

ICRP REPORT ON COMPLAINT BY MR BARRY CHIPMAN

TIMBER COMMUNITIES AUSTRALIA

7.30 REPORT : 5 JUNE 2007

Background

Mr Chipman, Tasmanian Manager for Timber Communities Australia (TCA), was concerned by aspects of a segment of the 7.30 Report program, broadcast on 5 June 2007, which was later entitled on the ABC Online site as "Pulp Mill Could Taint Catch : fishing industry". On 15 June 2007, he wrote to the ABC, seeking further information about the source of the footage and as to research undertaken by the ABC in preparing it.

He was not satisfied with the response he received and, on 13 August 2007, he wrote again. In this letter, he took clear exception to a graphic, displayed in the program, which had shown dioxin effluent from the pulp mill being, apparently, discharged directly from the mill to the adjacent waters. He also complained that the use of old unacknowledged video footage of scallop fishing activities, as an introduction to the segment, was misleading because "no commercial scallop catch had been made in the vicinity of the effluent outfall since before 1999". He complained that this material was significantly misleading and damaging to TCA.

In accordance with standard practice, a transcript of the program segment and the introductory visual of the scallop fishing had been placed on ABC Online.

After receipt by the ABC of his complaint of 13 August 2007, it was investigated by Audience and Consumer Affairs, who wrote to Mr Chipman on 12 October 2007, in the following terms:

"The ABC agrees that the date given in our letter of 6 August for the footage of scallop fishing in Bass Strait is likely to be incorrect. As you point out, there was no commercial scallop fishing in that area in 1999. I am advised by our News division that this was the information provided by ABC Archives, which noted the date of the footage and a detailed shot list, when the footage was supplied to the reporter. We will ensure that the information you have provided is brought to the attention of ABC Archives, so that this error is not repeated.

Similarly, the ABC acknowledges that there is no evidence to suggest commercial scallop fishing beds will open next year in the vicinity of the proposed pulp mill pipeline. The ABC apologises for providing inaccurate information in our initial response to you.

On reviewing the report, the ABC acknowledges that it gave the false impression that there is a current scallop fishing in Bass Strait, which may be at risk from the proposed pulp mill. Furthermore, the ABC agrees that the graphic labelled 'Dioxin contamination theory' was inaccurate. These specific segments of the report, through misrepresentation, also lacked the necessary impartiality as required by the ABC's Code of Practice.

Thank you for raising these serious matters with the ABC. The 7.30 Report website is in the process of being amended."

The next working day, the video was removed from the website and the following Editorial Note added:

"The video of this story has been removed from the site, as it contained visual elements that were potentially misleading".

The complainant was not satisfied with this response and referred the matter to ABC management. On 14 December 2007, the Director of Corporate Strategy and Governance wrote to him noting that:

"The ABC has already acknowledged that the report included specific segments, which through misrepresentation, lacked the impartiality required of ABC News and Current Affairs content". He instanced the conveying of a false impression of risk to a *"current scallop fishing industry in Bass Strait"*.

He also indicated agreement by the ABC that *"the graphic labelled 'Dioxin contamination theory', was inaccurate"*. He asserted that *"by removing these visual elements the editorial difficulties with the report were rectified."* Removal had been accompanied, on the program's website, by a note that *"the video of this story has been removed from the site, as it contained visual elements that were potentially misleading"*. After indicating that the concerns had been thoroughly investigated, he concluded by stating:

"It is clear that material was readily available on government websites indicating that there was no commercial scallop fishing industry in Bass Strait at the time the story went to air. This information was known to the reporter before the story was broadcast. The ABC agrees that this fact should have been made clear in the report and that the failure to do so breached the ABC Code of Practice. The report should not have gone to air in the form that it did, and this has been the subject of further follow-up internally within the ABC. The issue of appropriate use of file footage has also been the subject of further discussions internally".¹

In response to this communication, Mr Chipman, on behalf of TCA, indicated that:

"From your Director's admission it is in my opinion that what took place was a deliberate attempt by persons involved in preparing the report to broadcast a highly damaging segment knowingly based upon untruths. Dishonest is a very strong word but when it is known that those involved had the prior knowledge of the truth, then I'm not sure what other word is suitable to describe what took place in the development and broadcast of this report. I may be wrong but I couldn't imagine a more serious breach of the most basic principle of journalistic ethics."²

¹ 14 December 2007 ABC letter to TCA

² 6 February TCA letter to ABC MD

The TCA sought a full on-air public correction and apology by the ABC for the damage and harm created, "which was subsequently compounded with the report's untruthful claims being then reproduced as fact by most national and major city daily newspapers."

