

Chapter 5

Operation and effectiveness of the complaints process

5.1 In the previous chapter the Committee stressed the need for constant sampling of public opinion with regard to broadcasting standards to ensure that codes of practice and program ratings remained aligned with community standards. An important aspect of that process is the level and content of complaints received by the broadcasters and the regulator. This chapter looks at the frustrations that some have faced in making a complaint, and analyses the overall rigour of the complaints process.

Complaints process

5.2 The process for making complaints about the content of a broadcast is set out in Part 11 of the *Broadcasting Service Act 1992* (BSA). The process reflects the co-regulatory nature of the BSA in that roles have been assigned to both industry and the Australian Communications and Media Authority (ACMA) and the intention behind this is evident from the Explanatory Memorandum to the BSA, which states that:

It is envisaged that, in the first instance, the complainant would take up the complaint directly with the service provider... This Part provides for complaints to be made to [ACMA] as an avenue of last resort if other mechanisms have failed...¹

5.3 The complaints system is not 'user friendly'. Complaints in relation to most matters relating to program content must be made to the broadcaster, but different processes apply depending on whether the complaint refers to the ABC, SBS or the commercial stations. Complaints about content must refer to a breach of a code of practice; different codes apply to each broadcasting sector. Thus a complainant must, in theory, have some understanding of the content of the codes.

5.4 A brief perusal of ACMA's web site shows that ACMA can receive complaints directly on a wide range of subjects including various types of advertising, (political, tobacco and medicine) and Children's Television Standards. However, complaints about other forms of advertising on television go either to the Advertising Standards Board, for content matters such as sex, nudity or language, or to the

1 The Parliament of the Commonwealth of Australia House of Representatives, *Explanatory Memorandum to the Broadcasting Services Act 1992* (commentary on Part 11) as quoted in Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 22, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 9 April 2008).

Australian Competition and Consumer Commission if the complaint relates to false or misleading statements.²

Role of the broadcaster

5.5 Each industry code of practice advises viewers or listeners on how to make a complaint if there is a belief that the broadcaster has breached its own code of practice. This is consistent with section 148 of the BSA which states that a complaint against a broadcaster must be made in accordance with the relevant code of practice³.

5.6 All broadcasting codes of practice stipulate that a complaint must be submitted in writing, and include identifying information, to the station on which the alleged breach occurred. Broadcasters are required to respond to the complaint within 30 business days⁴; complainants who do not get a response within this period may refer the complaint to ACMA for investigation. The complaint may also be referred if the complainant 'has received a response within that period but considers that response to be inadequate'⁵. In responding to a written complaint, broadcasters must advise the complainant that, if she or he is dissatisfied with the response, the complaint may be referred to ACMA.

5.7 Broadcasters are under no obligation to investigate complaints received more than 60 days after the program was broadcast. Broadcasters may choose not to investigate complaints that they judge to be frivolous, vexatious or not made in good faith.

5.8 The ABC Code of Practice provides for complainants dissatisfied with their initial response from the ABC Audience and Consumer Affairs to:

...request that the matter be reviewed by the Complaints Review Executive (CRE). The CRE is a senior ABC manager with editorial experience, who is separate from Audience and Consumer Affairs and content areas, and who can consider the complaint afresh.⁶

5.9 Complainants also have recourse to the ABC's Independent Complaints Review Panel where the complaint relates to 'allegations of serious cases of factual inaccuracy, bias, lack of balance or unfair treatment arising from ABC content.'⁷ Note

2 However the Committee notes that most of the organisations have a policy of passing complaints received in error to the proper recipient. See paragraph 5.39.

3 *Broadcasting Services Act 1992*, Part 11, s. 148.

4 Free TV Australia, *Commercial Television Industry Code of Practice*, July 2004, p. 51. s 7.10. [http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_\(including%20amendment%20for%20election%20period\)_060907.pdf](http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_(including%20amendment%20for%20election%20period)_060907.pdf) (accessed 28 May 2008); Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, p. 5.

