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Corporation
Four Corners

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Confidential

Dear Minister Elferink,

I'm writing to you personally regarding a program of importance and significance being produced by the ABC's *Four Corners* program.

My letter follows conversations with your media adviser Dimitra Grehl. In Dimitra's words on the phone yesterday, "let's work together on this."

I understand you're a busy man with many demands on your time. The program we are making sits directly within several parts of your portfolio, and it is certainly an issue you're very passionate about. Indeed, you have devoted much of your career to it.

We are exploring the high rates of Indigenous incarceration around the country and prison overcrowding, with a particular focus on juvenile Indigenous incarceration. It is a complex and layered area with significant impacts on the community. Juveniles are in detention because they have offended. The high rates of incarceration speak to a broader issue and require careful and considered exploration.

Four Corners is the only program in the country with the resources and the time to make a document of record that is nuanced, non-sensationalist, culturally sensitive, accurate and balanced. We are bound by the highest editorial thresholds and rules in the country, which is why and how (over more than 55 years on air) we have earned the proud reputation of 'journalism at its best'. We have a genuine track record of making programs that matter, of sparking positive change, of educating Australia, of giving a voice to the voiceless, of bringing greater levels of understanding to a given issue or event.

We only make programs for the public benefit and in the public interest.

No story could be more important than a story about the impacts of crime and the lives of young and vulnerable Australians; those in positions of power entrusted with breaking cycles of crime and rates of incarceration by trying to improve the chances of accessing a better, fulfilling, productive life in the community. It's a tough area, but it isn't and shouldn't be Mission Impossible, as you have demonstrated.

Most recently, you said to a group of graduates at the Darwin Correctional Precinct at Holtze:

"I want you to make better choices. And if I stick you in a concrete box, turnover the egg timer and we let you go, you walk to the front door of the prison the same person as when you walked in."

"Not everyone starts on a level playing field, and I accept that. I think society accepts that."

"So this is about levelling the playing field."

These are very important words. Based on our research, the Northern Territory is proactively trying to make things better. From Sentenced to a Job, in-prison education programs, reducing reoffending rates, restraining the growth of prisoners, to barbecues being planned inside Don Dale to teach the juveniles about cooking. Under your tenure as Minister, a new adult prison has been built, juvenile offenders have been moved to the facility at Berrimah, child protection reviews have been launched and a new Corrections Commissioner has been appointed.

Minister Elferink, this is a significant legacy. It is also your legacy.

There has also been criticism of the government's policies and handling of Indigenous offenders.

Instead of engaging in a war of words, we seek your participation and cooperation to show us – in a meaningful way - how things are changing and what is being done to level the playing field.

Importantly:

We initially sought – and we were granted – access to two days filming in the new Darwin Correctional Centre. This was carefully and successfully negotiated between the Department of Correctional Services and my producer, Mary Fallon, whom I am making this program with. Agreement was reached to film over two days a range of programs including among other things, a walk around and chatting to prisoners undertaking various programs. Unfortunately and much to our surprise, inexplicably our access was revoked entirely. All of the correspondence is attached to this email.

We had organised and booked all of our flights, travel, and accommodation based on the approval from Corrections. Our team is travelling to the Northern Territory from Sydney at considerable cost. We carefully budgeted everything over several weeks. As you would understand, this is taxpayer's money. With ever-shrinking budgets and mounting demands on us as the national broadcaster, to spend precious resources based on considered and confirmed plans of access with a government department, and happily working with issues of practicality, only to have the approval and promises of access entirely revoked without warning, is an unacceptable waste and turnaround.

I am writing to you Minister Elferink to seek your support and participation in this important program and to work with us to re-open the doors. Closing the doors on us means we cannot tell the government's side of the story, and we cannot give a voice to the dedicated officers and staff in Corrections who work very hard.

We seek your assistance and support to honour the initial filming approval, so that we can film in a specified and controlled period of time at Darwin Correctional Centre and at Don Dale Juvenile Detention Centre where a special BBQ program is being introduced over the next several weeks to teach young people incarcerated how to cook. We are not asking for anything impractical or unrealistic. We guarantee we will comply with the rules and parameters set for us. We will not identify anyone without permission and approval. We have filmed with minors on countless occasions and we have a sophisticated understanding of what can and can't be shown and discussed. We will have minimal disruption on staff, budget and facilities because our time is restricted. We are only asking for a small period of time. Indeed, Indigenous Hip Hop Projects was granted an entire week's access to Don Dale in 2015 producing this video found here:
<https://www.youtube.com/watch?v=pZod-FpAL5w>

As the government broadcaster, our charter is to make programs like this one. It can be done.

We are not interested in 'gotcha moments'. We fought hard to have this program commissioned.

