CHAPTER 3

TELEVISION

Introduction

3.1 Unlike the self-regulatory system that operates within the print media, television stations operate within a co-regulatory environment, where codes of practice are developed and managed under the supervision of a statutory body.

3.2 Television broadcasters wield considerable power to influence the wider community:

> This role is not a passive one, as broadcasters select what information is presented to the public and from what perspective. The broadcasting media therefore play a pivotal part both in setting the agenda for public debate and in shaping public opinion on issues. Broadcasters also exercise a constant cumulative influence over Australian culture, social mores and standards of conduct through their programs and advertisements … Ownership of a (broadcasting) licence is a privilege not a right, and the licensee is responsible to utilise its power with due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys.[1]

3.3 In this Chapter the Committee first describes the framework within which codes of practice for the self-regulation of television must be developed, and the role of the Australian Broadcasting Authority (ABA) in their development. It then considers the code of practice relating to commercial television broadcasters, which includes a discussion of the regulation of advertising. The Committee also considers the regulatory models relating to the national broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service Corporation (SBS).[2]

The Australian Broadcasting Authority

3.4 The ABA is a statutory agency established to administer the *Broadcasting Services Act 1992* (the Broadcasting Services Act). In this capacity, one of its roles is to supervise the operation of the self-regulatory codes of practice for commercial television. Another of its functions is to assist television stations to develop self-regulatory codes.

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1 D Butler and S Roderick, *Australian Media Law*, (Sydney: LBC Information Services, 1999) pp. 410-11.

2 Several matters raised in this chapter have been addressed in the past by the Committee's predecessor, the Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies. Its October 1995 *Report on Operations of Codes of Practice in the Television Industry Part 1*, included 16 recommendations, while in February 1997 it tabled its *Report on the Portrayal of Violence in the Electronic Media,* containing 18 recommendations.

3.5 The ABA operates within a broad legislative scheme which has the following objectives:

- to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;
- to encourage diversity in control of the more influential broadcasting services;
- to ensure that Australians have effective control of the more influential broadcasting services;
- to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance;
- to encourage providers of broadcasting services to respect community standards in the provision of program material;
- to encourage the provision of means for addressing complaints about broadcasting services;
- to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and
- to provide a means for addressing complaints about certain Internet content.[3]

3.6 Part 12 of the Broadcasting Services Act establishes the ABA as the industry regulator. It provides the ABA with the following powers and functions:

- the allocation, renewal, suspension and cancellation of broadcasting licences;
- assisting broadcasting service providers in developing codes of practice and in monitoring compliance with those codes;
- monitoring and investigating complaints regarding broadcasting services; and
- informing itself and advising the Minister on technological advances and service trends in the broadcasting industry.[4]

3 *Broadcasting Services Act 1992*, s. 3.

4 *Broadcasting Services Act 1992*, s. 158.

Codes of practice

3.7 Section 123 of the Broadcasting Services Act provides for the development of codes of practice by industry groups representing sections of the broadcasting industry. Section 123(2) sets out the matters the codes may relate to. One is preventing the broadcasting of programs that, according to community standards, are not suitable to be broadcast by that section of the industry. Others include:

- methods of ensuring the protection of children from exposure to program material which may be harmful to them;
- methods of classifying programs that reflect community standards;
- promoting accuracy and fairness in news and current affairs programs; and
- methods of handling complaints from the public about program content or compliance with codes of practice.[5]

3.8 The Broadcasting Services Act therefore requires community attitudes to a range of matters to be taken into account in developing codes. These matters in summary are:

- the portrayal in programs of physical and psychological violence, sexual conduct and nudity;
- the use of offensive language;
- the portrayal of the use of drugs, including alcohol and tobacco; and
- the portrayal of matter that may incite or perpetuate hatred against, or vilify, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability.[6]

3.9 The ABA must register a code if it is satisfied that: (i) appropriate community safeguards for the matters are covered by the code; (ii) it has been endorsed by a majority of the service providers in the industry sector; and (iii) the public have been given an adequate opportunity to comment on it.[7] The ABA has the function of monitoring compliance with the code once it is registered. It investigates breaches of the Code, as well as breaches of the Broadcasting Services Act and of licence conditions.

3.10 A code of practice for commercial television stations has been developed by the industry group that represents their interests, the Federation of Australian

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5 *Broadcasting Services Act 1992,* s. 123(2).

6 *Broadcasting Services Act 1992,* Part 9.

7 *Broadcasting Services Act 1992,* s. 123(4).

Commercial Television Stations (FACTS). Its full title is the FACTS Commercial Television Industry Code of Practice. Although FACTS plays an active role in coordinating the development of the Code of Practice, it does not have any operational role in ensuring its observance, other than collecting and publishing statistics about complaints.[8] The Code was first introduced in September 1993 and came into force following its approval and registration by the ABA.[9] All commercial television services throughout Australia agreed to support and abide by the Code.[10]

3.11 The Code covers classification of television programs; program promotions; news and current affairs programs; time occupied by non-program matter; the classification and placement of commercials and community service announcements; and the handling of complaints to licensees. The objectives of the Code are summarised in its Introduction, which provides as follows:

> The Code is intended to:
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> - regulate the content of commercial television in accordance with current community standards;
> - ensure that viewers are assisted in making informed choices about their own and their children's television viewing;
> - provide uniform, speedy and effective procedures for the handling of viewer complaints about matters covered by the Code; and
> - be subject to periodic public review of its relevance and effectiveness.[11]

3.12 In addition to Commercial Television Industry Code of Practice, FACTS has issued a series of advisory notes that provide guidance on the administration of the Code. In summary, the advisory notes deal with the following subject matter:

- the portrayal of Aboriginal and Torres Strait Islander peoples;
- the portrayal of cultural diversity;
- the portrayal of people with disabilities;
- privacy; and
- the portrayal of women and men.

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8 *Official Committee Hansard*, Canberra, 11 June 1998, p. 538.

9 Federation of Australian Commercial Television Stations, Submission 29, p. 925.

10 Federation of Australian Commercial Television Stations, Submission 29, p. 925.

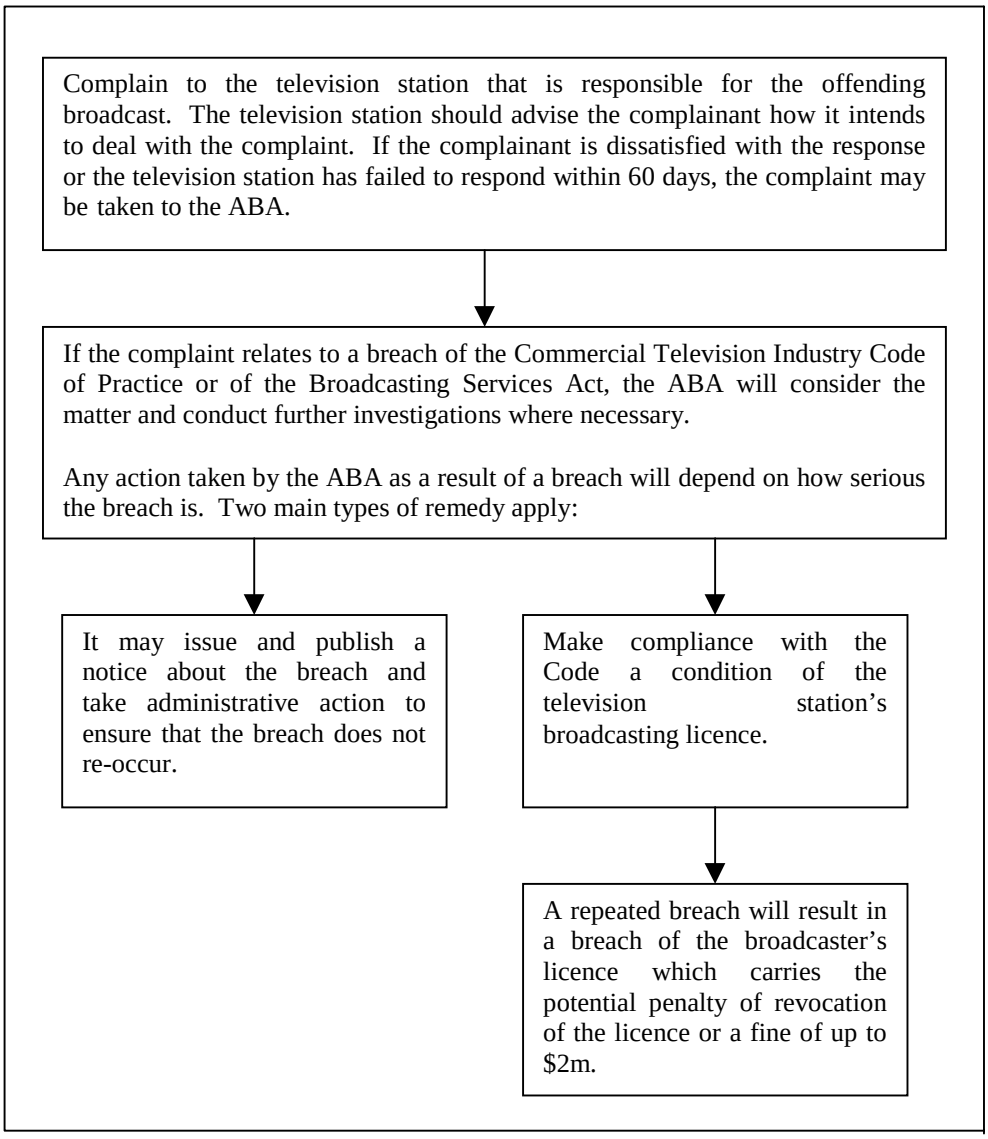
11 FACTS Commercial Television Industry Code of Practice, Section 1 – Introduction. A complete copy of the Code can be obtained at http://www.aba.gov.au/what/program/codes/facts_index.htm, as at 25 January 2000.

The complaints-handling process

3.13 The Broadcasting Services Act sets out the ABA's complaints-handling procedure.[12] The complaints process is summarised at Figure 3.1.