5 *Broadcasting Services Act 1992*, s. 148.

6 Australian Broadcasting Corporation, *Code of Practice*, March 2007, pp 18-19.

7 Australian Broadcasting Corporation, *Code of Practice*, March 2007, p. 19.

that the ABC, unlike the commercial broadcasters accepts complaint by e-mail (see below).

Role of ACMA

5.10 ACMA is required to investigate complaints that have been referred to it, providing that the complaint is not judged to be frivolous, vexatious or not made in good faith. ACMA's website lists investigations and findings relating to complaints about breaches of broadcasting codes.⁸

5.11 A condition of broadcasting licenses for the industries discussed is that they must 'comply with program standards applicable to the licence under Part 9 of this Act'⁹. Where ACMA has determined that a breach of a standard has taken place, it may:

- Impose an additional condition on the license;
- Refer the matter for prosecution as an offence;
- Issue a civil penalty notice;
- Issue a remedial direction;
- Suspend or cancel the license; or
- At any time, accept an enforceable undertaking.

ACMA may also take informal action in relation to breaches of standards.¹⁰

5.12 However, the Committee notes that ACMA is restricted in the action it can take where it is satisfied that a breach of a code of practice has occurred. Section 43 of the BSA allows ACMA to impose additional conditions on a license which would result in the broadcaster being forced to amend the code of practice to comply. Where a broadcaster:

... breaches such an additional license condition, ACMA may issue a remedial direction requiring compliance. In the event that the licensee does not comply with the remedial direction ACMA may:

- Pursue a civil penalty;
- Refer the matter for prosecution as an offence;
- Suspend or cancel the license; or
- At any time, accept an enforceable undertaking.¹¹

8 Follow links from http://www.acma.gov.au/WEB/STANDARD/pc=PC_90147 (accessed 17 April 2008)

9 *Broadcasting Services Act 1992*, Schedule 2, Parts 4-7.

10 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol_1_30mar07.pdf (accessed 3 April 2008).

5.13 As with a breach of standards, ACMA may accept an informal undertaking without legislative sanction where a breach of a code has occurred. ACMA states that previously accepted informal undertakings 'have been successfully employed'.¹²

5.14 As self-administering organisations, the ABC and SBS cannot be compelled to comply with a ruling of ACMA. Instead, if ACMA is satisfied that a complaint against either of the broadcasters is justified, it can recommend that the broadcaster take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice. 'Other action' may include broadcasting or otherwise publishing an apology or retraction. If the broadcaster fails to take the action considered appropriate by ACMA, the Authority may give the Minister a report on the matter.¹³

5.15 Where ACMA is satisfied that a breach of a code has occurred in 'deliberate disregard of a code of practice that applies to...subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services', a different process applies:

ACMA may, by notice in writing given to the person, direct the person to take action to ensure that those services are provided in accordance with that code of practice.¹⁴

5.16 A failure to comply with such a notice is an offence.¹⁵

Role of Parliament

5.17 Section 128 of the BSA gives either House of Parliament the power to amend a code registered by ACMA or a standard developed by ACMA with the agreement of the other House.¹⁶

Effectiveness of the current complaints system

5.18 Very little evidence was provided to the Committee apart from broadcasters themselves to suggest that the current complaints system adequately meets the needs

11 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/_assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 9 April 2008).

12 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/_assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 3 April 2008).

13 *Broadcasting Services Act 1992*, ss 150-153.

14 *Broadcasting Services Act 1992*, s. 141(2).

15 *Broadcasting Services Act 1992*, s. 142.

16 *Broadcasting Services Act 1992*, s. 128(1-2).

of complainants. Most contributors indicated that the system in general was discouraging:

Has this process been designed to frustrate and wear out complainants?¹⁷

What a farce – an absolute farce!!!¹⁸

The complaints process itself is a deterring regulation – it has become such an arduous task that the common viewer feels powerless to speak his/her mind.¹⁹

5.19 Community broadcasters and subscription broadcasters were not subject to the same level of criticism as free-to-air broadcasters. ASTRA attributes this to the fact that commercial broadcasters do not have direct relationships with their viewers:

ASTRA's members have a streamlined, effective and very efficient complaints process largely due to each subscription television operator having a call centre standing by to receive and address issues that may arise for their subscribers. Each operator has a vested interest in receiving feedback to ensure that subscribers are happy and to avoid 'churn': a term used to describe when a customer chooses to stop subscribing. Unresolved complaints are clearly to be avoided.

