fair opportunity to respond to the issues being examined in the report, but declined.

### **Fox News promoted Trump's narrative about election fraud**

The ABC acknowledges that Fox News called Arizona for Joe Biden before any other network and that it accurately reported the results of the 2020 election. Nevertheless, we are satisfied it was accurate for Four Corners to report that Fox News also perpetuated Donald Trump's false narrative about election fraud. The program has noted how on 18 November 2020, Media Matters for America reported that Fox News has *"cast doubt on or pushed conspiracy theories about the election results at least 574 times" in the nine days after the network called the election for Joe Biden. On 14 January 2021, an updated Media Matters for America report revealed that in the two week period after the network called the election for Joe Biden, Fox News "questioned the results of the election or pushed conspiracy theories about it at least 774 times."* [...] [italics in original]

We note that Fox News is being sued for defamation by two voting technology companies over its publication and republication of falsehoods about a criminal conspiracy to fix, rig and steal the 2020 presidential election. The voting machine companies allege these falsehoods were contained in broadcasts, online and on social media.

[voting machine company 1][voting machine company 1][voting machine company 1][voting machine company 1][voting machine company 1][voting machine company 1][...]

We observe how Four Corners presented an excerpt of the Fox News' presenter Maria Bartiromo's first post-election interview with President Donald Trump, broadcast by Fox on 29 November 2020. In the excerpt President Trump argued "thousands of votes" had been moved from his "account" to Joe Biden's "account" and "glitches" were "theft" and "absolute fraud". On 16 December 2020, Ms Bartiromo told her Fox viewers that an "intel source" told her "President Trump did in fact win the election".

The fact that some Fox News anchors tested the claims of election fraud or pushed back against outlandish allegations does not erase the fact that prominent Fox News anchors pushed the conspiracy and actively supported the claims of President Trump. We note how the fact there were exceptions was made clear by Four Corners [...]

For these reasons, we are satisfied that Four Corners made reasonable efforts to ensure the material facts were accurate and presented in context, in keeping with the Corporation's editorial standards for accuracy.

### **Fox News retaliated against employees involved in the decision to call the state of Arizona for Joe Biden**

We cannot agree with your claim that Four Corners claimed that Chris Stirewalt "led the decision desk". The program accurately stated that "Chris Stirewalt had a critical role on the Fox decision desk", based on the fact that he was a long-time political editor at Fox News and a prominent and senior member of the Decision Desk. Four Corners' research established that Mr Stirewalt had an important role on election night, evidenced by on-camera appearances he made after the call to answer questions about it and to report generally on

developments in the election. For example, Bret Baier interviewed Chris Stirewalt shortly after the network called Arizona for Joe Biden, around 11.42pm, to ask him how he could call Arizona but not Ohio. Part of this exchange appeared in part one of the Four Corners report.

The program's research confirmed that the following morning, 4 November 2020, Mr Stirewalt appeared on air with Bill Hemmer again answering questions about the Arizona call.

Four Corners has noted that in September 2019 the Los Angeles Times described Mr Stirewalt and his role at Fox: "Fox News Politics Editor Chris Stirewalt, who serves as **the network's main on-air analyst of polls and voting trends...**" [original emphasis] and in the aftermath of the 2020 election, USA Today described Mr Stirewalt as a "top news executive" and one of "the two most visible people defending the decision [the Arizona call] on the air". Vanity Fair described him as the "Fox News political editor who played a key role in the fateful decision to rightfully call Arizona for Joe Biden before any other network".

We cannot agree with your claim that Four Corners stated that Fox News pressured the Decision Desk to reverse its Arizona call. In part one of the report, [the Presenter] asks Mr Stirewalt if any "superior" asked him to reconsider the decision to call Arizona for Joe Biden. He replied that he "received no instruction to reverse the call". He confirms there were "a lot of questions" about the call. When pressed about claims an executive said he should "stop making calls" he declined to answer.

[...]We cannot agree that Four Corners reported that Mr Stirewalt lost his job for refusing to respond to pressure to reverse the call of Arizona for Joe Biden. We observe how the report's narrative detailed how members of the Trump administration contacted people at Fox News "to demand they reverse the Arizona call" and that amidst the outcry over the Arizona call in the following days, Fox ratings dropped dramatically and scapegoats were identified to appease the critics [...]

Four Corners has advised that in addition to Chris Stirewalt confirming as a first-person source that he was dismissed, it also spoke to other sources who confirmed the accuracy of this statement before it was broadcast [...]

For these reasons, we are satisfied that Four Corners made reasonable efforts to ensure the material facts were accurate and presented in context, in keeping with the Corporation's editorial standards for accuracy.

### **Fox News coverage led to the January 6, 2021 riots on Capitol Hill**

We observe that the reporter did not state that Fox News' coverage led to the 6 January riots. [...]

We are satisfied there was no editorial requirement for the program to refer to the information you identify, within the context of this report. It is important to understand that impartiality does not require that every perspective receives equal time or that every facet or aspect of a given issue is presented.

We are satisfied it was accurately reported that Fox News' coverage of the stolen election lie fuelled anger and outrage amongst the supporters of President Trump, who falsely believed that Trump won the election and that anger manifested itself in the insurrection at the Capitol on 6 January. The program has identified how mainstream media outlets were reporting similar sentiments in the aftermath of the riot [...]

We are satisfied the reporter's statement is in keeping with the Corporation's editorial standards for accuracy. We are satisfied the other statements you refer to about the insurrection were clearly attributed as the views of those former Fox News contributors.

## **Fox News allowed its hosts to campaign for Trump**

The program has confirmed how it reviewed footage of a President Trump rally at Cape Girardeau, Missouri, on 5 November 2018, from which Sean Hannity broadcast his program that evening. He was joined on air by another Fox News anchor, Jeanine Pirro, and Mr Hannity also interviewed Mr Trump backstage before his on-stage appearance. We observe how part two of the Four Corners report presented footage of this event in the context of Chris Stirewalt, former Fox News political editor, and Lt. Col. Ralph Peters (Ret.) offering their opinions about the direction of the network under the leadership of Rupert Murdoch.