Figure 3.1

Complaints-handling process for commercial television



3.14 Complaints can be made directly to the ABA about breaches of the Broadcasting Services Act or of a licence condition. However, complaints of breaches of the Code are required to go first to the television station involved. If the complainant is dissatisfied with the station's response or has not received a response within 60 days, he or she can then take the complaint to the ABA.

12 *Broadcasting Services Act 1992*, ss. 147 to 153.

3.15 Section 7 of the Code of Practice outlines the way that television stations must deal with the complaints that they receive. Under section 7.1, the licensee must:

- publicise the existence of the Code and its complaint procedures;
- maintain adequate procedures for receiving oral complaints;
- advise complainants of their right to make a written complaint about material broadcast by a licensee which allegedly breaches the Code; and
- respond promptly to written complaints of this kind, and make every reasonable effort to resolve them.

3.16 The ABA refers to complaints that come to it from the stations as 'unresolved complaints'. It is obliged to investigate them unless it is satisfied that the complaint is frivolous, vexatious or not made in good faith.

3.17 A breach of a code is not a breach of a licence condition or of the Broadcasting Services Act, and no formal penalties apply. Generally the ABA seeks to ensure that broadcasters take action to remedy breaches or to put in place procedures that will ensure that they do not recur. In addition, the ABA publicises breaches it finds in its *ABA Update* newsletter, which it regards as a form of sanction.[13] The ABA may also release its findings as a news release in cases in which there is wide public interest.

3.18 Where there are repeated breaches, the ABA can impose a condition on the licence that requires the licensee to comply with a code of practice. The ABA can also develop its own standard if it believes an existing code does not safeguard the community adequately. Failure to comply with a licence condition or with an ABA standard can ultimately result in suspension or revocation of the licence or the imposition of fines of up to $2 million.

3.19 However, section 5(2) of the Broadcasting Services Act requires the ABA, in using its powers to deal with breaches, to have regard to the intention of the Parliament that the use of its powers is to be commensurate with the seriousness of the breach concerned. It is to exercise these powers within the context of producing stable and predictable regulatory arrangements and dealing with new breaches of the rules.

Record of complaints

3.20 The ABA reports annually on the number of breaches by television stations of the Code of Practice. In 1998-99, it found 57 breaches of the Code.[14] The ABA also releases quarterly updates on the number of complaints made against commercial

13 ABA, *Annual Report 1996-97*, p. 84. The ABA advised that *ABA Update* has a circulation of about 600: ABA, Written Answers to Committee questions, 11 September 1998, p. 4.

14 ABA, *Annual Report 1998-99*, p. 64.

television stations. It obtains this information by virtue of section 7.16 of the Code of Practice, which requires licensees to provide FACTS with data on the complaints that they receive for every three-month period.

3.21 The FACTS Annual Report for 1999 details the number of written complaints received by commercial television stations for the period 1 October 1998 to 30 September 1999. Table 3.1 provides a breakdown of the written complaints.

Table 3.1

Written complaints about television

Type of Program	Sex/ Nudity	Lang.	Viol-ence	Drug use	Bias/ inacc-uracy	Priv-acy	Discrim -ination	Comm-ercials	Other	Total **(%)**
Children's	1	0	3	0	0	0	2	1	0	7 **(0.8)**
Comedy	69	29	33	2	0	0	51	4	14	202 **(23.4)**
Current Affairs	10	2	2	3	64	9	28	1	24	143 **(16.6)**
Documentary	2	0	0	0	0	0	0	0	0	2 **(0.2)**
Drama Series	20	7	4	0	0	0	5	16	29	81 **(9.4)**
Game	0	0	0	0	0	0	3	0	0	3 **(0.3)**
Information	14	4	35	0	1	0	24	5	7	90 **(10.4)**
Movies	16	26	39	0	0	0	1	7	9	98 **(11.3)**
Music Video	3	0	3	0	0	0	0	0	0	6 **(0.7)**
News	0	1	1	5	18	6	3	0	15	49 **(5.7)**
Sport	1	2	1	0	1	0	3	8	2	18 **(2.1)**
Variety	1	1	1	0	0	0	1	5	4	13 **(1.5)**
Unspecified	0	1	1	0	0	0	0	64	7	76 **(8.8)**
Promos	26	3	13	0	0	0	5	3	26	76 **(8.8)**
Total:	163	76	136	10	84	15	126	113	137	864 **(100)**

Source: FACTS Commercial Television Industry Code of Practice: 1999 Annual Report

Effectiveness of the regulation of commercial television

3.22 The Committee was presented with conflicting views about the efficacy and desirability of the present co-regulatory arrangement, and the way that it deals with complaints and privacy issues.

3.23 To date, the ABA has not considered it necessary to respond to a breach of the Code by imposing a licence condition or developing a standard. Mr Giles Tanner, the ABA's General Manager, Policy and Programs, advised the Committee:

> The authority has found a low rate of repeat offences by licensees and has not found it necessary to date to make compliance with the code of practice a condition of any licence. However, the authority has had on occasions

> discussions with individual licensees and issued warnings that it would consider imposing a licence condition if the licensee's behaviour did not change.[15]

3.24 It should be noted that whilst the Broadcasting Services Act provides that codes of practice which have been registered by the ABA may be directly amended by the Parliament, it has not so far exercised this power.

3.25 In support of the present system of regulation, Mr Peter Harvey, a senior journalist, National Nine Network, said: 'I quite strongly believe that self-regulation by people in the industry is the way to go, is the answer to these problems'.[16] Mr Paul Bongiorno, President of the Federal Parliamentary Press Gallery Committee, said that for him as a working journalist the FACTS Code of Practice and the AJA Code of Ethics provided the relevant framework: 'It is my submission that both codes are working well'.[17]

3.26 This was supported by FACTS, which claimed that self-regulation of the kind now in place is the only effective way of achieving an appropriate balance between the public's right to know, the media's interest in disseminating news of concern and interest to its audience, and respect for privacy, including personal tragedy and grief.[18] Overall, FACTS argued, the present regulatory system works well:

> Given the diversity of our society – the many different generations, backgrounds and value systems that make up our community – there is surprisingly little dissatisfaction with the way that we do our job, particularly in relation to news and current affairs.[19]

3.27 FACTS said that there had been lapses and instances of unprofessional behaviour, and these were of concern to the industry. However, FACTS argued that they were relatively isolated indications that the industry needed to work harder to bring everyone in it up to standard, rather than proof that self-regulation does not, or cannot, work.[20] FACTS also said that the overall thrust of public responses to the public review of the Code in 1996-97 had been favourable to self-regulation.

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15 *Official Committee Hansard*, Sydney, 5 February 1998, p. 51. See also ABA, Written Answers to Committee questions, 11 September 1998, pp. 3-4: The largest number of breaches of the same or similar clauses by a single licensee has been 3 for the FACTS Code and 4 for the FARB Code. In both cases the ABA was 'close to imposing a condition', and asked the licensee to show cause why it should not do so. The ABA was then satisfied with the remedial action taken by the licensees, both of who were required to give undertakings to ensure compliance, and warned that the issue of imposing a condition will be looked at again should any further similar breaches occur.

16 *Official Committee Hansard*, Sydney, 22 April 1998, p. 391.

17 Mr P Bongiorno, Submission 38, p. 1094.

18 Federation of Australian Commercial Television Stations, Submission 29, p. 924.

19 *Official Committee Hansard*, Sydney, 22 April 1998, p. 333.

20 Federation of Australian Commercial Television Stations, Submission 29, p. 927.

3.28 Mr Tony Branigan, the General Manager of FACTS, compared the extent of self-regulation in commercial television to that of its media competitors:

> It is certainly a matter of concern to us that our code is to some extent an island in a sea of codelessness. Not many other media are subject to codes of practice, and certainly not to equivalent codes of practice. That goes for media which look very much like television and compete with television for viewers and for advertising, such as subscription television, where, as I understand it, there is no code of practice in place.
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> It is certainly the case that the sorts of codes that we have seen from narrowcasters, for instance, are very attenuated codes. They cover quite narrow areas and are quite restrictive in the way they deal with those areas. It is not an issue that troubles us day by day. But when we take a longer view, we are conscious that we willingly accept all sorts of restrictions which do not apply to others. One reason we are reluctant to take on much broader responsibilities is simply that we do not see others expressing a willingness even to take on those which we have, for many decades in many cases.[21]

3.29 The Department of Communications, Information Technology and the Arts said that it was not aware of any disquiet about the way that the process of information technology self-regulation was working in broadcasting generally.[22] FACTS drew to the Committee's attention that the ABA had said publicly on a number of occasions that it considered self-regulation to be working successfully.[23]

3.30 The ABA's Deputy Chair, Mr Gareth Grainger, told the Committee that he thought the principle of self-regulation and the scheme of co-regulation was a sound basis for dealing with the regulatory issues in television.[24] The ABA did however state that there are signs that some individual licensees and some sectors of the radio and television industries need to take stock of the way they are discharging their responsibilities to self-regulate. The ABA noted that in the 1997-98 financial year investigations into programming matters increased by 32 per cent and breaches of Codes of Practice, licence conditions and the Act were up 71 per cent, with the main increases relating to commercial television rather than radio.[25] The ABA recognised that these increases may in part be due to increasing awareness of complaints mechanisms. It also said that it had, as a deliberate strategy, approached compliance issues in a more robust way than previously.[26]

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21 *Official Committee Hansard*, Sydney, 5 February 1998, pp. 86-87.

22 *Official Committee Hansard*, Canberra, 16 February 1998, p. 163.

23 Federation of Australian Commercial Television Stations, Submission 29, p. 927.

24 *Official Committee Hansard*, Sydney, 11 August 1998, p. 607.

25 ABA, Written Answers to Committee questions, 11 September 1998, p. 1.

26 ABA, Written Answers to Committee questions, 11 September 1998, p. 1.

3.31 Additionally, the ABA said that in its dealings with some commercial licensees it had also perceived a tendency to assert legalistic interpretations of the Codes of Practice somewhat at odds with its loose drafting. It was concerned that if such technical interpretations were to be accepted the objectives of the Code would be increasingly undermined.[27]

3.32 However, the Committee heard from a number of witnesses who criticised the complaints-handling mechanism. The criticisms were directed at various aspects of the complaints mechanism:

- the lack of public awareness of the system;
- time taken to deal with complaints;
- availability of escape clauses;
- inadequate monitoring of the system by the ABA; and
- lack of meaningful penalties.

