

## **Independent Complaints Review Panel**

### **Review of Complaint concerning the Radio 891 ABC Adelaide Mornings program**

#### **Preliminary Matters**

On 18 October 2006, the Independent Complaints Review Panel (the Panel) provided to the ABC its preliminary report in this complaint, pursuant to Section 12.6.14 of the ABC Editorial Policies. On 28 November 2006, the ABC forwarded to the Panel a lengthy response for its consideration, prior to the preparation of the Panel's final report, to be forwarded to the Managing Director, pursuant to Section 12.6.15 of the Editorial Policies.

This response raised "a number of concerns" about the Preliminary Report. It was suggested that discussions should take place between the Panel, the head of Audience and Consumer Affairs and the relevant presenters and producer before finalization of the report.

The Panel has considered this suggestion but is not prepared to accede to it. It has already received two lengthy reasoned submissions from the ABC which it has fully considered. There is no indication as to the nature of the issues proposed for discussion. Experience suggests that unstructured oral discussion is a poor substitute for reasoned written submissions. Also, the Panel is very much aware of the time which has elapsed since this difficult and complex complaint was received and the pressing need for it now to be resolved.

The ABC refers, as one of its concerns, to the "broader approach" taken by the Panel in the discussion of possible breaches of the Editorial Policies. This approach followed on the Panel's analysis of the Complainant's complaints into a series of topics and its then decision not to adjudicate upon each topic separately, it then being seen as being more convenient and appropriate to consider underlying issues common to all or some of them. The ABC which had, similarly, analysed the complaints into topics which did not correspond to the Panel's analysis, experienced "considerable difficulties" when formulating its response.

This is, of course, unfortunate and the attempt has been made in this final report to address this problem. The Panel must observe, however, that its task in relation to the production of a preliminary report is set out in Section 12.6.13 which provides for the content of the report and nothing else. Obviously, the Panel will seek to express its reasons as clearly as possible, but, in so doing, it cannot accept any obligation to adopt a format which will facilitate any response that the ABC may wish to make.

There must also be a question as to the extent of the ABC's right to respond to the Panel's preliminary report. Section 12.6.14 speaks only of the ABC's opportunity to "furnish any further information which it feels may be relevant" to the Panel's decision. It is doubtful whether this gives the ABC any general right of rebuttal. However, the Panel has adopted the view that, because of the complex nature of this complaint, it should fully consider the whole of the ABC's response. It has done so, with the result that some modifications and additions have been made in the final report, which now follows.

On 22 March 2006, the ICRP received the Complainant's complaint, which included his previous correspondence with the ABC. The complaint involved broadcast radio segments from 891 ABC Adelaide *Mornings* program on 5, 7 and 9 December 2005. The presenters in question were Mr David Bevan and Mr Matt Abraham (the Presenters). The details of the relevant segments are:

(a) 5 December 2005: 8.30am to 9.00am. This segment included opening comments and discussion between the Presenters about Mr Oday Adnan Al Tekriti, interviews with the former head of the Special Investigations Unit, Federal Government, Mr Graham Blewitt, and Shadow Immigration Minister, Mr Tony Bourke, about war crimes processes and Mr Al Tekriti's case, as well as a promotion of Mr Blewitt's forthcoming interview. A Presenter also read comments from the Minister of Immigration, Senator Amanda Vanstone, on protection claims and their processing.

(b) 5 December 2005: 10.00am to 10.30am. This segment included comments by the Presenters about Mr Al Tekriti, interviews with Christopher Pyne, Federal Liberal MP for Sturt, and Christopher Schott, former South Australian Labor Senator, concerning immigration processes, war crimes and the Special Investigations Unit, as well as Mr Al Tekriti's case.

(c) 5 December 2005: 11.00am until noon. This segment included various talk back callers on Mr Al Tekriti's case, including the caller, 'Henry', war crimes and temporary protection visa issues and reference to a SMS message received by the Presenters.

(d) 7 December 2005: 8.30am to 9.00am. This segment included the Presenters raising the content of a recent publication and telephone call (caller was not identified) which discussed the possibility that the parliamentary pension of Dr Pfitzner, Mr Al Tekriti's spouse, could be paid to Mr Al Tekriti in the event of her death.

(e) 7 December 2005: 10.00am to 10.30am. This segment included brief introductory comments by Mr Abraham (Presenter) concerning an interview with Mr Keith Suter, Foreign Affairs commentator, which was to occur later in the program. The interview covered the history of war crime trials, temporary protection visas, and refers briefly to Mr Al Tekriti's case, although not by name. This segment also included a promotion featuring Mr Graham Blewitt, described as the former head of the Special Investigations Unit in Australia, who had worked for the War Crimes Tribunal in The Hague. <sup>1</sup>

(f) 7 December 2005: 11.00am to 11.25am. This segment included the Presenters discussing Mr Al Tekriti's case, as well as other cases, with a talkback caller, Ray.

(g) 9 December 2005: 9.35 to 9.45am. This segment comprised largely of satirical piece featuring the character 'Kevin Corduroy'. This broadcast was part of a weekly series, which takes a satirical, light-hearted look at South Australian public affairs, particularly the activities of government, politicians and the public service. Its content is always taken from events and issue of prominence during the week". <sup>2</sup>

---

<sup>1</sup> P.4 5 December 2005: 8.30am to 9.00am segment transcript

<sup>2</sup> 18 July 2006: ABC's response to ICRP request for information

As a result of the Panel's correspondence with the Complainant, further information and views were provided (6 July, 28 July, 28 August and 10 September 2006). The Panel received transcripts and recordings of all the relevant segments, which it has read and listened to on several occasions. The Panel has accepted the complaint for review on the basis that the Complainant is alleging that the ABC has "violate[d] standards of fairness and objectivity over a five day period".

## Background

### a) The *Mornings* program

The *Mornings* program is broadcast on each weekday morning from 8.30am until noon, in South Australia. The ABC refers to this type of program as 'flow programming' because the program can cover a range of issues and stories, in a continuous format. The program generally commences "with analysis of breaking news stories, often involving interviews, talkback and other forms of participation by listeners"<sup>3</sup> as well as hourly news updates, regular traffic and weather reports. "...the idea is to enable listeners to be well informed about current events and issues of interest in their local community, and to share their own views on a range of issues. As the *Mornings* program progresses towards noon, it typically moves from an emphasis on current events to other topical, but perhaps somewhat 'lighter' subjects. Throughout the program, listener participation is encouraged and facilitated".<sup>4</sup>

The *Mornings* program is not classed as an investigative current affairs program. Other programs, such as *AM*, *The World Today* and *PM*, broadcast on 891 ABC Adelaide, perform this role.

In the ABC's submission, the *Mornings* program is covered by different provisions of the ABC Editorial Policies and the ABC Code of Practice. : "When covering news stories of the day or engaging in news analysis, the program is obliged to comply with the requirements set out in Section 5 of the Editorial Policies .

When the program covers other issues which are not as directly relevant to the news agenda of the day, the program is obliged to comply with the requirements set out in Section 7 of the Editorial Policies. In the ABC's view, the content that is the subject of this complaint is predominantly news and current affairs content, and therefore Section 5 of the Editorial Policies is relevant. However, one segment referred to in the complaint is covered by Section 7 of the Editorial Policies."

The ABC also accepts that Section 6 of the Editorial Policies is relevant as is also Section 4 of the ABC Code of Practice.

It seems that the *Mornings* program has a wide audience in Adelaide and that the presenters are seen as local personalities. The program, obviously, aims to provide some entertainment as well as news stories and information and the Presenters tend to adopt a style of presentation, consistent with this aim.