Mr Stirewalt's comments clearly relate to standards for opinion hosts at Fox News - "Once Roger did himself in, standards for conduct for the opinion hosts went way down, right? We would have never been in a place where Sean Hannity could appear onstage at a rally with Donald Trump".

Mr Peters' comment also reflects the evolution of the network during this period [...]

Four Corners presented excerpts from Mr Hannity's broadcast including a short clip of his backstage interview with President Trump, Mr Trump's on-stage introduction to Mr Hannity and some of Mr Hannity's comments on stage [...]

The program identified that the 2018 appearance was not Mr Hannity's first in support of Mr Trump. In September 2016, some two months after Mr Ailes left Fox News and Rupert Murdoch took over as acting CEO, Mr Hannity appeared in a campaign advertisement endorsing the candidate. One month earlier he confirmed that he was advising Mr Trump [...]

Four Corners has explained how it asked Fox News the following questions in relation to the anchors' appearance at the Trump rally –

*Fox's presenters Sean Hannity and Jeanine Pirro appeared on stage at a political rally with then President Donald Trump in November 2018. Was either Hannity or Pirro censured by Fox for their public support and endorsement of the President?*

*Does the network apply a different set of standards or code of conduct to opinion hosts and news reporters?*

Four Corners has confirmed that in response to these questions, Fox News provided the ABC with the following statement on 20 August 2021, which it had released in November 2018 - *"Fox News does not condone any talent participating in campaign events. We have an extraordinary team of journalists helming our coverage tonight and we are extremely proud of their work. This was an unfortunate distraction and has been addressed."*

Four Corners has confirmed that Fox News did not provide any additional information to that which it had supplied to media outlets asking about the issue in 2018 and did not respond to the specific inquiry it posed. It did not indicate what sanctions, if any, were applied to Mr Hannity and Ms Pirro for their on-stage campaigning for President Trump and did not confirm whether there were a different set of standards or code of conduct to opinion hosts and news reporters. Four Corners could not identify any independent reports that detailed any consequences imposed by the network on Mr Hannity or Ms Pirro, for example, a suspension.

We are therefore satisfied there was no editorial requirement for the program to refer to a 3 year old press statement that did not include any new information or respond to the specific relevant question that was asked, and is in keeping with the Corporation's editorial standards for accuracy.



## **Fox News competitors overtook Fox News in the ratings in the election's aftermath**

The program has identified the following references as the factual basis for these statements

*"Fox News, which benefited enormously from Mr Trump's rise easily beats [name of network] in overall viewership. But since the network called the race for Mr Biden...its ratings have fallen well below pre-election levels. Much of the drop has come during daytime hours....But several Fox News opinion shows have seen a dip, too: Earlier this month, for the first time in 19 years, 'Fox & Friends' drew a smaller weekly audience than [...]"*

We are satisfied the program's reference to ratings were accurately presented, in context, referring specifically to the post-election period and presented within the context of the network calling Arizona for Joe Biden on election night. Four Corners made no claims about the network's overall ratings for 2020, the network's position in the news broadcast market or the position of one of its rivals.

## **Procedural Errors**

### **The ABC overwhelmingly featured anti-Fox News perspectives**

Given the newsworthy focus of the reports was a critical examination of Fox News, we are satisfied it was relevant and reasonable that this critical focus would dominate the report. Fox News was repeatedly afforded opportunities to participate in the reports but declined. It is important to note that impartiality does not require that every perspective receives equal time, or that every facet of an issue be presented.

We are satisfied that Erik Connolly represented a principal relevant perspective on the issues being examined in the program and that his views were clearly presented as his own. In the absence of a Fox News interviewee, reporter [the Presenter] put a question to Erik Connolly in relation to Fox News' response to the complaint [...]

Fox News declined Four Corners' request to interview a relevant defamation lawyer to respond to Mr Connolly's comments, and we are therefore satisfied it was accurate and appropriate for the reporter to state that Fox News had rejected the case brought by [voting machine company 1].

We observe that Four Corners did not refer specifically to any of the 16 defamation or disparagement claims [voting machine company 1] makes against Fox News in its legal complaint, but covered the case in general terms including the fact that the case had been brought, the damages sought and some of Fox News' coverage of the company. That information was conveyed primarily by Erik Connolly, [voting machine company 1]'s lawyer.

We are satisfied the program exhibited open-mindedness and fair treatment in engaging with Fox News on multiple occasions, including sending written questions when the network refused all requests for interviews. We are satisfied the broadcasts did not unduly favour any one perspective over another and are in keeping with the Corporation's editorial standards for impartiality.

### **The ABC omitted relevant information in the episodes**

As we have explained above, it is important to understand that impartiality does not require that every perspective receives equal time, or that every facet or aspect of an issue be presented.

We are satisfied there was no editorial requirement for the program to include a 3 year old statement that provided no new or useful information and did not address the specific questions it was sent in response to.

Four Corners did not include detailed pleadings or defences from any other parties to the defamation lawsuits including [voting machine company 1], [voting machine company 2][names of companies and people]. We are therefore satisfied there was no editorial requirement for the program to include any information about Fox News' pleadings or arguments in those cases. The program has explained how it requested an interview with a defamation lawyer for the network who could speak to these matters, but that request was declined.

We are satisfied there was no editorial requirement for the program to examine the role of social media in the 6 January insurrection, given the editorial focus of the reporting was the role of Fox News. There was no relevant reason for the program to pursue that particular issue within the context of these reports.

### **The ABC failed to give Fox News an opportunity to meaningfully respond to the allegations in the episodes**

The program has confirmed that on 22 June, the reporter made a request for a stand-alone interview with Lachlan Murdoch via his representatives in Australia. Four Corners first approached Fox News for comment on 20 July, by email, seeking an interview with CEO Suzanne Scott. During the course of production, Four Corners also requested interviews with Rupert Murdoch, Lachlan Murdoch, James Murdoch, Tucker Carlson, Arnon Mishkin and Fox News defamation lawyers. The program also sought interviews with former Fox News executives and members of the Trump administration, various commentators and members of Congress.