We will be in Darwin from 14th June to 30th June and seek to film at both facilities during that time. In that time we can do a walk-through with you and we can also have a sit down interview with you before or after we visit the facilities. If there's anything else you'd like us to film or be aware of, please suggest it.

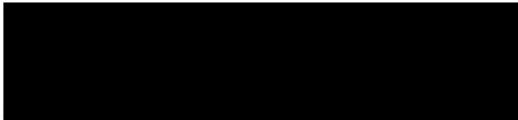
Please do not hesitate to contact me if you require further information.

This is a chance to make a real, lasting, positive contribution.

We look forward to hearing from you.

Kind Regards,

Caro Meldrum-Hanna
Reporter
Four Corners, ABC TV



11 September 2017

The Hon John Elferink
44 Penneys Hill Road
Hackham
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Dear Mr Elferink

Thank you for your letter of 22 August 2017 regarding the *Four Corners* program *Australia's Shame* broadcast on 25 July 2016. I am responding on behalf of the ABC.

In keeping with ABC procedures, your complaint was referred to Audience and Consumer Affairs, a unit which is separate to and independent of program making areas within the ABC. Our role is to review and, where appropriate, investigate complaints alleging that ABC content has breached the ABC's editorial standards.

We have given your correspondence careful consideration, particularly regarding the significant delay in receiving your complaint. As you are aware, Audience and Consumer Affairs does not generally investigate complaints submitted more than six weeks after the broadcast or publication of the content in question.

While we note your preference for submitting your complaint to the ABC after you had provided evidence to the Royal Commission into NT youth detention, there was no practical or legislative reason to delay the lodgement of your complaint. I further note that the ABC is committed to respecting the confidentiality of complaints and the identity of complainants: the opportunity was open to you for your concerns to be dealt with by Audience and Consumer Affairs discretely, in a timely manner, and independent of the program area or indeed the Royal Commission process. You chose not to take that opportunity.

We agree that the matters raised by the *Four Corners* program are of great gravity; however, we do not agree that it therefore follows the delay in receiving your complaint should be waived. The program was clearly in the public interest and in part prompted action from both the NT government and the Federal Government on the issue of youth detention; these serious matters are now appropriately under consideration by a Royal Commission. It is highly unlikely that an investigation of your complaint would have any bearing on this process. It is reasonable to trust that both the NT government and the Federal Government would have considered a range of information available to them, not limited to the *Australia's Shame*, and concluded that the actions taken, including the appointment of a Royal Commission, were indeed warranted.

The substance of your complaint largely centres on the conduct of the reporter Caro Meldrum Hannah and information you believe should have been included in the program, rather than identifying specific broadcast content that in your view breaches the ABC's Code of Practice. Contemporaneous notes,

accurate recollections of conversations and detailed timelines of events, which would be necessary for a meaningful consideration of the matters raised, are unlikely to be available or complete for an investigation undertaken more than a year after the broadcast.

For the reasons set out above, Audience and Consumer Affairs declines to investigate your complaint. Nonetheless, please be assured that your concerns are noted by the Corporation and have been brought to the attention of ABC News management.

Yours sincerely



Kirstin McIlesh
Head, Audience and Consumer Affairs

16th November 2021

Committee Secretary
Senate Standing Committees on
Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

The Hon John Elferink



Re: ABC and SBS complaints handling

Dear Secretary,

1. Please accept this letter as a submission to the Senate Standing Committees on Environment and Communications - ABC and SBS complaints handling, and I request that this submission be forwarded to the Chair and Committee Members for their consideration.
2. The purpose of this submission is to demonstrate by detailed reference to a particular example the decay which has developed in the ABC's self-checking mechanism to the point where the self-policing has become no more than a whitewashing mechanism.

Substance of complaint to ABC

3. On the 22nd of August 2017 I lodged a complaint against the ABC, in particular the 4 Corners program concerning a number of breaches by the program of the ABC's Code of Practice and the conduct of their journalist which was broadcast in July 2016 called 'Australia's Shame.'
4. The essence of the complaint was that by abandoning the duties of integrity demanded by the ABC's Code of Practice the ABC (4 Corners) misled the Australian public as well as the Prime Minister into calling for a Royal Commission that finally cost the taxpayer \$54 million dollars. (A decision which had the Prime Minister been apprised of the facts, would in every likelihood may not have been taken).
5. Acting on legal advice at the time I refrained from raising the matter with the ABC until such time as they had finished collecting evidence.
6. For that reason, my complaint was dismissed (by a letter on the 11th of September 2017) on the grounds I hadn't made it within the required six-week time frame required for making complaints. (Letter attached).
7. In taking such a position the ABC's dealing with the complaint was simply geared to be dismissive of the substance of the complaint on a technical ground.