---

<sup>3</sup> 30 May 2006: ABC's response to ICRP request for information

<sup>4</sup> 30 May 2006: ABC's response to ICRP request for information

b) Mr Al Tekriti

Mr Al Tekriti is a national of Iraq. He has been associated with the regime of Saddam Hussein. According to Mr Al Tekriti's lawyer "he is a member of the Tekriti clan; Saddam Hussein also belongs to the Tekriti clan. Because of his membership of the Tekriti clan, Mr Al Tekriti was obliged to enter service with the Iraqi government. In February 1998, Mr Al Tekriti's father was killed by Saddam Hussein or his agents. He was poisoned during a visit to the Presidential Palace. Mr Al Tekriti's father had voiced his opposition to the Government. Mr Al Tekriti was and remains deeply personally opposed to the regime of Saddam Hussein."

Mr Al Tekriti, after his father's murder, was in fear of his own life and managed to be smuggled from Iraq. After thus fleeing Iraq, Mr Al Tekriti arrived in Australia in December 1999 on a boat from Indonesia, and was placed in detention, as an illegal immigrant. He applied for a temporary protection visa and was declined, in a decision made by an appropriate immigration official, who found that there were "serious reasons for considering" that he had committed "crimes against humanity" (International Refugees Convention Article 1F).

The alleged crimes were persecution of the civilian population of Iraq on political grounds. However, Mr Al Tekriti's lawyer indicated that in 2001 the Administrative Appeals Tribunal (AAT) had found this case against him not to be supported by evidence. Accordingly, his appeal was upheld. The reasons of the AAT for this decision are not available. However, it was reported on ABC *PM* that the AAT found that that "at no time" did Mr Al Tekriti hold a "position within the regime which was involved in crimes against humanity".<sup>5</sup>

Mr Al Tekriti is married to Dr Bernice Pfitzner, a former Liberal MLC in South Australia. He currently holds a temporary protection visa and has been freed from detention.

## Relevant Code and Policy Provisions

Section 4 of the ABC Code of Practice deals with News, Current Affairs and Information Programs. Section 4.2 states:

"Every reasonable effort must be made to ensure that programs are balanced and impartial. The commitment to balance and impartiality requires that editorial staff present a wide range of perspectives and not unduly favour one over the others. But it does not require them to be unquestioning, nor to give all sides of an issue the same amount of time".

Section 4.3 states "Balance will be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of importance. This requirement may not always be reached within a single program or news bulletin but will be achieved as soon as possible".

The Charter of Editorial Practice, set out in Section 5.1 of the Editorial Policies, is relevant to these allegations; in particular, Sections 5.1.4, 5.1.5 and 5.1.6

---

<sup>5</sup> ABC PM 18.18pm 5 December 2005

Section 6.3 of the Editorial Policies deals with news and current affairs, and information programs comprising both news and information relating to current events. Section 6.3.1 states: "It is one of the statutory duties of the ABC Board to ensure that the gathering and presentation by the ABC of news and information is 'accurate and impartial according to the recognised standards of objective journalism'.

The Board requires ABC editorial staff to observe the highest standards and not allow their professional judgment to be influenced by pressures from political, commercial or other sectional interests or by their own personal views".

The ABC contends that Section 7 of the Editorial Policies is also relevant because it applies "when the program covers other issues which are not as directly relevant to the news agenda of the day.... " The section deals with factual content for programs, other than news and current affairs, that contain significant factual content, but do not comprise both news and information relating to current events.

As the Panel understands, the ABC submits that segment (g), the Kevin Corduroy satirical piece, should be considered under this section. This segment and the related question of satire will be considered later.

It must also be borne in mind that the Panel's role is to "review written complaints relating to allegations of serious cases of factual inaccuracy, bias, lack of balance or unfair treatment arising from an ABC broadcast or broadcasts..." (Section 12.6.1) and that, in so doing, it "will have regard to relevant sections of the ABC Editorial Policies" (Section 12.6.12).

Although most complaints can be determined on the basis that relevant editorial policies have or have not been breached, there would, arguably, appear to be room for findings in accordance with Sections 12.6.1 and 12.6.12, even where there has been no relevant breach of the editorial policies. Also there may be a need, in particular circumstances, to consider factors which may convert ordinary cases into "serious" cases, such as, perhaps, the effect of a policy breach upon a person or persons particularly susceptible to harm from the breach.

## **Allegations in the Complaint**

The Complainant's submissions were numerous, long and detailed. The Panel provided the Complainant with a draft summary of the issues which it could identify from reviewing all his correspondence. The Panel notes that, while the Complainant strenuously objects to such an approach because it "misrepresents him, the complaint and its purposes"<sup>6</sup>, we believe this approach is a useful analytical tool when dealing with a complaint that includes more than 70 pages of submission. It notes that the ABC, in its preliminary response also adopted this approach, although it produced a different summary.

The Panel has identified the following main topics or issues concerning Mr Al Tekriti arising from the Complainant's objections to the broadcast segments. It is convenient now to set them out, together with relevant portions of the Complainant's letters and the ABC's responses. The wording of the topics is largely taken from the Complainant's letters of complaint. Findings in respect of each are recorded.

---

<sup>6</sup> P.6 7 September 2006: Complainant's letter

**1. The Presenters engaged in “unsubstantiated speculation and incrimination” and were reckless “as to Mr Al Tekriti’s safety and reputation” and “acted repeatedly as intent on jeopardising Mr Al Tekriti and his case”<sup>7</sup>**

This allegation relates to all segments.

The complainant alleges “there was no coverage of any substantiated or evidenced relevance to Mr Al Tekriti. There was simply a series of nasty episodes of speculation, trying to link him to war criminality, torture, etc. The linking had absolutely no evidence to support it and was clearly, from the start, a tagging – a quite despicable practice of “discussing” war crimes in order to mention Mr Al Tekriti repeatedly, as if discussing him as a substantiated suspect. Mr Al Tekriti’s past was not covered. Next to nothing was known of his past, and nothing was done to seek more information before adversely speculating groundlessly...”<sup>8</sup>

In response, the ABC contends that, “it is clear from the wording of the ABC Editorial Policies that the obligation for balance requires programs to seek balance, while recognising that there may be circumstances where such balance is unable to be achieved. In this case the Presenters distinctly recall making many attempts to contact Mr Al Tekriti and Dr Pfitzner. The recollection is that they also made several attempts to contact Mr Al Tekriti’s lawyer, Ms Jane McGrath. Separately, persistent attempts were being made by the ABC’s South Australian newsroom. When the story broke journalists from News and Current Affairs made many attempts to contact Mr Al Tekriti, Dr Pfitzner and Ms McGrath. A TV crew and journalist visited their Adelaide home a number of times over a period of a week trying to contact them.

The ABC’s Sydney office also sent a crew and journalist to their Sydney home to try and contact them. Attempts were also made through intermediaries to get them to speak. An ABC reporter left at least two messages on their answering service in Sydney. He also asked a mutual acquaintance to pass on a request for an interview on two occasions. He was told they had decided to speak to *The Advertiser*.

On 5 December, ABC news ran radio news stories from The Australian Refugees Association defending Mr Al Tekriti. On that same day, ABC radio news ran stories, including comments from his lawyer, Ms McGrath. Ms McGrath was asked a number of times if her clients would speak to the ABC. They declined, however on a subsequent day Mr Al Tekriti did speak to *The Advertiser*.

The Presenters of the *Mornings* program aired excerpts from statements made by Ms McGrath in defence of her client. While the program would certainly have preferred to include comment from Mr Al Tekriti or Dr Pfitzner, there has been no breach of the Editorial Policies in not doing so in this instance. The Program fulfilled the requirement to seek balance.

---

<sup>7</sup> P.3 22 March 2006: Complainant’s letter

<sup>8</sup> P. 5 22 March 2006: Complainant’s letter

The ABC recognises that “Mr Al Tekriti and Dr Pfitzner are within their rights to choose not to speak to the ABC. However, this should not be used as a way of silencing discussion of important matters.”<sup>9</sup>

The Complainant’s complaints, under this heading, cover a wide field. They are not specifically related to particular policy breaches, although the allegation of “tagging” would amount to a complaint of departure from “recognised standards of objective journalism” and lack of impartiality.