Complaints-handling process

3.33 Industry representatives advised the Committee that the complaints-handling mechanism was operating well. FACTS stated that:

> The system of self-regulation clearly works as stations have upheld 172 out of the 3 353 complaints lodged to September 1997 (i.e. just over 5 per cent). When a station does uphold a complaint, it has a salutary effect on station staff, and recurrent breaches of the same provision are most uncommon. The follow-up action ranges from counselling of staff through to reviews of operational procedures and staff training.[28]

3.34 FACTS argued that the degree of viewer satisfaction with the system is probably best gauged by the fact that about 90 per cent of viewers who lodge complaints choose not to 'appeal' a station's decision to the ABA.[29]

3.35 In January 1998, the ABA informed the Committee that from September 1993 to 31 December 1997 it had conducted 209 investigations of unresolved complaints about Code of Practice matters on commercial television. Of these, 17 had yet to be finalised. Of the 192 completed investigations, 33 resulted in findings of a total of 48 code breaches.[30]

3.36 Ms Catherine Rothery, Legal Counsel, Regulatory and Business Affairs for the Seven Network Limited, said her Network had found that, because of the costs

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27 ABA, Written Answers to Committee questions, 11 September 1998, p. 1.

28 Federation of Australian Commercial Television Stations, Submission 29, p. 927.

29 Federation of Australian Commercial Television Stations, Submission 29, p. 927.

30 Australian Broadcasting Authority, Submission 20, pp. 735-36.

these days of taking defamation proceedings, people were resorting more to taking action under the Code and complaining by that venue because it is at no cost to them.[31]

Lack of public awareness of the complaints-handling mechanism

3.37 FACTS advised the Committee that it undertakes an ongoing educational campaign aimed to increase awareness of the complaints regime. Some 15 000 copies of the Code had been distributed since 1993. Also, the industry broadcasts public information spots explaining the Code and the complaints procedure. In the 12 months to March 1998 in Sydney, Channel 7 broadcast 497 spots, Channel 10 broadcast 222 and Channel 9 broadcast 161, and all were spread over all time zones including prime time. FACTS said that it believed these figures were broadly representative of all metropolitan stations.

3.38 FACTS told the Committee that the system was also given publicity when breaches occurred. Breaches were publicised in the ABA's monthly newsletter and the national press 'not infrequently' picked them up from there.[32]

3.39 The other element in the complaints-handling regime is the ABA. Mr Giles Tanner, the ABA's General Manager, Policy and Programs, said that his organisation may not be well known. Some media publicity arose from ABA findings that breaches occurred. However, he said that apart from measures like having a prominent position in the telephone White Pages all around the country, the ABA did not have an ongoing program of advertising its existence in a way that reaches the mass audience.[33] He confirmed that the ABA generally relies on the television stations to inform people who wish to pursue their complaints beyond the station level that the Authority existed.[34] The FACTS codes have always required a station's response to a complainant to include the fact that he or she may refer the matter to the ABA if not satisfied with the response.

3.40 The Committee was not told of any research that indicated the extent of public awareness of the complaints-handling mechanism. However, there is survey data showing the number of people with concerns about what appears on television. A survey by AC Nielsen Research for the ABA revealed that 38 per cent of people aged 14 years and over had seen something on television about which they had been concerned or that they had disliked in the first ten months of 1997, and most of these cases relate to code of practice issues.[35] This figure was the same as the ones

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31 *Official Committee Hansard*, Sydney, 22 April 1998, p. 336.

32 *Official Committee Hansard*, Canberra, 11 June 1998, p. 518.

33 *Official Committee Hansard*, Sydney, 5 February1998, p. 59.

34 *Official Committee Hansard*, Sydney, 5 February 1998, p. 57.

35 Australian Broadcasting Authority: Submission 20a, Attachment, 'Television Codes of Practice Research 1997', pp.1273-78: examples of those that do not relate to code issues are dislike for American programs, repetition of movies, poor ideas for comedy, sport programming that leaves no choice for children, and

produced in similar surveys in 1995 and 1996. In the 1997 survey, 63 per cent said that their concerns were about programs seen on commercial television, 8 per cent about programs on the ABC, 4 per cent about programs on the SBS. The survey reported:

> … the top five concerns mentioned by those respondents who had a concern were to do with the presentation style of news and current affairs programs (21 per cent), concern about the suitability of programs for children and the times that such material was broadcast (19 per cent), sex and nudity (18 per cent), violence (17 per cent) and advertising and program promotions (16 per cent).[36]

3.41 It appears to the Committee that there is a significant discrepancy between the number of people who say they have concerns about what is broadcast on commercial television and the number who lodge complaints.

Time taken to deal with complaints

3.42 The Code of Practice provides that unless a written complaint is made within thirty days of a broadcast, the station is not obliged to respond to it. However, where a complaint is made in a timely manner, the licensee must provide a substantive written response. Although the Broadcasting Services Act allows stations up to 60 days to respond to timely complaints, the Code requires a response to be made as soon as practicable, but in any case no longer than 30 working days after receipt of the complaint. FACTS stated that:

> The emphasis is very much on getting a quick reply. As far as we can ascertain, the average time for response to complaints is less than 15 working days. There are very few that fall outside that 30-day period that is laid down in the code.[37]

3.43 Mr Peter Harvey described complaints-handling practices in the Canberra Bureau of the Nine Network at the time he managed it:

> If somebody, a member of parliament or a member of the public, made a complaint to us, it would be examined immediately – by that I mean that day – and the person concerned would be contacted that day and given an explanation of what we were doing.[38]

3.44 Other representatives of television stations pointed out to the Committee that the stations from time to time received a lot of calls from viewers criticising particular

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sporting events not being shown. The survey results are also reported in 'Community views about television', *ABA Update*, October 1998, pp. 12-15.

36 Australian Broadcasting Authority, Submission 20a, Attachment, *Television Codes of Practice Research 1997*, p. 1279.

37 *Official Committee Hansard*, Sydney, 22 April 1998, p. 334.

38 *Official Committee Hansard*, Sydney, 22 April 1998, p. 391.

programs, but who did not wish to lodge formal complaints. This feedback could very quickly lead to a response from the station and influence future broadcasts, even though it stood outside the process set down in the Code.[39]

3.45 The Broadcasting Services Act does not set any time limit for the ABA to respond to complaints that it investigates. It appears that the time to process complaints at the ABA has been unsatisfactory. Young Media Australia's (YMA) Executive Director, Ms Barbara Biggins, told the Committee about a number of cases in which the ABA had acted very slowly in reviewing a determination made by a television station. Her evidence concerned 12 complaints relating to programs seen by children that were lodged with the ABA by her organisation over the past two to three years. She said that the ABA took 16 months to answer one of these. The next slowest took 13 months, with another taking 10 months, two taking nine months, one seven months, and one four months. Ms Biggins was particularly concerned where the complaint related to an on-going series, because the series could continue to go to air while the complaint was being dealt with:

> In relation to a program like *Mighty Morphin Power Rangers* where the decision took 16 months to emerge, in that time a whole series of about 100 episodes of *Mighty Morphin Power Rangers* could have been repeated a couple of times. … The complaint in this instance, which was partially upheld, was that the program was too violent for children. We suggest that the present complaints process in the self-regulatory system, in terms of removing material from television which parents deem to be harmful, is slow, to say the least, and largely ineffective.[40]

3.46 The Australian Children's Television Action Committee also complained of delays by the ABA in handling complaints.[41]

3.47 The Committee notes that the Commonwealth Ombudsman investigated and reported in July 1996 on the administration of the ABA's complaints system. The investigation arose from the way in which the ABA handled a complaint about the accuracy and fairness of a program on commercial television. On the issue of timeliness of complaint-handling, the Ombudsman accepted that the nature of investigation of complaints about lack of accuracy or fairness meant that they would on average take longer than for complaints about other matters. However, the Ombudsman considered that there were opportunities to improve the current procedures. The Ombudsman's report recommended that the ABA should give consideration to:

- establishing realistic performance standards to ensure that complaints are handled in a timely fashion, and

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39 *Official Committee Hansard*, Sydney, 22 April 1998, pp. 358-61; Sydney, 11 August 1998, pp. 563-64.

40 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 456.

41 *Official Committee Hansard*, Melbourne, 6 February 1998, pp. 138-39.

- giving more attention to minimising the initial delays in raising the complaint with the broadcaster which remain the most significant avoidable delay.[42]

3.48 The ABA acknowledged that there had been deficiencies in its handling of complaints, but has since said that these have been addressed.[43] It advised the Committee in April 1998 that it had now cleared the backlog of investigations. In the 18 months to September 1997, the average time for completing an investigation was four to five months, but the average had since dropped to two months.[44] In September 1998 the ABA advised that the time taken to deal with complaints was continuing to fall.[45]

3.49 However, another matter highlighted by the Ombudsman has not been addressed. The Code of Practice requires television stations to respond to complaints within 30 days of receipt by the station. Under section 148(c)(i) of the Broadcasting Services Act, a person who has not received a response from the station cannot make a valid, formal complaint to the ABA until 60 days after making the complaint to the station. The Committee understands that the 60-day period was chosen because, although the Code has a 30-day limit, other codes under which an 'appeal' lies to the ABA have longer limits.[46] Nevertheless, in cases where the station has not responded in 30 days, the provision imposes an unnecessary extra 30-day delay in the case of 'appeals' relating to the FACTS Code.

3.50 The Committee sought the ABA's view on reducing the 60-day period. The ABA said that it had already advised the Minister for Communications, Information Technology and the Arts, that the Broadcasting Services Act should be amended to enable a person to refer a complaint to the ABA within 30 days rather than 60. It also said that it did not consider that there was any reason why a person complaining of a breach of a code could not refer the complaint to the ABA if a response has not been received within the time specified in that Code.[47]

3.51 The Committee notes from the Ombudsman report that:

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42 Commonwealth Ombudsman, *Report of the investigation into the administration of complaints about broadcasting services by the Australian Broadcasting Authority*, July 1996, p. 47.