In response to various representations by the Complainant to obtain this remedy, the ABC indicated:

"The ABC has already acknowledged that the report included specific segments which, through misrepresentation, lacked the impartiality required of ABC news and current affairs content. This occurred because the report gave the false impression that there is a current scallop fishing industry in Bass Strait which may be at risk from the proposed pulp mill. The ABC also agreed that the graphic labelled 'Dioxin contamination theory' was inaccurate".³

After further discussion with the ABC, Mr Chipman referred his complaint to the Complaints Review Executive (CRE), who reported on 27 June 2008. The CRE found that the corrective action taken by the ABC was basically adequate but that the wording on the 7.30 Report website should be more detailed and prominent. As a result, the Editorial Note was expanded to read:

"Editor's Note: In October 2007, the video with this item was removed after it was found the original broadcast gave the false impression that there is a current scallop industry operating in Bass Strait that may be at risk from the proposed pulp mill. Although scallop fishing has taken place in the area in the past, there are currently no commercially viable scallop beds available in the area. The situation is being regularly monitored. A graphic labelled 'Dioxin contamination theory' was also found to be inaccurate. This note on corrective action was updated in July 2008."

However, Mr Chipman remained insistent that an appropriate on-air correction was the only satisfactory resolution of his complaint. He requested that the CRE refer the complaint to this Panel. The complaint was received on 4 July 2008 and the Panel has since considered it, along with the previous material and the ABC's further response, provided in accordance with the Editorial Policies.

Discussion

From the information set out above it is clear that the ABC acknowledges that breaches occurred because staff did not exercise sufficient care at the time that the program was being prepared and that managerial oversight was not rigorous enough to identify the problems before the program went to air. Facts were incorrect. Archival file footage was not labelled as such, even though it would have influenced viewers' perceptions. The plant diagram did not match the comments made in the program, in that it provided an appearance of toxic effluent being pumped directly from the plant to the immediately adjacent seabed of Bass Strait. The comments had indicated that the effluent was to be pumped and diffused well out to sea.

³ 14 December 2007 ABC letter to TCA

Once these matters were brought to the attention of management through the complaint process, the ABC did withdraw the visual material and, finally, provided the Editor's Note, referred to above, on the Online segment.

The Complainant does not believe that this form of correction is sufficient to right the wrong, which it claims to have experienced. Most recently, in an email to the ICRP dated 8 July 2008, the Complainant commented:

"Thank you for the notice, but could I please request that this reply is in no way to be taken as TCA's acceptance of this updated notice to the 7.30 Report archival web site as being in any way appropriate to correcting the harm brought by the acknowledged serious and significant errors made by the aforementioned report.

TCA position stands that the ABC has an obligation to appropriately inform ALL its viewers of the correct facts just as the ABC did in its letter to TCA dated 14 December 2007.

This updated notice by the ABC on an archival web site does not do that. Although, if the ABC still wishes to bring the matter to a close thus avoiding any future complaint processes, an agreed on-air correction based solely upon all the acknowledgments it made in its 14 December 2007 letter to TCA would achieve that aim."

Given the acceptance by the ABC that it did not exercise every reasonable effort to ensure breaches of the Code and Editorial Policy did not occur, then the remaining issue relates to Section 5.2.2.(ii) of the Editorial Policies.

"The ABC will not hesitate to admit and correct a significant error when it is established that one has been made. When a correction is necessary, it will be made in an appropriate manner as soon as reasonably possible."

The ABC initially responded to the Complainant on 6 August 2007. In its letter, the Audience and Consumer Affairs' representative defended the ABC position and did not suggest that a breach of Editorial Policy had occurred and, as a consequence, no corrective action was suggested. However, after receiving Mr Chipman's letter of 13 August, Audience and Consumer Affairs wrote in the terms already set out above. Admittedly, it is arguable that this admission could have been made earlier, but the Panel is not prepared to find a breach in this regards.