...

Consequently, complaints from subscribers are received over telephone and in writing. Telephone complaints are usually addressed at the time of the complaint then and there or if more complex, then very shortly afterwards. The process articulated in the codes of practice is designed to allow speedy resolution of issues directly from the supplier of the broadcast service...²⁰

5.20 ASTRA provided evidence that they 'are required to advise people that they can take it to ASTRA if they are not satisfied', however; 'ACMA does not receive that many complaints about our services'.²¹

5.21 Some submissions argued that the time taken to deal with complaints was an inevitable feature of a fair system and opposed significant change to the current process. For some, this is an acknowledgement of the responsibility given to the regulating bodies:

The ACMA has a very important job to do, seeing as the decisions they make now must be consistent, and will set precedents for years to come. As such,

17 Mr Desmond Kenneally, *Submission 39*, p. 1.

18 Mr Bruno D'Elia, *Submission 45*, p. 1.

19 Media Standards Australia, *Submission 48*, p. 4.

20 Australian Subscription Television and Radio Association, *Submission 77*, pp 3-4.

21 Ms Debra Richards, Chief Executive Officer, Australian Subscription Television and Radio Association, *Committee Hansard*, 23 May 2008, p. 54.

they should be able to take however long they feel is necessary in order for them to come up with their verdicts.²²

5.22 The New South Wales Council for Civil Liberties noted that shortening the allowed response time was not necessarily ideal:

If changes are made to the complaints procedure, it is of course important to ensure that the rules of natural justice are not compromised. Both complainants and broadcasters should be given adequate time to make submissions and replies. This might be frustrating to complainants, but it is a necessary requirement of the rule of law.²³

As the Committee notes below, it acknowledges that the Council's comments are relevant to investigations by ACMA but it does not consider that they justify extensive delay in responding to initial complaints.

Form of the complaint

5.23 The Committee heard that Commercial Radio Australia (CRA) considers that the low number of written complaints to ACMA indicates that the complaints system, whereby complainants are required to put their complaint in writing to the individual broadcaster, is effective.²⁴ CRA claimed a relatively small number of written complaints had advanced to investigation by ACMA.²⁵

5.24 Free TV Australia was unable to provide to the Committee with the number and nature of telephone complaints, or any statistics relating to the number of telephone complainants who went on to make a formal complaint in writing²⁶ although acknowledging that there were fewer formal written complaints than informal telephone complaints. Ms Flynn attributed this to the fact that:

...[O]nce they have rung up and had a conversation and someone has spoken to them, whether it is at the networks or with us, and that someone has listened to them. That is largely what they want to do; they do not necessarily want to go through a formal process.²⁷

5.25 Both Free TV Australia and the ABC also contended that telephone complaints did not necessarily relate to codes of practice, saying that those 'complaints

22 Mr Heath McDonough, *Submission 2*, p.2.

23 New South Wales Council for Civil Liberties, *Submission 42*, p. 7.

24 Ms Joan Warner, Chief Executive Officer, Commercial Radio Australia, *Committee Hansard*, 23 May 2008, p. 12.

25 Ms Joan Warner, Chief Executive Officer, Commercial Radio Australia, *Committee Hansard*, 23 May 2008, p. 12.

26 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 8.

