

INDEPENDENT COMPLAINTS REVIEW PANEL Report

ABC NEWS ONLINE 19 October 2009

On 19 October 2009, ABC Online published the following report:

Turnbull still stinks with voters

Opposition Leader Malcolm Turnbull may have won an internal party room battle on climate change, but voters are still unimpressed with his performance, a Newspoll shows.

Labor would also have won in a landslide if an election had been held at the weekend.

The opinion poll, to be published in Tuesday's edition of The Australian, shows Kevin Rudd is still overwhelmingly the voter's choice.

Mr Rudd's preferred prime minister rating slipped slightly to 65 per cent, down from 67 per cent.

But he is still well ahead of Mr Turnbull, the choice of just 19 per cent of voters, a one percentage point improvement from the previous survey.

If an election had been held at the weekend, Labor would have won in a landslide, picking up 59 per cent of the two-party preferred vote to the Coalition's 41 per cent.

Labor led the Opposition 58 to 42 in the previous poll.

The Coalition was defeated at the 2007 election, which Labor won with 53 per cent of the two-party vote compared with 47 per cent for the Coalition.

The latest Newspoll survey was conducted last weekend.

On Sunday, the joint Coalition party room meeting in Canberra agreed to allow Mr Turnbull to negotiate with the Government on its emissions trading scheme.

The Complainant, on viewing the report, made the following complaint, entitling it, *Excuse Me Sir, Your Political Bias is Showing*:

Complaint A)

In my view the headline of this story is an improper way to refer to the leader of a political party in Australia. A headline to the effect that "Turnbull still stinks with voters" is simply polemical, unbalanced reportage, making no contribution to, nor having any place in, civil discourse.

Complaint B)

This story contains a glaring inaccuracy by falsely relating the Liberal Party's ETS negotiations (of Sunday, 18 October), and the most recent Newspoll results. The story makes clear that the Newspoll survey was conducted the week prior to the negotiations of Sunday, 18 October. Yet the story in the opening paragraph states that: "Opposition Leader Malcolm Turnbull may have won an internal party room battle on climate change, but voters are still unimpressed with his performance, a Newspoll shows".

At best, this paragraph is simply drawing a clumsy and ham-fisted link between the Newspoll results and the ETS negotiations simply by way of illustrating that voters have not yet warmed to the Leader of the Opposition. At worst, the paragraph would appear to be a deliberate distortion of the Newspoll results, implicitly suggesting that the ETS negotiations were not sufficient to sway voter's [sic] opinions of the Liberal Party and the Leader of the Opposition – voters 'still' being unimpressed with Malcolm Turnbull's performance.

Prior to receipt of this complaint, the ABC, in fact, removed the article from the site in circumstances to be referred to. ABC Corporate Affairs responded to the Complainant on 14 December 2009. This response was satisfactory to the Complainant in respect of his particular complaint of inaccuracy but not in respect of his complaint of imbalance and lack of impartiality. The portion of the response relating to this complaint was as follows:

Thank you for your email of 20 October concerning the ABC News Online story Turnbull still stinks with voters, published the previous day. Please accept my sincere apologies for the delay in responding.

The story was an Australian Associated Press (AAP) agency report about a Newspoll survey conducted the previous weekend that found the Opposition and its Leader, Malcolm Turnbull, were still significantly behind the Government in the polls. The story also noted that Mr Turnbull had been successful in gaining the agreement of the Coalition party room to negotiate with the Government on its emissions trading scheme.

On review, the ABC agrees that the headline placed on the article by an ABC News staff member was not appropriate. Whilst we do not believe it was unbalanced, as you suggest, we consider the description of what was effectively a poor poll result was inappropriate in tone for ABC News Online.

...

I understand that the story was posted late in the evening on 19 October and removed by ABC News early on 20 October. The removal of the story occurred prior to ABC News being forwarded a copy of your email. Whilst we do not consider the story was biased, the story was removed given the issues outlined above. The staff member who wrote the headline has also been counselled.

It may be noted that the ABC has furnished to the Panel the following information as to how the item complained of came to be published and then removed:

The story came in to the ABC Online newsroom during the night shift. One staff member was on duty at the time, as is the usual practice. That person made minor stylistic changes to the item and published it online. There was no additional approval process prior to publication.

The morning producer removed the story from ABC News Online early the following day and replaced it with this item.

Also, "the staff member who initially published the item (a mid-range casual who was new to night shifts) was counselled" and "once a more senior staff member reviewed the story, immediate action was taken to remove the item from ABC News Online and replace it with an ABC-authorized item". The original story, with the headline, came from AAP. The substituted story was rewritten and the headline altered to read, *Libs sink to 30pc in Latest Poll*.

The Complainant, being dissatisfied, has sought review by the Panel of his “concern about impartiality of the headline”, in which he maintains the terms of his previous criticism, that it was “simply polemical, unbalanced reportage”. He added, “Arguably the headline was in breach of Section 3.1 of the Code of Practice, requiring that news and current affairs content ‘be accurate, impartial and objective and thereby avoid bias’”. He said, “The headline was clearly not impartial nor objective, taken to mean the equal treatment of persons irrespective of their place in the political spectrum or the dealing with the facts of the matter, without distortion or prejudice from personal feeling or interpretation”.