43 Australian Broadcasting Authority, *Annual Report 1996-97*, p. 104.

44 *Correspondence*, Ms J Ritter, Acting Director, Codes and Services, Australian Broadcasting Authority, 9 April 1998, p. 2.

45 ABA, Written Answers to Committee questions, 11 September 1998, p. 5.

46 See for example, Australian Subscription Television and Radio Association (ASTRA) Codes of Practice, *Television Open Narrowcasting*, September 1997, clause 2.4.

47 ABA, Written Answers to Committee questions, 11 September 1998, p. 5.

> The point remains that television is a very immediate medium and complaints need to be dealt with whilst they are still fresh. If corrective action is necessary this must follow promptly if it is to be effective.[48]

3.52 The Committee agrees with this view. The Committee is particularly concerned about complaints relating to a program series. If a breach is found in one episode, it may be that all the later episodes will also be in breach. The Committee considers that it is important to reduce as far a possible the number of episodes that go to air after the initial complaint is lodged, and this is best achieved by requiring speedier resolution of complaints. To assist in achieving this, the Committee considers that time limits for responding to complaints should be reduced, for both television and radio and at both the station level and for the ABA.

Availability of escape clauses

3.53 Some witnesses referred to specific paragraphs in the former FACTS Code of Practice that they regarded as so vague that they allowed television stations scope to avoid their responsibilities under the code. For example, Mr Steve Palyga, a solicitor, observed that the Code referred to a television broadcaster being required to make 'reasonable efforts' to correct 'significant' errors of fact (section 4.3.11). He argued that:

> Those qualifications are incredible. 'Reasonable efforts' – anybody can say you are asking for the unreasonable. You want a retraction published during the news at six. We never do that; that is not reasonable. We put it to air at 2 o'clock in the morning. Or 'significant' errors of fact – that qualification is remarkable. Anybody can claim that an error of fact is insignificant or not significant. One would think that, if a television station publishes an error of fact, then it should be required to remedy or rectify it, unless it is very minor. They have put a word in there that allows them to walk around it.[49]

3.54 Some provisions of the Code of Practice allow material to be shown if it is in the public interest, which otherwise could not be shown in that time slot or could not be shown at all.[50] Mrs Murdoch, from the Australian Children's Television Action Committee, criticised this:

> … the commercial stations have a wonderful ability to escape from any criticism there, because they can show anything which is in the public interest. They are very subjective words and they can say what they like in effect and still get away with it. They say, 'If we show something on the news which parents get upset about because their children are watching at 7 o'clock which is G time, it does not matter because it is in the public

48 Commonwealth Ombudsman, *Report of the investigation into the administration of complaints about broadcasting services by the Australian Broadcasting Authority*, July 1996, p. 53.

49 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 447.

50 FACTS code, paras. 1.7.2, 1.7.3, 2.7 and 4.3.7.

> interest to show this other matter'. Whether it is planes dropping from the sky in clouds of fire, which does upset young children whose parents do a lot of flying, or it is some very gory roadside death or something else, according to the television stations that is in the public interest and therefore it is acceptable. That is what they respond to you if you write to them and complain about that.[51]

3.55 In addition to these specific examples the Code states, at sections 1.5 and 1.6, that failure to comply with the Code will not be a breach if that failure was due to:

- a reasonable mistake;
- reasonable reliance on information supplied by another person; and
- an act or default of another person, or to an accident or to some other cause beyond the licensee's control, and the licensee took reasonable precautions and exercised due diligence to avoid the failure.

Where it is possible to remedy a failure to comply with the Code resulting from one or more of those circumstances, licensees must do so promptly.

3.56 Mr John Tebbutt, a lecturer in journalism from Monash University, commented that this provides 'a lot of outs for people'.[52] However, the Committee heard that this has rarely in fact been the case. For example, the ABA advised that in practice it had not found that the provision had been used as an escape clause and had 'been relied on very leanly on behalf of the licensees'.[53] FACTS also said it had been used quite rarely.[54]

3.57 Further support was added to the presence of the 'escape clause' by the Australian Competition and Consumer Commission, which advised that such a provision was appropriate in relation to a question of criminal liability - it was not at all appropriate to something less than that.[55]

Inadequate monitoring of the system by the ABA

3.58 One of the functions of the ABA under section 158 of the Broadcasting Services Act is to monitor compliance with the Code. FACTS collects summary data on the complaints made to the stations and forwards it to the ABA. As well, the ABA adjudicates all the complaints brought to it by complainants not satisfied with the stations' responses. The information from these two sources assists the ABA to gain

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51 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 142.

52 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 102.

53 *Official Committee Hansard*, Sydney, 5 February 1998, p. 55.

54 *Official Committee Hansard*, Sydney, 22 April 1998, p. 341.

55 *Official Committee Hansard*, Canberra, 16 February 1998, p. 186.

some indication of the degree to which a broadcaster's complaints handling procedure is working.

3.59 The Australian Children's Television Action Committee's submission recommended that a copy of each complaint received by a station be sent to the ABA for registration.[56] This would enable the ABA to better monitor the complaints handling process and enable the ABA to ensure that the broadcaster was following the procedure. The submission noted that the ABA reported to Parliament in 1997 that of the 19 breaches of the Code of Practice that the ABA upheld, nine referred to complaints handling procedure.[57]

Lack of meaningful penalties

3.60 One criticism of the co-regulatory system is that it lacks any proactive monitoring and enforcement mechanism. A complaint must be lodged before any action is taken under the Code. Another criticism is that there is no formal penalty for the breach of a Code provision.

3.61 If a television station commits repeated breaches, the ABA may make compliance with the Code a condition of the station's licence. A breach of a licence condition can, ultimately, lead to a large fine or suspension or cancellation of the licence. FACTS advised that the strongest penalty that the ABA has ever imposed for a breach of the commercial television Code has been a reprimand.[58]

3.62 In February 1998, the ABA told the Committee that it has never considered it necessary to impose a condition on a licence as a result of repeated Code breaches.[59] However, in August 1998 it advised that its concerns about Code breaches relating to handling of complaints by the stations had led it to consider imposing conditions on licences:

> We are finding far too many breaches of the complaints handling processes, and we have been in discussion with a number of major licensees in the last six months about why conditions should not be put on the licences in respect of obligations for complaints handling. The complaints handling area is the most significant area where licensees are falling down …[60]

3.63 FACTS argued that the public finding of a breach operated as a sanction: 'The fact of the matter is that stations do not like being found to be in breach of the code of practice'.[61] However, the Australian Children's Television Action Committee

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56 Australian Children's Television Action Committee, Submission 23, p. 790.

57 Australian Children's Television Action Committee, Submission 23, p. 786.

58 *Official Committee Hansard*, Canberra, 11 June 1998, p. 517.

59 *Official Committee Hansard*, Sydney, 5 February 1998, pp. 51, 66.

60 *Official Committee Hansard*, Sydney, 11 August 1998, p. 607.

61 *Official Committee Hansard*, Canberra, 11 June 1998, p. 518. See also *Official Committee Hansard*, Canberra, 15 April 1998, Mr P Bongiorno, p. 291.

questioned whether this achieved anything, except perhaps a minor irritation for the broadcaster in question.[62] It recommended that stations found to be in breach of the Code should be required to make an on-air apology for the breach, with the apology made by a senior member of staff at a time when the station had a large audience.[63]

3.64 The Australian Privacy Charter Council argued that the codes for both broadcasting and telecommunications provided for only weak, and largely unknown and toothless mechanisms for monitoring and enforcing compliance. It said that complaints about media invasions of privacy 'are typically treated with disdain or justified on grounds of the "public's right to know", with an arrogance which is becoming increasingly unacceptable'.[64] The Council argued that to make the system truly effective required binding rules or minimum standards across the board, and properly resourced enforcement mechanisms.[65]

3.65 Similarly, Mr Steve Palyga suggested that the ABA should enforce such standards proactively, much as the Australian Competition and Consumer Commission enforces the *Trade Practices Act 1974*. Mr Palyga also argued that penalties should be increased and include damages for those wronged.[66]

3.66 The Government responded in December 1998 to earlier concerns about the adequacy of the sanctions and a call for the imposition of on-the-spot fines for breaches of Codes of Practice. It rejected the notion. However, it stated that it would encourage broadcasters to give serious consideration to alternative approaches to addressing community concerns. The Government said that the alternatives might include: providing a mechanism to direct an apology or retraction for minor code infringements; the requirement for broadcasters to retain records and complaints for longer periods; and the reduction of the time period which broadcasters currently have to respond to complaints under the codes of practice.[67]

Other criticisms

3.67 Other criticisms of the regulatory scheme for commercial television covered a range of issues separate to the complaints-handling mechanism. These dealt mainly with the adequacy of the FACTS Commercial Television Industry Code of Practice. In summary, the criticisms covered the following:

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62 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 137.

63 Australian Children's Television Action Committee, Submission 23, p. 790.

64 Australian Privacy Charter Council, Submission 21, p. 763.

65 Australian Privacy Charter Council, Submission 21, p. 765.

66 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 441. In a subsequent supplementary submission (No. 16a, p. 1251) Mr Palyga modified his view on mandatory penalties in relation to the print media, saying that the industry should be given one last chance to make self-regulation work. He did not expressly modify his view on the need for increased penal powers for the ABA.

67 Minister for Communications, Information Technology and the Arts, *Government Response to the Report on the Portrayal of Violence in the Electronic Media*, by the Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies, 10 December 1998, p. 3.

- privacy;
- programming for children;
- classification of programs;
- advertising;
- the amount of non-program matter broadcast; and
- time taken to develop new codes of practice.

Privacy

3.68 Section 4 of the FACTS Code of Practice addresses privacy in news and current affairs by requiring that material relating to a person's private affairs not be used unless there is an identifiable public interest element and by requiring sensitivity to be displayed in traumatic incidents.