27 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 8.

can be about the colour of someone's coat that day or their hair, or that they did not like the time that the program started and so on.²⁸

5.26 During the course of the inquiry, the Committee found that the ABC received nearly quadruple the amount of complaints over the previous two financial years compared with the free-to-air commercial television stations. Mr Gary Dawson, Director of Communications for the ABC indicated that the complaint figures also included radio figures. He attributed the large number of complaints to the fact that 'Australians do have a strong sense of ownership of the ABC, and they do tend to let us know'.²⁹

5.27 The higher volume of complaints was also attributed to the fact that complainants have more avenues with the ABC through which to pursue their complaint:

The ABC has a range of avenues available for audience members wishing to lodge such complaints, including electronic lodgement using a dedicated complaints form on the ABC's website, or through any of the other electronic entry points available for contacting the ABC. Complaints can also be sent by regular mail or faxed to the ABC. If an audience member prefers to make a complaint by telephone, the ABC generally seeks to respond on the spot or by return call.³⁰

5.28 The Committee's attention was drawn to concerns that industry bodies feel about amending codes of practice to allow formal complaints other than through writing, including the fear of mass email campaigns adding to a compliance burden³¹ or telephone complaints for non-code related issues.

5.29 The ABC seems to be able to manage complaints received via a number of media; the Committee does not accept that commercial broadcasters would be any more liable to find their compliance burden insupportable if they were required to provide greater access to complainants. With regard to distinguishing complaints about code and non-code related matters, again it is difficult to see why commercial broadcasters should be in any different position to the ABC. Broadcasting services already have a discretion to dismiss complaints as 'trivial, vexatious or in bad faith'. Sorting out code and non-code complaints should not be difficult.

5.30 The Committee notes that individual broadcasters are under no obligation to record or either provide details to ACMA of telephone complaints or note the

28 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 5.

29 Mr Gary Dawson, Director of Communications, Australian Broadcasting Corporation, *Committee Hansard*, 23 May 2008, p. 50.

30 Australian Broadcasting Corporation, *Submission 80*, p. 9.

31 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 5.

proportion of original telephone complainants to those who go on to make written complaints. However, the Committee considers that this information could prove valuable to broadcasters, industry bodies and ACMA in evaluating the effectiveness of codes of practice.

Recommendation 11

5.31 The Committee recommends that all free-to-air commercial television stations should maintain a log of all telephone complaints received, including a short summary of the complaint, and provide that log to Free TV Australia and ACMA.

5.32 A formal complaint is a serious matter that requires a formal investigation and that could potentially have significant ramifications for the broadcaster. However, the Committee believes that the system whereby formal complaints can only be made in writing is unduly restrictive and is not consistent with the technological capabilities of today's society.

5.33 The Committee commends the ABC for allowing complaints from the public through diverse forums, including telephone and online.

Recommendation 12

5.34 All broadcasters should amend their codes of practice and website capabilities to allow viewers to make complaints about the code by email or electronically. Email and electronic complaints about code-related issues should receive the same response as a written complaint.

5.35 ACMA should monitor complaints process and ensure that they are simple and accessible. For example, an industry standard should require that all broadcasters' home pages have a clearly visible and direct link to a complaints site which requires only one key stroke or mouse click to access it.

Recommendation 13

5.36 Similarly worded complaints received by email, electronically or in writing may receive a standard written response from the broadcaster following notification to, and approval by, ACMA.

5.37 This process would serve to alert ACMA to any programs subject to a large volume of complaints which could be used by the regulator as a basis to initiate an inquiry into the content of the program without waiting to receive a formal complaint.

How to complain

5.38 Feedback to the inquiry suggests that there is confusion as to how to complain under the current system:

YMA is aware that a major portion of the audience for free-to-air TV do not know to whom, and how to make an effective complaint, should they wish to do so.