He also raised concerns about the adequacy of the ABC’s remedial action, which will be considered later.

Relevant provisions of the ABC’s Editorial Policies 2007 (the Policies)

The Panel’s jurisdiction to review complaints is provided by Section 13.7.1 of the Policies. It is, relevantly, to review “complaints relating to allegations of serious cases of ... bias, lack of balance or unfair treatment arising from ABC content ...”.

Provisions of Section 5 of the Policies, which deals with News and Current Affairs content, relating to impartiality and bias are:

- Section 5.2.1 *All news and current affairs content will be accurate, impartial and objective, and thereby avoid bias. Staff working on news and current affairs content are required to keep in mind the ABC’s key values: honesty, fairness, independence and respect*
- ...
- Section 5.2.2 *Staff must also observe the following principles:*
- (d) *Be impartial. Editorial judgements are based on news values, not for example on political, commercial or sectional interests or personal views. Do not unduly favour one perspective over others.*

(See also Ss. 3.1 and 3.4 of the ABC Code of Practice 2007)

Was the heading in breach of the Policies?

The Panel has held, in past decisions, that it has no jurisdiction to consider complaints involving only questions of good or bad taste. It is the ABC’s contention that the publication of the heading complained of raises only questions of taste. There was no bias or breach of impartiality in that “the headline did not unduly favour any particular perspective. In blunt language, it summarised a key newsworthy point in the item that followed ... its tone was considered inappropriate for an ABC news item. This was a stylistic decision rather than a matter of compliance with editorial standards ... a lapse in style will not necessarily equate to a breach of editorial policies and did not in this case”.

This point was elaborated in the ABC's further response, provided to the Panel. It was submitted that "the purpose of the headline is to grab the reader's attention and briefly convey the most newsworthy aspect of the story which follows". This was supported by reference to a broadcast discussion in the ABC's *Lingua Franca* program in March 2000, where there was a consideration of headline writing in which a main journalist participant said (inter alia), "The sub-editor must, in the time and space allowed, write a heading that is not only attractive to the reader, but also sums up the story".

It was further argued by the ABC that, "Headlines often make use of dramatic, eye-catching language; such was the case here", and that "while the original headline was stylistically lacking, it was not outside the tolerable editorial boundaries of headline writing. It sought to alert readers to the most newsworthy element of the story: support for Malcolm Turnbull as prime minister was very low and was showing no clear sign of improvement. In blunt terms and using vernacular language, the headline accurately conveyed that message ... It simply expressed it in language which was too tabloid for ABC News Online's style" but "did not breach ABC editorial standards ...".

The Panel is not persuaded by these arguments. It was referred by the ABC to the range of language used in headlines by ABC News Online to lead stories on Newspoll surveys, such as *Turnbull continues slide in latest Newspoll*, *Turnbull's popularity hits record low* and *Libs sink to 30pc in latest poll*. In the Panel's view, these sample acceptable headlines illustrate and emphasise the problem with the present one. To say of the Leader of the Opposition that he "still stinks with voters", in the Panel's view, does far more than provide an attractive, eye-catching summary of the story that followed. It adds an implicit comment which was disparaging, offensive and judgemental. Also, it clearly carried the imprimatur of the ABC. Further, the comment was unfair and inaccurate in that even a marked preference in an opinion poll for one politician over another does not mean that the latter "stinks" with the voters polled. The body of the report does not carry the message that Mr Turnbull was so deeply and personally disliked by the voters as to warrant the use of this headline.

Did the publishing of this headline involve a breach of the sections of the Policies set out above? The ABC, in its response to the Panel, has raised some questions of interpretation, which will now be discussed.

Section 5.2.1 refers to "the ABC's key values: honesty, fairness, independence and respect" and requires staff working on news and current affairs content to keep them in mind. This coincides with the requirements of Section 2 of the Policies. Plainly, staff's adherence to these values is a central requirement of the Policies. The treatment of Mr Turnbull in the headline did not, in the Panel's view, exhibit appropriate fairness and respect on the part of relevant staff. However, did this amount to a breach of the Policies, falling within the Panel's review jurisdiction?

The ABC has argued that the key values "set the broad philosophical framework in which ABC staff are expected to work" as opposed to "the standards which follow in Section 5.2.2", in that "the values provide an overarching philosophy rather than determining rules of conduct". The argument continues that "where the values are so intrinsic to the ABC's performance that they must be observed

in a certain way, they are elucidated within particular standards". The provisions of Section 5.2.2 are said to do this work, in that "the standards of accuracy, balance and impartiality are carefully explained, allowing staff to be confident that if they consider and observe the explanations of these standards, they will not infringe the Editorial Policies".

Accordingly, it is said, fairness and respect, although being key values, are not, relevantly, standards, the infringement of which would amount to policy breaches. The line of argument encounters some potential problems when it is noted that part of the Panel's jurisdiction involves consideration of "unfair treatment arising from ABC content" (Section 13.7.1) and Section 5.2.2 (g) requires that staff "Exercise civility unless there is compelling reason not to do so", which would involve questions of "respect" but in circumstances where such questions do not appear to fall within the Panel's review jurisdiction, as set out above.