3.69 FACTS told the Committee that privacy in relation to television broadcasts was not a major issue for the community and that it did not figure significantly in complaints. It provided the following figures on the number of privacy-related complaints made to commercial television stations in the last four years and noted that there was no upward trend:

- 1994 seven complaints (0.65 per cent of complaints);
- 1995 eight complaints (1.29 per cent of complaints);
- 1996 eight complaints (0.85 per cent of complaints); and
- 1997 five complaints (0.49 per cent of complaints).[68]

3.70 Only two of the complaints were upheld.[69] FACTS then pointed out that if these complaints were put into the context of the number of hours of news and current affairs that are broadcast each year by commercial television stations the level of complaint was indeed very small:

> Metropolitan stations broadcast something like 5 700 hours of news and current affairs each year. Regional stations broadcast a further 4 000 to 5 000 hours. So we are looking at something like 10,000 hours of news and current affairs a year which attract on average about six written complaints each year: clearly a tiny percentage.[70]

68 Federation of Commercial Television Stations, Submission 29, p. 929.

69 *Official Committee Hansard*, Sydney, 22 April 1998, pp. 333.

70 *Official Committee Hansard*, Sydney, 22 April 1998, pp. 333.

3.71 FACTS also stated that the ABA's research on community concerns about television broadcasting shows a very low level of concern about privacy issues.[71]

3.72 However, others criticised the media's attitude to privacy. For example, the Tasmania Police said that at an ecumenical service for the victims of the Port Arthur massacre, many of the relatives and friends were hounded by the media as they came to express their grief. Also, 'despite repeated requests to desist, relatives were hassled by television crews as they made their way to court' to attend the trial of the accused.[72]

> The media tended to hassle them something fierce. We appealed to them not to. But … once one breaks ranks, all the rest decide to go with it. We really had to get very tough and say, 'Excuse me.' We briefed them beforehand and said, 'These people have been through a terrible situation. Can you please desist from doing that?' Eventually they did. But as one pursued a relative, sticking a microphone under his nose and asking him to make some comments, it was not nice to see.[73]

3.73 The Australian Privacy Charter Council said that the codes relating to both radio and television, contained only minor and tangential references to privacy protection.[74] The Committee notes, and commends, the introduction by FACTS of a specific Advisory Note in relation to privacy, which will assist reporters, editors and producers to better understand the legislative, common law and Code of Practice context in which decisions relating to privacy issues should be made.

Programming for children

3.74 The protection of the interests of children is given special mention in the Broadcasting Services Act, both in terms of the development of specific standards for children's television programming and in the content of any codes of conduct that the ABA may register. FACTS' Code of Practice contains a number of provisions which are designed to protect children. For example, section 2.1.1 specifies that:

> … each broadcast day is divided into classification zones which are based on the majority audience normally viewing at that time, with particular regard to the child component of the audience.

3.75 Section 2.10 specifies that children's viewing zones are movable and may overlap other zones and if this occurs, the children's zones have precedence.

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71 *Official Committee Hansard*, Sydney, 22 April 1998, pp. 333.

72 Tasmania Police, Submission 33, p. 1042.

73 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 474.

74 Australian Privacy Charter Council, Submission 21, p. 763.

3.76 The efficacy of these provisions that are designed to protect children was disputed. Ms Barbara Biggins of Young Media Australia advised the Committee of her organisation's concern about advertising:

> … parents are feeling overwhelmed by the ever increasing advertising and marketing pushed at quite young children who, in fact, are defenceless in the face of these very sophisticated marketing campaigns. There is a lot of advertising by stealth going on in children's programs.[75]

3.77 Ms Biggins said that probably all three commercial stations would be guilty of the practices of advertising by stealth. The particular ones that her organisation had lodged complaints about were Channel 7's *Agro's Cartoon Connection*.[76]

3.78 According to Ms Biggins, the difficulties with children's television are long standing and an essential component of self-regulation:

> One of the very early submissions made by the South Australian Council for Children's Films and Television was to the inquiry into self-regulation by commercial telecasters which was conducted by the Australian Broadcasting Tribunal in 1977. That inquiry showed that children's television was one area where the commercial telecasters could not be trusted to self-regulate. I would put it to you that this is still the case. … Outside the present mandatory children's quotas required by the present Australian Broadcasting Authority, self-regulated children's programs are of poor quality and highly commercialised and they are subject to a number of complaints.[77]

3.79 The FACTS Code requires in section 1.11 that advertising and promotional material 'must be readily distinguishable by viewers from program material'. Apart from the specific issue of advertising by stealth to children, the Committee is aware of more general concerns about the distinction between the two types of material. It has been claimed that there has been an increase in recent years in 'infotainment' programs in which support in either cash or kind is provided to program producers by companies whose products feature favourably in the programs.[78]

Time taken to develop new codes of practice

3.80 The current Commercial Television Industry Code of Practice followed a comprehensive review, which was commenced in 1996, after the former Code had been in place for three years. A Code Review Group commenced the review and a discussion draft of a revised code was circulated in August 1996. Following consultation and receipt of public comment, a further draft was circulated in

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75 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 455.

76 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 457.

77 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 453-54.

78 P Gotting, 'Running ads between the ads', *Reportage*, No. 8, Spring 1998, pp. 46-47.

December 1996 and further comment obtained. What was envisaged as a final draft of the revised code was submitted to the Australian Broadcasting Authority in May 1997. FACTS stated that the revisions resulted in a code 'which more closely reflects community standards, and one which is both readily understandable and workable'.[79]

3.81 In February 1998, the ABA advised that it anticipated that it would register the Code shortly.[80] However, this did not occur. FACTS advised the Committee in June 1998 that, as a result of correspondence from the Minister for Communications, it had drafted further possible revisions to two aspects of the code relating to classification of programs.[81] In August 1998, FACTS advised of further revisions it was proposing, following meetings with the Committee and with the Minister.[82] At the same hearing, the Deputy Chair of the ABA, Mr Gareth Grainger, agreed that the revision process had been going on for a long time. As a result, Mr Grainger said the ABA considered that a further round of public consultations was warranted before the revisions were finalised.[83] The Committee was told by FACTS that if a further round was required, it would delay the adoption of the revised code by at least a further three months.[84]

3.82 Mr Grainger also said that he was concerned that it has taken as long as it had to work through the review of the FACTS code: 'I think it has taken both FACTS and ourselves too long to deal with that'.[85]

3.83 YMA criticised the delay because it meant that unsatisfactory parts of the Code remained in operation much longer than they should, and improvements recognised over 12 months before as necessary by the industry, such as the practice of 'host selling to children', had yet to come into effect.[86] YMA repeated this criticism in its most recent submission to the Committee, received after the finalisation of the most recent code. It pointed out that the original three year codes were in effect for some six years, which made a mockery of the position that the codes would be reviewed after three years.[87]

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79 Federation of Australian Commercial Television Stations, Submission 29, p. 926.

80 *Official Committee Hansard*, Sydney, 5 February 1998, p. 51.

81 *Official Committee Hansard*, Canberra, 11 June 1998, p. 512.

82 *Official Committee Hansard*, Sydney, 11 August 1998, p. 562. See also para. 3.96 below for reference to the need to revise the code provision relating to the amount of non-program matter that may be scheduled for broadcast.

83 *Official Committee Hansard*, Sydney, 11 August 1998, p. 606.

84 *Official Committee Hansard*, Sydney, 11 August 1998, p. 572.

85 *Official Committee Hansard*, Sydney, 11 August 1998, p. 606.

86 Young Media Australia, Submission 44, p. 1222 and Submission 14/39, p. 1565.

87 Young Media Australia, Submission 14/39, p. 1565.

3.84 In its 1998-99 Annual Report, the ABA states that the revised Commercial Television Industry Code of Practice was registered on 8 April 1999.[88] The ABA also states that it was:

> … satisfied that the revised code provides appropriate community safeguards for the matters covered by it, that it was endorsed by a majority of commercial television licensees, and members of the public had been given adequate opportunity to comment on it.[89]

Classification of programs

3.85 New classifications were introduced for commercial television programs when the FACTS Code first came into effect on 5 September 1993. The previous television classifications of G, PGR and AO were replaced by the classifications G, PG, M and MA. This brought them into line with the categories used for film and video.

3.86 In the April 1999 revised Code, a new AV classification was introduced, which was for material deemed unsuitable for MA classification because of the intensity and/or frequency of violence, or because violence is central to the theme. AV programs are not permitted to be shown before 9.30 pm. In general terms, the Code indicates that any material which satisfies a television classification may be broadcast during the AV classification zone of 9.30 pm to 5.00 am.[90]

3.87 Under the Broadcasting Services Act, licensees must ensure that films or programs classified M or MA[91] do not contain material that goes beyond the previous AO classification[92]. The issue emerged in the inquiry whether in fact the commercial television stations always adhere to this.

3.88 Mr Branigan of FACTS advised the Committee:

> … stations classify well within the AO guidelines. The most obvious instance of that is in relation to coarse language. It would have been possible for stations to include considerably more coarse language in AO movies than they typically did before 1993. You have seen some expansion of coarse language in MA classified movies since then. … Although, in other respects – violence – I suspect that we have moved back somewhat

88 ABA, *Annual Report 1998-99*, p. 61.

89 ABA, *Annual Report 1998-99*, p. 61.

90 Section 2.20, FACTS April 1999 code of practice.

91 The difference between the M (mature) and the MA (mature adult) programs is that M programs cannot be broadcast before 8.30 p.m. and MA programs before 9.00 p.m. Material classified M is 'recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is treated'. Material classified MA is, 'suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of violence, sexual depictions, or coarse language, or because violence is central to the theme'.

92 *Broadcasting Services Act 1992*, s. 123(3B).

> from the boundaries of AO. So there have been changes, but they are changes in both directions, and still within the boundaries of the AO classification.[93]

3.89 However, Mr Branigan also said that classification practices change over time, even though the wording of the standard being applied has not itself changed. He said these changes reflect what the classifiers see as changes in public attitudes:

> … in some respects they are more conservative now, and that is particularly so in relation to violence. In other respects, they are less conservative, and that is particularly so in relation to coarse language. In every respect, I believe they are still operating within the boundaries of the former AO classification.[94]

3.90 The Committee regards it as unsatisfactory that classification practices can change in this way. It is one thing to alter the wording of the applicable standard after a process of community consultation and debate. It is altogether another when the standard is not altered but what is permitted under it is altered by stealth, by classifiers giving less stringent interpretations to the words in the standard. Clearly if the latter is in fact occurring, it has the potential to subvert the statutory requirement that films classified M or MA do not portray material that goes beyond the previous AO classification criteria.

