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Arguing with Aunty

Engaging the ABC about its handling of the false rape allegations prevalence issue

Correspondence & Public Submission

17 June 2021 — 17 December 2021



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Tom Nankivell

Background

Commencing in early 2021, several high-profile developments involving allegations or discussion of sexual assault (think Christian Porter, Brittany Higgins, Grace Tame, and Chanel Contis) stoked a political outcry in Australia.

ABC's Four Corners broke the first of these stories, and during 2021 ABC Online published several articles about sexual assault, its prevalence, community attitudes to it, its impact on victims, and how police deal with it.

Amongst the ABC's many stories and articles were several that made a surprising and suspiciously-definitive claim about the prevalence of false sexual assault allegations. They asserted that there is extensive research that shows that such allegations are "almost always" or "overwhelmingly" true and that false allegations are "extremely rare".¹ The estimated prevalence rate was reported to be 5 per cent, although the remarks of some experts interviewed by the ABC suggested that the true prevalence rate is probably lower still.

The ABC also said that the low prevalence rate means that males — who it noted are 97 per cent of perpetrators of reported sexual violence cases — need not worry about false rape allegations.

And the ABC contrasted its finding that "allegations of sexual assault are almost always true" with the results of a question from its "Australia Talks" survey that asked respondents whether they agreed with the proposition. The survey found that "just" 40 per cent of men did agree, compared to 70 per cent of women (many of whom agreed "strongly").

When I investigated the underlying sources of the claims about the prevalence rate, I found that there is no credible evidence for them.

My complaints and submissions to the ABC

Accordingly, I wrote to the ABC asking it to issue corrections, clarifications and retractions to the offending articles. While the ABC issued some low-key clarifications, in my view the changes were inadequate to correct the misinformation it had spread through its reporting. Moreover, the way the ABC complaints unit handled my complaint was, from my experience of having managed a government complaints office, also less than stellar. I subsequently drew on this experience to make a submission to the Independent Review of ABC complaints handling.

My correspondence with the ABC's complaint unit and my submission to the review follow.

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¹ References for statements and quotes in this section can be found in the following documents and/or in the equivalent section of the companion paper: Nankivell, T. 2022, 'False allegations about false allegations: How women's safety advocates, researchers and the ABC have downplayed the rate of false sexual assault claims', Exposé, Gander Research.

Initial complaint to the ABC complaints unit

From: Tom Nankivell...

Sent: 17 June September 2021

Dear ABC Audience and Consumer Affairs staff,

ABC Online has recently published a series of articles that state or imply, wrongly in my submission, that credible research demonstrates that sexual assault allegations are “almost always true”, as Australia Talks puts it. Three statements from those articles are:

- “Extensive research shows allegations of sexual assault are overwhelmingly true.” (Lucy Sweeney)²
- “Guys, you can stop worrying about false rape allegations. They’re extremely rare.” (Maddy King)³
- “In reality, the overwhelming majority of sexual offence reports are true.” (Australia Talks)⁴

These statements, or the articles and webpages in which they appear, have hyperlinks to other ABC webpages or external research documents that purportedly justify the statements, but the research reported in those linked webpages and documents does not provide that justification.

One of the problems with the ABC’s statements is that, as academic literature on the rate of false sexual assault⁵ allegations points out, it is inherently difficult to determine the rate with much certainty. The statements and articles listed above do not reflect this uncertainty.

Another problem is that, in interpreting the relevant research statistics, the ABC appears to have overlooked sexual assault allegations that are potentially false but whose falsity has not been confirmed, which study results show can be multiple times the estimated rate of (confirmed) false reports on which the ABC’s statements are based.

The upshot, I submit, is that the statements and articles contravene your editorial policies in relation to accuracy (Item 2 in your Editorial Policies: <https://edpols.abc.net.au/policies/>).

Please note that, as suggested on your website (abc.net.au/contact/complain.htm), I tried to engage on this matter directly with Lucy Sweeney, the author of the first of the statements listed above. My note to her, which I sent last Thursday, is copied at attachment A for information. [NB: attachment not included in this document] In the absence of a response or receipt, I have decided to elevate this matter to a formal complaint.

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- 2 Lucy Sweeney (with added reporting by Sally Sara), ‘Grace Tame says change is a marathon effort. But Australia Talks data shows our perception of sexual assault is changing’, *ABC News Online*, <https://www.abc.net.au/news/2021-06-10/grace-tame-australia-talks-believing-sexual-assault-allegations/100155474> (accessed 10.50pm, 11 June 2021).
 - 3 Maddy King, ‘Guys, you can stop worry about false rape allegations. They’re extremely rare’, *Triple J Hack*, <https://www.abc.net.au/triplej/programs/hack/false-rape-allegations-myths/13281852> (accessed 10 June 2021).
 - 4 ‘More than 1 in 3 men say sexual assault claims are usually believable’, *Australia Talks interactive tool results page*, <https://australiatalks.abc.net.au/results> (accessed 9.20pm, 11 June 2021).
 - 5 Like the literature, the ABC articles use a range of terms for different sexually-related offences or classes of offences, including ‘sexual assault’, ‘sexual offences’ and ‘rape’, sometimes interchangeably. I have generally used the term sexual assault for the matters covered.

The following sections elaborate on the above points and suggest some corrective actions, for consideration if you accept the substance of this complaint.

What is the supporting basis for the ABC statements?

The Lucy Sweeney article

Ms Sweeney's article does not itself cite any research on the prevalence of false sexual assault allegations. Rather, the relevant statement in her article — that “extensive research shows allegations of sexual assault are overwhelmingly true” — is also a hyperlink that, when clicked, takes one to a different ABC Online story, entitled “Rough justice: How police are failing survivors of sexual assault.”⁶

That article looks at data on how the police handle sexual assault allegations and the meaning of the different terms used to classify what eventuated from those allegations — “rejected”, “unfounded”, “cleared”, “withdrawn”, “unsolved” and so on. Among other things, the article clarifies that the classification of ‘unfounded’ is potentially misleading, as there may well be allegations within this category that are actually true, just not pursued or substantiated. However, this point does not support the conclusion that the overwhelming majority of sexual assault allegations are true. Nor does any of the other data presented or cited in the article.