In so far as the complainant alleges a deliberate intent to jeopardise Mr Al Tekriti and his immigration prospects, the Panel is satisfied that this is not established. The other allegations which involve recklessness as to his safety and reputation based upon unsubstantiated speculation are also, in the Panel’s view, not made out. Whether imbalance has resulted from lack of appropriate care in the presentation of the program is considered later. In the Panel’s view this allegation has not been established.

## **2. Mr Tekriti was a target of guilt by association by the Presenters on tenuous excuses, for the entertainment value of populist troublemaking, rumour and gossip**

This allegation relates to most of the program segments, the subject of this complaint.

The Complainant alleges that the ABC assumed Mr Al Tekriti was guilty of serious crimes against humanity. As a consequence they did not seek an alternate view nor did they support Mr Al Tekriti’s right to a fair assessment, since facts were not sought to clarify the situation.<sup>10</sup>

In response to what was perceived by the ABC as a similar criticism made in the Complainant’s complaints, namely that it allowed to air, without correction, the most prejudicial and endangering views as if established fact and in the public interest, the ABC commented that the *Mornings* program aims to ‘enable listeners to be well informed about current events and issues of interest in their local community, and to share their own views on a range of issues’.

It further said, “During the week commencing 5 December 2005, the program discussed a news item which had dominated the *Sydney Morning Herald’s* front pages that morning in reports that an Iraqi man who had formerly been a major in Saddam Hussein’s personal security force was living in Adelaide, having successfully appealed against the Immigration Department’s initial decision not to grant him a visa on the grounds that there were serious concerns that he had committed crimes against humanity.

To the local Adelaide community it was also of interest that the man, Oday Adnan Al Tekriti, was married to Dr Bernice Pfitzner, a former Liberal member of the South Australian Parliament.

---

<sup>9</sup> P.3 18 July 2006: ABC’s Response to ICRP request for information

<sup>10</sup> P.6 22 March 2006: Complainant’s letter

With this story as a starting point, the *Mornings* program initiated discussions on a number of paths. These discussions were broader than simply an analysis of Mr Al Tekriti's circumstances. The program touched on a number of subjects of broad public interest including mandatory detention, border security, transparency of the decision-making process, the role and skills of public servants involved in the process, and Australia's international obligations in relation to suspected war crimes.

As an independent public broadcaster, the ABC makes its own decisions about the extent to which a particular story will be covered, and in what ways. In serving the public's right to know, the ABC Editorial Policies oblige editorial staff to be enterprising in perceiving, pursuing and presenting issues which affect society and the individual (5.1.6). ...Where the facts of Mr Al Tekriti's circumstances were publicly known, and were relevant to the discussion at hand, these featured in the *Mornings* program's coverage of the issue." <sup>11</sup>

The Panel accepts that the Presenters had a right to discuss the Al Tekriti case, but in doing so they needed to comply with the requirements for fairness, balance and impartiality. The underlying question is whether the ABC unreasonably, through the overall impact of these program segments, conveyed the suggestion that Mr Al Tekriti had been guilty of serious crimes whilst a member of Saddam Hussein's household in Iraq, without offering any substantiation for this view, other than his association with the regime, and whilst, at the same time, according no real weight to the favourable outcome he had achieved in his appeal to the AAT.

The Panel has decided that the program as a whole did evince imbalance in this regard, but it does not find that this occurred because of the deliberate motivations alleged by the complainant.

Matters relating to the imbalance in the program are considered later.

### **3. Through the use of 'satire' the Presenters ridiculed a man (Mr Al Tekriti) who could not defend himself, for not being able to defend himself.**

This allegation relates to segment (g)

According to the Complainant, this occurred because '891 does not appreciate how satire mocks power, not powerlessness'.<sup>12</sup>

The ABC acknowledges that the Presenters: "were occasionally drawn to the seemingly absurd or inconsequential aspects of this case. That fact that a person being discussed in relation to possible war crimes was permitted to enter Australia, and then faced a minor fine for washing his car, was considered in a satirical context and the ABC is satisfied that the vast majority of its audience would understand and appreciate it as satire.

---

<sup>11</sup> P.2 18 July 2006: ABC's responses to ICRP request for information

<sup>12</sup> P.10 22 March 2006: letter from Complainant

It should be noted that the reference to a 'gun' in the satirical piece was in fact a popular child's water pistol known as a Super Soaker, not a firearm. As a piece of satire, which is not intended to be taken seriously, the Corporation is satisfied that it is in keeping with its Editorial Policies and Code of Practice."<sup>13</sup>

There are no specific provisions in the Editorial Policies or the Code of Practice which deal with "satire" and, therefore, unless the satirical segment did, by itself or in conjunction with other material, lead to imbalance, impartiality or unfairness, the Panel has no jurisdiction to deal with it.

Arguably, the satirical segment could be seen as an extension of previous discussions relating to Mr Al Tekriti's role in the Saddam Hussein regime, and, therefore, as being subject to policies requiring balance and impartiality. However, the Panel is satisfied that the ABC's submission is correct. It would have been perceived as not being intended to be taken seriously.

Of course, it did amount to mockery of Mr Al Tekriti, which some listeners could have thought to be in poor taste. However, questions of good or poor taste do not fall within the Panel's jurisdiction.

The Complaint, in relation to this topic, is not upheld.

#### **4. The broadcast of an SMS message was inappropriate and not in the public interest**

This allegation relates to segment (c)

According to the Complainant, the reading out of this SMS which suggested that Mr Al Tekriti had to stay in Australia: "because back in Iraq he would be, quite rightly, killed by the Australian Army", was done "with such choking delight" and was not within the public interest as "pertinent and appropriate for discussion".<sup>14</sup>

The relevant section of the transcript is as follows:

MA: "You're on 891 mornings. The two Chris's – Chris Schott and Chris Pine with Matthew Abraham and David Bevan. A text message here – of course he was in danger in Iraq. The Australian soldiers were going to kill him".

DB: "Well if he was still in Iraq when the Australian soldiers arrived yes, he probably would have been in danger, but according to the Fairfax press he made his way to Australia back in – what was it – 1999, and he ended up on Ashmore Reef and then eventually found himself in the Woomera Detention Centre".<sup>15</sup>

---

<sup>13</sup> P.2 8 February 2006: ABC's letter to the Complainant

<sup>14</sup> P.11 + 12 22 March 2006: letter from Complainant

<sup>15</sup> P5, 5 December 10.00am until 10.30am transcript

In response, the ABC states that they see “no malice or recklessness in this discussion. It was not disputed that Mr Al Tekriti was a major in the personal security force of the former Iraqi leader, Saddam Hussein. Coalition forces – including Australian troops – invaded Iraq and toppled this regime. Had Mr Al Tekriti been in Iraq at the time of the invasion, it is likely that he would have been in danger...Matthew Abraham’s starting question frames the discussion to follow: “If we have our soldiers in the Middle East as part of an effort to wipe out remnants of the Saddam Hussein regime, why would we provide shelter and freedom to a member of that regime who served as a major?”

According to the ABC’s response, “this was a question that was likely to be on the minds of many listeners to the program, and the presenters were correct to open up this issue for discussion. Matthew Abraham’s question enabled Chris Pyne to emphasise that the proper processes had been followed in examining Mr Al Tekriti’s case, and that it should not be assumed that ‘just because he’s an Iraqi and was alleged to be a bodyguard for Saddam Hussein therefore he’s somehow a bad person’. This was an important element of the discussion and was not inappropriate in any way. As the Editorial Policies state, “the commitment to balance and impartiality does not require editorial staff to be unquestioning (5.1.5.)”.<sup>16</sup>

The Panel considers that the use of this SMS message and the subsequent commentary by the Presenters does not raise any Editorial Policy or Code of Practice issues.

It is clear that the Complainant was offended by the inclusion of this text message in the program and by the tone of voice in which it was introduced. In the Panel’s view, the use of this material by the Presenters raised only questions of taste.