Moreover, although "bias", as such, is not dealt with in the provisions of Section 5.2.2, it is specifically mentioned in the opening sentence of Section 5.2.1, which states, categorically, that "All news and current affairs content will be accurate, impartial and objective and thereby avoid bias". Also, a complaint of "bias ... arising from ABC content" is one factor that enlivens the Panel's review jurisdiction under Section 13.7.1. Moreover, in an investigation of a complaint of "bias" in ABC content, the Panel must "have regard to relevant sections of the ABC Editorial Policies" (Section 13.7.14). Clearly, this opening sentence of Section 5.2.1 is such a "relevant section". It does not rely on "key values" and is, therefore, free of the problem referred to by the ABC, in that values, although required to be kept in mind, are not themselves standards, in respect of which, non-compliance can amount to a breach of the Policies.

In the Panel's view, the first sentence of Section 5.2.1 does constitute a standard or "principle of editorial practice for news and current affairs content" in accordance with the heading to Section 5.2. It is not excluded from this category by reason of its not being included in Section 5.2.2, which the Panel, contrary to its understanding of the ABC's argument set out above, does not accept as constituting the exclusive list of editorial principles relating to news and current affairs content. Indeed, this exclusivity is denied by the opening words of Section 5.2.2, "Staff must *also* observe the following principles" (emphasis added).

Moreover, whilst acknowledging the ABC's contention that the key values "provide an overarching philosophy rather than determining rules of conduct", the Panel cannot accept that they have no part to play in the content and effect of those rules. The very fact that staff are required to keep them in mind in their work on content indicates that they have an overriding importance which cannot be excluded by the mere automatic application of the wording of the rules. For instance, impartiality can be defined, *inter alia*, as the avoidance of bias; also, as not taking sides in an area of dispute such as the political arena or in being perceived to do so. Accuracy and objectivity in reporting, together with fairness and respect, can also be involved. Such considerations are not excluded by the wording of Section 5.2.2 (d) which, in the Panel's view, does no more than provide a limited rule of thumb guide to the achievement of impartiality, which always remains the overriding requirement of the rule.

Conclusions

In the Panel's view, as already indicated, this headline was not an impartial summary of the body of the report. It had a superadded political slant, which rendered it an inaccurate, unfair and biased statement. It was in breach of the first part of Section 5.2.1 and also of Section 5.2.2 (d).

Accordingly, this complaint is upheld.

Has the ABC's response been adequate?

As has been noted, the ABC removed the story early on the day following its publication, replacing it with its own story which did not contain the offending headline. It has provided the following background information and submission:

ABC News has provided the following information as background:

Ordinarily, if we were to change a headline on a story, we would acknowledge the change with an Editor's note and, if we felt it was warranted, there would be an entry in the corrections and clarifications page. That didn't happen in this case because this was a politics story filed by AAP and our standard operating procedure is not to use AAP for political stories. Therefore rather than amending the story, we pulled it and replaced it with an ABC version. This rule is in place because politics is one area that the ABC covers extremely well. We use AAP to fill the gaps in our radio news coverage – most commonly in sport and entertainment. We have a standing rule that we only ever use AAP on politics as a last resort. Our preference is to use copy from our own political correspondents or write our own version of the story using our own staff here in Brisbane.

Once a more senior member reviewed the story, immediate action was taken to remove the item from ABC News Online and replace it with an ABC-authorized item. No correction was published by the ABC, at the time or subsequently. The ABC is satisfied that the action taken was appropriate and an entirely adequate response to this incident.

It is plain that the first article, with its heading, was displayed on ABC News Online for sufficient time for it to be viewed by the Complainant and, most likely, a number of other viewers. Also, apparently, it can still be accessed via the Google cache function, as explained by the Complainant. This fact has not been disputed by the ABC and the Panel has proceeded on the basis that this access remains open. The Panel is satisfied that the editorial manager had authority to remove the report (Section 4.3.3 of the Policies) and that it was eminently appropriate to do so. However, was its mere removal and replacement sufficient corrective action in the circumstances?

The Panel has concluded that it was not. Some viewers would have read the original and not have been aware of its removal and the substitution of the second report. It would have been appropriate, in the interests of those viewers, for a suitable note, of the type suggested by the ABC in the above passage, to have been entered. Also, viewers who had seen both the original and the substituted report were entitled to some clarification of the reasons for the change. Furthermore, the continued possibility of access to the report with the original headline makes clarification even more important.

Of course, the fact that the original error was made by an inexperienced and, apparently, unsupervised employee, who was later counselled, is nothing to the point.

In the Panel's view further remedial action is warranted.

Recommendation

An Editorial Note should be added to the report on the site in the following terms or in terms to similar effect:

"This report was substituted for an earlier report which had had a heading that was subject to a complaint and which the Independent Complaints Review Panel found to have been in breach of requirements of the ABC Editorial Policies for impartiality."

Michael L Foster QC
Convenor
Independent Complaints Review Panel

27 May 2010