The only comment in the article that might refer to the rate of false allegations is a later statement attributed to Karen Willis, executive officer at Rape and Domestic Violence Services Australia, who is quoted as saying: “Research tells us that between 2 and 5 per cent of reports are of a crime that did not occur.” No actual research is presented or referred to in the article to support this view; it is just her characterisation (and, as set out below, it is one that I submit cannot be justified).

The Maddy King article and the Australia Talks results page

Ms King's article also does not itself cite any specific research on the prevalence of false sexual assault allegations. Rather, to justify the statements that false allegations are rare, it uses a characterisation of the research by a criminology academic, Bianca Fileborn — who states that “the most commonly cited figure is that around 5 per cent of reports are false”⁷ — together with a hyperlink to a 2017 Australian Institute of Family Studies (AIFS) report entitled “Challenging misconceptions about sexual offending.”⁸

Like the King article, the Australia Talks interactive tool results page for the issue “Allegations of sexual assault are almost always true” does not itself cite any specific research but simply includes a link to the same 2017 AIFS report.

That AIFS report also does not contain any original research but rather draws on the academic research on various aspects of sexual offending. In discussing “Sexual crime: false allegations” (p. 9),

6 Inga Ting, Nathanael Scott and Alex Palmer, ‘Rough Justice: How police are failing survivors of sexual assault’, *ABC News Online*, <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0> (accessed 10 June 2021).

7 Note that Dr Fileborn's statement is technically correct insofar as “(around) 5 per cent” is the most commonly stated figure for (confirmed) false reports. But it is also, I submit, a misleading figure if it is taken to mean all false reports, missing potentially many more unconfirmed false reports, for the reasons set out below in this complaint.

8 AIFS, ‘Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners’, https://apo.org.au/sites/default/files/resource-files/2017-09/apo-nid107216_1.pdf (accessed 10 June 2021).

the report refers to a finding of a 2016 meta-analysis of studies in Western countries by Ferguson and Malouff.⁹ It also references a 2013 research paper by Wall and Tarczon on “the contested terrain of false allegations”.¹⁰ As discussed in the next section, neither of those studies supports Ms King’s statement that false reports are extremely rare, or the Australia Talks statement that the overwhelming majority of sexual offence reports are true.

What does the research actually show?

The two research papers cited in the AIFS study to which the ABC has referred to justify its statements make several relevant points.

The true rate of false sexual assault allegations is not known

The Ferguson and Malouff paper explains that the literature provides a very wide range of estimates of the prevalence rate of false allegations of sexual assault, reflecting differences in methodologies, terminology, samples and so forth, and the many inherent difficulties in determining whether sexual assault allegations are true or false. The authors (p. 8) state:

Given the serious difficulties with studying false rape allegations, many of the reported false report rates, both high and low, cannot be relied upon for an accurate assessment of how often false allegations occur.

The authors (p. 4) also caution about the risk that different commentators could select prevalence estimates to suit their own agendas:

This broad range in estimates has allowed proponents to argue, ostensibly, for any conclusion desired. Depending on their specific agenda, some commentators report that false allegations of rape are basically non-existent ... Others maintain that large portions of sexual assault reports are false ...

The Wall and Tarczon paper focuses on the definition of false allegations and the contextual factors surrounding them, rather than on estimates of the rate of false accusations. Nevertheless, the authors are consistent with Ferguson and Malouff in noting that “there is no definitive answer to the prevalence question” (p. 2).

Many studies use a conservative definition of false allegations

Ferguson and Mallouff point out that many studies — including those in their meta-analysis, from which the 5 per cent prevalence estimate relied on by the ABC is drawn — use a range of techniques to narrow down the number of allegations that are confirmed as ‘false’. While the studies vary in their details, those techniques include:

- considering only sexual assault allegations reported to police (noting that allegations made to others may be more likely to be false)

9 Claire Ferguson and John Malouff, ‘Assessing police classifications of sexual assault reports: A meta-analysis of false reporting rates.’ *Archives of Sexual Behavior*, 45(5), 1185–1193. (Page references in this document refer to PDF version downloaded via SSRN-id2924906%20(3) on 10 June 2021).

10 Liz Wall and Cindy Tarczon, ‘True or false? The contested terrain of false allegations’, AIFS, <https://aifs.gov.au/publications/true-or-false-contested-terrain-false-allegations>.

- classifying an allegation as false only if it is thoroughly investigated and can be confirmed (noting that allegations cannot be deemed false simply because the evidence fails to prove an assault took place)
- only counting false allegations that the complainant knows to be untrue (noting that there is a range of reasons why complainants may in good faith make allegations that are in fact false, including lack of awareness of the law, the influence of drug or alcohol use, mental health issues and cases of mistaken identity).

In commenting on the ramifications, Ferguson and Malouff (pp. 6-7) state:

Although limiting the sample, this is a necessary step as it prevents opening the floodgates to many equivocal cases that are **suspected but not demonstrably false**. It errs on the side of caution by not including cases in doubt, mistaken cases, or those claims made to anyone other than police. **Use of such a conservative definition is not meant to imply that all other cases are true reports, but just that they cannot responsibly be deemed confirmed false.** (emphasis added).

Unfortunately, the ABC appears to have fallen into this trap: that is, it has wrongly assumed that the low prevalence estimates of (confirmed) false allegations cover the full field of false allegations, and thus that sexual assault allegations are “almost always” or “overwhelmingly” true or that false allegations are “extremely rare”, when those estimates do not and cannot show this.