The system is fragmented, with viewers needing to make complaints either to the commercial channel they are watching, or the ABC, or SBS, or the AANA, or to ACMA (for children's C and P programs and ads), or to Pay TV.³²

5.39 The Australian Catholic Bishops Conference provides a solution to the confusion surrounding appropriate complaints body:

We recommend that government have a greater and easier process for feedback from the Australian public. We recommend a national hotline number be established for people to call and leave a verbal report on any audiovisual material about which they wish to complain or commend.³³

5.40 With regards to the method of complaint, Free TV Australia reminded the Committee that:

...[U]nder our code of practice we have to provide publicising [sic] of the code under section 7.5. We have to provide regular on-air information about the code and its complaints procedures. Licensees will broadcast 360 on-air spots each calendar year across all viewing zones. This information must be closed captioned. So, it is across all viewing zones in a week to ensure it is not just seen at 11.00 pm—you will see it at breakfast, prime time and so on. Approximately between 4,500 and 5,500 copies of the code of practice itself are downloaded from our website each month.³⁴

5.41 The Committee understands that it is a cause of frustration to some that the appropriate body to complain to may not be immediately apparent. However, the Committee is aware that it is the current practice of broadcasters, industry bodies and the government co-regulator to direct complainants to the appropriate broadcaster (or association, in the event that the complaint covers advertising) in the event that the complaint is made to the incorrect body in error.

Recommendation 14

5.42 Codes of practice should contain a formal undertaking by broadcasters that they will direct complainants as appropriate. Industry bodies and ACMA should ensure that their staff are aware of how to re-direct complaints received in error and inform complainants where this occurs.

Response time to complaints

5.43 The issue of the time taken to respond to complaints was identified by several contributors to the inquiry as a major source of frustration:

32 Young Media Australia, *Submission 79*, p. 7.

33 Australian Catholic Bishops Conference, *Submission 53*, p. 4.

34 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 5.

ACL is also concerned about the slow and ineffectual complaints process, which often fails to make any response to a complaint until the whole season of an offending program has aired.³⁵

5.44 Under current codes of practice, broadcasters have 30 working days to respond to a written complaint. According to Mr Coleman, this time allows 'discussion with people within the network about the classification of that particular episode and so on.'³⁶

5.45 Thirty working days should be more than adequate to respond to complaints. The complaint refers to a breach of the code. The program complained of will have been given a rating by the broadcaster according to the code and appropriate consumer advice prepared. The deliberations that were undertaken to do this will, presumably, be on the record within the broadcasting station. It cannot be difficult to review this process and advise the complainant of the basis on which a classification decision was made, or the judgements reached about particular content. If broadcasters are taking their responsibilities seriously then all the material necessary to provide a prompt response should be readily available.

Recommendation 15

5.46 The Committee recommends that, by the time of the next triennial review of free-to-air television codes of practice, broadcasters should seek to respond to all complaints received within 15 working days.

5.47 The only justification for a lengthy delay, other than the work involved, was offered by the NSW branch of the National Council for Civil Liberties; that natural justice required that the broadcaster be given ample time to respond to a complaint. The Committee does not accept that at this early stage in the complaint process issues of natural justice arise. The broadcaster is merely responding to a request from a dissatisfied consumer for an explanation with regard to some program content.

5.48 Once a complaint goes to ACMA, which has investigatory powers and the capacity to make finding and impose penalties, natural justice concerns may be real.

5.49 The Committee notes that, if its recommendations with regard to accepting electronic complaints are accepted, then the workload of broadcasters complaints units can be expected to rise. Thus it does not make any recommendation for a further reduction in response time. However ACMA should monitor broadcasters performance in responding to written complaints to ensure that the 30 day deadline is complied with.

35 Australian Christian Lobby, *Submission 82*, p. 3.

36 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 4.

5.50 The Committee is particularly disturbed by the accounts from submitters indicating that they received no response at all to complaints made which would appear to be a direct breach of the requirement of action from broadcasters.

On occasion that I have complained about the inappropriateness of content (eg sexual references, violence) during times when children are viewing, there has not been a reply from the network (or the ABA in the past) in question. Therefore I feel the complaints system has not been effective or accountable at all.³⁷

5.51 There may be cases where a complaint is treated as vexatious, trivial or not made in good faith and thus not investigated. However, even in those circumstances the complainant should be advised of the grounds on which the broadcaster has declined to act.