Central matters of this submission

8. My position was, and remains, that the given the gravity of the allegation that retreating to a technical rule was both inappropriate and amounted to nothing more than a deliberate attempt to obnubilate what was a clear failure on the part the ABC to follow their own rules.
9. That in retreating to a technicality Kirstin Mcliesh, Head of Audience and Consumer Affairs, mischaracterised the nature of the evidence she was presented with to a degree that no reasonable person could have come to the conclusions she came to. The effect of that mischaracterisation was to enable a free pass to 4 Corners for its multiple breaches of the Code of Practice.

Background and events surrounding the original story

10. The Committee on Environment and Communications is currently considering the complaints handling procedures of the ABC and SBS.
11. I offer for you a case in point namely, the 4 Corners Australia's Shame story regarding juvenile justice in the NT. I am the former Attorney General and Minister for Corrections in the NT. The program directly led to the establishment of a Royal Commission at a cost of \$54 million dollars to the taxpayer.
12. During the time of the Royal Commission, I refrained from making a complaint about the 4 Corners program because I did not want to do anything to prejudice my evidence or the Royal Commission while it was still collecting evidence. It has now reported and therefore I now feel at liberty to pursue this matter. I confess also that the threats against my family including my young children had also distracted me from pursuing this matter.
13. I do not now or at the time object to the issues raised in the story in the sense that these issues were not unimportant. As a Minister of the Crown, I always maintained an open media access principle regarding corrections issues in the NT and that same principle was applied to the Four Corners program. The stories of Adults and Children in the Corrections system are stories worth exploring. But such in accordance with the ABC's Code then need to be covered with integrity and fulsomeness. Four Corners conducted themselves in a fashion that abandoned the terms and principles of the ABC's Code of Practice.
14. My complaints and issues which I raised at the time with the ABC ranged across three areas:
 - firstly, the conduct of the journalist during filming,
 - secondly the content of the program and the material withheld and
 - finally subsequent public comments from the ABC that stepped beyond the bounds of defamation.

Filming

15. Prior to filming there were a number of conversations, emails and letters that were had between 4 Corners, and I. To summarise the matter 4 Corners had been refused access to film in NT Corrections facilities by my Commissioner for Corrections Mark Payne. This was

contrary to the open-door policy which I had always maintained with media, including the ABC and many stories, good and bad had been filed.

16. Further I was aware that there were several court cases on foot regarding juvenile custody matters and I guessed, accurately as it turns out, that those lawyers representing those clients would appear in the program. I wanted to rely on Four Corner's standards above all others to tell an accurate story. I was repeatedly assured that such standards would be applied.
17. During my tenure as Minister I had made substantial reforms to the corrections and juvenile detention facilities in the NT, because I was aware of the issues that surrounded them. Without entering into a long submission about the reforms it is sufficient to point out a letter from 4 Corners acknowledging the reform process, before filming commenced. It lists at some length some of the reforms that had been introduced which indicates that 4 Corners was clearly aware of the work that was being done. (That letter is attached to this submission).

The journalist said in later conversation before filming began,

"All I'm saying is we can talk and talk about change and progress but unless we see it and you can take us into the facilities where the change and progress is occurring, it's very difficult for people to be.. to fully understand it unless they're shown it."

18. 4 Corners was shown it¹. The public was not and the Prime Minister was not.

19. These reassurances were again sought and given in other pre-filming conversations:

Minister	So what I'm seeking from you is an assurance of balance and objectivity. Um, we've not always enjoyed that from the media but that what's what I'll be seeking from you
Caro	Of course, and that we are bound by the highest editorial guidelines in the Country on the ABC
Minister	Yes
Caro	and certainly Four Corners
Minister	Yes
Caro	But as I, I would reiterate the way to ensure accuracy and balance and fairness is to give us the ability to tell both sides of the story.
Minister	Yes

20. During conversations with the ABC's journalist, I sought and repeatedly got assurances of the highest ethical standards being applied. Those ethical standards can be found in your Code, in particular Part 4 which provides *inter alia*;

4.1 Gather and present news and information with due impartiality.

4.2 Present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

¹https://correctionalservices.nt.gov.au/__data/assets/pdf_file/0007/379771/Corrections-Annual-Report-2015-16.pdf

4.3 Do not state or imply that any perspective is the editorial opinion of the ABC. The ABC takes no editorial stance other than its commitment to fundamental democratic principles including the rule of law, freedom of speech and religion, parliamentary democracy and equality of opportunity.