The total rate of false allegations may be several times the ‘confirmed’ rate

Ferguson and Mallouf’s meta-analysis included four studies in which the researchers had provided data on the number of potentially false but unconfirmed allegations of sexual assault, in addition to the data on the confirmed false cases. Drawing on the information in the Ferguson and Mallouf paper, I have calculated the ratio of all potentially false allegations (confirmed plus equivocal/unconfirmed) to confirmed false allegations in each of those studies, as identified by their authors. The ratios are:

- Heenan and Murray, Victorian study — 5.5 to 1
- McCahill et al., Philadelphia study — 4.6 to 1
- Spohn et al, Los Angeles study — 1.6 to 1
- Clark and Lewis, Toronto study — 6.2 to 1

While it is not possible to determine what proportion of the equivocal/unconfirmed cases are actually false, these results indicate that the number is potentially significant. Together with the issues and uncertainties attaching to the definition and determination of false allegations generally, this reinforces that there is no basis in the research to conclude that the prevalence of false reports is extremely rare or that almost all allegations are true.¹¹

¹¹ Further research [since this complaint was lodged] has revealed further limitations with the ‘confirmed false’ estimates used for the meta-analysis, including the failure of several studies to consider the prevalence of false cases in categories other than those deemed ‘unfounded’. For example, the authors of an American study stated that their prevalence estimates ‘... may underestimate the prevalence of false reports among all cases ... because our interviews with LAPD detectives revealed that some of them were reluctant to categorize a case as “unfounded”, even if they believed that it was false or baseless; these detectives reported that they would clear the case by exceptional means or keep the case open. In addition, we have no way of knowing if there were false allegations that were not recognised as such and that were cleared by arrest or exceptional means.’ Cassia Spohn, Clair White and Katherine Tellis 2014, ‘Unfounding Sexual Assault: Examining the decision to unfound and identifying false reports’, *Law & Society Review* 48, p. 186.

Other problems with the King article

Ms King's Hack article gives the impression that the number of false allegations may be even less than the 5 per cent estimate. The relevant extract of the article says:

The estimates vary a little across studies, but the most commonly cited figure is that around 5 per cent of reports are false, according to criminologist Dr Bianca Fileborn, from the University of Melbourne.

And that 5 per cent needs to be looked at critically, Dr Fileborn told Hack.

"It doesn't necessarily mean that 5 per cent of survivors who have reported, have maliciously made up false reports," she said.

Reports can be labelled false for a huge range of reasons, said Dr Fileborn. That includes situations where there's not enough evidence to support the report, or when police have decided the person isn't credible (decisions that can be problematic), or if a report has been made on behalf of a victim — and then the victim doesn't want to pursue it in the criminal justice system.

As noted, the 5 per cent estimate being spoken of links back to a report that cites the Ferguson and Malouff research paper.

Contrary to the implications of the extract, the research approach underlying the Ferguson and Malouff meta-analysis was *not* to rely on police assessments of complainant credibility or to include cases where there is simply insufficient evidence to prove an allegation. Nor was it to rely on cases or where complainants unintentionally made a false report. So, allegations that were not substantiated for those reasons should not have been included in the 5 per cent prevalence estimate. (Note that I put these points to Dr Fileborn to provide an opportunity for her to clarify her comments and/or correct my interpretation before lodging this complaint, but she declined to do so — see correspondence at attachment B). [NB: attachment not included in document]

A further problem with the article is that the title tells "Guys" (which the article points out are the perpetrators of 97 per cent of reported cases of sexual violence) that they can "stop worrying about false allegations". Ferguson and Malouff (pp. 18-19) point to several destructive consequences that false reports can have on their victims, which need not require prosecution or conviction:

Unfortunately, false reports wreak havoc on the innocent people involved, and often losses to their reputation, livelihood, and mental health are not recoverable even when the falsity of the claim is uncovered.

Against these potential consequences, it is of little relevance to a person falsely accused of sexual violence as to whether the accusation is knowingly or unknowingly false, or who initiates it. Thus, the point attributed to Dr Fileborn on these aspects would provide little basis for people to not worry about being falsely accused. Likewise, that researchers might not classify false allegations as 'false' for other reasons (that is, for reasons other than that they are true) is of limited comfort to people subject to them. The fact that the prevalence rate for false allegations, even as the term is otherwise restricted in the research, could be much higher than 5 per cent — itself not a trivial number — shows that there is indeed a reasonable basis for men (and women who care about them) to worry about false allegations.

Closing comments

The public's views on the prevalence of false allegations are important for victims of sexual assault and for victims of false allegations of sexual assault. Statements aired on the public broadcaster may also influence the perceptions of police, judges, potential jurors, academics and others who deal with sexual assault issues. It is important that such statements be accurate.

If my analysis is correct, the ABC has published articles that misrepresent the findings of the relevant research, falsely indicating that the research is more definitive than it is, and that it demonstrates that sexual assault allegations are almost always true.

The ABC's dissemination of this position may have helped misinform community views. For example, the Australia Talks survey tells us that an increasing number of respondents — 40 per cent of men and 69 per cent of women (many women 'strongly') — agree with the proposition that "Allegations of sexual assault are almost always true"¹², when this proposition is not supported by the research and is most probably wrong.

It is therefore important, I believe, that the ABC correct the record. I thus request that you consider:

- retracting the King article, which I submit is particularly misleading
- issuing corrections or clarifications to the relevant parts of the Sweeney article and the Australia Talks results page
- adding a notice to the ABC Corrections and Clarifications page.

In making this complaint, I acknowledge that the ABC and its researchers/journalists are not solely to blame for the mistaken statements, as some of the experts and source research documentation referenced by the ABC also appear to have not properly understood or distinguished between estimates of (confirmed) false allegations and all false allegations. That said, a more questioning mindset and/or more thorough fact checking might have averted some of the mistakes, and could now help safeguard against recurrences.

Next steps?

If you require further information or explanation on any of the points I have made, or if you believe I have misconstrued some of the research, please feel free to get in touch for the purposes of clarification. I have gone to some lengths to check my analysis, including by reaching out to relevant academics. However, if my work proves to be wrong, I will readily stand corrected.

I hope the information in this complaint is sufficient and look forward to your response,

Tom Nankivell
17 June 2021

12 Annabel Crabb, 'What divides men and women? The Australia Talks survey reveals quite a list', *ABC News Online*, <https://www.abc.net.au/news/2021-06-10/australia-talks-reveals-what-divides-men-and-women/100195244> (accessed 9.30pm, 12 June 2021).

The ABC complaints unit's response to the initial complaint

From: ABC Corporate_Affairs...

Sent: 14 September 2021 16:37

Dear Mr Nankivell,

I write in response to your 17 June 2021 complaint (C13958-21) regarding three items published online: an ABC News Online story, 'Grace Tame says change is a marathon effort. But Australia Talks data shows our perception of sexual assault is changing'; text presented following completion of the *Australia Talks* survey; and the triple j *Hack* story, 'Guys, you can stop worrying about false rape allegations. They're extremely rare'. Please accept my sincere apologies for the time taken to provide this response.