5.52 Should the complainant not receive a response or be dissatisfied with a response, they can refer the complaint to ACMA which states on its website that:

The timeframe for completion of a community broadcasting investigation is 12 weeks. However, this may not be achievable on occasions when there are several complex issues to consider and/or several broadcasts to review.³⁸

5.53 The Committee urges ACMA to review its own internal complaint management process to determine if a faster response time to complainants is possible.

5.54 As noted above, all responses to complaints should indicate that the complainant has the right to send their complaint to ACMA if they are dissatisfied with the broadcaster's response. However, ACMA's website indicates that this is not always the practice of broadcasters. On 23 May 2008, ACMA found that Channel Seven Melbourne breached complaints handling provisions after receiving a complaint for a report about suicide. ACMA found that:

...[W]hile the report itself did not breach the code, Seven failed to advise the complainant that they could refer the matter to ACMA if not satisfied with Seven's response.³⁹

5.55 In response to this breach, ACMA took informal disciplinary action. ACMA's website indicates that this is not an isolated breach of this requirement of the code.

5.56 The Committee notes that the failure of broadcasters to comply with basic complaints handling procedures does not build confidence in the broadcasters as the first 'port of call' for someone wishing to make a complaint. Nor does it encourage

37 Mr John Von Dinklage, *Submission 59*, p. 1.

38 Australian Communications and Media Authority, *Complaints and Investigations*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

39 Australian Communications and Media Authority, *ACMA Media Release 64/2008 – 23 May*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311171 (accessed 4 June 2008).

confidence that ACMA is providing effective regulation where it fails either to deter or punish a repeat offence. This point is discussed further below.

Internal clarity

5.57 Submitters to the inquiry also indicated that lack of clarity internal to the broadcasters over complaint handling added to the frustration of complainants. Mr Kevin Hogan noted that 'the present complaints mechanism is very much flawed with little or no transparency and practically no accountability.'⁴⁰ Professor Lesley Hitchens expanded on this:

There appears to be almost no information about how complaints are handled. Most of the websites of the commercial broadcasters give very little information about the complaints process, apart from the provision of a complaints form. Even this is often difficult to locate. The websites of FTVA and CRA provide information about the overall complaints process. However, there appears to be no information about what structures/processes the individual licensees have established for dealing with complaints.⁴¹

5.58 ACMA provides the following description of its complaint handling process on its website:

In conducting an investigation, ACMA requires the relevant licensee to thoroughly address the issues and provide evidence to support their claims. When an investigation is concluded, ACMA notifies the complainant of the result and provides a copy to the relevant licensee. This may be in the form of a letter or a report.⁴²

5.59 If ACMA does not find a breach, details of the complaint and the outcome of the investigation are published on ACMA's website, ACMA's monthly publication *ACMA Sphere* and ACMA's Annual Report. If ACMA finds a breach, ACMA's usual practice is to issue a media release, including details of any remedial action taken by the licensee and/or enforcement action taken by ACMA. The table of enforcement actions taken at licence renewal and as a result of breach investigations on ACMA's website is also updated.⁴³

5.60 In order to make the complaints process more transparent and accountable, Professor Hitchens suggests that there could be:

...a clearly identified person by whom complaints can be received and you have a review or perhaps a review process within that, even before it goes to ACMA and you publicise who that person is. I mean, it is quite interesting

40 Mr Kevin Hogan, *Submission 58*, p. 1.

41 Professor Lesley Hitchens, *Submission 56*, p. 3.

42 Australian Communications and Media Authority, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

43 Australian Communications and Media Authority, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

that at the moment it is quite difficult to get the information on where to send your complaint and so forth. You can only send those complaints by letter or by fax. They seem to just go off, by and large, to the station at large. There is no specific person, for example, to whom you can address those.⁴⁴

Recommendation 16

5.61 Each broadcaster should have a nominated complaints officer within the organisation whose sole role it is to respond to complaints. The officer should be separate from the program production and scheduling sections and from the area responsible for classifying or rating programs. Officers should receive relevant training in the appropriate code of conduct and complaint management. The contact details of the complaints officer should be published on the website of the broadcaster, industry body and ACMA.