4.4 Do not misrepresent any perspective.

4.5 Do not unduly favour one perspective over another.

21. The Committee will note the journalist repeatedly assured me of the ethical standards by which she was bound and presumably she was referring to the standards in the code. She also promised in those conversations to include other aspects of what was being done in the juvenile detention space in the conversations. She was clearly aware that improvements have been made across the system, she identified them and promised to include them in the story. (See conversation below).
22. During filming the journalist requested to see all aspects of the Corrections System around Darwin. At her request, which is included in the letter I escorted her around the Adult Prison, where she was invited to film whatever she wanted. During that time, she noticed that I'd ridden my motorcycle to the gaol. The journalist asked if she could film me on the bike several times. The journalist subsequently denied uttering this request. This is untrue.
23. She was also given access to the old and abandoned Don Dale centre which had been ordered to be shut down more than a year earlier. She was shown all the reasons that it was shut down, including the fact that it was a fire trap that nearly killed several inmates and the fact there were no running toilets in that centre. She asked to be allowed to continue filming in the centre where she was left with a single staffer from the Corrections Department.
24. She was then taken to the New Don Dale and shown the improvements that had been and were being made across the system. She knew the Vita Report, a report I had commissioned because I wanted to improve the Juvenile Custodial environment, was being attended to and that there were substantial improvements being made in the system.
25. Again, she made promises to include material like the youth boot camps which were demonstrative of the changes that I had made in the system:

Minister	But I would like to play this with as open hand as possible so – and I am a little disappointed that you don't want to re-do the boot camps because I think they are useful
Caro	Look absolutely but we can access, we can access that material. We have to be – yeah with our shooting time and
Minister	Oh so you're not excluding them from the story per se
Caro	No absolutely not – no

26. Again, these improvements did not make the program.

27. Furthermore, during conversation Ms Meldrum-Hanna acknowledged the sad reality that the safest place for a child for some of these children was inside the custodial environment:

Caro	Well and it's why I asked you when we were outside of the classroom and we had that lengthier chat
Minister	Umm
Caro	Outside when we were outside for you to you know give us an understanding of where these kids are coming from you know
Minister	Yeah
Caro	When I said that isn't that a sad scenario where the safest place for a child
Minister	Yeah um
Caro	It seems to be is is you know could be there you know because at home is not safe, they've got nowhere to go, that's what you're up against and I asked you that question "what are you up against here?"
Minister	Yeah and I suspect that the Magistrates who do commit these children into the custodial environment shake their head because they are stuck with the same problem
Caro	Yes they say it's the last resort but what what can be done if they are going home to drug abuse and violence
Minister	Well.
Caro	And alcohol abuse its er a really difficult, it's a totalyeah it's a conundrum
Minister	It is and this is why I was very um anxious to point out the continuum of when the Government actually gets involved

28. It is certain that the journalist was aware of the matters that she alleged in her program, whether she had possession of the footage or not. Nevertheless, she still acknowledged the sad truth that the custodial environment was still the safest place for a child. If she knew that, why did she not put that important fact in her story?
29. Finally, in the sit-down interview in my office the journalist asked me a series of questions regarding youth detention only and addressed none of the other material she had requested. The nature of the questions she asked suggested to me that she had already seen the material she broadcast in the subsequent program. That interview in its entirety is available in a recorded video form.
30. She later asserted that the material had come to her later than that, which considering the admission she was in possession of the material but hadn't opened it surprising. In any instance, I was never given the opportunity to comment on the material that she broadcast in the program. If such an opportunity had been afforded I would have explained to her the depth of the investigations that had been conducted.
31. Indeed in her back story piece she said,
<http://abcnewsgathering.tumblr.com/post/150667935166/the-power-of-the-pictures-how-four-corners>):

"Several files wouldn't open on my old ABC laptop so we didn't even view all of the videos (hours of vision) before interviewing Minister Elferink."

32. If that was true she was in possession of the material that was broadcast but she didn't make an effort to present that material to me. If she had, she would have been told of multiple police investigations in detail. By her own admission she had seen at least some of the videos and gave me no opportunity to respond.
33. In truth the assertion that she could not open all the material is not credible, particularly when considering the detail her questions, which refer to matters being raised, and she specifically described conduct that reflected a visual account.
34. As it was, that information was volunteered. The journalist was told several times that that a number of matters had been referred to criminal investigation and that the subsequent prosecutions had failed. This was information volunteered by me, not extracted by her and moreover was not included in the subsequent program. These answers fundamentally changed the context of the content of the videos.
35. Even if she was not in possession of all the material at the time of the interview the journalist was duty bound to come back to me and seek comment on those particular items of footage because she would have been told in detail the responses to each of those matters. But to be in possession of information of such gravity and not to provide me with an opportunity to address it was grossly unfair and led to a profoundly unbalanced story.
36. Despite all of this she was nevertheless told that at least six criminal investigations had been conducted and she deliberately chose to ignore that important information. Moreover, she made no more inquiries about that footage and what had been done in relation to it, before it made it to air. This meant the report was governed by the bias of 4 Corners not based in fact and moreover ignored advice about the actions taken by government.
37. The failure to inform Australians and the Prime Minister that the footage depicted events that had been investigated by police was to deprive decision makers of the truth that these matters had been investigated and in several instances brought before courts and on one occasion the Supreme Court of the NT. This considering the import of the matter this was reckless in the extreme.
38. Considering the sensitive nature of these matters and the gravity of these matters it was incumbent upon the journalist to discover more about the footage than she did before she put it to air. I suspect the reason that she did not make the inquiries is that she was aware of what my answers would have been and that she would have been obliged to report that criminal investigations had been conducted and charges laid. This would not have suited the narrative of her story so she chose not to present the NT Government and I with the material before she aired it.
39. I do not know what decision the Prime Minister would have made regarding a Royal Commission into these matters in the NT, but I do know that he, and the Australian public, was not provided with vital information 4 Corners possessed regarding this.
40. When it came to the two other issues, namely the use of spit hoods and the incident with the deployment of gas, the journalist asked questions of me about these matters. She was informed that the use of the gas was declared by the Commissioner of Corrections, Ken

