

[REDACTED]

29 June 2018

Mr Robert Kerr
Chair
Competitive Neutrality Inquiry
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

By email: [REDACTED]

Dear Mr Kerr

Submission to 'Inquiry into the competitive neutrality of the national broadcasters'

I provide this submission to your Inquiry with the hope of highlighting the ineffectiveness and inadequacy of the Australian Broadcasting Corporation's Code of Practice in dealing with anything more than the most basic of broadcasting complaints. It contrasts with how complaints are dealt with and resolved in the commercial sector.

The submission I believe falls within the scope of your Inquiry specifically in respect to *'complaints and accountability mechanisms operated by the broadcasters, insofar as they relate to competitive neutrality principles'*.

The submission is ABC-specific and made following surprising advice received from a senior officer in the Office of the Commonwealth Ombudsman in relation to the purpose and application of the ABC Code of Practice in dealing with broadcasting complaints.

If the Commonwealth Ombudsman's advice is correct then it is my view that the ABC is free to operate with significantly lower broadcasting standards and levels of accountability than its commercial rivals. Certainly there is evidence of a disparity in broadcasting standards.

1. Background

In [REDACTED] the ABC used its 7.30 television program to nationally broadcast a story about me and my young children. The broadcast was deemed privacy breaching by the Australian Communications and Media Authority (ACMA)¹ and in my view (and that of my lawyers) was also offensive, defamatory and misleading due to omissions of essential facts directly related to the issues being raised.

It is not the purpose of this submission to delve into the specific ins and outs of the broadcast or my subsequent complaint; the crux of that complaint was that the broadcast was a case of faux journalism where the reporter put my family's safety at risk by choosing

¹ ACMA Investigation Report [REDACTED]

to provide viewers with selected and incomplete information that skewed viewers' understanding of the sensitive and highly emotive matters at hand. I argued that omissions of essential information were used to give the story some feigned resonance; the inclusion of just a shred of more complete information would have made my family's inclusion in the story somewhat pointless but that would have left the reporter without a story. A copy of a cover letter sent to the ABC (attachment 1) following the broadcast provides a brief summary of the specific concerns raised, should they be required.

Remarkably, after three years, that complaint is yet to be finalised; the ABC continues to publish privacy breaching details about my children.²

By contrast, my complaint to Fairfax and the Australian Press Council about an online companion piece Fairfax published the day after the ABC broadcast was dealt with far more cleanly and expeditiously.³

2. The folly of the ABC's complaints process

The folly of the ABC complaints process is in part detailed in my letter to Senator the Hon Mitch Fifield, Minister of Communications (attachment 1). I wrote to the Minister when the ABC had failed to respond to ACMA's privacy breach determination some four months after it was made. At that point in time, my concerns about the futility of the ABC complaints process related to:

2.1 ACMA's lack of powers to require the ABC to take remedial action.

While the ABC's complaints process identifies that complaints rejected by the ABC can be referred to ACMA for determination, it makes no mention that the ACMA can only recommend,⁴ not require, that the ABC take remedial action in response to any breaches of the ABC Code of Practice. In terms of competitive neutrality, the private sector media is not so fortunate; a breach of their respective codes constitutes an offence⁵ and ACMA can prosecute.

2.2 ACMA's lack of jurisdiction

ACMA could not consider my entire complaint; is not a 'one-stop shop' and did not have jurisdiction to consider aspects beyond the actual television broadcast such as

- Online content. In my case the ABC published the same privacy breaching content online⁶ including the online news story, which was essentially a duplicate copy of the television broadcast transcript. Despite being updated regularly, the ABC Code, perplexingly, does not apply to online content, unlike the codes of the private sector media;
- broader legal issues pertaining to the broadcast's content, where legal action is not being sought and resolution could be achieved by the removal of the content. For example, in my case, ACMA could not simply flag as an issue of concern, the broadcast's inclusion of details of unlawful⁷ off-record discussions with 'child

² This may also explain why the ABC has not publicly disclosed ACMA's privacy breach determination on its 'Complaints Upheld' site. It has advised the Commonwealth Ombudsman that it is not required to do so.