The complaint in respect of this topic is not upheld.

**5. The Presenters did not provide a sufficiently clear distinction between known facts relating to Mr Al Tekriti, their personal views, and general discussions on applications for protection/residency and Australia’s approach to dealing with war crimes.**

This allegation relates to segments (a) (b) (c) and (e).

According to the Complainant, “responsible discussion of Mr Al Tekriti would have been necessarily brief; with a prudent, consistent and clearly expressed distinction between him (and what little was know of him), and any general discussion of “...applications for protection/residency and also Australia’s record in dealing with war crimes”.

In response to the allegation that the ABC had publicly assumed Mr Al Tekriti’s guilt, the ABC relied on the fact that program staff sought comment ‘from those best able to speak on behalf of Mr Al Tekriti – Mr Al Tekriti, himself, his wife and his lawyer’ among other commentators.

---

<sup>16</sup> 18 July 2006: ABC’s response to ICRP request for information

Also the ABC asserted that with Mr Al Tekriti's "story as a starting point, the *Mornings* program initiated discussions on a number of paths. These discussions were broader than simply an analysis of Mr Al Tekriti's circumstances. The program touched on a number of subjects of broad public interest, including mandatory detention, border security, transparency of the decisions-making process, the role and skills of public servants involved in the process, and Australia's obligations in relation to suspected war crimes." <sup>17</sup>

While other views were introduced during the program segments, the Panel is satisfied that the following excerpts from the program transcripts indicate that the Presenters exhibited a consistently negative attitude towards Mr Al Tekriti and his receipt of a temporary protection visa through ordinary immigration processes, including his appeal to the AAT.

DB: "Another remarkable day here in Adelaide. Who would have ever thought that somebody who it's claimed was a member of Saddam Hussein's personal bodyguard would be living here in Adelaide? But that is the claim that's being made in the Fairfax press today."

MA: "Quite a remarkable story. And it would appear we weren't able to bounce him for crimes against humanity but in good old Adelaide he has been fined for using a hose with copious suds to hose down his late model BMW" <sup>18</sup>

MA: "Chris Pyne, where is Saddam Hussein's former personal bodyguard Oday Adnan Al Tekriti? Can you give us an assurance here in Adelaide ...I mean he's in Adelaide? I mean where's he living? Do you have any idea where he ...is he in your electorate or...?" <sup>19</sup>

MA: "Do you have any concerns that someone like this, and he's obviously gone through the proper processes, but that this person who admitted to being a major in Saddam Hussein's Guard, is living in Adelaide? Is free to move around? Is on a visa?" <sup>20</sup>

DB: "Christopher Pyne, doesn't this situation show that we need to set up another organisation? Perhaps it would be something like the old Special Investigations Unit, which investigated war crimes against people alleged to have committed crimes in the Second World War" <sup>21</sup>

DB: "We've spoken to Graham Blewitt this morning who used to head up that unit and he says that we don't have the ability to investigate and prosecute these sorts of crimes which are captured by these sorts of cases. We just don't have the legislation and we don't have the expertise. In fact many of the people involved in that old unit left Australia quite disillusioned. I know this from first-hand. Graham Blewitt didn't say this this morning, but I know many people from that unit left Australia quite disillusioned and went to work in the international war crimes unit in The Hague because they thought at least there they could do something.

---

<sup>17</sup> P1 + 2 ABC's response 18 July 2006

<sup>18</sup> P.1 5 December 2005: 8.30am to 9.00am transcript

<sup>19</sup> P.1 5 December 2005: 10.00am to 10.30am transcript

<sup>20</sup> P.1 5 December 2005: 10.00am to 10.30am transcript

<sup>21</sup> P.4 5 December 2005: 10.00am to 10.30am transcript

Now what I'm saying to you is that, leaving it as an Immigration matter just doesn't work because we now have the situation where this fellow can say look, if I go back to Iraq, heavens above, I could be persecuted by the people who were against the regime I used to be a part of."

MA: "The people I was persecuting. So therefore you have to protect me.

DB: "Well what sort of crazy situation is this?"

MA: "He said he'll be torn limb from limb".<sup>22</sup>

MA: "They haven't nailed him for one thing but by golly we're not going to let this guy waste any of our water. He's got a late model BMW apparently"<sup>23</sup>

MA: "Graham Blewitt, as a former special investigator of war crimes you would know the forensic nature of having to investigate war crimes. It's very difficult. And is it something that is beyond the wit of the Immigration Department? I mean you look at something like the Administrative Appeals Tribunal. They're not charged to look at those sorts of things are they?"

GB: "No. no. Immigration officials are certainly not experienced to do that sort of investigation. These are criminal investigators. You need experienced police officers to do the investigations, with experienced criminal law lawyers who can evaluate the evidence that's collected to determine whether or not a case exists and whether one can established in a court of law to the required standard. And you need expertise to do this, and certainly individuals in the Immigration Department, if that's their only background, would not be so equipped."

MA: "Graham, when you read something like this, does it leave you astounded?"<sup>24</sup>

In the Panel's view, the clear message that an audience would derive from these passages was that, in the Presenters' opinion, Mr Al Tekriti should not have been given a temporary protection visa, since he had been and remained a person of questionable character; also, that the Presenters considered that the statutory body charged with dealing with such applications was not competent to deal with them.

No additional information was provided by them or anyone else on the program that suggested that a decision-making error had been made by the AAT in following its ordinary and proper appeal processes relating to Mr Al Tekriti's case. In fact, no information was given to counter the apparent thesis that the AAT was an inappropriate body to deal with these matters and that, accordingly, its decision in favour of Mr Al Tekriti should be given no real weight.

Whilst the editorial policies do not require presenters to be unquestioning or require all sides of an issue to be given the same amount of time, they require that reasonable efforts be made to ensure that what is broadcast is not unduly skewed.

---

<sup>22</sup> P.4+5 5 December 2005: 10.00am to 10.30am transcript

<sup>23</sup> P.3 5 December 2005: 11.00am to noon transcript

<sup>24</sup> P.5 5 December 2005: 8.30am to 9.0am transcript

The Panel has formed the view that because of the level of negative commentary engaged in by the Presenters proper balance in the programs could not be achieved.

On 5 December 2005, the Presenters were put on notice that Mr Al Tekriti's lawyer had asserted on the ABC's radio news at 11.30am that uninformed commentary could harm Mr Al Tekriti's application for residency or leave him vulnerable to harm in Australia or back in Iraq.<sup>25</sup>

The Panel accepts that there is no requirement that the personal interests of individuals, the subject of news and broadcast coverage, be a major consideration for the ABC. However, it is reasonable to expect that the Presenters might have given consideration to these matters before the further broadcast on 7 December. On that day, the Presenters proceeded to develop two themes around the Al Tekriti case and his personal affairs.

(a) the possibility of Saddam Hussein's ex bodyguard receiving a parliamentary pension in the event of Dr Pfitzner's death;<sup>26</sup> and

(b) questioning of the assessment of his character and facts by a statutory review body, the Administrative Appeals Tribunal, charged with this responsibility.

MA: "And the system does seem to...look, he has made statement initially in his interview and then has recanted those statements. So I don't know where the truth rests. But thank you Ray"<sup>27</sup>

In the submission on behalf of the Presenters, the ABC stated that "much of the content of news and current affairs programs is the presentation of various viewpoints, allowing audience members to make up their own minds. Such viewpoints are not presented as 'fact', but rather as a contribution to public understanding and debate.

This is entirely consistent with the ABC's Editorial Policy requirements for balance and impartiality. Where the facts of Mr AL Tekriti's circumstances were publicly known, and were relevant to the discussion at hand, these featured in the *Mornings* program's coverage of the issue."<sup>28</sup>

The ABC also contended, "... that Mr Al Tekriti's case served as a prompt for the program to consider the broader issue of Australia's systems for dealing with people who are alleged to have committed war crimes or other atrocities".<sup>29</sup>

It asserted that the program touched on a number of subjects of broad public interest including mandatory detention, border security, transparency of the decision making process, the role and skills of public servants involved in the process, and Australia's international obligations in relation to suspected war crimes.

