

26 February 2014

Investigation Unit
Australian Communications Media Authority
Level 5, The Bay Centre
65 Pirrama Road
PYRMONT NSW 2009

Dear Sir/Madam

Complaint against ABC

1. We are instructed to make a complaint on behalf of *The Australian* about the Australian Broadcasting Corporation (**ABC**) on the grounds that it has acted contrary to its Code of Practice and failed to provide an adequate response to its complaint concerning the program broadcast on 17 February 2014. The ABC's response comprises two letters dated 21 and 24 February, 2014, and the Media Watch program broadcast on 24 February 2014.
2. We attach the following documents:
 - (a) Transcript of Media Watch program broadcast on 17 February, 2014;
 - (b) Copy of our letter to ABC dated 21 February, 2014;
 - (c) Letter from Tim Latham, Executive Producer, Media Watch dated 21, February 2014;
 - (d) Letter from Grant McAvaney, Senior Lawyer, ABC Legal and Business Affairs dated 24 February 2014 (the **ABC response**);
 - (e) Transcript of Media Watch program broadcast on 24 February 2014; and
 - (f) Link to Chris Mitchell's interview with Sharri Markson published by The Australian online on 24 February, 2014, at <http://www.theaustralian.com.au/media/print/media-watch-sent-to-acma-havent-they-had-a-barry/story-fn9ymmvo-1226835321891>.

Complaint

3. The ABC response is inadequate because not only does it disregard the clear and common meaning of the words contained in Sections 2.1, 2.2, 3.1 and 5.3 of its Code of Practice, it republished the factual error in the program broadcast on 24 February, and selected an extract from the Chris Mitchell interview out of context and without the further expressly relevant statements made by him concerning the incorrect statement. The ABC's response is self-serving, ridicules the complaint process and

aggravates the harm caused by its incorrect statement to suit an improper editorial intention of the Media Watch program.

4. The ABC Code of Conduct unambiguously states that the ABC should:
“make reasonable efforts to ensure that material facts are accurate and presented in context, not present factual content in a way that will materially mislead the audience, acknowledge and correct significant material errors and information likely to mislead the audience, and make reasonable efforts to provide an organisation with a fair opportunity to respond to allegations”.
5. If the response to this complaint were to be taken as a precedent of how ABC journalists should act in future, the Code of Practice should be abandoned by the ABC altogether and the co-regulatory structure of the existing regime disbanded.
6. Accordingly how ACMA views this case is critical to the fair treatment of people and organisations by the ABC and Media Watch.

Background

7. The complaint set out in the letter from this firm dated 21 February 2014 observes that Media Watch and its host Mr Paul Barry failed to observe the statutory duty to ensure that the gathering and presentation of news and information is accurate according to recognised standards of objective journalism.
8. The program included the statement “Insiders tell Media Watch that *The Australian* is losing \$40 million to \$50 million a year”.
9. It is clear that viewers would have taken that statement as conveying *The Australian* is losing \$40 million to \$50 million a year.
10. This allegation was not put to any of the Editor-in-Chief, Editor, Finance Manager or CEO of *The Australian*, the Director - Policy, Corporate Affairs and Community Relations, or Head of Corporate Affairs of News Corp Australia prior to broadcast of the program.
11. Mr Barry, when asked by *The Australian* on 18 February 2014, whether he approached *The Australian* said: “I don’t think if we’d have gone to News Corp that we’d have got anything”.
12. Mr Barry advised *The Australian* that the program had approached all other newspapers and media organisations for a response.
13. Media Watch was advised in clear terms that the statement was factually incorrect and *The Australian* sought a correction in the following terms:

“Last week we said The Australian is losing tens of millions a year. That statement was incorrect. Media Watch acknowledges that it did not contact The Australian for comment”.

14. By its response dated 21 February 2014 Media Watch advised *The Australian* that a correction was *conditional* upon the paper responding to questions it should have put to the paper before broadcast.
15. By its response dated 24 February 2014 the ABC asserts:
- that the statement was based on information from sources reasonably expected to have the requisite knowledge;
 - that the statement was not a bald assertion of fact because it was referable to ‘insiders’; and
 - that there was no obligation to seek a response from the paper.