As you are aware, your complaint has been considered by Audience and Consumer Affairs, a unit which is separate to and independent of content 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. These standards are explained in our Editorial Policies which are available here - <https://edpols.abc.net.au/policies/>. Standard 2.1 requires *reasonable efforts* to be made to ensure that material facts are accurate and presented in context.

Your complaint about the ABC News Online story and *Australia Talks* survey results relates to an identical statement presented in both: '*Extensive research shows allegations of sexual assault are overwhelmingly true*'. We have reviewed these items and sought and considered comments from ABC News.

ABC News has advised that in preparing the News Online story, as well as interviewing criminologist Dr Bianca Fileborn who specialises in researching sexual violence and harassment, '*[t]he editorial team also reviewed a wide range of research material ... most particularly the following report on misconceptions about sexual offending from the Australian Government's Australian Institute of Family Studies* - https://apo.org.au/sites/default/files/resource-files/2017-09/apo-nid107216_1.pdf'. Audience and Consumer Affairs note that this resource, titled 'Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners', states:

- » *The rate of false allegations of sexual offences is very low.*
- » *Studies estimate 5% of rape allegations are false (meta-analysis of seven studies in Western countries: Ferguson & Malouff, 2016). Therefore, the overwhelming majority of sexual offence reports are true. (emphasis added)*

Since receiving your complaint, the ABC has further examined the source material cited in this document as well as other primary research (in particular, Lisak et al's study, '[False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases](#)'). On consideration of this material, ABC News has amended both the ABC News Online story and the text presented following completion of the *Australia Talks* survey to state '*Extensive research shows that the prevalence of false sexual assault allegations reported to police is very low*'. We are satisfied that this wording accurately reflects the research which underpins it. An Editor's Note has been added to both items to acknowledge and explain the clarification made. ABC News has published an entry on the [ABC's Corrections and Clarifications](#) page which states: '*Australia Talks: Two related stories concerning community perceptions of the frequency of false allegations of sexual assault have been edited to clarify that academic research into sexual assault allegations referred to false allegations made to police and was not a conclusion about the overall truthfulness of sexual assault allegations.*' Audience and Consumer Affairs is satisfied that this action by ABC News resolves this aspect of your complaint.

The triple j *Hack* story, '[Guys, you can stop worrying about false rape allegations. They're extremely rare](#)', was published on 30 March 2021. Unless special circumstances exist, Audience and Consumer Affairs will generally not accept for investigation complaints lodged more than six weeks after an item was broadcast or published. Your complaint does not indicate that special circumstances apply in this instance. In any

case, it will be clear from the paragraph above that we are satisfied that describing *'false rape allegations'* as *'extremely rare'* accurately reflects research in this field. While noting your comments about Dr Fileborn's remarks, she has specific expertise in this field and her remarks are clearly attributed to her. The principles which accompany the ABC's accuracy standards note that sources with relevant expertise may be relied on more heavily than those without. In the circumstances, we decline to further investigate this aspect of your complaint.

Thank you for giving the ABC the opportunity to respond to your concerns.

Yours sincerely,
Head, Audience and Consumer Affairs

Rejoinder to the ABC complaints unit's response

From: Tom Nankivell...

Sent: 28 September 2021

Dear Head of ABC Audience and Consumer Affairs,

On 17 June I lodged a six-page complaint (ref C13958-21) that argued that three articles on ABC Online wrongly state or imply that credible research demonstrates that sexual assault allegations are almost always true. My complaint made the case that statements in the ABC articles were inaccurate and/or misleading principally by drawing directly on the source of the prevalence estimates on which the articles relied.

Thank you for your response of 14 September ..., which included an explanation of the process you followed, references to some sources ABC News has reviewed, and some discussion around your decisions.

I appreciate the edits and clarifications ABC has made that explain that the academic research on the prevalence of false sexual assault allegations relates to only those reports made *to police*. This deals with one matter covered in my complaint, albeit a minor one.

The other aspect of your edits to the wording of the articles involves a subtle shift in emphasis *from* the question of what proportion of sexual assault allegations are true to the question of what proportion of sexual assault allegations are false. So, for example, where the News Online article¹³ originally said:

“Extensive research shows allegations of sexual assault are overwhelmingly true.”

the recently updated version says:

“Extensive research shows that the prevalence of false sexual assault allegations ... is very low.”

I understand fully why you have done this, but that change does not correct the fundamental problem my complaint identified with those statements — namely that the estimate of false allegations on which the ABC articles rely omits the potentially significant number of false allegations that researchers could not confirm as such.

However, to understand what the subtle changes you made do and do not mean, and why they are misleading, a reader would need to be familiar with the underlying research literature and understand the artificially-constrained definitions many researchers use for classifying allegations as “false” — which in effect imply, among other oddities, that a false allegation only becomes false once it has been demonstrated to be such!

ABC News has recently made marked efforts to ensure that its readers are not misled by technical classifications of sexual assault reports that use terms such as “unfounded”, given that the common understanding of such terms can differ from their meaning when used in police reports and associated

¹³ REF: Lucy Sweeney (with added reporting by Sally Sara), *ABC News Online*, ‘Grace Tame says change is a marathon effort. But Australia Talks data shows our perception of sexual assault is changing’, *ABC News Online*, <https://www.abc.net.au/news/2021-06-10/grace-tame-australia-talks-believing-sexual-assault-allegations/100155474> (accessed 10.50pm, 11 June 2021; updated version accessed 25 September 2021).

research.¹⁴ In making these efforts, your concern was partly to ensure that people do not perceive that the number of false allegations is *greater* than the reality.

To be accurate and unbiased, it is incumbent on the ABC to take the same care to ensure that your reporting does not cause people to perceive that the number of false allegations is *less* than the reality (or that the research on this matter is more certain than it is). This means that you should avoid relying on definitive-sounding statements about “false” reports drawn from the research literature, without appropriate context and explanation, that leave your readers with an incorrect impression about the prevalence of what those readers would understand to be false reports. The corrections and clarifications you have made do not achieve this.

I believe your reluctance to make the necessary, substantive corrections and clarifications in response to my complaint stems from the way you engaged with it. As I elaborate below, while your response makes a range of points, it does not directly or rigorously address the evidence and arguments in my complaint. Nor do those points rebut the case I made.