The second sentence of Section 5.22 (ii) requires the ABC to make a correction in an appropriate manner. In its response to the Panel, in respect to the complaint, the ABC stated its belief that it had made the correction in an appropriate manner, for the following reasons:

"Mr Chipman's complaint was upheld on the basis that the report failed to meet requirements of accuracy and impartiality. These issues of partiality and inaccuracy were isolated only to specific visuals within the report, not to the voiceover, the people featured, or the principal focus of the story, which was based on fishing industry concerns that Gunns had not properly addressed concern of air and marine pollution with regard to the pulp mill. An on-air correction of purely visual errors in the report was not considered warranted for a number of reasons:

- .. *The report highlighted the concerns of the fishing industry in a balanced and even-handed manner, with comment sought from principal relevant stakeholders, including Gunns and Mr Chipman. The program did not directly claim that there was an existing Bass Strait scallop fishing industry which could be damaged by the pulp mill; however, by not providing specific facts about this issue, it did allow viewers to draw the conclusion that such fishing currently took place in this area. The footage of scallop fishing was, in essence, too specific in highlighting a particular and specialised aspect of the fishing industry which is not currently active in the Bass Strait. The report should have featured more generic footage to illustrate the local fishing industry.*

The use of the scallop visuals, while a serious error, did not detract from the legitimate coverage of the broader concerns of the fishing industry, nor did it detract from the overall even-handed approach of the report.

- .. *The inaccurate visual of the discharge of effluent from the pulp mill was featured only briefly. Again, the accompanying voiceover was accurate and the input from interview subjects was in keeping with the ABC's editorial guidelines in content and approach. Further, it is mentioned by fisherman John Hammond in the report that the pulp mill effluent outlet was expected to be "2.2 mile offshore". While acknowledging the serious graphic error, the ABC does not believe that, taking into account the context in which the image was featured, that the impact of the inaccuracy was such that it warranted an on air correction.*
- .. *In judging whether an on air correction was needed, the ABC considered the likely effect of the inaccuracies and lack of impartiality on the audience, and specifically if the effect was significant enough to materially mislead the audience about the core element of the story – that is, concerns being expressed by the fishing industry about the potential impact of the pulp mill. Within the overall context of the story – which was balanced, featured principal relevant viewpoints and importantly, in which the voiceover was accurate - the ABC concluded that although serious, the editorial breaches would not have a substantive distorting impact on the audience's understanding of the issues to hand. It was therefore determined that a website correction was appropriate."*

The ABC also referred to the Editorial Note and its later update added to the site, after removal of the video, asserting that these steps amounted to an appropriate correction of the error. The question is whether, in this instance, an Online correction several months after the program went to air on national television in prime time, was the most appropriate correction available to the ABC, given that the Complainant continues to seek "*an agreed on air correction based solely upon all the acknowledgments it made in its 14 December 2007 letter to TCA.*"

The Panel has viewed and considered closely the broadcast material. It takes the view that the visuals used in the program had a significant ability to influence public opinion. The suggested loss of the scallop industry to Tasmania was used to demonstrate the impact of the pulp mill on the local environment, while other commentators in the program segment made general non-specific comments, focused on the environmental impact assessment or the decision making process for the development. The use of this unlabelled archived file footage was a most powerful way to bring to the attention of viewers the alleged detrimental impact of the pulp mill.

The Panel is satisfied that many Australians who watched the program would have been left with the impression that an existing scallop industry in Bass Strait was under immediate threat from this development. Similarly, when faced with technical commentary on the impact of the flow of dioxin into the water, the inaccurate diagram used in the program would have played an important role in explaining that impact to the viewer. In this case, the viewing public could certainly have been confused or could have formed a far more negative view of the outflow than was actually warranted.

The development of a pulp mill and its impact on the environment continues to be a serious issue for Australians, particularly Tasmanians. A review of the relevant ABC website program segments indicates that the development of the pulp mill continues to provide regular news and current affairs content.

The Panel believes these breaches did constitute a serious misrepresentation of the situation, which could well have resulted in influencing public attitudes against the pulp mill development. In these circumstances, it was, and is, incumbent on ABC management to ensure that any misunderstanding is properly and fully corrected.

The reliance on ABC Online as the delivery mechanism for the correction is, in the Panel's view, inadequate. Access to the Editor's Note is only gained if a viewer has a reason to visit the site. In the Panel's view, few of the viewers who saw the program would do so. For the majority of viewers, the program's mischievous effect would remain uncorrected. Furthermore, the ongoing interest in this development in Tasmania ensures that issues relating to it will continue to be of public interest.