Further, the letter stated that the ABC was not in a position to accept *The Australian’s* statement that the Media Watch statement was incorrect, as a matter of fact.

16. By its response in the program broadcast on 24 February the ABC rebroadcast the incorrect statement and ridiculed its obligations under the Code of Practice and the complaints process with the following statement:

“And finally to our good friends at The Australian who were most distressed with [last week’s program about the challenges facing newspapers](#) .

And in particular with our report that insiders claim the Australian is losing \$40 to \$50 million a year.

They sent us a legal letter saying that is factually incorrect. They were also upset that we hadn’t called to check.”

17. In its response in the program broadcast on 24 February the ABC stated:

“But in an interview on the Australian website today, Chris Mitchell admitted the paper is losing money.” Media Watch then extracted the following from the interview with Chris Mitchell:

“SHARRI MARKSON: Yeah, it’s still a profitable business, for sure.

CHRIS MITCHELL: Well, you know, it’s probably not profitable on The Australian, as people have noticed, we’ve had a hard time since the GFC.”

18. In its response in the program broadcast on 24 February 2014 the ABC omitted the following statements which immediately followed on from the extract above that were directly relevant to and corrected the incorrect statement the subject of complaint.

“CHRIS MITCHELL: Well, you know, it's probably not profitable on The Australian, as people have noticed, we've had a hard time since the GFC, but the idea that we are losing \$50 million is ridiculous and..

SHARRI MARKSON: Those figures are incorrect?

CHRIS MITCHELL: Completely incorrect. We have not even gone close to that. You know we've had, like most newspapers, we have lost classified advertising. The aim of the game in paper is to lift your display advertising and lift your cover prices and the balance that you lose from classifieds you need to make up from digital. Now have we made that up? No we haven't. We have cut costs pretty effectively and we will go close to halving our loss from last year to this year so it will be a fraction of the number Paul Barry quoted.”

The ABC Code of Practice

Section 2 of the Code of Practice requires the ABC to:

- 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.

Section 3 of the Code of Practice requires the ABC to:

- 3.1 Acknowledge and correct or clarify, in an appropriate manner as soon reasonably practicable significant errors that are readily apparent or have been demonstrated; or information that is likely to significantly and materially mislead.

Section 5.3 of the ABC Code of Practice 2011 requires the ABC to:

'Where an allegation is made about a person or organisation, make reasonable efforts in the circumstances to provide a fair opportunity to respond'.

The ABC's response

19. In summary, the ABC's response is inadequate because contrary to the Code of Practice it asserts that:
 - it had no obligation to put the allegations to *The Australian*;
 - does not accept as accurate that the statement that the paper is losing \$40m to \$50m a year is inaccurate;
 - denies that the statement is a statement of fact;
 - made any correction conditional upon the paper providing information which should have been sought from it prior to broadcast; and
 - republishing the incorrect statement in juxtaposition with a selectively edited and out of context extract from the Chris Mitchell interview.

20. The ABC response is inadequate because it fails to interpret the Code of Practice by giving effect to the ordinary English meaning of the words. It seeks to obfuscate the meaning of the Code and fails to respond to the central complaint. It is a response designed to reach a predetermined result so as to facilitate a rebroadcast of the incorrect statement in a context which suggests that *The Australian's* complaint is utterly without merit and that the paper is in fact losing \$40m to \$50m a year. It fails to provide adequate address to *The Australian* by way of an appropriate correction. It ridicules the complaint process. It raises serious concerns as to the manner in which the ABC generally deals with complaints and its interpretation of its Code especially if it responds with similar arguments to other complainants.

21. The ABC and its response asserts: **It had no obligation or journalistic imperative to seek a response from the *The Australian*.**

This assertion is in clear and direct conflict with the ABC's Code of Practice and is self evidently wrong. The program was making a statement of fact concerning the extent of the paper's losses each year without making any, let alone reasonable, efforts to verify that statement. The program did seek a response from other media outlets. No reason is advanced for the selective treatment of *The Australian* in failing to approach the paper for a response. No reason is advanced for this assertion, but for Mr Barry's speculation that any response would not have been forthcoming. That speculation is also wildly inaccurate and false. *The Australian* has always responded to questions from the program and Chris Mitchell was interviewed at length by former host Jonathan Holmes for a program broadcast several years ago.