³ The Fairfax piece happened to be written by another ABC employee though this relationship was not disclosed to readers.

⁴ See S.153 *Broadcasting Services Act 1992*

⁵ Ibid, S.142

⁶ This apparently is because online publishing did not exist when the legislation was drafted and passed.

⁷ See for example S.58 (SA) *Children's Protection Act 1993*: **Duty to maintain confidentiality** (1) A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information. Maximum penalty: \$10 000.

protection authorities' or the actions taken by 7.30 to solicit these, even under Standard 5 (Fair and Honest Dealing) of the ABC Code. This limitation only became apparent at the completion of ACMA's investigation and given it was nearly a year after the broadcast, it was hardly realistic to then refer the matter to state government authorities for consideration.

2.3 Seeking a remedy — which agency and when?

While ACMA can prosecute the private sector media entities for breaches of their professional codes, what can an individual do when the ABC fails to respond to a formal breach determination that ACMA has made but cannot enforce? And what agency has jurisdiction to make determinations about the ABC's online content?

I referred ACMA's privacy breach determination to the Office of the Australian Information Commissioner (formerly the Office of the Australian Privacy Commissioner) in the hope it could assist given an independent privacy breach determination by ACMA had already been made. The OAIC advised it could not assist because the ABC is exempt from the Australian Privacy Principles contained in the *Privacy Act 1988*.⁸ The fact that ACMA, in line with its legislated responsibilities, had already determined a privacy breach had occurred appeared to make no difference. Indeed, it is unclear whether the OAIC actually read my complaint, because its nonsensical advice was to make a broadcasting complaint to ACMA.

Assistance was concurrently sought from the Australian Human Rights Commission. AHRC could not assist because my children and I were not, for the purposes of the respective legislation, employees or customers of the ABC. AHRC suggested that I contact OAIC for assistance.

It was at this point when I wrote to Minister Fifield about the folly of the process.⁹ Very soon after, perhaps coincidentally, the ABC happened to make some minor editorial changes to its published television broadcast materials in partial response to the ACMA privacy breach, however the full duplicate materials published online remained untouched. A response from Minister Fifield's Department of Communications and the Arts suggested I now refer the matter to the Commonwealth Ombudsman, at least for the consideration of the ABC's ongoing publishing of privacy breaching content online. Even the Commonwealth Ombudsman's Office was initially unsure whether it could assist. After 16 months its involvement is still ongoing as key matters remain unresolved however several outcomes to date relate to your Inquiry and are considered separately below.

3. Various interpretations of the ABC Code of Practice in resolving complaints

When considered in its entirety, the ABC Code of Practice conveys an unambiguous *intent* that the national broadcaster seeks to 'deliver the goods' in terms of meritorious broadcasting underpinned by professional conduct and practice, irrespective of its compliance with the Code being voluntary. It is also apparent from those issues selected for inclusion on the ABC's 'Complaints Upheld' site that the Code is applied as intended to address clear cut or 'basic' issues such as

- use of racist or sexist commentary
- errors of fact

⁸ Unhelpfully, the ABC's exempted status is not identified in the Act. Its specific exemption is instead provided in the *Freedom of Information Act 1982*:

⁹ I had first written to the ABC six weeks after the privacy breach. The ABC responded saying it was still considering what action it would take and that it was not responsible for use of the content by other media.

- breakdowns in process, such as where a necessary right of reply has not been sought from an entity featured in a story or a failure to provide graphic content/language warnings when necessary.

Of relevance to your Inquiry and issues of competitive neutrality is the application of the ABC Code when used to assess broadcasting complaints that go beyond basic matters and whether the Code ensures the national broadcaster can be held to account like its commercial counterparts.