Middlebrook, as a response that in all the circumstances was reasonable. Nevertheless, this information was not reported.

41. The program made no mention of this, rather a mere uninformed and biased opinion was offered by the journalist saying that the response “*beggar’s belief*”. The subsequent use of water from fire hoses is presented as an act of abuse. It wasn’t, it was a standard decontamination process after the application of CS Gas. A fact of which the journalist was informed.
42. That was an opinion of a journalist which was unsupported, and inconsistent with the principle in the ABC Code of Practice which says,

“The ABC accuracy standard applies to assertions of fact, not to expressions of opinion. An opinion, being a value judgement or conclusion, cannot be found to be accurate or inaccurate in the way facts can.”

43. Further, the presenter of the program likened the use of spit hoods and restraint chairs as something from “*Abu Ghraib*”. Once again this is a mere opinion. The facts were, that these restraints were used only where necessary and only to a reasonable level, which the journalist had explained to her. The restraints used in the Juvenile detention system were overseen by an expert panel who developed systems and guidelines for their use. No examination was offered by 4 Corners, just opinion. Opinion should have been sought but from trained professionals in a corrections system, not just a lawyer who was representing a client and a journalist with no training in the use of reasonable force. The events at Abu Ghraib led to 9 courts marshal. Even after spending \$54 million and 12-months investigating the Commissioners Royal did not make any findings of criminality. They merely referred a couple of low-level staff for further investigation, which had already been investigated and no charges flowed from those referrals.
44. Not a single criminal charge has been raised as a result of the Royal Commission.
45. No findings of torture, no findings of barbarism, no comparisons to Abu Ghraib.
46. In a subsequent interview published by the ABC under the heading backstory (<http://abcnewsgathering.tumblr.com/post/150667935166/the-power-of-the-pictures-how-four-corners>) the journalist said,

“When I first viewed the tear gassing videos I was deeply disturbed. When we obtained the video of Dylan Voller being strapped to that chair (just a few days before broadcast) I thought I was going to vomit.”
47. This represented an emotional response by the journalist. She didn’t like what she saw and made no attempt to discover what the footage meant and why it was being applied. At that point all objectivity had been abandoned and replaced with mere opinion, bias and guesswork contrary to the ABC’s Code of Practice. From that moment onwards, the journalist had decided she was judge jury and executioner.
48. No argument stood a chance against her bias.

49. In Australia people are restrained by the state for numerous reasons, mental upheaval, threats to others, medical interventions, arrests and the prevention of self-harm. The state must have a power to restrain to protect. Electroshock therapy is still applied in this country against people's will but warranted by the state and it is not a form of torture. It is an intervention. Simply because there happens to be a resemblance between a spit hood and an event in Iraq it cannot automatically invite the assertion because one is torture so is the other. The use of reasonable force to restrain a person from self-harm was explained to the journalist and she failed to include that response in her story.
50. There is no doubt that those images were confronting. But to deliberately choose to intone injustices by inflammatory opinion rather than broadcasting the response she was given amounted to a breach of the Code of Practice.

The Program

51. It is my belief that the journalist laid out the program with the intent to sensationalise rather than report. As noted above the journalist was informed of criminal investigations into at least six matters. She did not bother to find out if the footage that she put to air was investigated although she had been told that investigations had been conducted.
52. During the program, I was asked about my knowledge of the gassing incident and if I had seen the footage to which I said I hadn't which was true. However, I also said after that comment that I had been fully briefed on the matter by the Children's Commissioner who had investigated the matter in detail and read the Children's Commissioner's report. The withholding that part of the answer was a deliberate misrepresentation of my knowledge of the events and again distorted the story.
53. As discussed above the program was littered with 4 Corners' opinions rather than the answers they had been given which cited expert advice to the contrary.
54. The program ignored the substantial improvements that had been made to the Youth Detention environment although the journalist, knew about and was shown those improvements. Nevertheless, that information was withheld.
55. Most of the incidents which were broadcast with the exception of the spit hoods and gassing incidents predated my Ministry. Indeed, the gassing incident was what led me to order that the Old Don Dale be closed. The journalist was advised of this, but that information was not made at all clear in the program. In fact, the truth that the institution where these events had occurred had been closed at my order received a fleeting reference in the program.
56. 4 Corners failed to broadcast the fact that I had the system reviewed by Mr Michael Vita and that review had led to the improvements that she spoke of in the letter to me and improvements that she promised to report on.
57. The journalist has subsequently claimed that there was no time to add that information into the story. I would have expected that a few lines about appropriate criminal investigations

and appropriate improvements would have been reported on rather than the Minister's mode of transport.