22. The ABC in its response asserts: **The information was obtained from sources reasonably expected to have the information.**

The standard to be applied here is the statutory duty to ensure that the gathering and presentation of news and information is accurate according to recognised standards of objective journalism. Those standards require that information from sources is verified and put to the subject of the allegation. This argument does not relieve Media Watch, or the ABC, from its obligations under the Code. In short it is no answer and a woefully inadequate response to the clear breach of the Code.

23. The ABC in its response asserts: **The statement was not a bald assertion of fact.**

This argument is disingenuous, dishonest and made with an improper purpose. That improper purpose is to oust any obligation on the program to comply with the Code of Practice. Unless characterised as a 'non fact' the program is then bound by section 5.3 of the Code which places it in an embarrassing and inconvenient position.

The statement clearly conveys a fact to viewers.

24. The ABC in its response asserts: **The statement was not a statement of fact because it was referable to 'insiders'.**

This argument is again obfuscating, disingenuous and dishonest. The attribution of the information to 'insiders' clearly imputes that the statement of fact has been subjected to scrutiny of the kind obligations under the Code of Practice require, and

is accurate. It imputes that the information came from News Corp Australia or *The Australian* itself, when in fact, Mr Barry has publically confirmed neither entity was approached for a response.

25. The ABC in its response asserts: **It does not accept that the statement was incorrect.**

This argument is startling. *The Australian* and *News Corp* has been clear and unequivocal that the statement is factually wrong. Given that those entities are the sole source of accurate information concerning the paper's financial position it is unclear how the ABC can assert the statement is not incorrect. There is no factual basis for the ABC's assertion.

26. The ABC in its response argues: **Any correction is conditional upon *The Australian* providing information which had been sought from it before broadcast.**

This is a tortured interpretation of the Code of Practice and the obligation to correct significant material errors and information likely to significantly and materially mislead. It is no answer to a complaint of factual inaccuracy to require the paper to respond to allegations which should have been put to the paper before broadcast.

The statement contained a significant material error, and has in fact, significantly and materially misled the ABC audience. That audience included, amongst others, the staff of *The Australian*, some of whom were concerned by the broadcast.

27. The ABC in its response argues: **The incorrect statement is in fact accurate.**

The program broadcast on 24 February 2014 clearly imputes that *The Australian's* complaint is without any merit, is worthy of ridicule, and false. The program is not in possession of information to justify that position. This response wholly and improperly ridicules the Code of Practice, the complaints process, and the staff of *The Australian* and is a substantial aggravation of the original complaint. It is a wholly inadequate response to the complaint.

28. The ABC in its response asserts: **Chris Mitchell's statement extracted from the interview justifies the ABC's position.**

This is without doubt the most egregious aspect of the ABC's response. The ABC's audience, watching the program broadcast on 24 February 2014, would understand Mr Mitchell to be confirming the statement that the paper loses \$40m to \$50m a year to be true. In fact, the entire unedited answer he gave Ms Markson was:

*CHRIS MITCHELL: Well, you know, it's probably not profitable on *The Australian*, as people have noticed, we've had a hard time since the GFC, but the idea that we are losing \$50 million is ridiculous and*

SHARRI MARKSON: Those figures are incorrect?

CHRIS MITCHELL: Completely incorrect. We have not even gone close to that. You know we've had, like most newspapers, we have lost classified advertising. The aim of the game in paper is to lift your display advertising and lift your cover prices and

the balance that you lose from classifieds you need to make up from digital. Now have we made that up? No we haven't. We have cut costs pretty effectively and we will go close to halving our loss from last year to this year so it will be a fraction of the number Paul Barry quoted.

This omission, in breach of the Code of Practice, significantly and materially misled the ABC audience. While Mr Mitchell agreed the paper was not profitable he immediately qualified that statement by saying the "the idea that we are losing \$50m is ridiculous" and further that losses were a "fraction of the number that Paul Barry quoted." It is, in all the circumstances of the complaint, an indefensible omission and an indefensible response from the ABC. Given the proximity of the words edited out to the words broadcast by Media Watch there can be no other conclusion drawn than that the ABC deliberately edited out the relevant words because they did not suit the factually incorrect meaning intended to be conveyed.