5.62 This is already the practice within the ABC.

5.63 The Committee considers that publishing details of all written complaints received (without identifying the complainant), including those both upheld and dismissed, will allow broadcasters to demonstrate the consistency of a decision against similar complaints. This may assist in providing clarity and improve public confidence in the process.

Unsatisfactory complaint handling

5.64 The Committee heard that, after negotiating the complex complaints process over a period of time, complainants often felt dissatisfied with the tone of the response received from the broadcaster or co-regulator, with formal responses to written complaints described as 'highly unsatisfactory and smacking of arrogance'.⁴⁵ Dr Frank Murphy notes that:

Management of the various channels will need to do a whole lot better in responding to correspondence from their viewing audience. What is at stake here is partly an adherence to old-fashioned courtesy...⁴⁶

5.65 Mr Graham and Mrs Carol V. Phillips provided the Committee with an example of typical responses received following complaints:

Once the letter of complaint is sent, we receive one or the other of these letters, or ones similarly worded, in response:

"Thank you for your letter regarding... We have referred the matter to...[a board of some sort]."

OR

44 Professor Lesley Hitchens, *Committee Hansard*, 23 May 2008, p. 68.

45 Dr Frank Murphy, *Submission 11*, p. 3.

46 Dr Frank Murphy, *Submission 11*, p. 6.

"Thank you for your letter in relation to... We are sorry that...offended you. We have reviewed the matter and found that, since very few complaints were received about this particular... your complaint is unfounded.⁴⁷

5.66 The Committee notes the distress that insensitive or abrupt responses to complaints have caused to members of the public who exercise their right to complain to broadcasters about what they believe to be a breach of a code. The implication in the response quoted above, that the number of complaints has a bearing on the validity of a complaint, is unacceptable.

5.67 The Committee believes that broadcasters have the opportunity to be transparent and accountable by providing some detail on *how* a decision was reached and the issues that were considered, not just the final decision itself. The educative function of such responses should not be ignored. While the Committee acknowledges that this might use more resources in the short term, it is likely to reduce the instances of multiple complaints on the same issue being sent by the complainant if the complainant receives a satisfactory response in the first instance.

5.68 The Committee believes that ACMA should also exercise greater initiative in conducting investigations into matters related to the implementation of Codes of Practice, not necessarily waiting for specific complaints. In many cases, for instance with regard to the Big Brother program and to the Ramsay program, community concern is first expressed through the media rather than through the formal complaints process.

5.69 If ACMA conducted more investigations on its own initiative it would help to clarify interpretation of standards and codes of practice and assist broadcasters in the task of classifying programs.

Recommendation 17

5.70 Broadcasters should ensure that responses to complaints are comprehensive, deal with the substantive issue and are courteous in tone.

Recommendation 18

5.71 ACMA should develop a practice of testing compliance with standards and codes of practice by conducting investigations into a sample of programs that may, in its opinion, raise issues with regard to the appropriateness of the classification received.

Lack of change resulting from a complaint

5.72 Submission 86 relates an issue that resulted following a complaint:

I complained about an item on SBS TV, which was blatantly offensive. After following the prescribed steps (ie writing to SBS, waiting 60 days for a

47 Mr Graham and Mrs Carol V. Phillips, *Submission 25*. p. 1.

response, sending the response to the Australian Communications and Media Authority ('ACMA'), the item was found to be in breach of SBS' own Code of Practice. However there was **no consequence whatsoever** for SBS apart from having nominally being found to have breached its own Code.⁴⁸

5.73 As independent broadcasters, ABC and SBS are subject to a different penalty system than commercial broadcasters. As detailed above, ACMA cannot compel either of these stations to comply with a ruling. ACMA can recommend that the station publish a retraction or apology, and if the broadcaster fails to take action considered appropriate, ACMA may give the Minister a report on the matter.

Recommendation 19

5.74 In the event that SBS or the ABC fails to comply with an ACMA recommendation within a 14 days period of receiving such a recommendation, ACMA should automatically provide a report to the Minister on the matter.