The upshot is that ABC Online continues to mispresent the research on the prevalence of false sexual assault allegations. As Australia’s most trusted news source, misreporting by the ABC has the potential to seriously mislead the community. Indeed, as my complaint pointed out, the results of the Australia Talks survey show that a large proportion of your respondents have already formed views that, while aligned with your reporting about the prevalence of false sexual assault allegations, are not supported by the research and are most probably wrong.

I therefore believe you should reconsider my complaint with a view to fully correcting the record. The ABC Complaint Handling Procedure¹⁵ does not appear to countenance reconsideration by ABC Audience and Consumer Affairs. If reconsideration is not an option, please let me know. However, in the first instance I would prefer to see if it is possible to resolve the matter satisfactorily with you, ahead of pursuing it through other channels.

With that in mind, below I have recapped some relevant points from my complaint and then set out what I see as the main problems in your response, and why major corrections are still needed.

Recapping some points from the complaint

My complaint highlighted the following statements from three ABC Online articles:

"Extensive research shows allegations of sexual assault are overwhelmingly true."
(Lucy Sweeney/News Online)

"Guys, you can stop worrying about false rape allegations. They’re extremely rare."
(Maddy King/Hack)¹⁶

14 REF: Inga Ting, Nathanael Scott and Alex Palmer, ‘Rough Justice: How police are failing survivors of sexual assault’, *ABC News Online*, <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0> (accessed 10 June 2021); and Inga Ting and Lauren Roberts, ‘Unpursued in the Top End’, *ABC News Online*, <https://www.abc.net.au/news/2020-02-20/sexual-assaults-reported-to-nt-police-least-likely-to-be-pursued/11917478?nw=0&r=HtmlFragment> (accessed 27 September 2021)

15 REF: *ABC Complaint Handling Procedures*, <https://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf> (accessed 25 September 2021)

16 REF: Maddy King, ‘Guys, you can stop worry about false rape allegations. They’re extremely rare’, *Triple J Hack*, <https://www.abc.net.au/triplej/programs/hack/false-rape-allegations-myths/13281852> (accessed 10 June 2021).

“In reality, the overwhelming majority of sexual offence reports are true.”
(Australia Talks online results page)¹⁷

(While the first and third statements have now been edited to look at the prevalence of false allegations, as mentioned that does not address the fundamental problem with them.)

The complaint then pointed out that:

- these statements/articles rely on a 2017 AIFS report, *Challenging conceptions on sexual offending*¹⁸, which cited a prevalence estimate (of 5 per cent) for false sexual assault allegations.¹⁹
- the AIFS report sourced that estimate from a 2016 meta-analysis by Ferguson and Malouff²⁰
- Ferguson and Malouff **explicitly cautioned** that its prevalence estimate covered only “confirmed” false reports; and that the conservative definition of false reports adopted “is not intended to imply that all other cases are true reports.”
- the total of all false reports (confirmed plus unconfirmed) is potentially multiple times higher than the 5 per cent figure used in the ABC’s articles.

Importantly, my complaint also said:

... the ABC and its researchers/journalists are not solely to blame for the mistaken statements, as some of the experts and source research documentation referenced by the ABC also appear to have not properly understood or distinguished between estimates of (confirmed) false allegations and all false allegations.

In other words, I was both acknowledging and indicating to you that relying solely on the words in the sources originally referenced by the ABC— ie the AIFS report (and Dr Bianca Fileborn) — is insufficient to gain an accurate understanding of the matter.

Rejoinders to your response

Your response stated that, in preparing the News Online story, the ABC News editorial team had interviewed criminologist Dr Fileborn and reviewed a wide range of research material, including “most

17 REF: ‘More than 1 in 3 men say sexual assault claims are usually believable’, *Australia Talks interactive tool results page*, <https://australiatalks.abc.net.au/results> (accessed 9.20pm, 11 June 2021).

18 REF: AIFS (Australian Institute of Family Studies), ‘Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners’, https://apo.org.au/sites/default/files/resource-files/2017-09/apo-nid107216_1.pdf (accessed 10 June 2021).

¹⁹ The second and third of these ABC articles stated and/or hyperlinked to a prevalence estimate (of 5 per cent) for false sexual assault allegations contained in a 2017 AIFS report.

When published, the News Online article hyperlinked to a separate ABC article that did not include any research on the prevalence rates of false sexual assaults. I note that, in making the recent edits to that sentence in that article to capture the point about the sexual offence reports studied being those made to *police*, the original hyperlink has also been deleted. As a consequence, the only support for the original statement in the News Online article is the material added later in the article which says “The figure varies across studies, but on average, around 5 per cent of reports made to police are deemed false”. As the article then discusses Dr Fileborn’s views about that 5 per cent figure, presumably it too is a reference to the figure from the AIFS and Ferguson and Malouff studies (given that, in the Hack article, Dr Fileborn’s very similar discussion of the 5 per cent estimate is hyperlinked to the AIFS 2017 study).

20 REF: Claire Ferguson and John Malouff, ‘Assessing police classifications of sexual assault reports: A meta-analysis of false reporting rates.’ *Archives of Sexual Behavior*, 45(5), 1185–1193.

particularly” the 2017 AIFS report, *Challenging misconceptions on sexual offending*. (I will discuss ... Dr Fileborn’s comments later).

Your response then noted that the AIFS report states:

The rate of false allegations of sexual assault is very low.

Studies estimate 5% of rape allegations are false (meta-analysis of seven studies in Western countries: Ferguson & Malouff, 2016). **Therefore, the overwhelming majority of sexual offence reports are true.** (your emphasis added)

Why the ABC is wrong to rely on the words in the AIFS study

However, as indicated above, my complaint explained that the Ferguson and Malouff meta-analysis relied upon by the AIFS document does not support the conclusion drawn. To repeat, Ferguson and Malouff made clear that the 5 per cent figure related only to “confirmed” cases of false sexual assault allegations, and that there are potentially many other cases that are also false but whose falsity or veracity cannot be determined. I included calculations from the relevant studies in the Ferguson and Malouff meta-analysis to show that the actual rate of false allegations (confirmed and unconfirmed) could be many times higher than 5 per cent. Thus, **the AIFS report was wrong** to conclude from the Ferguson and Malouff meta-analysis that the overwhelming majority of sexual offence reports are true, or that the rate of false allegations is very low — which is the phrasing you adopted for your recent edits.