Conclusion

Accordingly, the ABC's response should not be seen as adequate or a proper response as all it seeks to do is to construct a confection of an argument in order to avoid application of its own Codes of Practice.

The ABC allows program Media Watch to operate outside the Code of Practice, and its response defies logic, good journalistic practice, the law and common sense.

The approach by Media Watch is extremely hypocritical given its editorial purpose as a watchdog of and oracle of media propriety.

Please let me know if you require any further information and the outcome of this complaint.

Yours faithfully
Kelly Hazell Quill Lawyers



Justin Quill
Director
Email: jquill@khq.com.au



WATCH

everyone loves it until they're on it

Episode 03, 17 February 2014

Clicks, cats and crazy headlines

31 reasons why newspapers are fighting for their lives as click-bait lures readers and advertisers online.

Man beheads baby, licks up blood

— *News.com.au, 6th February, 2014*

Naked man shot dead while eating teen's face

— *News.com.au, 6th February, 2014*

This model plane is incredible

— *News.com.au, 6th February, 2014*

Hello, I'm Paul Barry, and welcome to Media Watch as we gaze into our crystal ball and peek into the future of print and online news

Those were three of the top stories earlier this month on what's now Australia's most popular news site, News.com.au.

And here are a couple of others.

George Clooney kills off dad in latest prank

— *News.com.au, 6th February, 2014*

18 signs you're dealing with a narcissist

— *News.com.au*, 6th February, 2014

Busted! The celebs who've lied about their age

— *News.com.au*, 6th February, 2014

They call this stuff click-bait and it's what news sites all over the world are now using in their battle to sell advertising.

They're forced into offering this fare—or so they believe—because they need to make money, and it's now almost impossible to do that from print

Double digit declines for newspapers

— *Australian Newsagency Blog*, 14th February, 2014

Yes, newspaper sales are plummeting again.

Audit Bureau of Circulation figures for the last 3 months of 2013 show another huge fall ... with Fairfax Media's The Age and Sydney Morning Herald down by a shocking 17% from the same period of 2012.

News Corp's Herald Sun and Daily Telegraph fared slightly better, but still fell 12%, after even bigger falls in the previous quarter.

And how bad is that? As one former News Corp editor told Media Watch:

“It's slaughter”

— *Ex-News Corp editor, comment to Media Watch*

Or in the words of another ex-News Corp executive, who was equally shocked:

“It's a bloodbath. I've never seen figures like it.”

— *Ex-News Corp executive, comment to Media Watch*

In absolute terms the Herald and Age are now selling not much more than 130,000 copies each a day.

Meanwhile, the mighty Herald Sun has sunk below 400,000 and the Daily Telegraph below 300,000.

The glory days are well and truly gone.

But believe it or not, the news on advertising revenue is even worse. And that's where it really hurts.

Fairfax Media's 2013 results show that print advertising revenue for its two big Metro mastheads—the Herald and the Age—fell by 25% last financial year, or by almost exactly \$100 million.

Meanwhile, at News Corp ... total revenue for their Australian papers was down by around \$120 million in the last quarter, or 10% from the previous year.

According to media analyst Roger Colman:

It's a pretty poor outlook for The Fairfax Group and News Corp looking at the numbers in Australia.

— Roger Colman, *Media and Internet Research, CCZ Statton Equities, statement to Media Watch, 13th February, 2014*

That is an understatement.

Insiders tell Media Watch that The Australian is losing \$40 million to \$50 million a year.

The Daily Telegraph is also losing money.

And even Brisbane's Courier-Mail—which was once a goldmine has hit hard times.

Six or seven years ago News Corp's Queensland papers—which include the Gold Coast Bulletin, Cairns Post and Townsville Bulletin—were making \$270 million profit before interest and tax.

This year—we're told—they're budgeted to make less than 1/10th of that and are in fact on track for a loss.