Beyond basic issues, it is my experience that the Code is a somewhat useless instrument for complainants seeking accountability and it would seem that a similar view is held by those in the Commonwealth Ombudsman's Office. I had referred to that Office my concerns about the ABC and ACMA rejecting my complaint about viewers being misled by those critical omissions of information in the broadcast.¹⁰ The complaint was rejected on the grounds that a *literal* interpretation of the ABC Code's Standards did not require the inclusion of the missing information even though I considered it to be imperative to the fair and honest provision of the 'whole truth' in terms of what the ABC was specifically asking viewers to consider. Having the complaint rejected by way of a literal interpretation of the Standards (rather than the implicit *intent* of the Standards) was made more surprising when it became apparent that the Standards had been applied without any evidence or published reference to Section IV (Interpretation) of the ABC Code which *stipulates*:

"The Standards are to be applied in ways that maintain independence and integrity, preserve trust and do not unduly constrain journalistic enquiry or artistic expression."¹¹

It was my view that the broadcast's omissions of information were not consistent with the ABC's requirement to maintain integrity or preserve trust and that the complaint would have been upheld had the Standards been interpreted with proper regard to these mandatory principles. The Commonwealth Ombudsman had a third view. In response to my concerns,¹² an officer advised that Section IV of the ABC Code — the core section detailing the ABC's 'required' broadcasting Standards and how they are to be interpreted — in fact only provides:

'...broad guidance as to how the Code should be interpreted and may lead to different interpretations depending on the circumstances and, as noted above, may not always lead to a single supportable interpretation or conclusion.'

If this is the case, then how can the ABC be held accountable? A broadly worded Code of Practice that can be interpreted in a multiplicity of ways means it is hardly useful for the proper or fair adjudication of any substantive complaint. It is doubtful whether this was the original intent of Parliament but of course it serves the ABC brilliantly. The Ombudsman's advice about the Code also implies that the ABC can operate as it wishes including with lower enforceable standards than its commercial counterparts.

To illustrate this I quote, necessarily at length, the following advice from the Commonwealth Ombudsman¹³ about the response it received from the ABC in relation to the fact it had not removed from its online publishing any of the information that ACMA determined to be a breach of my children's privacy:

¹⁰ Described in the correspondence to Minister Fifield, attachment 2

¹¹ See also Section 2 of the ABC Code (Scope of the Code) which identifies 'Interpretation' as set out in Section IV as a requirement, not an option.

¹² Correspondence dated 9 June 2017

¹³ *ibid*

“The ABC responded advising that it did not agree with ACMA’s findings in relation to a breach of the children’s privacy under Standard 6 of the Code. The ABC noted that reasonable decision-makers, acting in good faith, can come to different views about whether a particular item of content complies with editorial standards, and that a final decision often involves weighing competing values and making finely nuanced editorial judgements.

The ABC explained that in this case it reasonably came to a different view about the extent to which intrusions into your and your children’s privacy were justified by the public interest. For this reason, in its actions to remedy the breach, the ABC went no further than was required by the ACMA decision, as the ABC had formed its own careful and good faith view that the material complied with editorial standards.

We acknowledge your frustrations in this respect and the reasons why you consider the ABC should amend the online material. However, as the ABC has explained why it has decided not to amend the online material (being that it disagreed with ACMA’s finding of a breach), and as ACMA’s decision does not extend to the ABC’s online content, it is not clear there is a basis to be critical of the ABC’s decision.

Our office can consider whether the ABC is complying with its own editorial policies, such as the Code. However, the ABC has explained that it made its own assessment and came to a different view about its compliance with the Code. We accept that it is possible for decision-makers to come to different views about whether particular content complies with editorial standards and we are not satisfied the ABC’s decision was unreasonable, or not open to it to make.”

That the Commonwealth Ombudsman did not find the actions unreasonable is surprising for a range of reasons, notwithstanding that ACMA had rejected the ABC’s public interest justifications for breaching my children’s privacy because those public interest issues were not even raised in the story. Other problematic issues the Ombudsman missed included that here was the national broadcaster simultaneously using two sets of privacy standards for the very same information on the same website but with different outcomes and that ACMA’s involvement was consistent with both its legislated role and the ABC’s published complaints process. These and other related issues are detailed in my response to the Ombudsman at that time — see attachment 2. My dogged persistence resulted in a follow up enquiry to the ABC which in turn saw the ABC making partial editorial amendments to its online content in April this year.