Given that my complaint (a) pointed out that the Ferguson and Malouff meta-analysis cited in the AIFS study does not support the conclusion drawn by the AIFS, and (b) warned you of the unreliability of the source (AIFS) documentation referenced by the ABC, I submit that it is not an adequate response for you to simply quote the AIFS conclusion as if that shows that the ABC’s statements are correct.

You might respond that it was a “reasonable effort” for ABC journalists to rely on the AIFS’s words without further investigation. Even if that argument were initially valid²¹, I submit that it was not valid to continue to rely on the AIFS’s words, as your response did, once you had been alerted that they are problematic.

What lessons should the ABC take from the Lisak et al study?

Your response also says that, since receiving my complaint, the ABC has examined other primary research, “in particular, the Lisak et al’s study”.²²

The response does not explain exactly what ABC drew from Lisak et al. It is possible that all you drew was confirmation of the point that the research covers only sexual offence reports *to police*, rather than all allegations. That would be a reasonable point to take from the study.

21 That said, on reading the statements in the ABC articles, their implausibly definitive nature immediately prompted me to investigate the veracity of the sources. As I mentioned in my complaint, a more questioning mindset and/or more thorough fact checking by your journalists/researchers might have averted some of the mistakes, and could now help safeguard against recurrences.

22 REF: Lisak, D., Gardinier, L., Nicksa, S. C., and Cote, A. M. (2010), ‘False allegations of sexual assault: an analysis of ten years of reported cases’, *Violence Against Women*, 16(2), 1318-1334.

However, if your response is suggesting that the Lisak et al study provides support for the conclusion that the overwhelming majority of sexual assault reports is true or that the number of false reports is very low, this would not be a reasonable conclusion. This is because:

- the Lisak et al study was one of the studies included in the Ferguson and Malouff 2016 meta-study, and so its results are also counted in the “5 per cent” estimate of confirmed false allegations
- while the Lisak et al study found that 6 per cent of sexual assault allegations in its sample could be confirmed as false, it found that a further 45 per cent of allegations “did not proceed to any prosecution or disciplinary action” (and another 14 per cent contained insufficient information for the researchers to code).²³ This again demonstrates that the total number of false allegations is potentially several times the number of “confirmed” false allegations.

It is true that Lisak et al (p. 1318) state that their results together with those of other studies “indicate that the prevalence of false allegations is between 2% and 10%.” However, these figures relate only to confirmed false allegations; they do not include unconfirmed false allegations.

Thus, the Lisak et al study does not provide anything additional to the Ferguson and Malouff study that would save the conclusion that the overwhelming majority of sexual offence reports (to police) are true or that the prevalence of false reports is very low.

Dr Fileborn’s comments and appeals to authority

If my analysis is correct, there are two main problems with the words and views attributed to Dr Fileborn in the Hack (and News Online) articles.

The first and most important problem is that, like the AIFS report, Dr Fileborn seems to have mistakenly interpreted the 5 per cent prevalence estimate that emanated from the Ferguson and Malouff meta-analysis as if it were intended to be an estimate of all false sexual assault allegations ...

Second, Dr Fileborn’s comments would likely give readers the impression that there are a number of factors that would reduce the actual rate of false allegations below the 5 per cent estimate. However, the research approach underlying the Ferguson and Malouff meta-analysis was in fact designed to take into account several of the matters mentioned by Dr Fileborn.

Your response did not address the substance of my arguments but instead said:

While noting your comments about Dr Fileborn’s remarks, she has specific expertise in this field and her remarks are clearly attributed to her. The principles which accompany the ABC’s accuracy standards note that sources with relevant expertise may be relied on more heavily than those without.

As with relying on AIFS report, I accept that in the first instance it can be reasonable to rely on the words of independent and objective experts. While I do have some expertise,²⁴ I accept that, were you

²³ To avoid any doubt, I am not implying that all complaints in these two categories were false; just that we do not know whether they were true or false. Note that Lisak et al (p. 1328) explain that “cases [that] did not proceed” captures cases where there was insufficient evidence to proceed, cases where the victim withdrew from the process or was unable to identify the perpetrator, and cases where the victim mislabelled the incident (that is, the incident did not meet the legal elements of the crime of sexual assault).

²⁴ For the record, indicators of my own expertise include that I have academic qualifications in economics and public policy, and around 35 years experience as a researcher and government policy adviser. Over this time I have worked on, or interpreted and evaluated, many statistical reports and government or academic research papers. I have also run an independent complaint handling unit for a government agency.

faced simply with a “my word versus hers” choice on this matter, it would have been reasonable for you to favour Dr Fileborn’s views.

One caveat is that it is also important that the ABC consider whether the experts it relies on are able to provide balanced views of research on a particularly-politicalised issue. It is clear from some of her writings that Dr Fileborn is not only an academic but also an advocate on gender and sexual assault issues. ...

The more important point is that you had, available for your consideration, not just my and Dr Fileborn’s words but also the words in the research studies I cited and referenced. My complaint presented careful and detailed arguments, drawing on the source literature, to show why the points attributed to Dr Fileborn were wrong or potentially misleading. Your staff should have been able to check my arguments, in the first instance by reading the Ferguson and Malouff meta-analysis from which the 5 per cent estimate about which Dr Fileborn spoke comes. They could then, of course, have also tested my arguments with Dr Fileborn and other experts as necessary.

Timing issues

Your response also pointed out that the Hack article was published on 30 March 2021, which is more than six weeks before I lodged my complaint (the normal time window for consideration of complaints), and that I failed to indicate what special circumstances might apply to warrant its review. I accept this point of technicality.

What I would say now is that the Hack article is one of several ABC articles that together have promoted a particular narrative around the prevalence of false sexual assault allegations. Further, a link to the Hack article appeared at the bottom of the News Online article when it was published on the ABC website, so it effectively remained “live”, and something that your audience might readily read, at that time. My thought is that if you are to correct one of these articles, it would be sensible to correct all of the set.

What further changes are needed?