Subsequent Public statements.

58. On the 20th of March 2017 the journalist tweeted, *"4 teens win civil case against NT Govt over Don Dale teargassing and solitary confinement following #4 Corners Australia's Shame."* That was not true. Kelly J concluded the direct opposite of that. Compensation was paid for another unrelated matter. Indeed, another ABC Journalist Alyssa Betts corrected her response.
59. On the 27th of April 2017 the journalist posted *"Has Mr Elferink forgotten what he said to me while he was shepherding me around the prison, 'Where's the electric chair gone'."* This post was dishonest in two ways. She was not being shepherded at all. She was being granted the tour that she personally requested in the letter that she sent me in the letter and in a verbal request in a later telephone conversation that I had with her when I told her that she had the access she required:

Minister	Yeah exactly right, um you're in um
Caro	Oh Minister that is so good and will you come with us?

60. To use the word, *"shepherding"*, in the context that she had, implies an intention on my part to control her movements and further implied that I wanted to control her movements to restrict her from investigation.
61. The journalist was given unfettered access to all parts of the centres that she wanted to see and I was there because she asked me to be there twice, in letter and conversation. Secondly, the reference to the electric chair by her was used recklessly and out of context. The comment, (which I don't believe is accurately quoted but I will accept for the purpose of this matter), after a prisoner, who I knew identified himself as an Adelaide Crows supporter, and we were engaged in banter at the time about football.
62. In other words, it was a joke with a prisoner relating to football. It could not have been interpreted in any other way. That is why I asked the journalist not to use it which she said she wouldn't. Not only did she use it in the tweet, but she has so fundamentally misrepresented the comment it falls outside the boundaries of responsible journalistic behaviour as it breached the ABC's Code of Practice particularly 2.2 which provides: *"Do not present factual content in a way that will materially mislead the audience"*
63. Breach of this rule resonates throughout the whole story.

Substance of Complaint to the ABC

64. The journalist sought to do a story on complex issues which these were at the time. At some time during her research she became possessed of a number of items of material which were not presented to me to comment upon.

65. By not seeking comment on the material she presented matters that were treated as crimes by me and the department and failed in any way to differentiate between those and those matters of the lawful use of force, namely the use of the restraint chairs and tear gas. Rather she chose to present all that material as a single continuum of abuse that was unattended to and moreover endorsed by the NT Government and was ongoing.
66. This is not true, not accurate and absurdly oversimplified the nature of the events which occurred and how the Government and I responded to them.
67. Moreover 4 Corners published material that they knew to be false, namely, a conversation between Dr Bath and the journalist:

Caro Meldrum-Hanna: So the authorities knew as early as 2012 the authorities the Government knew of excessive force, inappropriate solitary confinement of children in detention?

Dr Howard Bath: Yes.

Caro Meldrum-Hanna: And nothing was done?

Dr Howard Bath: As far as I know nothing was done.

Caro Meldrum-Hanna: Well how do you respond to that?

Dr Howard Bath: Well I find that appalling um.

68. Dr Bath was fully cognisant of the police investigations because I told him to take the matters to police and many matters were already investigated, charges laid, and matters taken to court. Police investigated those matters and I told the journalist that investigations had been conducted. If she had shown me the footage she would have had her answer. This was all been received in evidence by the Royal Commission and was not a matter of contest.
69. The ABC was also fully aware that I had attempted to bring international inspectors into the custodial facilities in the NT as early as 2013 by bringing legislation into the NT Legislative Assembly to enshrine the OPCAT protocol into law. The Commonwealth did not ratify the protocol preventing those steps from being taken. Suppression of this important fact adds to the biases which displayed by the ABC.
70. 4 Corners failed to report on those improvements in the system that had been made. Those improvements were filmed by 4 Corners and clearly 4 Corners was aware of what was being done in the original letter that was sent. 4 Corners filmed that work as it was in its final stages but did not broadcast it. The work that was shown to 4 Corners was nearing completion and can be found in pages 60 – 74 of the NT Correctional Services Annual Report 2015-16.² Moreover 4 Corners promised to cover other areas of improvements such as the boot camps and failed to do so.