[...] The program has confirmed for Audience and Consumer Affairs how it continued to press for the Fox News perspective to be presented on camera, but all requests were denied. On 17 August Four Corners sent 11 questions to Fox News for its response. On 19 August Fox News provided answers to five of those questions. On 20 August, after the deadline for a response had passed and the first episode had been locked-off for post- production, Four Corners received an urgent request from Fox News via telephone for a statement to be included in the programs.

The program included a section of that statement in the first program and the remainder of the statement in the second part of the report. We note a separate statement from Fox News, relating to its defence of the defamation lawsuits, was also included in episode two.

We cannot agree with your claim that the reporter ambushed Jeanine Pirro. The reporter was filming in the street outside Fox News' New York headquarters on 14 July, when Ms Pirro unexpectedly appeared on the street, so the reporter politely approached her. The reporter was in no way aggressive and politely waited until Ms Pirro had finished speaking with her supporters before approaching and clearly stating where she was from. When it was obvious Ms Pirro did not intend to respond to the reporter's questions, the reporter did not obstruct or delay her at all and Ms Pirro moved on without hindrance.

We note your reference to the fair and honest dealing standard 5.1 – *Participants in ABC content should normally be informed of the general nature of their participation.* [original italics and emphasis]

Ms Pirro was not participating in ABC content, she was walking down the street. She ignored the reporter's polite questions so it was obvious she was not willing to participate, and

therefore any editorial requirement to inform her of the general nature of her “participation” did not exist.

We are satisfied there was nothing misleading about the reporter’s email of 5 July requesting to interview Lachlan Murdoch. Four Corners has explained that the program was initially commissioned as one episode and the broadcast date was not confirmed until a week after the reporter’s interview request for Mr Murdoch. Had Mr Murdoch expressed interest in participating, it would have been at that stage that further discussions about the nature and timing of the program would have been discussed.

For these reasons, we are satisfied the program made reasonable efforts in the circumstances to provide Fox News with a fair opportunity to respond to the critical issues raised in the reports, and the program’s approaches to potential interviewees is in keeping with the editorial standards for fair and honest dealing.

Audience and Consumer Affairs has concluded that the program made reasonable efforts to ensure the material facts were accurately presented in context.

Audience and Consumer Affairs is satisfied that Four Corners exhibited open-mindedness and fair treatment in engaging with Fox News on multiple occasions, including sending written questions when the network refused all requests for interviews, and afforded Fox a fair opportunity to respond and to present its version of events. We note that, to the extent Fox News was willing to respond to the program and those responses were relevant, they were reported. We are satisfied the broadcasts did not unduly favour any one perspective over another. [...]

***ABC submissions to the ACMA dated 7 October 2022*** [original bolding and italics][...]

#### **Standard 4.1**

The ABC strongly disagrees with the preliminary finding that the program breached standard 4.1. The finding, and the reasoning outlined in the preliminary investigation report, are of serious concern to the ABC as they are wholly inconsistent with the established approach to impartiality under the ABC’s Code of Practice. The two aspects of the program the ACMA has found in breach of standard 4.1 are addressed below.

#### ***Omission of statement issued by Fox News after Sean Hannity and Jeanine Pirro appeared at Trump rally***

The preliminary investigation report asserts that the omission of any reference to the statement Fox News issued on 6 November 2018 constituted a breach of standard 4.1 because it “left it open to viewers to conclude that Fox News had either endorsed or did not object to” Sean Hannity and Jeanine Pirro’s appearances onstage at Donald Trump’s rally on 5 November 2018, and including some reference to the statement “would have provided viewers with relevant contextual information and a factor that would have equipped them to better make up their own minds when evaluating the presenter’s claim of a ‘shift to the right’” on the part of Fox News.

The ABC submits that Fox News’ 6 November 2018 statement was not, in fact, relevant contextual information, nor was it germane to the audience’s understanding of, or capacity to evaluate, the claim that Fox News had exhibited a shift to the right.

The statement did not name Sean Hannity or Jeanine Pirro. It did not indicate that Mr Hannity or Ms Pirro had been suspended, demoted, or punished in any way after their appearances on stage at the rally. Both Mr Hannity and Ms Pirro continued in their [...] influential roles as Fox News hosts after the statement was issued; it had no bearing on their employment or their standing with the network. Both Mr Hannity and Ms Pirro continued to amplify President Trump’s messages in the years after the statement was issued. Over time, the network aligned itself more closely with President Trump. The statement did not appear to have any

effect, nor did it represent a change in direction or policy on the part of Fox News. Fox News hosts continued to appear at political fundraisers and campaign events, as reported by various media outlets [...].

The ABC notes that the complainant asserted – and the ACMA appears to have accepted – that the 2018 statement contradicted claims made in the program. The ABC submits that this is not the case. The program did not convey that Fox News ‘tacitly endorsed employees to campaign for former President Trump’ or condoned its talent participating in campaign events. It did not suggest that Fox News sent Mr Hannity and Ms Pirro to the 5 November 2018 rally, or that the network’s leadership was aware that the hosts would appear onstage at the rally campaigning for President Trump, or expressed support for the hosts’ actions afterwards.

The ABC also notes that subsequent reports have revealed the circumstances surrounding the release of the statement. [...]

It is demonstrably the case that the statement was of limited significance and consequence. Furthermore, the ABC submits that the existence of the statement does not materially alter the significance or meaning of the event to which it relates. The fact remains that both Mr Hannity and Ms Pirro considered, at the time, that it was acceptable for them to appear onstage at a Trump campaign rally, campaigning for President Trump the night before the 2018 midterm elections. That they both felt that way, and proceeded with the appearances, is solid evidence of the network’s shift to the right; the statement does not erase that. Chris Stirewalt made this point directly in the program: “We would have never been in a place where Sean Hannity could appear onstage at a rally with Donald Trump”. Mr Stirewalt was, of course, aware of the statement; but nonetheless he felt Mr Hannity’s appearance at the rally was indicative of the network’s shift, and would not have occurred under previous leadership.