If my analysis is correct, and I submit that your response provides no firm grounds to think otherwise, the ABC has published articles that materially misrepresent the findings of the relevant research, falsely indicating that the research is more definitive than it is, and that it demonstrates that false sexual assault allegations (to police) are very low (and/or, as in the earlier formulation, that such allegations are almost always true). This has likely misinformed the general public and may have added to “women’s anger” and the prevalence of the view that complainants should be automatically believed. In turn it may have harmed the credibility and wellbeing of people who have been falsely accused of sexual assault. The longer the delay in addressing these widespread misconceptions, the longer the harm they cause will persist.

Thus, while I do not have the same credentials as Dr Fileborn in the areas of criminology, and sexual violence and harassment, I submit that I do have reasonable expertise to be able to interpret the Ferguson and Malouff paper, from which the 5 per cent estimate relied on by the ABC and Dr Fileborn is drawn, and to challenge and critique Dr Fileborn’s comments in relation to that estimate. Note that I also checked my understanding of the Ferguson and Malouff meta-analysis with Professor Malouff before lodging my complaint.

That said, as I mentioned in my complaint, I will readily stand corrected should my work or conclusions prove to be mistaken.

While an aspect of the edits and clarifications you made recently (to narrow the scope of your statements to reports to police) is a small step in the right direction, your changes do not address the fundamental problems with the statements and articles highlighted in my complaint.

Accordingly, unless you can demonstrate material errors in my analysis that the actual rate of false sexual assault allegations (to police) is potentially much higher than the 5 per cent estimate your articles have relied on, I request that you:

- retract the Hack article — whose title tells Guys not to worry because false rape allegations are extremely rare — as the premise is clearly baseless
- issue corrections and clarifications to the relevant parts of the News Online article and the Australia Talks results page, pointing out that the prevalence rate of false sexual assault allegations (whether restricted to police reports or more generally) cannot be determined but is potentially multiple times higher than the 5 per cent estimate previously reported by the ABC
- add a further notice to the ABC Corrections and Clarifications page, that reflects the material in the first two dot-points in this list.

Given the heightened attention currently being given to the issue of the veracity of sexual assault allegations, I also request that ABC publish articles on this matter on News Online and Hack (and potentially items on other ABC platforms). These could cover my complaint and confess to the errors in the ABC's earlier reports, to give these matters a higher-profile with your audience.

Closing comments and next steps

I recognise that the veracity of sexual assault allegations is a sensitive topic for many people: those who have been sexually assaulted; those who have been accused of sexual assault; the community generally; and, in light of recent controversies, the ABC. Further, the issue's politicisation has created an obvious risk that some people, potentially including some journalists and even academics, will struggle to fully separate what the evidence shows from their own beliefs and agendas.

While I do not know what internal discussions were had in the framing of your response, the risk is that it could be seen more as an attempt to fob off my complaint, in order to protect a particular narrative favoured by some people within the ABC, than as a genuine attempt to seek the truth and ensure that it is reported accurately and understandably.

As mentioned earlier, in the first instance I would prefer it if this matter could be resolved satisfactorily with you. However, because of the extended period your initial investigation took (almost thrice your standard 30-day window) and the limited nature of your response, I would like some assurances about how ABC will deal with this request for reconsideration.

I thus ask that you reply reasonably promptly to say whether you are willing to formally reconsider my complaint. If you are, can you also commit to engage directly and rigorously with the evidence and arguments I have provided? In view of this matter's seriousness and the substantial time that your investigation has already absorbed, I also ask that you commit to provide at least a preliminary response to the substance of my complaint within a fortnight from now, that is by Tuesday, 12 October. If you are not able to commit to this, please let me know.

Yours sincerely,
Tom Nankivell
28 September 2021

The ABC complaint unit's short response to the rejoinder

From: ABC Corporate Affairs

Sent: Friday, 8 October 2021 1:05 PM

Dear Mr Nankivell,

I have now had the opportunity to read the document you provided and advise that the ABC will not be reinvestigating this matter.

The wording used in the ABC's stories accurately reflects the research which underpins it – for example, the Lisak et al research concludes that *'the prevalence of false allegations is between 2% and 10%'*.

The corrective action already taken is sufficient and the ABC will not be retracting or further amending the stories in the way you suggest.

Yours sincerely,

[Head, Audience and Consumer Affairs]

Submission to the Independent Review

Submission to the Independent Review of ABC complaint handling

Tom Nankivell, 17 December 2021

About this submission

Earlier this year I lodged a complaint with the ABC's Audience and Consumer Affairs (ACA) about the ABC's representation of evidence on the frequency of false sexual assault allegations. My complaint was partially accepted by ACA, and some minor corrections were made. However, in my view, there were several deficiencies in the way ACA dealt with the complaint.

This episode may make a useful case study for the Independent Review. Accordingly, this submission outlines the process and the problems I saw with the ABC's response, and suggests some possible fixes. I have attached my complaint(s) and the ABC's responses to the submission.

Note that as well as being an ABC audience member, a taxpayer and a complainant, I have also worked in an independent complaints handling body. Specifically, I worked for several years in the Australian competitive neutrality complaints office — running the office in 2019. I have drawn on this experience in suggesting some reforms the Independent Review could consider.

Timeline of my complaint and ACA's response

In early 2021, ABC Online published a series of articles that said that sexual assault allegations are “almost always true” and that false allegations are “extremely rare”. As these statements struck me as dubious, I followed the links and references contained in the articles to the underlying literature. On reading that literature, I concluded that the ABC's statements were indeed incorrect.

After consulting the ABC guidelines on complaints, on 10 June I emailed Lucy Sweeney, the author of one of the articles, seeking a correction.

As I did not receive a reply to my email, on 17 June I submitted a formal complaint to the ABC's Audience and Consumer Affairs. The body of my complaint was detailed (6 pages long), carefully argued and fully referenced. The complaint is outlined in Box 1 and reproduced as Appendix A.

While I received acknowledgement that my complaint would be considered by ACA, I did not hear anything further for a couple of months.

After I sent a follow-up email on 27 August, ACA responded on 14 September, indicating that the ABC had made some minor corrections/clarifications to address some points in my submission. That response is at Appendix B.