3.91 Another issue that emerged in the inquiry was whether the wording of the MA classification was sufficiently clear. FACTS stated that an argument had been made to it that the criteria for MA did not make it sufficiently clear what, if any, upper limits there were on, for example, nudity, regarding both the amount and the extent of nudity that was permissible.[95] As a result, FACTS had drafted an amendment to the relevant provision to make the limits clearer.[96]

3.92 In contrast to the positive picture painted by the television industry representatives, YMA's Ms Barbara Biggins criticised the classification of a children's program called *Mighty Morphin Power Rangers*. She said that about 10 to 15 episodes of the program had been classified for video as PG by the Office of Film and Literature Classification using a different set of criteria:

> But here they were on television, which is supposed to be more conservative, classified G. The way in which the ABA dealt with our complaint, which was basically about the violent nature of the whole series, was to simply take three episodes at random and look at them and find that

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93 *Official Committee Hansard*, Sydney, 22 April 1998, pp. 356-57. See also the discussion with FACTS in *Official Committee Hansard*, Sydney, 11 August 1998, pp. 567-69.

94 *Official Committee Hansard*, Sydney, 22 April 1998, p. 357.

95 *Official Committee Hansard*, Canberra, 11 June 1998, p. 512.

96 *Official Committee Hansard*, Canberra, 11 June 1998, p. 514; Sydney, 11 August 1998, p. 566, pp. 569-71.

> two of them broke the television criteria for G. They were told to fix those two episodes, and the whole series went back on air again. That is a most unsatisfactory outcome, in our view.[97]

3.93 Following the publication of the revised codes, Ms Biggins has submitted that there had not yet been sufficient time to properly evaluate their impact on programming practices. She wrote:

> We have a particular interest in evaluating whether the new classification criteria are being implemented in regard to cartoon programs being classified 'G', soapies (such as *The Bold and the Beautiful)* being classified 'G', and violent movies which are classified 'M' and screened at 8.30 pm.[98]

3.94 She noted that early signs were not promising and urged the Committee to seek to evaluate the introduction of the new codes.

Amount of non-program matter broadcast

3.95 Section 5 of the FACTS Code aims to ensure that there is a reasonable balance between program and non-program material broadcast by licensees. Amongst other constraints, it sets out limits on the amount of non-program material that may be broadcast in any one hour and in total between 6.00 pm and midnight. The code attempts to define what constitutes program and non-program material and how the amounts of each are to be measured.

3.96 The ABA advised the Committee in September 1998 that:

> … recent investigations into the amount of non-program matter broadcast by commercial television licensees clearly indicate that this part of the then commercial television industry code of practice is not working well.[99]

3.97 In the ABA's view, some licensees were following the strict letter of the Code, which in some respects was not well-drafted. As a result, the amounts of advertising and promotional material being scheduled exceeded what the ABA believed that the spirit of the Code required and that viewers might reasonably expect. It said that it had raised its concerns with FACTS and individual licensees. In a media release in December 1998, the ABA Chair, Professor David Flint, stated:

> The current code is open to different interpretations which can result in confusion and misunderstanding. The industry has responded to the ABA's concerns by agreeing to review this section of the code. The industry will

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97 *Official Committee Hansard*, Adelaide, 22 April 1998, p. 459.

98 Young Media Australia, Submission 14/39, p. 1566.

99 ABA, Written Answers to Committee questions, 11 September 1998, p. 1. See also ABA, *Report of Investigation: TCN-9 Sydney: Time Occupied by Non-Program Matter*, 13 August 1998.

> seek public comment on the revised code prior to submitting it to the ABA for registration.[100]

3.98 While the Committee notes the release of the new code on April 1999, it has not taken evidence of the adequacy of the revisions in this respect.

Advertising

Codes of practice

3.99 A complex variety of codes of practice and complaints mechanisms cover broadcast advertising. One reason for this is that a different code of practice will apply depending on the subject matter of the advertisement. For example, advertisements relating to political matters, tobacco products and therapeutic goods are subject to conditions imposed on broadcasters in their licences.[101] Advertisements that appear in or between children's programs are subject to the detailed provisions contained in the ABA's Children's Television Standards, which television stations are also obliged to observe.[102] Further, some matters are dealt with by Federal, State or Territory laws relating to fair-trading.

3.100 In addition to the above, section 6 of the FACTS Commercial Television Industry Code of Practice deals with the classification and placement of commercials on television. Section 6 states that its objectives are to ensure that television commercials:

- are classified and broadcast appropriately, in the light of the current community attitudes, the need to limit the exposure of children to material intended for adult viewing, and the fact that such material is typically very brief, and cannot in practice be preceded by a warning;
- are subject to appropriate placement restriction when they are for products and services which are of particular concern and sensitivity, but that public health and safety messages are not unreasonably restricted; and
- comply with federal and State law and meet the relevant requirements of the Australian Broadcasting Authority's Children's Television Standards.[103]

3.101 In recent years there has been some uncertainty as to which code of practice applies to a particular advertisement. Under the former FACTS Commercial Television Code of Practice, all commercials broadcast had to comply with that Code

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100 ABA, News Release NR117/98, 'ABA Finds that 10 Exceeded Advertising Limits', 3 December 1998.

101 *Broadcasting Services Act 1992*, s. 42(1) and Schedule 2, cl. 7.

102 *Broadcasting Services Act 1992*, s. 122.

103 FACTS Commercial Television Industry Code of Practice, section 6.1.

and with the applicable Media Council of Australia Codes of Advertising which existed at the time.

3.102 Until the end of 1996, the Media Council of Australia administered a system which included an Advertising Standards Council, an Advertising Code of Ethics, and product-specific codes relating to alcoholic beverages, to slimming and weight control products, to therapeutic goods, and to cigarettes, respectively.

3.103 The Media Council of Australia system involved collective actions by otherwise competing firms, such as collective boycotts of offending advertisements. As such, it had anti-competitive elements which required authorisation under the Trade Practices Act if the parties were not to be in breach of the Act.[104] Beginning in the 1970s, various authorisations were given and varied. One authorisation, involving accreditation of advertising agencies and not directly relating to the codes, was revoked in 1995 with effect (following an unsuccessful appeal) from February 1997. In August 1996, the Australian Competition and Consumer Commission announced a review of the authorisations directly relating to the codes. In response, the Media Council of Australia decided to terminate all its activities, with effect from the end of 1996.[105]

3.104 This left a gap in the self-regulatory system with some adverse consequences. The Committee notes two of them. One relates to advice it received from FACTS that inappropriately classified advertisements had gone to air due to a misunderstanding as to which rules were to apply after the Media Council and its associated codes ceased to operate. The other relates to how the self-regulatory system that is being established to replace the Council meshes with the FACTS Code and the requirements of the Broadcasting Services Act.

Effectiveness of the regulatory model for commercial advertising

3.105 FACTS scrutinises all commercials for compliance with applicable law and the relevant codes of practice. With the demise of the Media Council of Australia and its related codes of practice, FACTS had to ensure the continuing regulation of advertisements. The Committee heard evidence that pointed to significant shortcomings in FACTS's role as a regulator in this regard.

3.106 Following the demise of the Media Council of Australia, its codes could no longer be enforced. Consequently, the FACTS classifiers instead applied the classification provisions of the FACTS Commercial Television Industry Code of Practice. In doing so, they treated the commercials as if they were part of a long program. However, FACTS said they should have applied the requirements appropriate to a very short piece of material.[106] These are more stringent because a

104 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 582-83.

105 Australian Competition and Consumer Commission, *Annual Report 1996-97*, pp. 56-57.

106 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 562-63.

short item lacks a context and in practice cannot be preceded by any warning to viewers about its content.

3.107 FACTS told the Committee that this situation lasted for several months. It was only viewer complaints that alerted the stations and FACTS to the problem. The stations had initially responded by restricting the commercials to even later time-slots. Generally speaking this type of commercial had not appeared before at least 11.00 pm and the stations moved them back to midnight or in some cases 1.30 am. Once FACTS identified the problem, it responded by ensuring that the correct classification approach was adopted.[107] It also reviewed the incorrectly classified material, involving some 70 or 80 commercials, leading to the withdrawal of those not meeting the correct criteria.[108]

3.108 The current FACTS Commercial Television Industry Code of Practice has addressed such problems by stressing that a commercial must be given a television classification appropriate to its contents and broadcast at a time which its classification allows. Classifiers are required by section 6.6.1 to give consideration to such contextual factors as brevity, the absence of substantial content, and the inability in practice to precede an item with a warning.

Complaints-handling process

3.109 The numerous codes of practice that apply to advertising on television have contributed to the complexity of complaints handling mechanisms with respect to advertisers. There is also a more general issue of what criteria should apply to advertising and who should be responsible for developing the code and associated complaints mechanism.

3.110 The former FACTS Commercial Television Industry Code of Practice provided, for example, that all complaints about the content of a commercial (as opposed to its placement or the number of commercials broadcast) were to be referred to the Advertising Standards Council (which no longer exists). The release of the revised code and parallel developments in the advertising industry seem to have lessened some areas of uncertainty although at the cost of some increased complexity.

3.111 The current FACTS Commercial Television Industry Code of Practice emphasises that compliance with statutory and other rules in relation to commercials is the responsibility of the licensee. Complaints about their placement, or the amount of non-program matter broadcast, are the responsibility of licensees to resolve. Complaints about the content of a commercial are referred to the Advertising Standards Board or, in the case of advertising directed to children, to the ABA. Advertisers are expected to ensure that their commercials comply with the Advertiser

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107 *Official Committee Hansard*, Sydney, 11 August 1998, p. 563.

108 *Official Committee Hansard*, Sydney, 11 August 1998, p. 573.

Code of Ethics which, for completeness, have been published as an Appendix to section 1 of the revised code.