---

<sup>25</sup> P.11 5 December 2005: 11.00am to noon transcript

<sup>26</sup> 7 December 2005: 8.30am to 9.00am transcript

<sup>27</sup> P.2 7 December 2005: 11.00am to 11.25am transcript

<sup>28</sup> P.2 18 July 2006: ABC's response to the ICRP request for information

<sup>29</sup> P.3 18 July 2006: ABC's response to the ICRP request for information

In the Panel's view the ABC has the responsibility to raise such issues and present various points of view, but, in this instance, the Presenters did not remain even-handed and their comments, over the period of the broadcasts, robbed the Program of a proper degree of balance and impartiality.

Some effort was made to balance out the discussion through the use of comments relayed to the Presenters through the Minister of Immigration's office, and the lawyer, Ms McGrath. However in the Panel's view, the Presenters should have done more to ensure that the audience understood, and kept in mind, that Mr Al Tekriti asserted that he was a genuine refugee who had fled from Saddam Hussein's regime after his father had been murdered by an official of the regime, that he was concerned for his own life; also, that despite an initial adverse finding by the Immigration Department official, he had succeeded in an appeal, on the merits of the case, to the AAT.

Instead, in the Panel's view, the audience would have gained a clear impression that the Presenters were advocating personal views that Mr Al Tekriti should not have been given a protection visa, since he was guilty, by association, with Saddam Hussein, of serious crimes.

Accordingly, the Panel believes that in these program segments the Presenters could have done significantly more to seek balance and impartiality by ensuring that listeners were regularly reminded (throughout the morning session and again on 7 December) of the position of the Al Tekriti case in the broader discussion that was taking place. This complaint, accordingly, is upheld

**6. The Presenters unfairly relied on mass media newspaper reports as the basis for their program comment and did not provide sufficient factual information as to Mr Tekriti's background while in Iraq, nor as to his obtaining of his temporary protection visa.<sup>30</sup>**

This allegation relates to segments (a) and (b)

According to the Complainant, the Presenters' "idea of research and investigation is to skim mass media newspapers..." The articles in question were published in the *Sydney Morning Herald* and according to the Complainant "contained some facts (given to authorities by the man targeted) and much pseudo-incriminating speculation unsupported by evidence, (that he was hiding like a war criminal). And it tailed off, after front page white heat, into the obligatory, hypocritical, token 'balance, hidden late in the article, after the damage has been done'.<sup>31</sup>

In reply to the Panel, the ABC responded that it is "entirely consistent with the brief of the program that it draws on items from respectable news sources, such as *Sydney Morning Herald*. During the week commencing 5 December, the Program took the *SMH* material as a base and then pursued further discussion and analysis of the issues raised by interviewing a number of relevant commentators. The program also featured listeners' views on relevant issues".<sup>32</sup>

---

<sup>30</sup> P.6 14 December 2005: letter from Complainant

<sup>31</sup> P.6 14 December 2005: letter from Complainant

<sup>32</sup> 18 July 2006: ABC's response to ICRP request for information

The ABC contends that there was “no breach of Editorial Policy in the decision to focus on this story and there is no particular standard for research and investigation imposed through Editorial Policies.”

The Panel notes that

(a) Significant efforts were made to contact both Mr Al Tekriti and that statements were relayed from both Mr Al Tekriti's lawyer and the Minister of Immigration to supplement other media coverage which the ABC relied upon.

(b) There is no editorial policy provision which requires the ABC to support the use of other media outlets publications with additional research or investigations.

(c) The Presenters drew on other information which appears to also have come from the SMH which referred to both Ms McGrath and Ms Sansoms' comments on Mr Al Tekriti's background and visa application.

In response to the preliminary report the ABC stated that 'given the circumstances where Mr Al Tekriti and those who could speak on his behalf would not speak to the program, it is difficult to understand what other factual material the program could have sourced and presented to explain Mr Al Tekriti's circumstances'<sup>33</sup>.

There can be no basic objection to a program such as this, which is not, in itself, an investigative current affairs program, drawing upon news sources such as the Sydney Morning Herald to provide a basis and starting point for a discussion program. There were a number of articles in that newspaper on the morning of 5 December 2005, which referred to Mr Al Tekriti, his role in Iraq, and his history in Australia, since his arrival as a refugee. A perusal of these and subsequent articles shows that they raised many of the same matters that came to be aired in the ABC programs in question.

It is not the use of such material which can raise concerns as to possible policy breaches, but rather the way in which it is used, in the course of programs that draw upon it. This includes the manner of its presentation, the words used, tone of voice etc. In this regard, it must be emphasized that the Panel, in reviewing a complaint about a radio program, necessarily listens to the tape of the program on more than one occasion in order to gauge its likely impact on an audience. It is not uncommon for the spoken word, because of tone, emphasis, differing speeds of delivery and the like, to convey a significantly different impression from the same material when appearing in a written transcript.

Also, the following commentary demonstrates the way in which the presentation could unfairly have given listeners the impression that Mr Al Tekriti, in effect, beat the system because of flaws in it.

DB: “Graham Blewitt, this particular man, Oday Adnan Al Tekriti, he seems to have gone through the immigration process. At one point he was accused of being part of the Saddam Hussein regime. He worked apparently, according to the Fairfax press, for the dictator's notorious son, Qusay. But at the end of all of this is it your opinion that Australia has adequate legislation to deal with these sorts of cases?”<sup>34</sup>

---

<sup>33</sup> P.5 28 November 2006 letter to Panel from ABC.

<sup>34</sup> 5 December 2005: 8.30am to 9.00am transcript

The Panel's criticism does not mean that these matters of public interest should not have been covered but that, in presenting the issue, more care and news judgement should have been taken in tackling what was bound to raise sensitive questions in relation to the position of Mr Al Tekriti. Fairness required that a clear distinction should have been made and maintained, through the broadcasts, between the general topics of discussion and the known facts relating to Mr Al Tekriti's position.

In the Panel's view, the broadcasts conveyed the strong impression that Mr Al Tekriti was, in fact, guilty of significant crimes in Iraq and had received undeservedly favourable treatment in Australia. The underlying assertion that he had done rather too well in Australia was assisted, for instance, by somewhat snide references, on occasions, to his vehicle being a "new model BMW".

Also, although comments from Dr Pfitzner, Minister for Immigration, Ms McGrath and Ms Sansom were all referred to in the 8.30am - 9.00am segment on 5 December 2006, the other morning segments on the same day, 10.00am – 10.30am and 11.00am until noon, did not make any further reference to the information they had provided about Mr Tekriti's case. Nor did the Presenters avail themselves of the opportunity to balance out some commentary made by guests and talk back callers when it was available to them. Even when caller Henry put his view that it would be appropriate to send Mr Al Tekriti to Guantanamo Bay, it is clear that the Presenters chose not to make an appropriate comment, as discussed later. Also, they provided negative rather than informative comments about the background to Mr Tekriti's case, in the following passage:

DB "Mmm. Well, we'd like to talk about this with Amanda Vanstone, the Immigration Minister. We put in a request earlier this morning. She sent us a statement, which we've read. I don't think we'll go through the process of reading it out again. But we'd be very keen to talk to her about...about these issues with her Henry and tease it out.

MA "But the lawyer acting for this gentleman, Oday, said that the allegations that were against him were found to be baseless by the Administrative Appeals Tribunal and Dr Pfitzner said that he was nervous and wanted to keep a low profile. She said he's been cleared of all that. He went to the Tribunal, which ruled about 3 years ago they see no evidence that he is of any criminality that should prevent him from staying. His...I think from his admission though was a major in the Presidential Guard – promoted from lieutenant to major. I don't know what you'd do as a major in a Presidential Guard, but it's not the Boy Scouts is it?" <sup>35</sup>

The concluding remarks in this passage appeared as clearly intended to cast doubt on the AAT's finding and had the appearance of the expression of a personal view by Mr Abraham. In the absence of any reasoned discussion of the AAT decision, this produced an imbalance in the presentation of the program which could have been readily avoided by the adoption of a clearly impartial attitude towards Mr Al Tekriti.