While I appreciated the corrections and clarifications made, in my view the ACA response did not rigorously or transparently address the main concerns in my complaint. Thus, on 28 September I submitted a ‘rejoinder’, explaining the problems I saw with the ACA response and seeking reconsideration. My rejoinder is at Appendix C.

The head of ACA wrote back on 8 October rejecting my request for reconsideration. That reply is at Attachment D.

The essence of my complaint

My complaint referred to the following statements from three ABC Online articles:

"Extensive research shows allegations of sexual assault are overwhelmingly true"

"Guys, you can stop worrying about false rape allegations. They're extremely rare"

"In reality, the overwhelming majority of sexual offence reports are true"

The complaint then pointed out that:

- these statements/articles relied on a 2017 AIFS report, *Challenging conceptions on sexual offending*, which cited a prevalence estimate (of 5 per cent) for false sexual assault allegations
- the AIFS report sourced that estimate from a 2016 meta-analysis by Ferguson and Malouff
- Ferguson and Malouff **explicitly cautioned** that its prevalence estimate covered only "confirmed" false reports; and that the conservative definition of false reports adopted "is not intended to imply that all other cases are true reports"
- the total of all false reports (confirmed plus unconfirmed) is potentially multiple times higher than the 5 per cent figure used in the ABC's articles.

The complaint also made several other points as to why the ABC's statements were misleading.

Some deficiencies in the way ACA handled my complaint

Lengthy timeframe

From lodgement, it took almost three months for ACA to provide a response. I understand that the ABC has resource constraints and that, had it addressed my complaint fully and rigorously, the complaint may have taken longer to consider than some others. Nonetheless, it appears that my complaint may have been 'parked' and then 'forgotten' for a while — perhaps after being sent to the ABC News area for comment — and was only acted upon after I sent a follow-up email in late August.

Slip-ups of this nature can occasionally happen in even the best-run organisation. However, if the Independent Review finds that my experience is not a rare one, it could investigate possible improvements to ACA's administrative processes.

Limited explanations in ACA's response

ACA's response (Appendix B) to my complaint was quite brief, running to about a page. It:

- outlined my complaint
- briefly explained ACA's role
- mentioned that ACA had consulted the relevant program area and some other sources (without explaining, for the most part, what it had taken from those sources)
- set out the minor corrections the ABC had made to the articles and on the corrections page
- provided one or two observations (including a quote from the AIFS 2017 paper) that were apparently to be taken as counterpoints to points I had made in my original complaint.

However, the ACA response did not engage directly or transparently with the substance of my complaint to any significant extent. In essence, the ACA response said “thank you for your complaint, we have considered the merits of your arguments and we agree with X but not with Y”. As such, I was expected to ‘trust’ that ACA had properly considered my complaint and that its determination was well based.

This is quite different from the approach taken by the competitive neutrality complaints body, where once a complaint was accepted, the complaints office would respond to the arguments in the original complaint in a much more direct, thorough and transparent manner. The office would also often engage with the complainant and, in effect, issue draft decisions and invite the complainant (and complained-about body) to respond or make further input. This did not happen with my complaint to the ABC. Once I submitted my complaint, I was not included in the process nor invited to make any comment before ACA issued its decision.

If the complaints functions is to remain within the ABC, the Independent Review could consider recommending that ACA provide more open, transparent and rigorous responses when it responds to complaints it has ‘accepted’ for investigation.

Weak arguments used by ACA

While the ACA response provided limited information to help explain the reasons for its decisions, the information it did provide was generally underwhelming.

For example, in its response to my original complaint, ACA quoted the 2017 AIFS report as if the quoted material justified the statements in the ABC articles. Yet, my original complaint had in effect already pointed out why the AIFS statement could not be relied upon to support the statements in the ABC articles. As I said in my rejoinder:

Given that my complaint (a) pointed out that the Ferguson and Malouff meta-analysis cited in the AIFS study does not support the conclusion drawn by the AIFS, and (b) warned you of the unreliability of the source (AIFS) documentation referenced by the ABC, I submit that it is not an adequate response for you to simply quote the AIFS conclusion as if that shows that the ABC’s statements are correct.

ACA repeated this approach in its reply to my rejoinder. In that case, my rejoinder explained why material from another study mentioned by ACA — by *Lisak et al* — could not be relied on to support the statements in the ABC articles. Yet, without addressing my point, the ACA response to my rejoinder simply quoted the material from *Lisak et al*!

The ACA response also relied on appeals to authority and technicalities to avoid addressing the substance of my complaint and making more substantive changes to the ABC articles. (My rejoinder — Appendix C — explains these points in more detail).

Was there some politics at play in the ACA response?

The Independent Review’s public consultation paper mentions three high-profile complaints around which there has been a concern, at least in some quarters, that the (conscious or unconscious) political biases of ABC staff may have played a role in the initial reporting that led to the complaint. One of these, the *Ms Represented* complaint, relates to a program about gender politics.

This is also potentially relevant to the subject matter of my complaint, given that most sexual assaults are committed by males and most victims are female. The ABC has been heavily involved in breaking and reporting sexual assault issues recently, as well as stories emphasising gender discrimination against women. Accurate and balanced news reporting on such issues is always to be welcomed. However, rightly or wrongly, the ABC has been under fire in recent years for its reporting on sexual assault allegations affecting some high-profile Australians, including George Pell and Christian Porter. A former ABC Board Member has also accused the ABC of having a feminist bias.²⁵ In this context, while I submitted my complaint in good faith, I did wonder whether the ABC and its complaint unit would feel more pressure than it might otherwise to ‘hold the line’ on the statements that were the subject of my complaint.

While I do not know what discussions within the ABC were had in framing of the ACA response, to me the nature of the response — including its reliance on limited and weak arguments and the minimal (and arguably almost token) changes it made — seems to at least be consistent with the view that some gender politics had been at play.

Of course, I recognise that it is beyond the scope of the Independent Review to make any general determination about whether the ABC or its staff have a political bias that interferes with either its reporting or how ACA responds to complaints.

Rather, the relevant point for the Independent Review is that there may be value in the complaints body being separate and thus more undoubtedly independent from the ABC. This would remove any question of ABC bias (genuine or perceived) affecting the outcome of complaints.

²⁵ Janet Albrechtsen, “In Aunty’s playground, the Squad runs riot”, *The Australian*, 1 September 2021.