It is relevant to note that Four Corners was aware of the statement prior to broadcast. Given that it did not name Ms Pirro or Mr Hannity, and given the presenters’ continued prominence at the network and explicit support for Donald Trump, Four Corners asked Fox News whether there had been any repercussions of any kind. The questions put to the network were:

1. *Fox’s presenters Sean Hannity and Jeanine Pirro appeared on stage at a political rally with then President Donald Trump in November 2018. Was either Hannity or Pirro censured by Fox for their public support and endorsement of the President?*
2. *Does the network apply a different set of standards or code of conduct to opinion hosts and news reporters?*

Fox News did not answer these questions, instead referring to the 2018 statement. If Fox News had provided any new or specific information in response to the questions rather than pointing to the existing statement, Four Corners would have conveyed the response to its audience, just as it did with other responses Fox News provided.

The program team made a considered editorial decision not to refer to the statement in the program, since it was three years old, provided no new information, and was – for the reasons outlined above – of limited import. Having regard to its research into what had transpired at Fox News over the three years after the statement was issued (for example, the fact that the network’s shift to the right continued unabated; the fact that Mr Hannity and Ms Pirro remained close to President Trump and continued to use their programs to amplify his messages; and the fact that Fox News hosts continued to appear at political fundraisers and campaign events), [...]. It was not regarded as sufficiently material to warrant inclusion, or necessary to include for the program to achieve due impartiality, particularly in view of the opportunity which had been afforded to Fox News to provide more specific and relevant information, and the demonstrable fact that no sanctions had been imposed on the two presenters.

The ABC notes that the reasoning in the preliminary investigation report does not engage with the hallmarks of impartiality or the factors relevant to assessment of due impartiality in given circumstances, as outlined in the Principles in section 4 of the Code of Practice. In the

circumstances, and in the absence of further reasoning, it is difficult for the ABC to understand how the omission of the statement amounts to a breach of standard 4.1.

In the event that the ACMA does not accept the ABC's submission that the statement was not relevant contextual information and its omission did not breach standard 4.1, the ABC submits that the omission would be more appropriately considered as a matter of contextual accuracy, under section 2 of the Code. Omission of relevant contextual information is typically assessed against accuracy standards (as it may materially mislead the audience) rather than impartiality standards. The ABC notes that the ACMA also assessed the omission against standard 2.2, and did not find it to constitute a breach of this standard. (For clarity: it is the ABC's view that the omission of the statement was not a breach of the impartiality or accuracy standards.)

### ***Omission of reference to role of social media in the Capitol riots***

The preliminary investigation report asserts that Fox News' statement "Congressional hearings and the Biden Justice Department not only did not implicate Fox, but other media companies were cited as platforms for inciting and coordinating the Capitol riots", quoted toward the end of the second episode, was "not in sufficient proximity" to the introduction to the first episode, which conveyed that Fox News hosts had contributed to the anger of the rioters. The report contends that this insufficient proximity precluded the program from "meaningfully convey[ing] the complexity of the contributory factors", and that the program ought to have placed "Fox News' alleged role in the riots ... in the context of the actions of other organisations, particularly online platforms reportedly responsible for inciting the rioters".

The preliminary investigation report acknowledges that the introduction to the first episode "did not convey that Fox News had been solely responsible for the Capitol Hill riots"; it expressly stated "Fox News didn't send the mob", and instead asserted that the network's "worst outrage generators certainly fuelled [the mob's] anger", and that it was a "reliable echo chamber" and "propaganda vehicle" for President Trump. The Fox News statement quoted in the second episode did not directly address the assertions made in this introduction. The program included both of these elements (the introduction to the first episode, and the statement from Fox News quoted in the second episode), but they were not directly aligned or connected. The ABC does not consider that placing the two elements in closer proximity to one another would have enhanced the audience's understanding of either of them, or of the program's themes. Moreover, the ABC notes that section 4 of the Code of Practice does not refer to 'sufficient proximity' as a relevant consideration in assessing due impartiality under standard 4.1.

The ABC submits that the program's audience would have been well aware of the complexity of the factors contributing to the January 6 riots prior to watching the program. The assault on the Capitol was a major news story, and subsequent related events (including the various investigations) were the subject of considerable news coverage in the seven months between the event itself and the broadcast of the program in August 2021. Notably, in February 2021, reporter [...] had presented a Four Corners program, *Downfall: The Last Days of President Trump* [...]

Viewers of Fox and the Big Lie would not have been hearing about January 6 for the first time; they would already have been familiar with the event and aware of its complex (and much-debated) causes. The program did not attempt or purport to provide a detailed account of the event and its causes; this was not its editorial focus. It is entirely appropriate, and unremarkable, for a current affairs program of this nature to select a particular editorial focus. In this case, the focus was Fox News and Donald Trump's attempts to overturn the election. In that context, there was no obligation upon the program makers to specifically outline the role played by social media platforms in relation to January 6, just as they were not obliged to outline the roles played by far-right groups [...]. The selection of editorial focus, and consequent omission of other subjects, does not indicate any lack of impartiality; as the Principles in section 4 of the Code of Practice state, "Impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented".

The ACMA's reasoning appears to rest on the assumption that the roles of Fox News and social media platforms were in some way equivalent and comparable. The ABC submits that this is in fact a false equivalence [...]. Fox News, as evidenced in the program, was able to amplify and spread President Trump's message to a wide national audience. It is a mainstream media outlet relied upon by its numerous viewers as a trusted source of news and commentary. Its role in spreading the 'stolen election' lie, and fuelling the anger of Trump supporters, was completely different to the role of social media platforms [...]. Social media platforms were used as methods of communication between individuals planning to take part in the riot. This communication, and its connection to the riot, was separate from and not relevant to the role played by Fox News as outlined in the program. Accordingly, the ABC submits that coverage of the role of social media platforms in the planning and preparation for the riot would have been irrelevant and extraneous to the story being told in the program.

