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Professor Ross Garnaut AO

[REDACTED]

[REDACTED]

[REDACTED]

Dear Professor Garnaut,

I refer to your letter of complaint dated 14 January 2011 and apologise again for the misunderstanding within the ABC which contributed to delay in investigating it. Thank you for your patience in awaiting my response on behalf of the ABC.

Your letter, as you say on page eight, contains a lot of detail. It relates to parts of two *7.30 Report* programs broadcast on ABC TV on 9 September 2010 (Price of Gold) and 15 September 2010 (Garnaut's Response). It relates also to material published on the ABC website abc.net.au. comprising: transcripts of both stories; your three-page statement of 15 September and your 20-page annotated transcript of Price of Gold, with three attachments; and a 12-page response by the *7.30 Report* to your response. The material points to voluminous and sometimes technical scientific references.

The delay has been in part a consequence of my requirement for a thorough examination of the relevant material and issues. Staff from the ABC's complaints-handling unit, which is independent of the News Division, needed to absorb the detail, consult relevant staff, and brief senior executives. Those executives in turn had to absorb detail and prepare their advice to me.

The investigation has found that whilst the subject of your record in mining in PNG and the airing of diverse views about it was a legitimate subject for independent journalism, there are aspects of these programs where the ABC fell short in its standards for accuracy and balance in ways that affected you.

As a consequence, the ABC will make appropriate statements on TV and on its website, and remove from its website the 12-page response by the *7.30 Report*. Price of Gold and Garnaut's Response will not be removed from the website, but will have an appropriate statement attached so that any person who in future watches them or reads the transcripts will be advised of flaws which this complaint process has identified.

To the extent to which the ABC failed to meet our editorial standards in ways that adversely affected you, I would like to apologise.

Let me assure you that your complaint has been considered with the utmost seriousness. If you do not find every one of your points listed here, it is for brevity's sake and not because they have not been considered. This letter outlines the areas where the investigation has identified a breach in its editorial standards.

Towards the end of your letter of 14 January you suggested that we both keep our eyes on the big issues, and noted that they go wider than your specific complaint. You evoked the importance of the integrity of the national broadcaster to the integrity of our democracy. You also made some observations - in the context of mining management - about balancing environmental and human development values, conscientious debate, transparent analysis and public disclosure.

Covering an issue like this is an important one for an independent public broadcaster and as you outline, the issues are complex and the amount of precise information is unpredictable. There will be divergent opinions around matters of fact or inferences from facts. In the midst of this complexity, journalism has the additional challenge of distilling the salient elements of the story or the debate for an audience that will often not approach the issue with specialist insight or understanding. This adds to our burden and gives weight to our responsibility.

Key contested issues emerging from this story include:

- whether a mine should be in a particular location at all, having regard to other uses or values associated with the land
- whether laws and guidelines for operating a mine are stringent enough, having regard to the costs and benefits of the mine and of the regulatory requirements
- whether the risks posed by a mining operation are worth the benefits, in particular when long term environmental effects are among the risks
- whether information necessary to assess the risks is adequately collected, independent, reliable and disclosed
- whether the information that is adequate then has its proper impact on decision-making in mining operations and among regulators and legislators.

It is important we report on this complexity and the debates around facts and divergent opinions. As this story testifies, there will be differing views around facts and opinions that cannot be verified or tested in the way facts can. What one person sees as exemplary another calls paltry, and neither view is open to the descriptor 'truth'. And while one opinion may be preferable because of the solidity of the facts which underpin it, nothing compels an individual to prefer it over his or her view built on a different fact base.

An individual's views of a person associated with mining operations may be affected merely by the person's association with mining. Where a person has a leadership role in mining operations, they may be seen by some to personify the operations. Where a person with a leadership role in mining operations is also a prominent adviser to government on public

policy relating to environment, the simple fact of their role in mining may affect the views held by some individuals.

That said, nothing absolves the ABC from striving in its coverage to meet its declared standards, from disentangling opinion and fact when circumstances require, from making distinctions when they are material ones, and from its responsibility to give an account of itself. ABC integrity is bound up with it independently striving to gather and verify facts, weigh evidence and give opportunities for expression to diverse opinions.

The ABC will continue to enquire into and report on matters of importance related to mining in PNG. If it is proposed again to report on your involvement in it we will appropriately seek to interview you. In light of our experience here, we will seek to contact you directly in addition to making appropriate efforts to contact you through the public affairs divisions of companies related to the story being covered and with which you are associated.

ABC editorial standards

The ABC content which is the subject of your complaint has been assessed against the following sections of the ABC Editorial Policies 2007.