The Panel considers that the complaint encapsulated in this topic should be upheld.

---

<sup>35</sup> 5 December 2005: 11.00am until noon transcript

## 7. The Presenters did not handle callers' comments in a balanced way. 36

This allegation relates to segments (c) and (f).

The Complainant cites the differing way in which the Presenters handled two callers: Henry and Ray:

"For the duo's notion of balance compare how they treat Henry: caller, 11.23am, 5 December 2005. Henry wants the man put in Guantanamo Bay. Henry's a bit uncomfortably gauche, but there's no argument with him, no challenge. They don't take the Henrys on."

Ray, a caller at 11.00am, 7 December 2005, had sought "to jump to the defence of this guy that everyone is hounding from Iraq." He provided the following argument which produced the following responses from the Presenters.

Ray "...the nature of conflicts is that after every conflict there are refugees and after the Second World War, of course, the atom bomb was developed quickly by Russia and the United States as a result of people that they captured that had been working for the Nazis. After the Vietnam War there were...a small percentage of the population couldn't live under the Communist regime because they'd been involved in activities that the Communists immediately stamped out such as prostitution and stand over tactics and what-have-you. An of course we see the results of that now in suburbs around the world, particularly in Cabramatta where the traditional stand over tactics and prostitution is thriving, but it's not in Vietnam.

The fact is that with this fellow, he may well have been a bodyguard for Saddam Hussein but clearly it was just a job because one of his family was actually murdered by Hussein's henchmen. So he decided that he'd better bolt the place before he was next. Now until he done something wrong I just can't see the story in this. Leave the man alone and let him get on with his job and his new life in Australia. That's what our immigration program was all about – providing a new life for people, and this guy hasn't done anything wrong in either Iraq or indeed so far Australia so let's leave him alone."

DB: "Well in your view he hasn't, but for the purposes of the transcript this is very important. This is David Bevan speaking. The Bakhtiyaris from what I can gather, they didn't do anything wrong either did they? The kids that were taken out of their home at very short notice. What did they do?"

Ray: [indistinct]

DB: "I'm sorry Ray, I can't hear you."

Ray: "I agree with you wholeheartedly on that, but that's a different story altogether. But once again I agree with you there. That's a case of government policy that's inconsistent. But that family had nothing to do with this guy so let's..."

---

<sup>36</sup> P.11 14 December 2005: letter from Complainant

DB: “No, No, and I take your point Ray. But I think that's the point that some people are trying to make with Mr Oday, and that is that the system does seem to throw up all sorts of inconsistencies. But Ray, thank you for your point because you're putting it [in] some sort of historical perspective for us.”

MA “And the system does seem to...look, he has made statements initially in his interview and then has recanted those statements. So I don't know where the truth rests. But Ray, thank you.”<sup>37</sup>

The ABC submits that, “both callers were dealt with appropriately. In dealing with both calls, the presenters sought to draw out the discussion back to some of the broader issues the program had been discussing. In Henry's case, this was whether the Immigration Department was best equipped to deal with allegations that a person had been associated with crimes against humanity. In Ray's case, this was whether government policy was resulting in inconsistent outcomes”.<sup>38</sup>

In relation to the comments made to Henry, the ABC contends that the Presenter adopted 'a form of vernacular language which was appropriate to Henry's own communication style'.<sup>39</sup>

The ABC's response to the Complainant's assertion that there had been unfairness and imbalance in the treatment of the callers, Henry and Ray, in the Panel's view, failed to answer the thrust of the complaint. Ray was not talking about government policy resulting in inconsistent outcomes. He was complaining about the Program and other callers not giving Mr Al Tekriti a 'fair go'. This approach did not appear to be welcomed by the Presenters, who seemed to fob Ray off without properly dealing with his comment.

The reference to “the transcript”, of which the Complainant was critical, has been satisfactorily explained in the ABC's response.

The ABC also submits that the comments made by Matthew Abraham at the conclusion of the call also provided sufficient balance.<sup>40</sup>

MA: "But the lawyer acting for this gentleman, Oday, said that the allegations that were against him were found to be baseless by the Administrative Appeals Tribunal and Dr Pfitzner said that he was nervous and wanted to keep a low profile. She said he's been cleared of all that. He went to the Tribunal, which ruled about 3 years ago they see no evidence that he is of any criminality that should prevent him from staying. His...I think from his admission though was a major in the Presidential Guard – promoted from lieutenant to major. I don't know what you'd do as a major in a Presidential Guard, but it's not the Boy Scouts is it?"<sup>41</sup>

The Panel has already referred to this passage. Its analysis of these concluding comments is that while the Presenter did refer the Tribunal's finding, it was not done in a neutral or fair way. It cast doubt upon the AAT's finding in circumstances where no analysis of the Tribunal's decision or reasoning had been offered in the program.

---

<sup>37</sup> P.1,2 7 December 2005: 11.00am to 11.25am transcript

<sup>38</sup> 18 July 2006: P.8 ABC's response to ICRP request for information

<sup>39</sup> 28 November 2006 ABC's response to preliminary report

<sup>40</sup> P.5 28 November 2006 ABC response to preliminary report

<sup>41</sup> 5 December 2005: 11.00am until noon transcript

The Panel has concluded that the Presenters could have done more to ensure that both callers were treated fairly and handled in a balanced way. Balance could readily have been "sought" by maintaining a neutral stance in the program's presentation.

The Panel finds that the allegations in this topic have been established.

## **8. The Presenters inappropriately raised irrelevant issues such as Mr Al Tekriti's fine for unlawful water use and his wife's parliamentary pension.** <sup>42</sup>

These allegations relate to segments (c) (d) and (g).

The Complainant alleges that the raising of these issues was part of 'their campaign of denunciation of Mr Al Tekriti'. <sup>43</sup> The Panel is not persuaded that there was, in fact, any such deliberate campaign.

In relation to the fines for unlawful water use, the ABC contends that "the piece was broadcast on the Friday following the original broadcast on Mr AL Tekriti. Because the central character is a public servant, the segment in question was within the normal field of interest, i.e. the perceived absurdity of some of the activities of governments and public servants. In this case, the contrast between an association with a murderous regime and being caught by a public servant in suburban Adelaide for breaking water restrictions could not have been greater and provided obvious material for this segment. There was no intention to insult or denigrate Mr Al Tekriti, and there was no breach of the editorial policies." <sup>44</sup>

In relation to the raising of the parliamentary pension issue the ABC stated that they also believe "the issue of Mr Al Tekriti's potential entitlement to his wife's parliamentary pension was a legitimate matter for discussion and well within the public interest, given Mr Al Tekriti's questionable past and his marriage to a former Australian politician". <sup>45</sup>

Two examples of the discussion of these issues raised are:

DB: "Its funny how things work out isn't it?"

MA: "Yes, so taxpayers of South Australia would be paying an indexed parliamentary pension – could be, could be – to Saddam Hussein's ex bodyguard. So there you go." <sup>46</sup>

MA: "You may have missed it earlier this morning but this man (Oday Al Tekriti) is here. I think by his own admission he was a major in Saddam Hussein's personal guard. His father was one of the top 10 people in the Baathist party so he's out here.

DB: "He was given a suburban shock according to the Fairfax press. He was fined for using a hose with copious suds to wash his car" <sup>47</sup>

---

<sup>42</sup> 14 December 2005: Letter from Complainant

<sup>43</sup> P.13 4 December 2005: letter from Complainant

<sup>44</sup> P.5 18 July 2006: ABC's response to ICRP request for information

<sup>45</sup> P.2 8 February 2006: letter from ABC to the Complainant

<sup>46</sup> P.1 7 December 8.30am to 9.00am transcript

<sup>47</sup> P3 of 5 December 11.00 until noon transcript

In the Panel's view these comments fall into the area of taste and, consequently, are not appropriate for consideration by the Panel. Accordingly, no policy breaches have been demonstrated.