4. Comparison with other professional codes

The professional codes used by the commercial media sector not only extend to online publishing but are more prescriptive than the ABC’s, and, on paper, offer fewer ‘get out of gaol’ opportunities for breaches of professional integrity and the omission of key facts.¹⁴ . For example, the first point of the Media, Entertainment & Arts Alliance’s (MEAA’s) own Journalist Code of Ethics unambiguously requires its journalist members to

‘[r]eport and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis.’

The MEAA provides the equally unambiguous guidance clause:

‘Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial

¹⁴ I am not in a position to comment as to whether the codes are applied as intended. My single experience with having a complaint dealt with through Fairfax and the APC (referred to on page 2 of this submission) was positive notwithstanding the fact they simply copied the ABC’s amendments

advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.'

Similarly, the Australian Press Council (of which the MEAA is a member) requires members to follow its 'General Principles' for print and online media including Principle 3 (Fairness and Balance):

'Ensure that factual material is presented with reasonable fairness and balance, and that writers' expressions of opinion are not based on significantly inaccurate factual material or omission of key facts.'

The Australian Associated Press is also bound by the APC's Standards of Practice and additionally it has its own comprehensive Code of Practice to document AAP reporting standards and requirements relating to operational issues such as ethical conduct, timely corrections and use of authoritatively sourced content.

The disparity between the commercial media codes' binding requirements and the ABC Code's provision of nothing more than 'broad guidance' (if the Commonwealth Ombudsman's advice is correct) does not concur with the Australian Government's competitive neutrality policy for the ABC. That the ABC Code does not apply to online publishing is remarkable.

5. Issues arising from the processes involved with dealing with an ABC broadcasting complaint

Issues that have arisen as a result of my case and that come within the context of your Inquiry include:

5.1 Time and cost

After three years, various aspects of my original complaint about the ABC broadcast remain unresolved and are still under consideration by the Commonwealth Ombudsman. To date, five government entities have been involved (including the ABC but not including the involvement of the Minister for Communications or his department). The time and cost to taxpayers of this folly must be extraordinary. The time and cost to me has been extraordinary. The cost to my children by the ongoing privacy breach is starting to be a cost to them in the most damaging and enduring way (see 5.3 below).

Unlike the ABC, there is an onus on commercial media organisations to deal with complaints expediently. If the commercial media snubbed a children's privacy breach there is the risk of prosecution by ACMA, a risk of legal action by the complainant, possible backlash from viewers and potential negative impacts on advertising revenues. No doubt ABC Media Watch would be there to expose their actions too.

When I made my original complaint to the ABC I had naively expected it to reply saying its young reporter had overstepped the mark and to apologise. For me that would have been the end of the matter. Had I known it would defend its actions in the manner it has I would have instead had the matter raised in Parliament as offered by a Senator. As I said in my letter to Minister Fifield a year later:

'Next time I'll know the ABC's 'due process' is simply a trap, a shortcut to self invalidation.'

5.2 Burden of remedial action and appeal: should it be the ABC's?

Imagine if the ABC was required to immediately remove an item from public access after ACMA had determined the item had in some way breached the ABC Code. Then, to have the item reinstated (in amended form), the ABC would require approval from ACMA

to do so. This approach would address breach issues immediately and place the burden of remedial action and any appeal about ACMA's determination onto the ABC.

Under current arrangements, it is the complainant who must take action when the ABC snubs, obfuscates or otherwise fails to properly respond to an ACMA breach. As my case shows, a very significant burden of appeal falls to the complainant. In the absence of legal remedies available, this is completely unfair because it is the ABC that has breached its Code in the first place and has the resources to deal with it.

Placing the burden of immediate remedial action onto the ABC would go some way in ensuring higher standards and would also be consistent with the approach taken by the commercial media. For example, in relation to responding to doubts about the accuracy of its materials, the AAP requires:

"If such doubts are confirmed, we must advise subscribers to kill the story, issue take-down notices to internet subscribers and replace with a corrected version as soon as possible."¹⁵

5.3 Ongoing harm while complaints are being resolved

In my original complaints to the ABC, ACMA and ultimately the Commonwealth Ombudsman I have repeatedly raised concerns about the risks to my children as a result of the broadcast and its ongoing publishing by the ABC.