Penalties

5.75 A number of submissions conveyed the frustration felt by those who view ACMA as ineffective in enforcing the codes of practice and thus engendering respect for them in the industry:

The inutility of complaint processes and the ineffectiveness of sanctions make the regulator's function completely unsatisfactory.⁴⁹

5.76 Submissions to the inquiry advocated an increase in the frequency of use of penalties:

Coast FM feels that despite the effectiveness of current broadcasting codes of practice, the consequences for breaching the codes of practice must be of more detriment to the offending organisation.⁵⁰

5.77 Ten per cent or more of those making a submission to this inquiry advocated the immediate use of financial penalties by ACMA if a broadcaster is found to have broken its broadcasting code of practice. The Festival of Light makes the argument that:

Licensees are enjoying a privilege in being given access to the airwaves. This privilege carries it with the legal and social responsibility to comply with the codes of practice which are developed by the respective industry sectors. There ought to be a financial penalty for any breach of the code.⁵¹

48 Name withheld, *Submission 86*, p. 1.

49 Mr Gerard Flood, *Submission 49*, p. 1.

50 Central Coast Community FM Radio Association Inc., *Submission 50*, p. 6.

51 Festival of Light, *Submission 51*, p. 9.

5.78 It is generally known among those concerned that ACMA has the power under certain circumstances to impose a financial penalty. However, contributors were of the opinion that ACMA is a 'toothless tiger, diminishing respect for the codes and the ACMA's authority'⁵², because it chooses not to exercise its regulatory powers in a manner that results in a significant consequence for the broadcaster, or because it has few powers to exercise in relation to the ABC and SBS.

5.79 An example of this can be found in a judgement on 4 June 2008 that the Nine Network breached safeguards for reports about suicide and provision of warnings:

ACMA found that the segment contained a detailed description of the suicide method, and was not straightforward in its presentation of the facts. ACMA also found that while the segment contained a warning, it did not precede the segment, as the code requires.⁵³

5.80 Despite the potentially distressing nature of this breach, ACMA chose to use the least of its powers in only undertaking informal action against the Nine Network:

Nine has advised ACMA that it will incorporate the findings in its regular training program for staff. As well as asking Nine to ensure that any future reports about suicide comply with the code, ACMA has also recommended to Nine that relevant help line numbers be provided as part of such reports so viewers have access to support if required. ACMA will be encouraging all broadcasters to consider such an approach to ensure that vulnerable viewers are made aware of help available to them when incidents of suicide are reported.⁵⁴

5.81 The Committee is of the opinion that ACMA fails significantly, through repeated use of informal disciplinary action in response to breaches of the code, to act in a manner consistent with both its powers and its responsibility.

52 Federation of Parents and Citizens' Association of New South Wales, *Submission 53*, p. 7.

53 Australian Communications and Media Authority, *ACMA Media Release 68/2008*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311187 (accessed 4 June 2008). Note that the *Commercial Television Code of Practice* specifically identifies "realistic depiction of methods of suicide" as "material not suitable for television" which "must not be broadcast"; p. 19.

54 Australian Communications and Media Authority, *ACMA Media Release 68/2008*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311187 (accessed 4 June 2008)

Recommendation 20

5.82 ACMA should limit its use of unenforceable undertakings from broadcasters in relation to a breach of the code. The second time that a broadcaster is found to be in breach of the same part of the code within the duration of its code of practice, ACMA should use its existing powers to impose additional conditions on a license of the broadcaster. In the event of subsequent breaches, ACMA should use its powers to:

- **Pursue a civil penalty;**
- **Refer the matter for prosecution as an offence;**
- **Suspend or cancel the license; or**
- **Impose an enforceable undertaking.**

5.83 The Committee understands the frustrations of audiences making complaints under this system and thanks those who have offered suggestions whereby these impediments can be overcome. The Committee believes that the recommendations it has made will, if adopted, significantly improve the complaints process.

