
**Context and decisions regarding the appearance of
Mr Zaky Mallah
on the ABC's Q&A program on 22 June 2015
Department of Communications - 1 July 2015**

Summary of Investigation Report

Nature of Investigation

On 22 June 2015, Mr Zaky Mallah joined the live audience of the Q&A program produced by the Australian Broadcasting Corporation (ABC). Mr Mallah asked a question and subsequently engaged in a short debate with the panel.

On 25 June 2015 the Minister for Communications, the Hon Malcolm Turnbull, MP requested the Department investigate:

1. The context in which Mr Mallah appeared on Q&A, including his previous engagement with the ABC.
2. The decision making process for this appearance.
3. The protocols that were used in regard to physical security for the live broadcast.
4. The decision making process for the subsequent re-broadcast of the Q&A episode.
5. The extent to which existing broadcasting codes apply to this situation.

Context and Limitations

The Department has not been asked to make recommendations or to provide opinions on the matters investigated. The role of the Department has been to establish the relevant facts and provide these to the Minister. The Department has, in performing its role, relied on information (written and oral) provided by the ABC. The ABC has cooperated with this investigation. While the Department has no reason to doubt the veracity of the information provided by the ABC, the Department has not audited that information. The ABC reviewed a draft of the full report prepared by the Department and relevant comments and clarifications were incorporated in that draft version and this summary.

Mr Mallah's appearance on Q&A on 22 June 2015

Mr Zaky Mallah was arrested in December 2003 and subsequently prosecuted for two charges under section 101.6(1) of the *Criminal Code Act 1995 (Criminal Code)*, for doing an act in preparation for or planning a terrorist act, and one charge under section 147.2 of the Criminal Code, for threatening to cause harm to a Commonwealth public official.

Mr Mallah was found not guilty by a jury of the two terrorist related charges. Mr Mallah pleaded guilty on the charge relating to the threats to kill officers of ASIO or DFAT.

Mr Mallah has made extensive media appearances over the intervening years, including television (*The Project, Insight*, various news services), radio (*2GB, 2UE, 6PR*), and in the print media (*The Australian, Sydney Morning Herald*). This is in spite of the very public statements by the judge in Mr Mallah's original case (Wood CJ) in regard to media involvement with Mr Mallah, including:

“It does seem to me to have been regrettable that some sections of the media took up the Prisoner as a person of interest, and gave him an entirely underserved and unnecessary exposure ...”

He also has an extensive social media presence, particularly through Twitter and YouTube. His social media content ranges from innocuous personal matters, to commentary on terrorism issues (including criticism of ISIS), and offensive (using sexually violent language) material.

Mr Mallah was well known to the Q&A editorial management team. He had first registered to be an audience member in 2011, had attended Q&A as an audience member on two occasions and been booked as an audience member on another three occasions but cancelled his booking on the day of the broadcast. He has also asked to be a panellist on the program on two occasions; neither time has he been accepted. On one other occasion he was asked if he wished to attend in the audience but did not accept the invitation.

Mr Mallah’s selection as a general audience member for the 22 June 2015 episode appears consistent with Q&A’s general practices, drawing on their database of registrations of interest.

The 22 June 2015 broadcast was the first time that Mr Mallah had been shortlisted by the Q&A editorial management team to ask a question of his own construction and actually had the opportunity to ask the question during the broadcast. This was in the context of an episode which, amongst other issues, discussed the Government’s proposals to remove citizenship from dual nationals involved in terrorism-related activities.

It was only at the time that Mr Mallah was being considered to ask a question live-to-air that any checks on Mr Mallah were undertaken for the purposes of that 22 June episode. After attempts to contact two people familiar with Mr Mallah were unsuccessful, the Q&A team relied on its previous experience with Mr Mallah, the advice of another ABC journalist, a review of a recent television appearance and a review of his social media posts undertaken in August 2014, which did not include Mr Mallah’s offensive tweets posted in early 2015 or his recent YouTube videos, in determining that he was not dangerous, would not be disruptive and would be a suitable audience member to ask a question.

Ultimately his selection for appearance was an editorial judgement made by the Q&A editorial management team, which is led by the Executive Producer, Peter McEvoy. We have been advised that this decision did not raise any issues of concern for the team in relation to the Editorial Policies of the ABC that they determined would require any referral beyond Mr McEvoy.

The ABC has subsequently acknowledged an error of judgement in allowing Mr Mallah to join the audience and ask a question.

Protocols for physical security for the live broadcast

As part of the investigation, the Department reviewed the ABC’s physical security protocols and the security practices in relation to Q&A. The results of that part of the investigation are classified security in confidence and are not for publication.

The decision to rebroadcast the 22 June episode

The ABC's standard practice—subject to scheduling and rights ownership—is to rebroadcast programming and make it available on online platforms. Options open to the broadcaster to deal with broadcasts which have raised concerns include:

- Not rebroadcasting;
- Editing the program prior to the rebroadcast; and/or
- Providing enhanced viewer advice or an updated viewer advice shown before the program commences.

The ABC has advised that it is only on rare occasions that the ABC may withdraw or edit a program prior to repeat, if there are known legal concerns or formal editorial content breaches identified in a program.

In the case of the 22 June 2015 broadcast of Q&A, the ABC advises that its standard practices were followed and an additional advisory added to the episode prior to rebroadcast and for online versions. The summary advisory is as follows:

“The ABC has acknowledged it made an error of judgement in allowing Mr Zaky Mallah to join the audience and ask a question in this edition of Q & A.”

Viewers are directed to a more detailed statement on the ABC's website.

We have been advised that the Director of Television (Mr Richard Finlayson), in consultation with the Managing Director (Mr Mark Scott AO) and Head of Editorial Policy (Mr Alan Sunderland), considered whether there were known legal concerns or formal editorial breaches which justified not repeating or editing the episode and subsequently made the editorial judgement to include the additional advisory material, which was drafted in consultation with the Director of Corporate Affairs (Mr Michael Millett).

It had also been seen by many viewers and widely reported, so not repeating it in full would have had in their view no effect.

Complaints and relevant policies and codes of practice

ABC Editorial Policies and the ABC Code of Practice apply to all ABC radio and television programming. There are editorial standards of relevance to the program: Impartiality and Diversity of Perspectives and Harm and Offence.

Complaints about the ABC's programming content should be sent to the broadcaster in the first instance. If the complainant does not receive a response in 60 days or is unsatisfied with the response they may then complain to the Australian Communications and Media Authority (ACMA). If the ACMA finds the complaint is justified it can recommend action be taken by the ABC to address the issue raised in the complaint.

As at 29 June 2015, 962 complaints had been logged by the ABC about the Q&A on 22 June 2015. The Audience and Consumer Affairs area of the ABC is currently considering the issues raised in these complaints.