² https://correctionalservices.nt.gov.au/__data/assets/pdf_file/0007/379771/Corrections-Annual-Report-2015-16.pdf

71. In essence, 4 Corners did not attend to a number of issues that should have been attended to. Once in possession of the footage 4 Corners made no effort to discover what the footage was and engaged in a narrative that did not reflect the truth of the continuity of events over the years in which these events occurred.
72. Even Journalists inside the ABC have stated that the 4 Corners Story was a "*Hatchet Job*", on the 16th of January 2017 Steven Schubert of the ABC in Darwin described it in exactly those terms in two conversations.
73. 4 Corners consistently engaged in misleading conduct, before filming, during filming, during the broadcast and after the broadcast.
74. The 4 Corners program was designed with a particular narrative in mind and that narrative was designed to present the story in a fashion that breached 4.4 and 4.5 of the ABC's Code.
75. The Royal Commission made adverse findings relating to juvenile incarceration in the NT, there are no surprises in this I publicly acknowledged the issues on many occasions and told the ABC on a number of occasions what was being done to repair it as early as January 2015 when I released the Vita Review. 4 Corners was also told. No custodial system in this nation could survive the scrutiny of a Royal Commission and come away uncriticised. In truth I welcomed the Royal Commission and I hope some good comes of it.
76. None of this however, excuses a departure from the ethical standards that the ABC propounds as part of its charter. This submission is focussed on the conduct of 4 Corners and their failures to objectively and honestly report on a difficult issue and their use of a technicality in the reporting rules to actively avoid looking.
77. ABC sought to suppress my criticism of them at the Royal Commission.³
78. In short, a clear bias was shown by 4 Corners, so that they could produce a story that focussed on unfair and unbalanced reporting, namely:
 - The ABC deliberately misrepresented some conduct as torture contrary to having been told that experts in the field had declared the force used as reasonable, and
 - The ABC lied to the Attorney General of the NT in a letter describing the reasons they wanted access to Don Dale, and
 - The ABC deliberately chose not to show the substantial improvements that had been made in the system prior to their interest in the story, and
 - The ABC suppressed knowledge that I had taken steps to get international inspectors into the centres, and
 - The ABC allowed a known untruth to be reported as fact when Dr Howard Bath said in the program that nothing had been done, and

³ <http://www.heraldsun.com.au/news/abc-object-to-criticism-from-former-corrections-minister-john-elferink-at-royal-commission/news-story/3cb9e39805e4c3c4f8fdcae3ab7198b2>

- The ABC withheld information about criminal investigations, including a criminal trial that ended in the Supreme Court, from the viewing population and the Prime Minister, and
 - The ABC sought to suppress criticism of their conduct by suppressing my evidence before a Royal Commission, and
 - The ABC claims to have destroyed relevant material that may have been called before a Royal Commission, and
 - The ABC chose to hide behind the six-week complaint rule to avoid scrutiny of their conduct in spite of the fact that the rule could be set aside at the full discretion of the ABC, (The criteria for setting aside that rule are all satisfied and can be found in The ABC Complaints Handling Procedure), and
 - The ABC continue to post misleading photographs of their journalist saying she was standing in Don Dale when in fact she's standing in an abandoned building that had been closed a year earlier, and
 - Other ABC journalists have described the program as a "hatchet job" which acknowledges that they are aware that this federal government department has engaged in conduct that misled a Prime Minister and they have chosen to ignore it.
79. The new Don Dale which I established continues to operate to this day applying all of the new standards that were being rolled out before 4 Corners went to air. If 4 Corners was even close to correct in their assertions, then this could not be. The Royal Commission allowed it to continue to operate during the whole period of the Commission and while it recommended the construction of a new facility, the Commissioners were prepared to accept its continued operation in the meantime. No government, Federal or State has committed money to a new centre.

ABC's complaint handling process in this matter

80. On the 22nd of August 2017 I lodged a complaint against the ABC, in particular the 4 Corners program concerning a number of breaches by the program of the ABC's Code of Practice.
81. On the 11th of September 2017, Kirstin McIlesh, Head of Audience and Consumer Affairs, wrote to me dismissing the complaint and asserting:

The substance of your complaint largely centres on the conduct of reporter Caro Meldrum Hannah and information you believe should have been included in the program, rather than identifying specific broadcast content that in your view breaches the ABC's Code of Practice. Contemporaneous notes, accurate recollections of conversations and detailed timelines of events, which would be necessary for a meaningful consideration of the matters raised are unlikely to be available or complete for and investigation more than a year after the broadcast.

82. Considering that Ms McIlesh was provided with transcripts and recordings were available dismissal on those grounds were simply unsupportable.
83. Moreover, considering the gravity of the allegation made by a former state Attorney General, namely that the Prime Minister was misled by the ABC, the ABC was under a duty

to take the matter more seriously.