According to Colman this is the new reality:

Print product is unprofitable Monday to Friday. Commercially, the newspaper has ceased to exist, other than as a magazine on the weekends.

— Roger Colman, *Media and Internet Research, CCZ Statton Equities, statement to Media Watch, 13th February, 2014*

As profits at Australian newspapers evaporated last year, five News Corp editors got the chop.

And Kim Williams, the new CEO, resigned.

One former News Corp executive tells Media Watch:

Kim Williams wanted to change, but the Old Guard knocked him off...

— *Ex-News Corp executive, statement to Media Watch*

Now it's not clear what News Corp's strategy will be. In the words of another former News Corp executive:

The business is heading towards the cliff. At least Kim was trying to grab the wheel. Now they're heading to the edge with their foot flat to the floor and hoping for a soft landing.

— *Ex-News Corp executive, statement to Media Watch*

Over at Fairfax ... the Herald, the Age and Fin Review are also fighting for their lives, despite drastic cost cutting over the last two years.

Fairfax has shed some 2,000 jobs, announced the closure of its two biggest printing plants, shut down magazines, moved to a tabloid format and got rid of some its best-known writers.

On the plus side, the Age and Herald have put up paywalls on their popular websites—with some success—and CEO Greg Hywood maintains it's all going fine ...

I've been here since 1976 and let me say that our journalism has never been better...

In this company at this time everyone is hungry to succeed.

— *Greg Hywood, CEO, Fairfax Media, 7th November, 2013*

But the share price still tells a sorry tale.

At around 72 cents—which is admittedly higher than it has been—Fairfax Media is worth only 1/7th of what it was worth seven years ago.

And where has the value gone?

To the new online sites that hijacked its advertising.

As former Fairfax adviser Daniel Petre told Colleen Ryan for her book *Fairfax: The Rise and Fall*.

DANIEL PETRE: Eight billion dollars of market cap ... is now tied up in [realestate.com.au], carsales and Seek. That has basically come out of Fairfax. And Fairfax is worth \$1.3 billion. That is the scale of the tragedy ...

— *Fairfax: The Rise and Fall, by Colleen Ryan, 2013*

Ultimately, it's the loss of advertising that poses the main problem for these newspapers, especially if it continues, because that's where so much of their money still comes from.

And this is true at News Corp too, even though it owns realestate.com.au, because its tabloid papers risk losing the display ads they still rely on.

As a former executive admitted:

Everyone knows the classifieds are gone. The big worry is the big retailers' ads. They know what customers want to buy and they can marry it up, and they're not going to need newspapers at all in a few years.

— *Ex-News Corp executive, statement to Media Watch*

Compounding this is the difficulty newspapers have making money online.

More and more, advertisers are spending money with Google and Facebook, because they can target their customers.

And even if ad volume is going up, ad rates are going down.

Last year Fairfax's digital ad revenue rose by only \$5.5 million, while its print ad revenue fell \$100 million, or almost 20 times as much.

To cap it all, big international media groups are now muscling in on our market.

Britain's Guardian launched an Australian website in May last year and is now a regular in the top ten.

The Daily Mail is also now here and whizzing up the charts with stories like this.

Now that's a tandoori tan! Jackie O tweets orange face after losing 'spray tan bingo'

— *Mail Online, 13th February, 2014*

The Mail Online is the most popular English-language news site in the world, with an audience of 58 million people per month, and a very particular approach to news:

LOOming on the horizon... the precarious privvy perching over a 2,600m Siberian cliff and frequented by the brave, stupid or very desperate

— *Mail Online, 27th November, 2013*

The Mail is famous for its kooky stories and crazy headlines, which are designed to be picked up by online search engines.

It's also notorious for the so-called sidebar of shame, packed with celebrity gossip and

wardrobe malfunctions, which publisher Martin Clarke says will certainly be coming our way.

MARTIN CLARKE: We don't call it the sidebar of shame, but yeah obviously the right rail with its great showbiz content, yes that will definitely be there, but with an awful lot more Australian personalities.

— *ABC Radio National, RN Breakfast, 28th November, 2013*

The Mail—which has formed a joint venture with Nine Entertainment—is looking to hire 50 local journalists to bring us truly Australian content.