My concerns were dismissed, apparently because they were deemed hypothetical and inconsequential and as identified previously, because the ABC Code of Practice did not specifically stipulate the inclusion of key information even under the Code's requirements relating to professional integrity and maintenance of trust or Standard 7 (Harm and offence) or Standard 8 (Children and young people) which refers to the ABC's responsibility to protect from harm children and other young participants in ABC materials. In this case my children were involuntary participants,

Unfortunately, those concerns as raised are now being realised as a direct result of the broadcast and its omissions.

Legal advice taken on the matter included putting on record with the Commonwealth Ombudsman what had occurred given it was the last agency to consider my complaint.¹⁶ The Ombudsman has replied to advise that a review of their determination will now be undertaken. It's small comfort at this late stage and there is no guarantee that a review will change the determination or that the ABC would respond to any changed determination.

5.4 Other negative consequences of delayed complaint resolution

Now three years into the ongoing complaints process, much of the privacy breaching detail—including sensitive personal information about my children—remains publicly accessible on the ABC website even though ACMA noted:

¹⁵ AAP Code of Practice, paragraph 3.3

¹⁶ Copy of correspondence dated 30 May 2018, attachment 4

As the intrusion into the two children's lives involved the non-consensual disclosure of specific and sensitive personal information concerning their birth and parentage, the ACMA does not accept that the intrusion was justified by the public interest issues raised in the report. The ACMA notes that the public interest issues that were covered in the report could have been explored without disclosing this sensitive personal information.

ACMA Investigation Report [REDACTED]

Other published materials still under review in the context of potentially misleading content and information that is harmful to my children also remains published. This in my view is completely unfair, inappropriate and a complete abuse of the ABC's immense power and privilege. Despite the broadcast's highly emotive content, the ABC does not even inform readers that the story and its contents are under independent review as part of an ongoing formal complaints process; without fear of consequence presumably there is no reason to do so.

Apart from the painful issue of my family's privacy still being made public, other ramifications include:

- The information can be freely accessed and utilised by other media organisations who can claim its use by them is not privacy breaching because the information is publicly available elsewhere.
- The information is freely available to the public. The omissions of information that answer the question raised by the ABC about my children's safety remain missing meaning that people accessing the information are misled as the example provided in 5.3 (above) demonstrates. This issue remains 'alive' and unresolved in the ongoing complaints process. If my complaint is ultimately upheld and the ABC responds accordingly, has the damage already been done?
- The inferences of the story have been contested. In the meantime they reflect badly on me. This does not assist in my attempts to find employment.

Again, if a commercial media organisation behaved in this manner it would leave itself wide open to prosecution and the risk of other legal action and significant costs. While this may or may not constitute an issue of competitive neutrality, it does highlight a disparity in broadcasting standards.

5.5 What constitutes 'professional integrity'?

The codes of practice of both the ABC and the Australian Public Service make more than one reference to 'integrity' but despite its apparent importance, neither actually define it. In terms of ensuring compliance, it is unclear in the codes whether 'integrity' is a pure or singular attribute or if there are now various levels of integrity, including perhaps a minimum standard or benchmark?

The issue of definition is raised because it becomes important in terms of broadcasting standards (including competitive neutrality), interpretation of the ABC Code and resolution of complaints. As made abundantly clear in this submission and elsewhere, I do not believe the ABC's broadcast about my family and its reliance on omission of key facts to give it (feigned) resonance matches traditional interpretations of integrity, ditto the ongoing online publishing of privacy breaching information. While my concerns about the ABC's integrity have not been specifically dismissed by ACMA or the Commonwealth Ombudsman, neither have they been tangibly supported; the ACMA investigation report makes no mention of integrity or the benchmark it presumably used to determine compliance nor has the Commonwealth Ombudsman defined a minimum standard. If the ABC's actions in this case do meet current Australian Government or Australian Public Service standards for integrity then why can't this be put on public record?