84. The response to the complaint by the ABC was in this instance, in my opinion, more directed to avoiding scrutiny than displaying transparency.
85. If the example of this matter reflects the conduct of the ABC when dealing with complaints about its conduct, then the complaints handling process amounts to little more than a whitewashing mechanism where the ABC as a self-regulator has failed in that function determining it is better to protect itself than to actually enforce its own integrity.

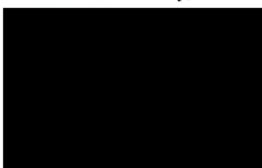
Recommendations

86. That the function of self-regulation be removed from the ABC and referred to an independent board comprising of experts reflecting the profession as well as community representatives.
87. Such board be empowered to call evidence and investigate such matters as it sees fit, including investigations of its own motion.
88. That ABC staff may be summoned before that board to give evidence in relation to matters that the board is investigating.
89. That the board make such reports as it deems necessary and such reports are to be released into the public domain as the board sees fit.

Conclusion

90. The ABC should provide the gold standard for journalistic integrity in Australia. The problem, as reflected in this instance, is that it has not met those principles. Rather the ABC has decayed into a ratings chasing organisation and sadly sensationalism has supplanted integrity. The gold can no longer be taken to the bank.
91. The mechanisms to govern the ABC's integrity have failed. If the example in this submission is indicative of general practice, then the complaints process is nothing more than a laundry and its decay has reflected the wider decay that has crept into the ABC generally.
92. If requested I am available to give evidence before the committee.

Yours Faithfully,

A solid black rectangular box redacting the signature of the sender.

The Hon John Elferink

News

ABC object to criticism from former corrections minister John Elferink at royal commission

CRITICISM by former Northern Territory CLP minister John Elferink of the ABC program which led to his sacking has been silenced in the royal commission into youth justice.

Hayley Sorensen

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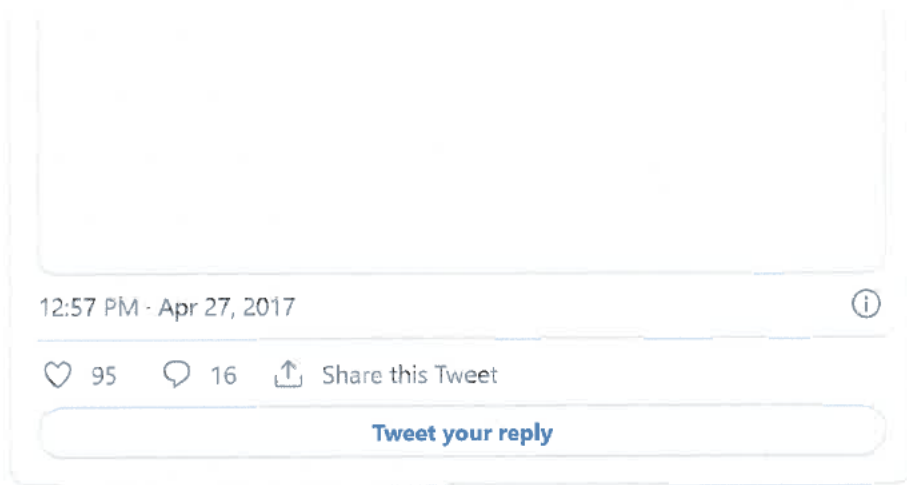
Mr Elferink lost his job as corrections minister in July 2016, days after the Four Corners program detailing alleged abuse in youth detention aired.

His original statement to the commission criticised the report as unbalanced and misleading.

But those paragraphs were struck out as "irrelevant" after an objection from the ABC.

Matt Cunningham 
@mattcunningham

The ABC is trying to stop criticism of 4 Corners being submitted to the NT Royal Commission... meanwhile, in Ultimo



Senior Counsel Assisting the Commission Peter Morrissey said by allowing the critical paragraphs of Mr Elferink’s statement, the commission would risk “generating a lengthy and distracting side issue”.

Mr Morrissey said the ABC had contacted the commission to register its objection to the critical material.

Mr Elferink’s lawyer Andrew Harris said the criticism was not intended as a distraction.

“This is not a royal commission into the ABC. That may be for another occasion,” he said.



John Elferink believes a Four Corners report was unbalanced and misleading. Picture: Michael Franchi

“... the weaving into the proceedings and fabric of this commission of the fact of this ABC broadcast is unarguable.”

A letter from Four Corners reporter Caro Meldrum-Hanna to Mr Elferink seeking access to youth justice facilities was leaked to Sky News last year.

In the letter, Ms Meldrum-Hanna stated: “We are not interested in ‘gotcha moments’”. The letter made references to NT government initiatives such as Sentenced to a Job, which Ms Meldrum-Hanna wrote was Mr Elferink’s “significant legacy.”

Most of the morning session was consumed with legal argument.

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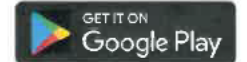
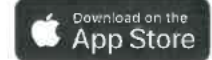
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