So what will it look like?

Here's an example of what to expect :

Three Aborigine boys airlifted to hospital after circumcision ritual goes horrifically wrong and they are left sitting in 'pools of blood'

— *Mail Online, 23rd January, 2014*

That story came with a totally unrelated picture that looks like it came from a tourist brochure.

A family of aboriginals strolling in the wild, near Darwin, Australia.

— *Mail Online, 23rd January, 2014*

But once the Mail Online gets its bearings, it is expecting to take Australia by storm. Here's Martin Clarke again:

MARTIN CLARKE: My view in life is there's not much point going into races where you want to come second. So, we have a massive market penetration in the UK and a very dominant position. We're expanding our position in the US all the time and I see no reason we shouldn't become a very big player in Australia.

— *Mumbrella Hangout, 27th November, 2013*

Industry insiders say the Mail is already scaring the bejesus out of its competitors like News.com.au.

And they are running more and more Man bites Dog stories in an attempt to fight back:

NATARSHA BELLING: ... Let's see what is trending online this morning, Alison Stephenson joins us from news.com.au. Good morning Ali what are people looking at today?

ALISON STEPHENSON: Good morning guys I've got a bit of an odd one for you today, a woman who hated being named 'Sheila' and said that her name was one of the ugliest out there has legally changed her first name to 'Sexy'. 41 year old Sheila Crabtree from Ohio told the court how she wanted a name that reflected her personality ...

— *Channel Ten, Wake Up, 13th February, 2014*

Sexy Crabtree. What's not to like about a story like that?

Well ... one of our viewers who is on News.com.au's daily email list has complained to Media Watch about the stuff that now lands in his Inbox, like this batch last Wednesday.

Son, 16, 'killed mum with dumbbell'

— *News.com.au, 12th February, 2014*

'America's sweetheart is a b*****'

— *News.com.au, 12th February, 2014*

Woman's fury over 'mile-high sex snub'

— *News.com.au, 12th February, 2014*

Says James our informant

This email paper is continually full of such rubbish, undoubtedly picked up from the international wires. It smacks of laziness on the part of reporters and perhaps says something of the audience – tech smart but socially dumb!! Avoids the paper grappling with the real issues of our Australian community.

— *Viewer 'James', email to Media Watch, 12th February, 2014*

But media websites like News.com.au have yet another new kid on the block to fight.

The internationally-renowned BuzzFeed launched here in Australia just over 2 weeks ago with a barrage of lists ... that you really don't need to read:

50 Reasons Why Australia Is The Lucky Country

— *BuzzFeed Australia, 16th February, 2014*

12 Things You May Not Know About The Movie 'Wolf Creek'

— *BuzzFeed Australia, 16th February, 2014*

31 Heartwarming Photos Of Animals Returning Home After Bushfire Evacuations

— *BuzzFeed Australia, 16th February, 2014*

Oh all right, let's have a look .

Aaaahhh. Heartwarming isn't it?

BuzzFeed of course is a massive success, with a worldwide audience of 43 million people per month**— almost as many as the Mail Online—which grew by 76% last year.

**These comScore figures do not include mobile traffic

Famous for its cute cat videos and its lists, BuzzFeed creates content that people want to share. Mainly young people and mainly on Facebook.

These include sponsored stories co-written by Buzzfeed, which advertisers love because they can pay by results when their message is shared.

BuzzFeed now wants to be seen as a serious news site, and in America it's hiring political, business and investigative reporters.

But it's taking on just 3 journalists in Australia to cover our news and to look for...little furry animals...

SCOTT LAMB: Americans love cute cats, this is a true thing. Maybe in Australia it's going to be quokkas or some other cute animal ...

— *ABC News 24, 31st January, 2014*

Some of BuzzFeed's stories do have serious intent.

Like this one:

7 Ways The ABC Could Be More On Australia's Side

— *BuzzFeed, 29th January, 2014*

But even then it's more like comment and comedy.

So is any of what BuzzFeed does really news or journalism?

SCOTT LAMB: That's an excellent question. I would say that list of cats can be journalism.