Accuracy

Section 5.2.2 c

Be accurate.

i Every reasonable effort, in the circumstances, must be made to ensure that the factual content of news and current affairs is accurate and in context.

ii The ABC will not hesitate to admit and correct a significant error when it is established that one has been made. When a correction is necessary, it will be made in an appropriate manner as soon as reasonably practicable.

The ABC did not meet its accuracy standard in four areas. They relate to the substance of your concerns.

Price of Gold's references to Ok Tedi did not provide sufficient context to give the audience an accurate understanding of your involvement with the mine. In particular, the story did not make it clear that you became involved only after the environmental disaster was clear. The mine continues to operate, but during your period of involvement as the nominee director of the Papua New Guinea Sustainable Development Limited (PNGSDP) on the Ok Tedi board the mine has been engaged also in remediation efforts.

Price of Gold quotes inaccurately from an affidavit derived from the Scottish Association of Marine Science (SAMS) work on the form of mine waste disposal known as Deep Sea Tailings Placement (DSTP). The effect is to convey to a reasonable audience member an

inaccurate impression of DSTP, with which you were associated through your long period as chairman of Lihir Gold Limited (until August 2010 when Newcrest acquired Lihir). The inaccuracy reverses the meaning of one SAMS comment and has the effect of attributing to DSTP, a form of mine waste disposal at sea, an adverse feature of mine waste disposal on land. I am satisfied the inaccuracy was not the result of a deliberate attempt to distort the material in order to mislead the audience.

In several places in the *7.30 Report* coverage different forms of mine waste disposal are conflated. The accuracy standard in the context of this coverage required distinctions to be made more clearly between DSTP at Lihir and DSTP at other locations and other types of waste disposal at Lihir, and between other types of waste disposal at other locations. Failure to make relevant distinctions can have two consequences, depending on the context: audience members may obtain an inaccurate understanding adverse to you; or a reader may misunderstand points made by you in your press conference, written statement and annotated transcript and by the *7.30 Report* in its response to your response. Again, the investigation did not find this conflation was a deliberate attempt to mislead the audience. The investigation indicates that it was more a combination of inadequate attention to the significance of the distinctions and the compression and haste which can characterise journalism done against deadlines.

Three pieces of footage, in combination with words used around the footage, were inaccurate.

Footage of coral reefs, in the context in which it appears, exacerbates the inaccuracy identified above about conflation of different forms of mine waste disposal.

The footage from Ok Tedi of mud pouring out of a pipe was taken from ABC archives. I accept your description that it does not show mine waste entering the river but rather the footage is of dredged mud being moved into a dump as part of environmental remediation. Since it remains the case that the mine at Ok Tedi does still discharge waste into the river system, a lay audience is unlikely to have been materially misled by this piece of vision. However, the footage was used inaccurately in the context of reference to your Ok Tedi involvement. It coincided with a voiceover paraphrase of a statement by you some time ago about Ok Tedi sulphur reduction efforts.

The footage of a group of Papua New Guineans dancing is used several times: when the voiceover refers to Madang landowners litigating about mine waste matters, action which relates to mine locations other than Lihir; when the voiceover refers to you having won support amongst locals on Lihir Island; when the voiceover refers to Ross Garnaut 'leaving the protesters behind in his wake'; and when the Madang landowners' lawyer who criticises DSTP states that tailings should be stored on land.

The footage of the dancers is archival. It does not depict Lihir Islanders or people from Madang province. It does not depict a protest. The use of the term 'protesters' was intended to be a broad reference to the Madang landowners' claims. No reference to a protest on Lihir against you was intended. To the extent the juxtaposition of the archival footage and the voiceover's reference to protesters conveyed that impression it was inaccurate.

Balance

Section 5.2.2 e

Be balanced. Balance will be sought but may not always be achieved within a single program or publication; it will be achieved as soon as reasonably practicable and in an appropriate manner. It is not essential to give all sides equal time. As far as possible, present principal relevant perspective on matters of importance.

The most significant focus of Price of Gold was you and your involvement in mining in PNG, in particular in relation to environmental effects of mining in PNG. Your honours, board roles, remuneration from Lihir, and work on public policy and climate change, for which you are particularly well known in Australia, were all referred to in the program. The 'news peg' was the merger of Lihir and Newcrest, which was happening close to the date of the broadcast.

For the purposes of your complaint and in the language of the balance standard of section 5.2.2 of the Editorial Policies, you and your involvement in mining in PNG were the 'matter of importance' in Price of Gold. In relation to that matter, your view was plainly a principal relevant view. To meet the standard, the ABC needed to seek and, as far as possible, present your view.

Assessing whether sufficient efforts were made to seek balance is a matter of judgement.