The Australian Association of National Advertisers

3.112 The Advertiser Code of Ethics has been adopted by the Australian Association of National Advertisers (AANA) as a means of co-regulation and, it is claimed, is intended to be applied to all forms of advertising. The object of the code is 'to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors'. In August 1999 the AANA supplemented its code of ethics with Principles and Advisory Notes for Advertising to Children. The document is intended to complement existing Children's Television Standards and other codes and standards already in operation. The guidelines, which were developed in consultation with the ABA, FACTS and FARB, as well as the Advertising Federation of Australia, include seven overriding principles for advertising directed at children including, for example, that care is taken not to unfairly exploit children's credulity, vulnerability or lack of experience.[109] AANA General Manager, Ms Sara Morton-Stone, has said that:

> Advertising directed towards children's audiences is inevitably a controversial topic and we believe this initiative represents a step forward.[110]

3.113 The AANA represents advertisers, especially the larger ones, but has recently broadened its membership to include advertising agencies and service providers.[111] It was a key member of the Media Council system, and since the demise of that system it has worked to establish a replacement mechanism for co-regulation funded by the industry. This involves the code of ethics and two complaints-handling bodies: an Advertising Standards Board to deal with complaints involving taste and decency having regard to contemporary community values; and an Advertising Claims Board primarily to deal with intra-industry disputes about truth and accuracy.[112] These bodies do not have any power to order the withdrawal of offending advertising: the system relies on voluntary compliance.[113] As a result, the AANA has not sought authorisation from the Australian Competition and Consumer Commission, which has said that it 'has some concerns that the AANA scheme lacks enforceability'.[114]

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109 Which can be obtained at www.aana.com.au/about/children.htm, as at 21 February 2000.

110 *Australian Financial Review*, 17 August 1999, p. 42.

111 *Official Committee Hansard*, Sydney, 11 August 1998, p. 581.

112 Australian Association of National Advertisers, *Advertising Self-Regulation: The Facts, The Figures, The Future*, August 1997, pp. 14-17.

113 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 587-88, 593-94.

114 Australian Competition and Consumer Commission, *Annual Report 1996-97*, p. 57.

3.114 It should be noted that the new system does not cover all types and facets of advertising. For example, the Telephone Information Services Standards Council (TISSC) has a code of practice which includes provisions relating to the advertising of live and recorded telephone information services. However, the AANA told the Committee that its Advertising Standards Board would in future deal with complaints regarding advertisements for phone sex services, rather than refer them to the TISSC.[115]

3.115 FACTS told the Committee that it had a formal role in the Media Council system, but did not in the new system, although it was supportive of it.[116] It considered that the new system for advertising meshed in well with the FACTS Code of Practice and the television industry's own complaint handling system:

> We believe the general approach with complaints about advertising is that, if the complaint is about the content of the advertisement, it is a matter for the AANA's complaint handling system. If it is about the classification or the placement of an advertisement, it is a matter for the station which runs the commercial, because it is either a classification mistake by the station or by FACTS or it is a scheduling error by the station. If it is a scheduling error, it is a breach of the code of practice and has to be answered by the station. We see the two systems working together very effectively.[117]

3.116 However, FACTS noted that there could be advertisements that complied with the FACTS code and any applicable laws but were in breach of the AANA advertising code. It gave as an illustration an advertisement involving a man picking his nose. Although FACTS considered it was in poor taste, it did not breach any of the requirements of the FACTS code. Despite a FACTS warning issued to the advertiser before the ad went to air, it was broadcast. It attracted numerous viewer complaints and as a result was withdrawn.[118]

3.117 FACTS said that under the *Trade Practices Act 1974* it could not, in pre-vetting of advertisements on behalf of the industry, illegally discriminate against an advertiser:

> … if an advertisement comes our way which appears to be in breach of the AANA code of ethics all we can do is to draw this to the attention of the advertising agency and the advertiser.

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115 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 590, 595.

116 *Official Committee Hansard*, Sydney, 11 August 1998, p. 575.

117 *Official Committee Hansard*, Sydney, 11 August 1998, p. 575. FACTS subsequently advised that it appeared that up to ten per cent of telephoned complaints received by stations may relate to advertising matters dealt with by the AANA system. Stations directed these complainants to the Advertising Standards Board, and as a result, few written complaints about advertising were received by the stations: FACTS, Written Answers to Committee questions, 4 September 1998, p. 3.

118 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 578-79. See also pp. 596-97 (Australian Association of National Advertisers) and 'FACTS: we warned Nestle', *B & T Weekly*, 23 January 1998, p. 2.

> Normally when we do that they will amend the ad, because it is usually an oversight. If they refuse to, there is really nothing we can do. We are required to provide a scheduling number for the commercial. In that instance, though, we would advise stations that this commercial appears not to comply with the AANA code of ethics. It is then a matter for stations to decide whether or not to run the commercial or to require changes to the commercial. They are permitted to do that; we are not.[119]

3.118 The Committee asked FACTS if its former code when amended should incorporate relevant elements from the AANA code. FACTS said that it believed that the FACTS code provisions, when properly applied, provided adequate protection against television advertisements which would prove offensive to the community on grounds of sex, nudity, violence, coarse language, drug use and other elements specified in the classification criteria. It said that beyond these areas there was a wide range of matters which may offend some in the community but on which there is not the clear community consensus to justify mandatory requirements in the FACTS code:

> We consider that the current system works quite effectively. Any code of practice provision designed to prohibit television advertisements on the grounds of bad taste would be difficult to frame in a way which was sensibly limited in its application, and would undoubtedly be problematic in terms of the Trade Practices Act.[120]

3.119 As discussed earlier in this Chapter, a person lodging a complaint under the FACTS Code who is not satisfied with the station's response can take the matter to the ABA. The Committee notes that there is no equivalent avenue of review for complainants who are not satisfied with the response from the AANA advertising complaints system about broadcast advertisements.[121]

3.120 FACTS noted that there were arguments for having all complaints about broadcast material, both programs and commercials, dealt with by the station concerned. Equally, there were cogent arguments for having all complaints about advertisements, whatever medium they appeared in, dealt with by an advertising complaints body. FACTS' preference was for the latter approach.[122]

3.121 In response to questions from the Committee, the ABA advised the Committee that it had 'considerable concern' that the system as a whole for regulation of advertising 'may be failing adequately to serve the consumer'.[123] It identified the overlapping regimes and the various distinctions that a viewer who wished to

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119 *Official Committee Hansard*, Sydney, 11 August 1998, p. 577.

120 FACTS, Written Answers to Committee questions, 4 September 1998, p. 2.

121 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 578-79.

122 *Official Committee Hansard*, Sydney, 11 August 1998, pp. 574, 578.

123 ABA, Written Answers to Committee questions, 11 September 1998, p. 2.

complain needed to be aware of in order to identify the appropriate avenue for complaints. Its own role varied according to circumstances:

- it could deal directly with the complaint if it related to a breach of the Children's Television Standards or the licence conditions relating to political matter or tobacco or therapeutic goods advertising;
- if the complaint related to a breach of the FACTS or the FARB codes of practice, the ABA could only deal with it if the complainant had first gone to the relevant station and had not received a satisfactory response; and
- if the complaint related to a breach of the AANA code or some other industry code, then the ABA had no role at all.

3.122 The ABA told the Committee:

> If the ABA is contacted by someone with a complaint about an advertisement, it advises them of the correct course of action. This is a very regular occurrence. Nonetheless, the current situation is clearly unsatisfactory from a consumer point of view, a matter which has been highlighted by recent problems with 'phone sex ads on late night television. As many as three separate complaints handling regimes apply to such programming and the ABA has extremely limited powers in relation to such advertising. The ABA considers that this situation is not in the public interest.[124]

The Australian Broadcasting Corporation

3.123 The Australian Broadcasting Corporation (ABC) is not subject to section 123 of the Broadcasting Services Act, but under its own legislation it is required to develop codes of practice relating to programming standards and content.[125] It is required to notify its code to the Australian Broadcasting Authority.

3.124 The ABC has a Code of Practice and a separate document of some 50 pages, excluding appendices, called *Editorial Policies*. Both apply to ABC Radio, ABC Television and ABC Online services.[126] The Code was first notified to the ABA on 7 December 1992.[127] The code and editorial policies are reviewed periodically by the ABC Board and it undertakes a systematic review every two years. The Code and editorial policies were last reissued in April 1998. The ABC advised the Committee that its code and editorial policies are published and widely disseminated in print and on-line.[128]

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124 ABA, Written Answers to Committee questions, 11 September 1998, p. 3.

125 *Australian Broadcasting Corporation Act 1983*, s. 8(1)(e).

126 Australian Broadcasting Corporation, Submission 22, p. 778-79.

127 Australian Broadcasting Authority, Submission 20, p. 734.

128 Australian Broadcasting Corporation, Submission 22, p. 777.

3.125 The Corporation advised the Committee that it believed the current system was working well and that it supported the current co-regulatory complaints handling processes.[129] In evidence to the Committee, Mr Walter Hamilton, National Editor (News) Radio, ABC, affirmed the ABC's commitment to co-regulation and maintaining ABC standards:

> These documents [the ABC's Code of Practice and editorial policies] form the basis for the directives sent in written form to all staff in respect of dealing with issues such as informing next of kin in the case of an accident or a death and how to treat episodes such as suicide. So there is a commitment to self-regulation in a quite specific way in terms of directing staff to conform with ABC standards which are transparent through the publication of the code of practice and editorial policies.[130]

3.126 It advised the Committee in July 1997 that:

> The ABC firmly believes that self-regulation should continue to be the primary mechanism for establishing the rules by which the Corporation conducts itself and deals with complaints. This is particularly appropriate for the ABC, with its specific legislative provisions guaranteeing its independence. That statutory independence is recognised in relation to both content and administration.[131]

Complaints-handling process

3.127 Complaints alleging a breach of the code of practice are directed initially to the ABC. Phone complainants are asked to put their complaint in writing. Section 8 of the Code specifies that the complaints handling procedure does not apply to complaints concerning programs which are the subject of legal proceedings.