Certainly, we have reporters and writers at BuzzFeed who are very traditional journalists in most sense. They go out into the world and get new information.

The way that they present it, though, is varied. And sometimes a list of cats is a great way to tell a story. It depends on what point it is that you're trying to get across.

— *ABC Radio, PM, 31st January, 2014*

Journalism or not, BuzzFeed will be trying to steal readers from the big Australian news sites, and so will the Mail Online.

This will put those sites under pressure to be more sensational, more celebrity-focused and less interested in real news.

BuzzFeed and the Mail Online will also steal advertising dollars from those established Australian sites and make it even harder for them to make a living.

Indeed, some believe the globalisation of Australian news will drive the locals out of business and leave us with franchises of international media brands.

Says Roger Colman:

ROGER COLMAN: It's hard to see independent, stand-alone businesses like the SMH, Daily Telegraph and The Age surviving the onslaught.

— *Roger Colman, Media and Internet Research, CCZ Statton Equities, statement to Media Watch, 13th February, 2014*

We hope that's too pessimistic.

And with smaller start-ups like The New Daily, launched in November, and the Saturday Paper due out in March, it's certainly not all doom and gloom.

In fact some say these are exciting times in journalism. Especially if you like cat stories.

And you can read more about all this on our website, where you can also read a transcript and download the program.

You can also send tips to that website and contact me or Media Watch on Twitter.

But for now that's all from us, Good Bye.

Our Ref: JHQ:RLS:170451

21 February 2014

Rob Simpson
Australian Broadcasting Corporation
700 Harris Street
ULTIMO NSW 2007

Dear Rob

The Australian – Media Watch

As you know, we act for Nationwide News Pty Ltd, publisher of *The Australian*.

The Australian has asked us to relay to you its serious concerns regarding the Media Watch program broadcast on ABC1 on 17 February 2014 and published online at <http://www.abc.net.au/mediawatch/> and on iview at <http://www.abc.net.au/iview/>.

The program included the statement: "*Insiders tell Media Watch that The Australian is losing \$40million to \$50million a year.*"

We are instructed that the statement is factually incorrect.

Broadcast of the statement risks damaging a number of substantial commercial partnerships with the paper. It has also understandably caused alarm and distress to journalists and production staff employed by *The Australian*.

The program quotes at least three former News Corp executives, and no current executives. In fact, we are instructed that the \$40m to \$50m figure was not put to any of the Editor-in-Chief, Editor, Finance Manager or CEO of *The Australian*.

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.

Both the ABC's Code of Practice and Editorial Policies place the obligation on the ABC to make reasonable efforts to ensure that material facts are accurate and presented in context. *The Australian* considers that the relevant Code and Policies have not been complied with in circumstances where this assertion was not put to any of the Editor-in-Chief, Editor, Finance Manager or CEO of *The Australian*, the Director - Policy, Corporate Affairs and Community Relations, or Head of Corporate Affairs of News Corp Australia.

In addition, the ABC's Editorial Policies require the ABC, when making allegations about a person or organisation, to make reasonable efforts in the circumstances to provide a fair opportunity to respond. As you would recall, Media Watch was the subject of an adverse

finding by ACMA in its report concerning a program broadcast on September 19, 2011 concerning *The Daily Telegraph*, due to a breach of this obligation.

The Australian notes that had the program complied with the ABC's Code of Practice and Editorial Policies and made the bare minimum of enquiries, let alone 'reasonable efforts', it would have been advised that the statement is wrong.

We are further instructed that it is simply wrong for Paul Barry to assert that *The Australian* would not have responded to questions from the program. He said: "I don't think if we'd have gone to News Corp that we'd have got anything". The paper has never failed to respond to questions from Media Watch. The Editor in Chief, Chris Mitchell was interviewed by former presenter Jonathan Holmes at length for the program some years ago.

The Australian should not have to draw the program's attention to the ABC's Code of Conduct and Editorial Policies. The program has demonstrably failed to apply the same 'recognised standards of objective journalism' to which it bound by statute and which it expects of the media each week.