The ABC's starting point is that a subject of journalistic scrutiny cannot be allowed to stop the ABC from doing its duty to gather and present news and information simply by the device of making themselves unavailable for comment. (I do not imply you did so; I am outlining a general principle.) The unavailability of a key person may hinder, but it ought not and does not stop, legitimate journalism. The balance standard anticipates factors that may result in a single piece of content lacking balance, and requires consideration of overall coverage.

You may be unaware of the extent of the emails and calls between the reporter and the corporate communications staff of Lihir and of Newcrest. The ABC cannot know how much of this communication was referred to you by the companies for your personal consideration. A factor which complicated the communications over this story was the handover from Lihir management to Newcrest which was going on at the relevant period.

The reporter persistently sought, through the two companies' communications staff, to arrange an interview with you. One was tentatively arranged then called off by Lihir, citing a change in your schedule. In a 24 August email to Lihir the reporter summarised the intended topics as including your experience at Lihir, challenges of operating in the PNG environment, lessons learnt, environmental debate for Lihir and future of natural resources in PNG. In a 30 August email to Newcrest, the reporter referred to Lihir's use of Deep Sea Tailings Placement.



Nine days passed between the last communication with Newcrest seeking an interview and the story *Price of Gold* being broadcast on 9 September.

The investigation concluded that the ABC's efforts to contact you were insufficient having regard to the degree of focus on you in the story, the seriousness of the content, the complexity of the content and the failure to try to make direct contact with you either to invite you to be interviewed or to put to you the substance of criticisms and seek your comment for inclusion in the story by a method other than on-camera interview.

I accept the force of this section of your complaint letter:

I have appeared many times over recent years on the major ABC television and radio current affairs programmes. On the numerous occasions when I have been approached with requests to appear on the *7.30 Report*, *Lateline* and *Four Corners*, direct contact has been made before an interview by some combination of senior executives associated with those programmes and the lead presenters of the programme. I am well known to ABC officers working on these programmes. The ABC current affairs programmes had always found it easy to contact me directly.

Not all of the material in *Price of Gold* about you and your involvement in mining in PNG was adverse to you, but balance was not achieved in that story in the absence of a response from you.

The relevant ABC editorial standard requires consideration of whether, nevertheless, balance was achieved as soon as reasonably practicable and in an appropriate manner after *Price of Gold* was broadcast.

This requires consideration of the coverage as a whole. A story entitled 'Garnaut's Response' was broadcast on 15 September, the day you held a press conference to respond to *Price of Gold*. Your three-page statement, your 20-page annotation of the transcript of *Price of Gold* and, in due course, the *7.30 Report*'s 12-page response to your response were all published on the *7.30 Report* page of abc.net.au

A significant amount of your criticism of *Price of Gold* was included in the TV program *Garnaut's Response* and went a considerable distance in achieving balance. The publication online of your statement and annotated transcript, together with the presenter's broadcast pointer to them, also contributed. I understand that you suggested to the *7.30 Report* that you would make yourself available for interview by the program's then presenter, Kerry O'Brien, but that the program decided the interview should be conducted by the reporter of the *Price of Gold*, Greg Hoy. You declined, I am advised, on the grounds that it was unreasonable to expect that the journalist who had played an important role in the presentation of egregious errors and distortions would straightforwardly acknowledge errors.

The investigation considered the fact that, as you note in your complaint, *Garnaut's Response* repeated excerpts from *Price of Gold* about which you had complained (and which have been found after investigation to fall short of the accuracy standard). Some new material was



included in Garnaut's Response, to which you could not have responded because it was first broadcast after your press conference.

It was reasonable for the *7.30 Report* to give the audience for Garnaut's Response necessary context for understanding your criticisms of Price of Gold. On 15 September, inaccuracies in Price of Gold were not yet demonstrated in the way this complaints process has demonstrated them. As a general principle, the ABC would be unwise to permit an expectation to develop that a critical response to one of its stories by a person who did not appear in the original story can be broadcast without the ABC testing it and engaging with it.

The investigation concluded that the coverage overall did not achieve balance.

To the extent that Garnaut's Response simply repeated parts of Price of Gold in close proximity to your criticism of the story, the effect was to undercut the effect of your response. To the extent Garnaut's Response included new material to which you had had no opportunity to respond and that new material appeared to affirm Price of Gold, it undercut the effect of your response.

The 12-page document headed 'The 7.30 Report responds to Ross Garnaut' and placed on the program's web page also had the effect of undercutting your response. The document is to be removed from the ABC website.

Conclusion

This has been a long and detailed letter in a long and detailed process.

I trust that after you reflect on it you will conclude that the ABC responded to your complaint justly, and in the spirit in which you expressed your complaint in your letter to me.

These decisions will be put into effect in the near future.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Scott'.

Mark Scott