The ABC also notes that the role played by social media platforms was not well understood by August 2021 (and remains so in 2022). [...]

The ABC is deeply concerned about the ramifications of this element of the preliminary finding. If the ACMA proceeds with the breach finding on this point, it would establish a precedent that content makers are unable to select an editorial focus without risking a potential breach of standard 4.1, and that any coverage of a complex event with multiple causes must necessarily canvas all purported causes. The ABC submits that this approach runs counter to the long-established operation of the impartiality standards in the Code of Practice. The ABC also reminds the ACMA that section 1 of Part IV of the Code, headed 'Interpretation', notes that the standards are to be applied in ways that "do not unduly constrain journalistic enquiry"; a requirement that every program examining any complex event must necessarily do so in an exhaustive manner would, in the ABC's view, unduly constrain journalistic enquiry.

The ABC reiterates that the program did in fact flag to its audience that there were other factors contributing to the events of January 6. It prominently quoted Fox News' statement saying exactly that, pointing to "other media companies" which had been "cited as platforms for inciting and coordinating the Capitol riots". There was, the ABC submits, no obligation to go further than that. The audience, understanding that this was a complex subject, and being familiar with Four Corners' established style and approach, would have readily recognised the import of Fox News' statement, and its connection to the overall theme of the program. The statement was not presented in close proximity to the introduction to the first episode, but this did not detract from its prominence or the audience's ability to judge the claims being made.

For these reasons, the ABC requests that the ACMA reconsider the finding of a breach of standard 4.1. If the ACMA maintains its view that there was a material absence of contextualising information about the role of social media platforms in inciting the rioters, the ABC submits that this absence would be more appropriately considered as an accuracy issue; as explained above in relation to the omission of reference to Fox News' statement about talent participating in campaign events, omission of relevant contextual information is typically assessed against accuracy standards rather than impartiality standards.

### **Standard 5.1**

The ABC strongly disagrees with the ACMA's preliminary finding that the program breached standard 5.1, for the following reasons.

#### ***Reason 1: Jeanine Pirro was not a participant***

The preliminary investigation report correctly notes that the key initial consideration in assessing compliance with standard 5.1 is whether the person, in this case Jeanine Pirro, was a participant in the content. The report then states: "In circumstances where the Episodes [sic] presented actions taken by her as underpinning a central theme, namely that Fox News had become 'a propaganda vehicle' for former President Trump, such as footage of her appearing on stage at a campaign rally, the inclusion of the footage of her being approached for comment meant she should be considered as a participant in ABC content."

The ABC submits that the question of whether Ms Pirro was a participant for the purposes of standard 5.1 ought to be determined solely with reference to what occurred during the encounter between Ms Pirro and the Four Corners reporter and crew. Other aspects of the program, such as the theme that Fox News had become a propaganda vehicle for President Trump, and the examination of the actions of Sean Hannity and Ms Pirro at a campaign rally, have no bearing on the question. The fact that Ms Pirro was referred to in other parts of the program does not make her a participant, nor is it relevant for determining if her appearance in the street encounter sequence amounted to participation. This approach is consistent with the ACMA's reasoning in Investigation Report No. BI-402, which established that "an individual who declines an offer to participate in a program, but is nevertheless referred to in the program" is not a 'participant' under standard 5.1, but may be someone 'otherwise directly affected by ABC content', as contemplated by the Principles in section 5 of the Code of Practice. In view of the references to Ms Pirro elsewhere in the program, it is appropriate to regard her as someone 'otherwise directly affected by ABC content', but this does not make her a participant, nor is it relevant to an assessment of the street encounter sequence against standard 5.1.

It is relevant to consider the particular circumstances of the encounter. It was not a planned encounter; it occurred without warning or preparation. Reporter [...] was filming a piece to camera outside the Fox News building in New York, when Ms Pirro exited the building and walked by. The camera crew filmed her as she passed, and she looked at the camera and at [the presenter]. She continued along the pavement and stopped to interact with some fans. Having allowed that interaction to happen undisturbed, [the presenter] stepped forward and said "We're from Australia. I just wanted to ask you, do you still think that [voting machine company 2] and [voting machine company 1] stole the election from President Trump?". Ms Pirro, already aware of [the presenter] and the crew, chose to say nothing and walked away for another encounter with fans. At this moment, Ms Pirro made an informed decision not to participate, walking away to meet with other fans.

As noted in the ABC's initial response to the complainant, "Ms Pirro was not participating in ABC content, she was walking down the street. She ignored the reporter's polite questions so it was obvious she was not willing to participate." Ms Pirro's actions were precisely those of a person electing not to participate. She elected not to respond to the questions [the presenter] put to her, and simply walked away. Her appearance was brief, lasting around 45 seconds in total, much of which was filmed from a distance; she answered no questions and did not cooperate or engage. The ABC submits that in the circumstances it is self-evidently the case that she was not a participant, since she declined to participate and instead walked away from [the presenter] and the camera crew.

Four Corners has advised that if Ms Pirro had elected to participate, [the presenter] would have provided more information; but since she immediately declined to participate (beginning to walk away approximately six seconds after [the presenter] started addressing her), there was no opportunity or reason to do so. [the presenter] and the crew wished to cause as little disruption as possible, so they did not pursue Ms Pirro when she walked away; they respected her decision to decline to participate.

The ABC notes that in Investigation Report No. 3214 (file no. ACMA 2014/374), the ACMA stated, in relation to standard 5.1: "The obligation in the Standard is only to inform participants of the general nature of their participation. Standard 5.1 does not require the ABC to set out every issue that will be canvassed with a participant. Moreover, an interviewee who is not satisfied with the level of detail proffered about the proposed story and their proposed participation, can decline to participate." Also, in Investigation Report No. BI-402, the ACMA stated that standards 5.1 and 5.2 "do not apply to those who elect not to participate, but are otherwise directly affected by their decision to decline to participate." It is well established that individuals who decline to participate – whether because they are not satisfied with the level of detail provided to them, or for any other reasons – are not in fact participants for the purposes of standard 5.1. The ABC submits that this is the case for Ms Pirro.