Our client requests that the statement be deleted from the transcript and edited from the program available on iview. Our client also seeks the following correction to be broadcast on Media Watch next week:

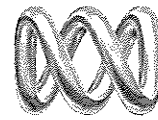
"Last week we said The Australian is losing tens of millions a year. That statement was incorrect. Media Watch acknowledges that it did not contact The Australian for comment".

We look forward to hearing from you.

Yours faithfully
Kelly Hazell Quill Lawyers


Justin Quill
Director
Email: jquill@khq.com.au

21 February 2014



ABC
Australian Broadcasting Corporation
News

Chris Mitchell
The Editor in Chief
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Re The Australian - Media Watch

Dear Chris

We note today's letter from KellyHazellQuill lawyers regarding last week's Media Watch episode in which we quoted sources who informed us "*The Australian* is losing \$40 to \$50 million dollars a year."

The letter says the Media Watch statement is "factually incorrect".

If that is indeed the case we are more than happy to correct the record: however, in order to do so we would seek your answers to the following questions:

1. Did *The Australian* lose money in FY 2012-13
2. If so, how much money did it lose?
3. If it turned a profit in 2012-13 how much money did it make?
4. What is its total profit or loss for *The Australian* over the past seven financial years?

Because of our production deadlines we require a response by 10am Monday 24th February.

Look forward to hearing from you.

Regards

Tim Latham
Executive Producer
ABC Media Watch
Email : latham.fimothy@abc.net.au

Our Ref: 14184
Your Ref: JHQ:RLS:170451



ABC
Australian
Broadcasting
Corporation

24 February 2014

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Dear Mr Quill

***Media Watch*, 17 February 2014 (the Broadcast)**

We refer to your letter dated 21 February 2014.

The allegations made in your letter are denied. Specifically, we are instructed:

1. The statement concerning your client was based on information provided to *Media Watch* by sources reasonably expected to have the requisite knowledge;
2. The statement concerning your client was, within the Broadcast, made referable to 'insiders' rather than a bald assertion of fact; and
3. There was no obligation or journalistic imperative to seek a response from your client in the circumstances of this Broadcast.

Media Watch will, however, confirm your client's response to the statement in tonight's episode. The program makers are not in a position to accept your client's response as a matter of fact as sought in your letter.

In the meantime, please note that this response has been provided by Legal given that your letter was directed to Mr Simpson and sought that action be taken in tonight's episode. We presume that your client wishes to make an editorial complaint. As such, we have referred your correspondence to the ABC's Audience & Consumer Affairs section for their consideration and in accordance with usual procedures.

Yours sincerely

Grant McAvaney
Senior Lawyer
ABC Legal & Business Affairs

WATCH

everyone loves it until they're on it

Episode 04, 24 February 2014

Media Watch responds to The Australian

Media Watch tries to set the record straight on the profitability of The Australian.

And finally to our good friends at The Australian who were most distressed with last week's program about the challenges facing newspapers.

And in particular with our report that insiders claim the Australian is losing \$40 to \$50 million a year.

They sent us a legal letter saying that is factually incorrect. They were also upset that we hadn't called to check.

So what are the facts?

In an attempt to set the record straight, we asked editor Chris Mitchell:

Did The Australia lose money in FY 2012-13

If so, how much money did it lose?

— *Media Watch, Questions to The Australian, 21st February, 2014*

Imagine our surprise when the Australian's editor declined to answer.

Within minutes, Chris Mitchell emailed us to say:

That is not how it works mate. Straight to ACMA I think.

— *Chris Mitchell, Editor-in-Chief, The Australian, response to Media Watch's questions, 21st February, 2014*

ACMA being the Australian Communications and Media Authority to which The Australian apparently plans to complain.

We'll keep you posted on what happens.

But in an interview on the Australian website today, Chris Mitchell admitted the paper is losing money.

SHARRI MARKSON: Yeah, it's still a profitable business, for sure.

CHRIS MITCHELL: Well, you know, it's probably not profitable on The Australian, as people have noticed, we've had a hard time since the GFC.

— *The Australian Online, 24th February, 2014*

And you can read more about this and other stories on our website, where you can also read a transcript and download the program.

You can also catch up with us on iview, and contact me or Media Watch on Twitter.

But until next week that's all from us, Goodbye.