### **9. The Presenters inappropriately used inappropriate and inflammatory terms in the interview with Mr Keith Suter**<sup>48</sup>

This allegations relates to segment (e)

The Complainant alleges that through the use of tagging, that is the use of emotional extreme terms such as 'persecutor', 'war criminal' and 'torturer', Mr Al Tekriti was portrayed in a very negative manner: "...without evidence, in place of fairness and proper process, there's always good, old, reliable tagging.

The absence of evidence is no hindrance to tagging 'these people'. During the Souter interview the duo (the Presenters) have their target 'a persecutor', a war criminal', a 'torturer'.

In response to this allegation the ABC stated, "The interview with Keith Suter addressed the general question of whether Australia had become a haven for war criminals. The presenters' language was appropriate to the discussion".<sup>49</sup>

Mr Abraham introduced the segment in the following way: "And we'll be picking up with Keith Suter, our foreign affairs analyst, whether our current immigration policies or refugee policies mean that if you are fleeing a regime – if you're persecuted, you're more likely to be sent back to a regime were there's been a change as there has been in Iraq than if you are the persecutor. That we may become a haven for people who persecute people. And whether this is exactly what's happened with Saddam Hussein's former ... one of his former bodyguards, Oday Adnan Al Tekriti – you'll see his photo with Bernice Pfitzner, former Liberal MP and his wife now, in the paper today. So we'll pick that up with Keith Suter".<sup>50</sup>

The body of the segment then started as follows: "Keith, we thought we better ask you about war criminals today. Is Australia Hotel California for war criminals?"

Mr Suter then talked about earlier efforts in Australia to conduct prosecutions of persons accused of war crimes in the Second World War, in comparison with procedures adopted elsewhere. Mr Abraham, however, directed the discussions back to what listeners would have perceived to be a reference to Mr Al Tekriti, in the following way: "Keith, without ancient history though, coming up to the here and now, it does appear – and *The Sydney Morning Herald* has reported that if you were persecuted by a regime, you're more likely to be sent back than if you were a persecutor. And that some people are now living here and have got temporary visas or permanent visas did so by arguing that, "Look I was a torturer or whatever, and if you send me back I'll almost certainly be killed or persecuted'".<sup>51</sup>

---

<sup>48</sup> P.16 14 December 2005: letter from Complainant

<sup>49</sup> 18 July 2006: ABC's response to ICRP request for information

<sup>50</sup> 7 December 2005: 10.00am to 10.30am transcript

<sup>51</sup> P.5 7 December 2005: 10.30am to 11.00am transcript

In the Panel's view, these passages demonstrate a lack of appropriate impartiality towards Mr Al Tekriti on the part of Mr Abraham. At the very least, there should have been a clear reference to Mr Al Tekriti's denial of having been a "persecutor" and to the favorable outcome of his case in the AAT.

In the Panel's view, although the general topic was appropriate for discussion, the overall effect of the segment was, again, unfairly, to present Mr Al Tekriti in an unfavorable light.

Nor, in the Panel's view, is this an example of a presenters' right "to be unquestioning". (Section 5.1.5). Although, as the ABC has pointed out in its response, a media interviewer is not bound by any legal rule against leading questions as such, their overuse in the interests of promoting a particular point of view apparently espoused by the interviewer can run the risk of "infringing the commitment to balance and impartiality". (Section 5.1.5). In the Panel's view, this has occurred here.

**10. A promotion featuring the voice of G Blewitt was used repeatedly and was inappropriately used during the programs in question and as a consequence linked Mr Al Tekriti with men "accused of the worst [kind] of atrocities" This link was not corrected by the Presenters. The promotion advertises victimisation.**

This allegation relates to segment (a) and, as the description of this segment (above) indicates, it included the promotion in question:

According to the Complainant, "the voice of one G Blewitt was used in much repeated promo, a scene-setting, as if he knew this man's case and were making pointed reference to it. This was never corrected. The promo was clearly intended as reference to this man (Mr Al Tekriti)."<sup>52</sup>

In response, the ABC stated that "it is standard practice for the *Mornings* program to include promotions featuring excerpts from past programs and one such promotion included an excerpt from the interview with Graham Blewitt. It appears that the excerpt was the phrase "they've been involved in the worst atrocities that anyone can imagine" from Mr Blewitt's interview on the *Mornings* program on 5 December 2005."

In response to a Panel request for a transcript of the promotion, "Local Radio SA confirmed that they do not have a record, audio or transcribed, of the promotion in question."<sup>53</sup>

The Panel considers it unfortunate that a record of the promotion is not available. It is therefore unable to make a finding in relation to this allegation.

## **ADDITIONAL CONSIDERATIONS**

(a) The Panel had expressed the preliminary view that the Presenters had been in breach of Section 6.3.1 in breach of Section 6.3.1, in that they had allowed their professional judgement to be influenced by "their own personal views".

---

<sup>52</sup> P.3 14 December 2005: letter from Complainant

<sup>53</sup> 16 August 2006 email from ABC

It was intended to convey that, as shown by the content of their frequent negative comments relating to him, they had formed the view that Mr Al Tekriti had a criminal past in Iraq and was undeserving of the award to him of a temporary protection visa; also, that this view had been allowed to influence their judgement.

The ABC's response assumed that the "views" in question were broad general views relating to the receipt of and treatment by Australia of refugees seeking haven in this country. Of course, the Panel does not know what general view in this regard is held by either of the Presenters or the Producer of the program and was not referring to it.

On further consideration, the Panel considers that there is some ambiguity in the expression "own personal views" as used in the section. In these circumstances, it considers that it should not further pursue considerations based upon Section 6.3.1 of the Editorial Policies and not adhere to its preliminary view.

(b) The Complainant raised the way in which Mr Al Tekriti was pursued for interview and asserted that this was bordering on, if not actually, harassment. The Complainant stated in his letter to the Panel, "Why would anyone on a temporary protection visa, subject to such attack, consent to an interview by his assailants?"

While the ABC, apparently, strenuously pursued every possible avenue to obtain an interview with relevant parties, the Panel does not believe that these efforts constituted an unacceptable level of harassment. Rightly or wrongly, they were acting within the accepted area of standard news reporting practice. Mr Al Tekriti was, however, fully entitled to decline to cooperate in what he could readily evaluate as being a hostile situation.

In these circumstances the Panel can give little weight to the ABC's argument, that balance was "sought" in the program through the efforts made to interview Mr Al Tekriti. As it was clear that Mr Al Tekriti, on the day the story broke in national media, could quite reasonably decline to participate in this procedure, his failure to do so could provide no excuse for engaging in speculation as to his possible criminal past in Iraq, nor for the omission to provide balance by adequate reference to known matters favourable to his position. Whilst some reference was made to these matters, this had little effect on the overall impact of the program. It is, after all, the lack of balance and impartiality in the actual presentation of the program segments which is the crux of the complaint.

(c) The ABC, in its response, deals extensively with matters relied upon as giving "balance" to the program. In particular, it places considerable weight upon the following passage which occurred on the morning of 5 December, 2005.

MA "Former head of the Special Investigation Unit and a specialist war crime investigator. Matthew Abraham and David Bevan with you on 891 *Mornings*. Now according to the *Sydney Morning Herald*, I think quite comprehensive reports by Deborah Jobson and Lisa Pryor about Oday Adnan Al Tekriti, the original rejection of his claim for a visa was by Jane Sansom from the Immigration Department, an immigration onshore protection officer who found he should be refused a visa, states, "He had been engaged in a series of acts that amounted to the persecution of the civilian population on political grounds." Now that was overturned on appeal. But Ms Sansom's decision records that he worked at one time as a personal assistant in Saddam's special security forces, a job reserved for family members only. His duties included attending to the President's car, clothes and personal belongings during the President's official duties.