## **Reason 2: Sufficient information was provided to Ms Pirro**

If the ACMA does not accept the ABC's submission that Ms Pirro was not a participant, the ABC submits that the information provided – directly and indirectly – to Ms Pirro was sufficient in the circumstances to discharge the obligation imposed by standard 5.1.

Like all standards in the Code of Practice, standard 5.1 must be interpreted and applied with due regard for the particular circumstances under consideration. The inclusion of the word 'normally' in the standard indicates that different circumstances will warrant different approaches in terms of precisely how to discharge the obligation: how much information to provide, how to provide it, how much knowledge can be assumed on the part of the participant, who the participant is (e.g. how media-savvy they are and how much prior engagement with the reporter or program team they have had), how much time is available to provide information, when to provide the information (e.g. providing it all at once before participation commences vs. providing more detailed information over the course of the participation), etc. To illustrate: consider the different approaches that would be appropriate to inform participants in Old People's Home for Teenagers of the nature of their participation, compared to a panellist on Q&A, or an interviewee participating in a brief vox pop interview, or a talkback radio caller.

In this case, the individual was a highly experienced, media-savvy, prominent public figure, a TV presenter and former judge and politician, who was unexpectedly encountered on a public street. Ms Pirro initially saw [the presenter] and the camera crew as she passed them on the street; she would have understood that Ms [...] was a journalist accompanied by a camera crew. When [the presenter] subsequently approached Ms Pirro, it would have been apparent from the tone, nature and content of the questions, [the presenter]'s manner, the introductory comment "we're from Australia" (phrased and delivered in the common manner of a journalist's self-identification prior to asking questions), and the obvious camera crew, that [the presenter] was an Australian television journalist asking questions about Ms Pirro's false claims about [voting machine company 2] and [voting machine company 1] having stolen the 2020 election. These are matters of considerable public interest, and Ms Pirro would have been well aware of the controversy surrounding her claims; it is likely other journalists had previously put similar questions to her, particularly in connection to the high-profile [voting machine company 2] and [voting machine company 1] lawsuits. Being approached on the street by a journalist asking questions like this would not be an unfamiliar or unexpected situation for Ms Pirro, and she is experienced enough to readily understand the purpose and nature of the approach, and decide whether to answer the questions. She was able, if she wished, to seek clarification from [the presenter] as to which media outlet she worked for, or ask for other details before answering questions. She did not appear confused, surprised or upset; she simply declined to answer the questions and walked away.

When reporting in the United States, in brief encounters such as this one, it is common for reporters from the ABC to identify themselves as being "from Australia", without necessarily mentioning the ABC. The reason for this is that mentioning the ABC may cause confusion, as most Americans would assume the reference is to the American Broadcasting Company (known as ABC). If more time is available, reporters will of course explain that they are from the Australian Broadcasting Corporation; but in some situations, there may not be time to do so.

The ABC notes the ACMA's contention that "the ABC was required to disclose to Ms Pirro that her participation was as part of a current affairs program examining Fox News and former President Trump". As explained above, different circumstances will warrant different approaches to standard 5.1. Certainly, for sit-down interviews with key participants, the Four Corners team was obliged to give a clear indication of the genre and subject of the program. However, the ABC submits that it is unreasonable to expect such detailed information to be provided in all circumstances. In a situation where a public figure such as Ms Pirro is unexpectedly encountered on the street, and the reporter is afforded only a moment to introduce herself and put a question forward before minders or security staff intervene, the ABC submits that [the presenter]'s comment "we're from Australia", combined with the various



indirect signals of who she was and what she was doing (the tone, nature and content of the questions, [the presenter]’s manner, the presence of the camera crew, etc.) was sufficient to discharge the obligation imposed by standard 5.1 in this case, particularly in view of the brevity of Ms Pirro’s appearance in the program.

[...]

### ***ABC submissions to the ACMA dated 13 December 2022***

The ABC does not agree with the ACMA’s revised findings for the reasons explained in our previous submission, and the additional reasons outlined below.

#### **Standard 2.2**

The ABC welcomes the ACMA’s withdrawal of its previous preliminary finding that the program breached standard 4.1.

We note that the two issues previously found in breach of standard 4.1 have now been found in breach of standard 2.2. The ABC agrees (and previously submitted) that these issues – omitting reference to Fox News’ 6 November 2018 statement and omitting reference to the role of social media in the Capitol riots – are appropriately considered as matters of contextual accuracy rather than impartiality. However, the ABC reiterates its previous submission that neither of these omissions contravened standard 2.2.

It is not clear why the ACMA has changed its position in relation to compliance with standard 2.2. The ABC notes that the ACMA’s previous preliminary report outlined why the two omissions did not breach standard 2.2:

- Fox News’ November 2018 statement: “The Episodes were focused on Fox News. As they did not contain a factual statement alleging that Fox News was solely responsible for the Capitol Hill riots, did not examine other possible causes of the riots, and included a statement from Fox News, set out above, noting that it had not been implicated and effectively rejecting responsibility, it was not materially misleading for the Episodes to omit the information referred to by the complainant.”
- Role of social media: “It was found above that the presentation of information about the two hosts’ appearance at the rally for former President Trump was factual in character. The implications of those appearances, that they indicated a partisan shift toward the political right, were conveyed as opinion and argumentation by Chris Stirewalt and the presenter. While the omission of references to Fox News’ public statement opposing the appearances may be construed as misleading with regards to Fox News’ ‘shift to the right’, the allegation of such a political shift is an argument put forward by Mr Stirewalt and the presenter.”

The ABC requests that the ACMA provides further reasoning to support its finding on this standard, and to explain why the ACMA’s previous reasoning has been overturned.