The Complainant also suggests in his complaint that the report was presented in a form such as to intentionally and deliberately mislead viewers. He asserts this to be an important factor in determining the appropriate corrective action.

In response, the ABC stated that:

"ABC News has explained that at the time the report was put to air, the reporter was aware that there was no commercial scallop fishing active in Bass Strait. However, she was also aware that scallops remained in this area and these were being monitored and assessed on a regular basis to determine whether the beds could be re-opened for commercial fishing. She took the view that the possibility that the beds may re-open gave some weight to the concerns of scallop fishermen.

It was a misjudgment on the reporter's part not to give scallop fishing further context in the report, or alternatively, to use more generic footage to illustrate fishing in Bass Strait. Audience and Consumer Affairs aims to draw evidence based conclusions against the relevant policies, and in our review of the story and the information supplied by the News division, we found no basis for the claim that the report deliberately set out to mislead... ABC News management communicated directly with the reporter at some length on this matter and concluded that this was not a deliberate act of misreporting. The report cannot fairly be described as "a deliberate betrayal of journalistic ethics".⁴

⁴ Page 3, 4 September 2008 letter from ABC to ICRP.

In relation to the dioxin outflow diagram, the ABC provided the following explanation:

"The problem arose because the reporter was in Hobart and the graphic was produced in Sydney. The reporter received the graphic very late in the day and it appeared to be fine. Find attached an email from Jocelyn Nettlefold explaining the origin of the information.

The script clearly states the outfall would run into the Bass Strait but the diagram simply draws the outfall line going immediately below the pulp mill and then stopping. The diagram is not a photograph, and is meant to be indicative only. Given that the script makes it crystal clear how far into the ocean the pipe goes, the diagram was focused on other details, and the outfall simply indicates the fact that there is effluent leaving the pulp mill. It shouldn't be taken as a visually accurate and 'to-scale' depiction.

So in retrospect it was sloppy and potentially misleading, but obviously not deliberately misleading. We have already apologised for the graphic and removed the video. Please assure the ICRP that there was absolutely no intention on the part of the reporter or the 7.30 Report to be misleading. It was a genuine mistake."⁵

The Panel is not prepared to find that the scallop fishing file footage, together with the incorrect outflow diagram, were deliberately used to make the program more sensational. It appears that tight scheduling, sloppy vetting and insufficient managerial oversight were the most likely causes for the mistakes.

The Complainant also sought an on-air apology as well as a correction of the facts. The ABC contends:

"There is an important distinction to be drawn between the activity of correcting an error, on one hand, and extending an apology to an injured party, on the other. In this instance, the ABC does not consider that any further apology to Mr Chipman is warranted. To the extent that there were deficiencies in the handling of Mr Chipman's complaint, the ABC has acknowledged and apologised to him. However, the report itself was not critical of Mr Chipman or of Timber Communities Australia and the ABC respectfully suggests that the issue to be considered in the Panel's view is that of correction of error, not apology."

Conclusion

The Panel believes that no further apology is required since the Complainant has already received an apology from ABC management in its letter dated 14 December 2007.

However, the Panel considers that corrections should have been broadcast promptly, as part of a 7.30 Report, clarifying that (a) scallop farming did not currently occur and was, therefore, not under threat and (b) the dioxin outflow from the plant was not as depicted in the diagram. In this way, the corrections would have reached as many as possible of the original viewers who could have been misled by the program. Also, an appropriate level of compliance with Editorial

⁵ Email to ICRP from ABC dated 17 September 2008

Policy 5.2.2 (c) (ii) would have been achieved. In the absence of such an appropriate correction having been made, the Panel finds that a Policy breach occurred.

Recommendation

While considerable time has elapsed since the broadcast went to air, the Panel believes that ongoing public interest in this development means that continuing reliance on the corrections stated on ABC Online is not, in the circumstances, adequate and that these corrections should be supplemented by an appropriate on-air correction. This correction should refer to the findings of this report and address the matters referred to above. It should be broadcast during a *7.30 Report* segment, on an occasion when the program is again dealing with issues relating to the pulp mill development.

Michael L Foster QC
Convenor
Independent Complaints Review Panel

6 November 2008