Prior to this appointment he held the appointment of Director of Continuation, responsible for information security, surveillance and the detention and interrogation of individuals of interest attempting to depart the country.

For his part, according to the Herald, documents they've seen – immigration documents, Al Tekriti said he graduated directly from 2 years of military school in Baghdad to the Presidential Guard in 1987 where he was promoted from lieutenant to major over 9 years. "My father was one of the top 10 people in the Baath Party" he said, in a document which he signed.

He claimed that his father, Adnan Abdulrahman Ahmad Al Tekriti, who as first consultant on political issues to Saddam Hussein advised on domestic and foreign politics, fell out with the President. In February 1998 he was murdered. He was summoned to see the President at his palace and given a cup of tea laced with poison. Saddam himself attended the funeral the next day. As you do.

Fearing for his own life, the *Sydney Morning Herald* reports, Al Tekriti said he had paid a smuggler \$2,000 US to get him out of Iraq, and after flying to Indonesia, paid another people smuggler 600 US to bring him to Australia by boat. He arrived at Ashmore Reef in December 1999 on a false Iraqi passport. He says he can't go back to Iraq. "An officer such as myself who is a Presidential Guard would be torn to shreds if I returned home. I am asking the Australian government for asylum."

The Panel had not overlooked this passage, nor an earlier one that morning where Ms McGrath, Mr Tekriti's lawyer, was referred to as having stated that the allegations against him "were found to be baseless by the Administrative Appeals Tribunal" together with a statement from Mr Al Tekriti's wife that the Tribunal had "ruled about three years ago they see no evidence that he is of any criminality that should prevent him from staying". His wife was also quoted as saying that "His character has been cleared by ASIO, the Australian Federal Police and the Department of Foreign Affairs, which had all investigated him...the only bad thing is he was born in the same village as the dictator. The second bad thing is when he spoke in terms to Australia as though he was a supporter of the dictator which he wasn't. All the people from the village had to work in that area".

There can be no doubt that Mr Al Tekriti's story was newsworthy and that, consequently, its news value was "a material consideration" for the Presenters and staff when, relevantly, they were considering questions of balance and impartiality in relation to the proposed broadcasts and the range of perspectives involved in them. They were to seek balance in the contemplated programs "through the presentation as far as possible of principle relevant viewpoints on matters of importance" (Section 5.1.4).

It was clearly a matter of prime importance that Mr Al Tekriti, after an initial refusal of a visa, had had his immigration proceedings decided in his favour by the AAT. In seeking balance, in the Panel's view, it was necessary that the Presenters keep that matter clearly in mind and before the public.

Did this happen? In answering, it is necessary to have regard to the impact of the programs taken as a whole and not to focus simply on individual passages. Individual incidents may be considered as gratuitous, as errors of judgement or poorly constructed commentary not amounting to policy breaches. However, when the broadcasts are considered as a whole, in the Panel's view, a pattern emerges to the effect that the AAT was not the appropriate body to determine Mr Al Tekriti's eligibility to be and remain in Australia and that he had been undeservedly lucky.

When the passage quoted above is examined closely, and it is remembered that it occurred early in the programs, it is, in the Panel's view, properly to be seen as quite dismissive of the AAT's decision. It refers to the facts which were before the primary decision maker, which were adverse to Mr Al Tekriti and which were, apparently, the basis of the decision to refuse his visa. It then states "now that was overturned on appeal".

Although the actual reasons for the AAT decision were not available, it would have been appropriate, in the interests of balance, clearly to point out to the audience that the appeal was on the merits of the case and would have involved a full reconsideration of the material before Ms Sansom. Instead, what followed was introduced by the word “but”, which indicated an attitude of challenge to the AAT decision. There is then a repetition of facts adverse to Mr Al Tekriti which had been before the primary decision-maker. As the program segments developed, as already discussed, doubts were increasingly raised about the role of the AAT and references were made to Mr Al Tekriti being a persecutor. A momentum in the program was allowed to develop by which, in the Panel’s opinion, Mr Al Tekriti was unfairly placed in the category of criminals, in respect of which it was suggested that the AAT should have no jurisdiction.

In light of the ABC’s response, the Panel is prepared to accept that there was no deliberate focused campaign in these programs to portray Mr Al Tekriti as a criminal persecutor. Nevertheless, the imbalance that the Panel considers to have occurred was a result of an apparent adverse attitude to him which was allowed to develop in the course of the program segments.

The Presenters used the Al Tekriti case and linked to it a broader discussion of the administrative process which provides for such visa decisions. The clear implication obtained from guests’ and Presenters’ comments was that the system was essentially fallible and it allowed non deserving immigrants to obtain visas.

In the Panel’s view this discussion was not balanced, since no one spoke in favour of the existing administrative process. The result was that the Al Tekriti case was presented as an example of system failure, when no reliable information was presented to demonstrate that this was, in fact, the case. The Presenters certainly had a right to discuss the case but in doing so they did not exercise sufficient care to ensure fairness and balance were maintained.

The Panel’s findings in relation to Allegation 5, 6, 7 and 9 indicate the Presenters did not take all reasonable steps to ensure that the program segments and the particular broadcast on the days of 5 and 7 December were balanced and impartial. Whilst there was some attempt to balance the various views in the program segments, through the introduction of differing points of view, such as the exchanges between Messrs Pyne and Schott, and also through the fairly strenuous attempts that were made to interview Mr Al Tekriti and his wife, these, in the Panel’s view, could not compensate for the general unfairness and lack of impartiality arising from the content and the manner in which the program was presented. This produced the overall impression that Mr Al Tekriti had been guilty of serious crimes in Iraq and had been undeservedly lucky in Australia.

Furthermore, the Presenters did not make it clear to the audience that the broader issues discussed were not necessarily relevant to Mr Al Tekriti’s case. An ordinary listener would most likely have gained the impression from the Presenters that the AAT had made a mistake and, in any event, was not the appropriate body to deal with Mr Al Tekriti’s case; also, that Mr Al Tekriti did not deserve to be treated as any other person living in Adelaide.

In the Panel’s view, the Presenters did much more than use the Al Tekriti case, as the ABC submits, as a starting point or prompt, since, as already indicated, there were several occasions where Mr Al Tekriti’s case was directly or indirectly linked with other and separate immigration and war crimes issues, which suggested that he could have been implicated in criminal activity in Iraq.

Finally, the Panel does not disagree with the ABC's submission that the Presenters were entitled to debate the question of the AAT's efficacy in relation to adjudicating upon war criminals or, indeed, to criticise in an informed way, individual decisions of that body. This was not the issue. The reasoning of the AAT in Mr Al Tekriti's appeal was not disclosed. If it was not available, this should have been clearly stated. There were no reasons advanced for criticising the decision. For practical purposes, it simply brushed aside in favour of dwelling upon the material which had been before the primary decision-maker, which was adverse to Mr Al Tekriti.

In the Panel's opinion, despite the efforts that were made to collect and present material in what was, perhaps, a difficult and developing situation, the Presenters should, nevertheless, have taken greater care to prevent imbalance occurring in the presentation of the program segments, in the ways which have been discussed.

## **Conclusion**

In these circumstances, the Panel finds, in relation to Allegations 5, 6, 7 and 9 that the ABC has committed breaches on 5 and 7 December 2005 of Section 4.2 of the ABC's Code of Practice, in that every reasonable effort was not made to ensure that the *Mornings* program segments were balanced and impartial.

## **Possible Remedy**

Pursuant to Section 12.6.15, the Panel recommends that these reasons be brought to the attention of the Presenters and Producer of the *Mornings* program segments, with a view to their exercising greater care in relation to the requirements of the ABC's Code of Practice and Editorial Policies, relating to imbalance and impartiality.

No further action is suggested.

The Hon Michael L Foster QC  
Convenor  
19 January 2007