#### **Fox News’ November 2018 statement**

For the reasons set out in our previous submission, the ABC maintains that Fox News’ 6 November 2018 statement was not, in fact, relevant contextual information, nor was it germane to the audience’s understanding of, or capacity to evaluate, the claim that Fox News had changed, exhibiting a shift to the right.

Prior to broadcast in August 2021, *Four Corners* sent Fox News two specific questions about what actions the network took after Sean Hannity and Jeanine Pirro appeared on stage at a political rally with President Trump, enthusiastically endorsing his Presidency.

The questions were: “was either Hannity or Pirro censured by Fox News?” and “Does Fox News apply a different set of standards to opinion hosts & News reporters?”.

Fox News chose not to answer the questions. Instead, it referred to a general statement issued in November 2018 saying the network “does not condone any talent participating in campaign events...This was an unfortunate distraction and has been addressed”. There was no explicit reference in the statement to Mr Hannity or Ms Pirro and no details about what or how the incident had been “addressed”, including internally. Both presenters continued to support and endorse Trump on air in the years that followed, including leading up to and after the 2020 election. Ms Pirro, with Fox News and others, was sued by a voting company for her alleged role in promulgating Donald Trump’s Big Lie.

Fox News chose not to give meaningful answers to *Four Corners*’ questions and the program was not obliged to include an oblique statement from almost three years prior, that did not address the questions or reference the presenters who were the subject of those questions.

Crucially, the statement offered no meaningful context or relevant details for the programs’ audience to consider. The ABC contends that this is the critical test: whether running the statement would have assisted the audience to judge the analysis including, in particular, commentary that standards at the network had deteriorated since Roger Ailes’ departure (such as Chris Stirewalt’s comments: “Once Roger did himself in standards for conduct for the opinion hosts went way down right? We would never have been in a place where Sean Hannity could appear onstage at a rally with Donald Trump. It’s bad for business, it’s bad for the country, it’s bad for everything when you become an arm of a political party”).

*Four Corners* offered Fox News an opportunity to respond to legitimate questions about the conduct of its presenters and its approach to that conduct. The network elected not to do that. The ABC is concerned that ACMA’s preliminary decision would set a precedent that any company or person choosing to address wrongdoing in a hollow and dismissive manner can nonetheless insist that its PR statement be quoted and relied on in all future reporting on the issues. This is untenable as a standard for Australian journalism.

### **Role of social media**

In its original complaint to the ABC, Fox News claimed the *Four Corners* programs “state that Fox News’ coverage led to the January 6 riots on Capitol Hill” (False Claim 5, p. 4) and that a failure to include information about:

- the role of social media platforms,
- the role of other broadcasters,
- details included in indictments filed by the US Justice Department and
- epithets shouted by rioters on January 6

was a breach of several standards, including 2.2.

From the beginning of the first episode, *Four Corners* was explicit about the subject of the programs: Fox News’ role in promulgating Donald Trump’s Big Lie and the consequences for democracy.

The programs were not primarily about the violent insurrection at the Capitol on January 6, or its causes, which *Four Corners* had reported on earlier in the year, in a program entitled ‘Downfall: The Last Days of President Trump’.

The thesis was not “that Fox News’ coverage led to the January 6 riots” and *Four Corners* did not attempt to prove that thesis.

At the opening of the first episode (after the tease section), [the Presenter] stated in a piece to camera the rationale of the programs: “Fox News didn’t send the mob but its worst outrage generators certainly fuelled its anger...Tonight on *Four Corners*, how America’s number one cable news network became a propaganda vehicle for Donald Trump and helped destabilise democracy”.

The ABC maintains that coverage of the role of social media platforms in the planning and preparation for the Capitol riots was extraneous to the story being told in the program, and the absence of this coverage was a legitimate and entirely defensible editorial decision.

The factors that “led to” January 6 are many and complex. Multiple different social media platforms were used in the lead up to the riots; cable networks [names of channels] also supported Donald Trump’s claims; there were right wing hate groups, lawyers and more than 60 failed legal proceedings arguing to overturn election results; members of Congress and State Legislatures holding bogus enquiries and direct mailing their constituents and individuals who threatened to kill poll workers.

The programs did not purport to examine and report on this complex ecosystem. Their focus was Fox News, one of the most powerful media organisations in the US and its relationship with Donald Trump.

The ABC does not agree that the absence of social media (or the other factors) “invited the viewer to discount their role relative to that of Fox News in propagating allegations of election fraud and hence opposition to the confirmation of Joe Biden as president-elect”, as asserted in the draft report; at no point did the program assert or imply that Fox News was the sole propagator of allegations of election fraud.

### **Standard 5.1**

The ABC maintains that Jeanine Pirro was not a participant in the content. The ABC notes the ACMA’s contention that “Ms Pirro’s appearance in other parts of the Episodes is a relevant factor in determining whether she should be considered a participant in ABC content for the purposes of the Code”.

In the ABC’s view, this approach fundamentally misunderstands the distinction between a *subject* and a *participant*. The references to and footage of Ms Pirro elsewhere in the program indicate that she was one of its subjects. She was fortuitously encountered on the street and declined to participate in the program. Accordingly, she remained merely a subject and not a participant.

Subjects of journalism often decline to participate, and it is standard practice to convey this to the audience. Often this is done by showing the approach (e.g. a doorstep interview attempt) and the person’s ‘no comment’-style response. This does not make the person a participant in the content.

### **Standard 5.2**

The ABC strongly disagrees with the ACMA’s preliminary finding of a breach of standard 5.2. We note that Fox News did not allege a breach of standard 5.2 in its complaint to the ABC, and the ABC has had no opportunity to comment on compliance with this standard until now.

For the reasons previously outlined, the ABC considers that Ms Pirro was not a participant in the program. She refused to participate, as is her right. She was a subject but not a participant.

The ABC submits that in broadcasting footage of the interaction between [the Presenter] and Ms Pirro, the ABC was not *overriding* Ms Pirro's refusal to participate, but rather *documenting* her refusal to participate.