Notions of integrity go further when public broadcasting standards are considered. When I sought clarification as to whether ACMA had adjudicated the ABC broadcast solely against the relevant ABC Code Standard or against the Standard with reference to the Code's required principles of 'maintaining integrity' and 'preserving trust,' the Ombudsman's investigator advised:

"It seems to me that notions of trust and integrity are usually inherent to the process of considering the accuracy of a broadcast..."¹⁷

Plainly, this response did not answer the question or address the specific concern raised. If professional integrity and the maintenance of trust are integral to the ABC meeting its Standards, then ACMA is obligated to consider these aspects when assessing complaints. Of course the principles are integral or inherent to the Code but this does not mean their inclusion in a broadcast assessment process is automatic, guaranteed or should be taken for granted — there is a difference between principles being overlooked and their *conscientious* application to matters at hand. The current scandals concerning financial institutions, Facebook privacy and live sheep exports highlight this. As identified previously (see section 4 above), the MEAA Code of Practice is proactive in this regard and guides its members: *'[b]asic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context.'*

It is shambolic and to the detriment of the entire ABC complaints process and credibility of the national broadcaster that no one has yet been able to verify, let alone demonstrate, that the broadcast in this case meets an accepted standard of professional integrity.

5.6 Mismatch across government between understandings of the ABC Code and its application

How is the ABC Code of Practice to be interpreted and applied?

- By reference to the overall *intent* of the Code, its Standards and Principles? (A public perception.)
- By *literal* application of each (broadly worded) Standard in isolation? (see ABC and ACMA assessments of my complaint.)
- By application each Standard with *conscientious reference* to the principles underpinning the interpretation of the Standards? (The Code itself infers/requires this.)
- By using the Code only as a tool for 'broad guidance'? (Commonwealth Ombudsman.)

5.7 Should the ABC's compliance with its self-written Code be voluntary?

To be competitively neutral, should the ABC's compliance with its Code remain voluntary or is there an argument for the national broadcaster to be accountable by way of enforced compliance of its Code through ACMA?

5.8 Should the ABC Code of Practice apply to its online publishing?

Online publishing is a rapidly growing phenomenon and presumably it is a policy decision and not an oversight of the ABC or government that the ABC Code has not been extended to cover this form of media content, unlike commercial media codes. As already identified, this means complaints about ABC online content remain outside of the jurisdiction of ACMA, even where broadcasting and online materials are duplicates of one another.

¹⁷ Email dated 22 February 2018

If this perplexing position is to be maintained then the role and powers of the Commonwealth Ombudsman in considering unresolved complaints about ABC online publishing needs to be better publicised, including by the ABC. The Commonwealth Ombudsman also needs to be properly resourced (in terms of staff levels and training) to fulfil this function within reasonable timeframes.

The Commonwealth Ombudsman's parallel role in considering the actions of ACMA's assessment of ABC *broadcasting* complaints (as per the Code) will inevitably cause some confusion for complainants but this seems unavoidable under current arrangements.

In contrast, the commercial sector's inclusion of online publishing into their respective codes of practice appears to be far more efficient and user-friendly for stakeholders.

5.9 UN Convention on the Rights of the Child (UNCROC)

As a signatory to the UNCROC, Australia is obligated to guarantee the rights of children through the incorporation of the Convention into domestic law. Articles of the Convention¹⁸ that particularly apply to media broadcasting and publishing include:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

and

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

At national level, the provisions of Articles such as these are incorporated into the *Privacy Act 1988* and *Enhancing Online Safety Act 2015* where the Convention is even identified by name. This sounds ideal until it is recognised that the ABC is exempt from these Acts. It would seem highly unlikely that it is the intent of government to have any government entity (including the ABC) to be exempt from Australia's international treaty obligations and in practical terms, be above international law.

While the commercial media shares some or all of the same exemptions under these Acts, their codes of practice include enforceable provisions relating to the protection of children and their right to privacy and freedom from discrimination. The ABC may argue that its Code similarly provides for the protection of children but this is not enforceable and as my case demonstrates, the 'finely-nuanced' editorial decisions 'made by reasonable decision makers in good faith' at the ABC instead put the rights of children a distant last behind its own interests.