In the context of the program, showing this encounter was strongly justified in the public interest. It demonstrated Ms Pirro's unwillingness to respond to pertinent questions about her false claims about [voting machine company 2] and [voting machine company 1] having stolen the 2020 election (claims which were the subject of major lawsuits, as reported in the program), in contrast to her friendly interactions with fans moments earlier; and it also demonstrated the heavy-handedness of Fox News security staff engaging with [the Presenter] after Ms Pirro walked away.

If the ACMA maintains this preliminary finding it will have far-reaching consequences for journalism in this country. Television news and current affairs reports routinely include footage of people (politicians, public figures, people involved in legal proceedings, etc.) being approached or doorstopped by journalists in public and declining to be interviewed. The ACMA's finding suggests that if a person, who is a public figure and about whom serious allegations have been made, declines to be interviewed when approached in public, the ABC would not be permitted to broadcast footage of that interaction. This is of significant concern to the ABC and does not reflect the intended application of standard 5.2. [...]

## Attachment C

### Relevant standards under the ABC Code of Practice 2019

#### Standard 2 Accuracy

##### Principles:

The ABC has a statutory duty to ensure that the gathering and presentation of news and information is accurate according to the recognised standards of objective journalism. Credibility depends heavily on factual accuracy. Types of fact-based content include news and analysis of current events, documentaries, factual dramas and lifestyle programs. The ABC requires that reasonable efforts must be made to ensure accuracy in all fact-based content. The ABC gauges those efforts by reference to:

- the type, subject and nature of the content;
- the likely audience expectations of the content;
- the likely impact of reliance by the audience on the accuracy of the content; and
- the circumstances in which the content was made and presented.

The ABC accuracy standard applies to assertions of fact, not expressions of opinion. An opinion being a value judgment or a conclusion, cannot be found to be accurate or inaccurate in the way facts can. The accuracy standard requires that opinions be conveyed accurately, in the sense that quotes should be accurate and any editing should not distort the meaning of the opinion expressed.

The efforts reasonably required to ensure accuracy will depend on the circumstances. Sources with relevant expertise may be relied on more heavily than those without. Eyewitness testimony usually carries more weight than second-hand accounts. The passage of time or the inaccessibility of locations or sources can affect the standard of verification reasonably required.

The ABC should make reasonable efforts, appropriate in the context, to signal to audiences gradations in accuracy, for example by querying interviewees, qualifying bald assertions, supplementing the partly right and correcting the plainly wrong.

##### Standards:

2.1 Make reasonable efforts to ensure that material facts are accurate and presented in context.

2.2 Do not present factual content in a way that will materially mislead the audience. In some cases, this may require appropriate labels or other explanatory information.

#### Standard 4 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.

### **Standard 5 Fair and honest dealing**

#### **Principles:**

Fair and honest dealing is essential to maintaining trust with audiences and with those who participate in or are otherwise directly affected by ABC content. In rare circumstances, deception or a breach of an undertaking may be justified. Because of the potential damage to

trust, deception or breach of an undertaking must be explained openly afterwards unless there are compelling reasons not to do so.

**Standards:**

Dealing with participants

5.1 Participants in ABC content should normally be informed of the general nature of their participation.

5.2 A refusal to participate will not be overridden without good cause.

Opportunity to respond

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

Attribution and sources

5.4 Aim to attribute information to its source.

5.5 Where a source seeks anonymity, do not agree without first considering the source's motive and any alternative attributable sources.

5.6 Do not misrepresent another's work as your own.

Undertakings

5.7 Assurances given in relation to conditions of participation, use of content, confidentiality or anonymity must be honoured except in rare cases where justified in the public interest.

Secret recording and other types of deception

5.8 Secret recording, misrepresentation or other types of deception must not be used by the ABC or its co-production partners to obtain or seek information, audio, pictures or an agreement to participate except where:

(a) justified in the public interest and the material cannot reasonably be obtained by any other means; or

(b) consent is obtained from the subject or identities are effectively obscured; or

(c) the deception is integral to an artistic work.

In all cases, the potential for harm must be taken into consideration.

## 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.<sup>3</sup>

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

### **ACMA considerations for determining factual content**

- > In practice, distinguishing between factual material and other material, such as opinion, can be a matter of fine judgement.
- > The ACMA will have regard to all contextual indications (including subject, language, tenor and tone and inferences that may be drawn) in making its assessment.
- > The ACMA will first look to the natural and ordinary meaning of the language used.
- > Factual material will usually be specific, unequivocal and capable of independent verification.
- > The use of language such as 'it seems to me' or 'we consider/think/believe' will tend to indicate that the content is contestable and presented as an expression of opinion or personal judgement. However, a common sense judgement is required and the form of words introducing the relevant content is not conclusive.
- > Statements in the nature of predictions as to future events will rarely be characterised as factual material.
- > Statements containing argumentative and exaggerated language or hyperbole will usually indicate a subjective opinion and will rarely be characterised as factual material.
- > The identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.
- > Where it is clear in the broadcast that an interviewee's account is subjective and contestable, and it is not endorsed or corroborated, their allegations will not be considered as factual assertions.
- > Where an interviewee's stance is separately asserted or reinforced by the reporter or presenter, or proof of an allegation is offered so that it becomes the foundation on which a program or a critical element of the program is built, it may be considered a factual assertion.<sup>4</sup>
- > Sources with expertise may be relied on more heavily than those without, in determining whether material is factual, but this will depend on:
  - > whether the statements are merely corroborative of 'lay' accounts given by other interviewees

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<sup>3</sup> *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.

<sup>4</sup> See Investigation 2712 (*Today Tonight* broadcast on Seven on 25 July 2011); *Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority* [2014] FCA 667.



- > the qualifications of the expert
- > whether their statements are described as opinion
- > whether their statements concern past or future events<sup>5</sup>
- > whether they are simply comments made on another person's account of events or a separate assertion about matters within their expertise.

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<sup>5</sup> See Investigation 3066 (*Four Corners* broadcast on ABC on 23 July 2012) and Investigation 2961 (*The Alan Jones Breakfast Show* broadcast on 2GB on 19 October 2012).