¹⁸ Full text available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

While this issue may or may not come under the scope of this Inquiry and competitive neutrality, it is argued it highlights another disparity in broadcasting standards and another failure of the ABC to regulate itself under its Code and in terms of maintaining trust and integrity.

6. Ongoing bureaucratic hurdles in achieving complaint resolution: due process, unyielding obfuscation or careless indifference?

Remarkably, three years and five government agencies later, my complaint about the ABC broadcast remains unresolved and is now under review by the Commonwealth Ombudsman. That office has been dealing with the complaint since February 2017 although some of its delays relate to the lengthy periods (months) it has taken to get responses from the ABC.

Currently, resolution of the complaint is bogged down over the interpretation of ACMA's privacy breach determination.¹⁹

Adding to this hurdle, the Commonwealth Ombudsman's investigator has determined this interpretation is also the view of ACMA even though ACMA's investigation report is unambiguous

²⁰ ACMA's report also explicitly rejects the ABC's public interest claims to publicly disclose the information.²¹ This detail was again pointed out to the investigator to no avail. Is it something that only could happen in a government bureaucracy?

While the Ombudsman investigator's determination seemed highly problematic it also seemed insurmountable: an aggrieved parent versus the colossus that is the ABC and the Commonwealth Ombudsman, year 3. Common sense would suggest that the circumstances of a person's birth is entirely confidential. Such personal information cannot be released by a hospital or others without consent. Contrary to the ABC's assessment, a person's place of birth is less confidential given it is often identified in media reports about asylum seekers, sports celebrities and politicians with possible dual nationalities. It also appears in everyone's passport.

Before preparing yet another response to the Ombudsman to challenge its investigator's determination, I sought independent assessment of the ACMA investigation report in case I was blind to the obvious. Advice taken was that the ACMA had correctly and unambiguously identified that the ABC's disclosure of the children's birth details and parentage was privacy breaching and that the ABC Code does not proscribe the sensitive use of ethnic identifiers.

It remains patently unclear to me why the investigator made the determination he did in light of the information available to him (ie the ACMA report). It is hoped that the Commonwealth Ombudsman's forthcoming review of the matter will not only resolve discrepancies and finalise the complaints process but at the same identify why this seemingly unnecessary hurdle came about in the first place and had to be responded to.

¹⁹ Detailed in attachment 5 — request for a review of determinations

²⁰ See for example, ACMA investigation Report, page 12

²¹ *Ibid*, page 15

Is there any complaints process in the commercial media sector so protracted and unwieldy as this?

7. In closing

The purpose of this submission has been to highlight the ineffectiveness and what I consider to be the complete inadequacy of the ABC Code of Practice and ABC complaints process in dealing with anything more than the most basic of broadcasting complaints.

The submission is not in any way intended to be an attack on the role of the ABC or national broadcasting in general, or to argue for privatisation. Nor is it claiming the commercial media sector is perfect in comparison. Instead, the submission seeks to demonstrate how and why the ABC under current arrangements is essentially unassailable in terms being held accountable to its Code of Practice whereas the commercial media sector can be prosecuted for poor or otherwise substandard broadcasting and online publishing.

It is acknowledged the case example used in this submission is personal, and while its resolution of the related broadcasting complaint is of paramount importance to my family's wellbeing and safety, it's somewhat inconsequential for everyone else. Nonetheless, the passage of my complaint through the ABC complaints process²² together with outcomes along the way, highlight in my view the shambolic nature of current arrangements. That no-one has yet been able to verify, let alone demonstrate, that the broadcast in this case meets an accepted standard of professional integrity speaks volumes. It reflects poorly on the ABC that it persists in trampling on the privacy of small children and even more so if it nothing more than some muscle-flexing exercise in looking powerful and above reproach.

It is hoped the issues raised in the submission will be of interest to the Inquiry and will inform its findings and recommendations. A more accountable ABC will not only be of benefit to the broadcaster maintaining a respected presence in the Australian media landscape, it will also benefit Australian media in general and the public.

²² including ACMA and the Commonwealth Ombudsman