3.128 Clause 8.1 of the Code requires the ABC to respond to all written complaints within 60 days of receipt of the complaint. The ABC advised that the usual response time is from two to three weeks, with straightforward complaints being dealt with more quickly and complex ones taking longer.[132] If complainants do not receive a response within 60 days or are dissatisfied with the response, they are able to take their complaint to the ABA and/or to the ABC's Independent Complaints Review Panel.

3.129 The Independent Complaints Review Panel's role is to review written complaints which relate to allegations of serious cases of bias, lack of balance or unfair treatment. Its convenor has a discretion whether the Panel should take up a matter: only the more serious or notorious matters are eligible to be taken up.[133] If it

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129 Australian Broadcasting Corporation, Submission 22, pp. 777-79.

130 *Official Committee Hansard*, Sydney, 5 February1998, p. 70.

131 Australian Broadcasting Corporation, Submission 11/39, p. 1523.

132 Australian Broadcasting Corporation, Submission 22a, p. 1282.

133 ABC, *Editorial Policies*, April 1998, section 10.2 deals with the functioning of the Panel.

does, the complainant is asked not to seek ABA review until the outcome of the Panel's review is known, so as to avoid two bodies investigating the same matter at the same time.

3.130 Most unresolved complaints are taken to the ABA. As at January 1998, it had investigated 37 unresolved complaints into alleged breaches of the ABC Code of Practice by ABC television since the Code was notified to the ABA on 7 December 1992. Of the 34 investigations completed by the ABA, six had resulted in a total of nine breach findings and three investigations remained outstanding.[134] Of the complaints, 19 concerned news and current affairs, which resulted in five breach findings, and ten concerned complaints handling, which resulted in three findings of a breach of the ABC code. There was also one complaint concerning programming classification and this complaint was upheld.[135] The ABC Annual Report for 1997-98 indicated that the ABA had investigated 17 complaints during the year, of which eight were dismissed and nine upheld (the annual report did not distinguish complaints data for television and radio). Eight of the adverse findings involved breach of section 8, where the ABC had not provided a satisfactory response within the required period.

3.131 Section 152 of the Broadcasting Services Act provides that if the ABA investigates and upholds a complaint against the ABC or the SBS, the ABA may issue a notice to the broadcaster recommending that it take specified action. The action may include steps to comply with the relevant code of practice and the broadcast of an apology or retraction. The ABA advised the Committee that it has never issued a s 152 notice to the ABC (or to the SBS): 'it has not at any time been satisfied that it should take action under that section'.[136]

3.132 Ms Pauline Garde, General Manager, Corporate Policy, ABC, summarised the ABC's overall view of the current system:

> Our submission supports continuation of the self-regulatory system which, as I say, includes the complaints procedure. We believe that responsibility for the editorial policies in the code should continue to be the responsibility of the board, and we believe that the system of investigation of complaints by the ABA where dissatisfaction remains after the ABC has dealt with a complaint also seems to be working well. We would expect it to continue. …We do not believe that the system needs to be changed.[137]

3.133 The ABC's assessment of its compliance with its own code of conduct and the success of the regulatory regime was challenged by Mr Steve Palyga, who is a solicitor representing Mr Tom and Mrs Wendy Chapman in defamation actions arising

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134 Australian Broadcasting Authority, Submission 20, p. 737.

135 Australian Broadcasting Authority, Submission 20, p. 737.

136 ABA, Written Answers to Committee questions, 11 September 1998, p. 4.

137 *Official Committee Hansard*, Sydney, 5 February 1998, p. 69.

from the ABC's reporting of the Hindmarsh Island bridge affair. [138] Mr Palyga told the Committee:

> On the whole, it is not the words of the codes which have failed. My observation – and this applies to the ABC in particular – is that you cannot get the media to abide by them. My written submission goes into detail about the ABC's bias in the [Hindmarsh Island] bridge case. It presents the evidence, chapter and verse, pages of transcript of segments on radio and television, where the ABC pushed a line in blatant disregard of its code of practice. That this had continued over such a long period of time and that it had occurred time and time again, despite my numerous letters, demonstrates that it is no accident or isolated breach of standards.[139]

3.134 Mr Palyga also told the Committee that he was unaware of the ABC's complaints system and Code of Practice despite being a regular ABC viewer.[140]

3.135 The ABC responded to Mr Palyga's criticisms by providing a rebuttal of his evidence that the ABC had been biased and unfair in its coverage of the Hindmarsh Island bridge issue. The ABC also pointed out that he had not sought to use its complaints process even after he became aware of it, and therefore his comments were not based on first-hand experience.[141] The matters he had raised directly with the ABC were principally directed to libel and not to alleged breaches of the Code:

> It is curious to say the least that Mr Palyga should cite the ABC's coverage of the Hindmarsh Island Bridge issue as an example of the total failure of self-regulation when neither he nor his clients have sought to avail themselves of the various complaints regimes applying to the ABC. Simply, nothing in Mr Palyga's evidence demonstrates any failure of self-regulatory mechanisms applying to the ABC.[142]

Privacy

3.136 Clause 2.5 of the ABC's code relates to the issue of privacy. It states:

> The rights of individuals to privacy should be respected in all ABC programs. However, in order to provide information which relates to a person's performance of public duties or about other matters of public interest, intrusions upon privacy may, in some circumstances, be justified.

3.137 The ABC's editorial policies elaborate on this, stating that investigative programs are often concerned with activities or individuals which have important

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138 Mr S Palyga, Submission 16; pp. 535-42 and *Official Committee Hansard*, Adelaide, 27 April 1998, pp. 438-52.

139 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 439.

140 *Official Committee Hansard*, Adelaide, 27 April 1998, p. 446.

141 Australian Broadcasting Corporation, Submission 22b, pp. 1293-94.

142 Australian Broadcasting Corporation, Submission 22b, p. 1294.

adverse effects on other people: 'This can justify methods which could otherwise be unacceptable as breaches of privacy'.[143] The editorial policies document contains nearly a page of guidelines about intrusion into grief following traumatic events. This begins by observing that such intrusion 'is seen by many as a violation of people's privacy at a time when they are most vulnerable'.[144]

3.138 In 1996-97, the ABC received ten complaints about privacy or media intrusion out of 10 982 letters and emails.[145] Advice about more recent years' statistics suggested that a similar level of complaints was received.[146] Ms Garde told the Committee that privacy was a minor area of complaint:

> Privacy, which I take to be the main focus of the committee's interest, is in fact a very minor area of complaint. It is in the range of one in 1100 matters that come to us, so it is certainly way down. We believe that this reflects the fact that the ABC editorial policies and the code in relation to privacy and grief are appropriate and that they are observed.[147]

3.139 ABC management did not believe that further regulation or legislation was warranted. The ABC recognised its responsibility to balance the public right to know with the right of individuals to privacy.[148] Reporting of major accidents had led the ABC to incorporate grief reporting into its code on their own volition.[149] The April 1998 revisions include a clause to reinforce the need for sensitivity in reporting deaths and have removed the editorial discretion to permit showing relatives being informed of the death of a person.[150]

Special Broadcasting Service Corporation

3.140 Like the ABC, the Special Broadcasting Service Corporation (SBS) is not subject to section 123 of the Broadcasting Services Act, but under its own legislation it is required to develop a code of practice relating to programming standards and content.[151] It is required to notify its code to the Australian Broadcasting Authority, which it did on 15 March 1993. The code has been amended several times since.[152] It applies to the programming and content of both radio and television services.

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143 ABC, *Editorial Policies*, April 1998, para. 9.9.1.

144 ABC, *Editorial Policies*, April 1998, para. 9.8.1.

145 Australian Broadcasting Corporation, Submission 22, p. 778.

146 Australian Broadcasting Corporation, Submission 11/39, p. 1524.

147 *Official Committee Hansard*, Sydney, 5 February1998, pp. 68-9.

148 *Official Committee Hansard*, Sydney, 5 February 1998, p. 69.

149 *Official Committee Hansard*, Sydney, 22 April 1998, p. 339.

150 Australian Broadcasting Corporation, Submission 11/39, p. 1524.

151 *Special Broadcasting Service Act 1991*, s. 10(1)(j).

152 Australian Broadcasting Authority, Submission 20, p. 734.

3.141 The SBS has also developed a Handbook of Editorial and Programming Procedures. Its preamble states that SBS staff are required to abide by it and by the Codes of Practice, and any breach of either may result in corrective and, if necessary, disciplinary action being taken.[153]

3.142 In its submission to the Committee, the SBS noted that:

> … the freedom to develop our own codes of practice has been important in reinforcing the long-held position of SBS that with independence comes responsibility and accountability. … the Codes are also a valuable internal resource, improving the organisation's focus on its broadcasting output far more than externally imposed regulations would do.[154]

Complaints-handling process

3.143 Section 7 of the SBS code sets down the complaints handling procedures. Complaints can be made by telephone, electronic mail or in writing. They can be made in the language most comfortable to the complainant.[155] Only written complaints receive a written response, normally within 6 weeks. Telephone and electronic mail complaints are noted and brought to the attention of management and appropriate programming staff. Depending on the nature of the written complaint, a reply may be prepared by the Managing Director or other senior SBS staff.

3.144 If complainants do not receive a response within 60 days, or if they are dissatisfied with the response, they may take the complaint to the ABA. According to the ABA, as at January 1998 it had conducted 17 investigations into unresolved complaints about SBS television programs since the Code of Practice was notified to the ABA on 15 March 1993. Of the 17 investigations, three resulted in findings of four breaches of the Code of Practice. No investigations are outstanding. The ABA advised the Committee that issues about classification symbols and consumer advice were raised on six occasions. These led to two findings of a breach of the Code. Sex and nudity was also raised as an issue six times. This resulted in one finding of a breach. Complaints handling was raised three times and one breach finding was made by the ABA.[156]

3.145 In its submission, SBS noted that:

> The present self-regulatory framework in broadcasting, including the complaints regime, is operating successfully and to the benefit of SBS viewers and listeners. By all reports, the present arrangements are working very well across the Australian broadcasting industry. SBS believes these

153 Special Broadcasting Service Corporation, Submission 14, Attachment, SBS Handbook of Editorial and Programming Procedures, July 1995, p. 438.

154 Special Broadcasting Service Corporation, Submission 14, p. 397.

155 Special Broadcasting Service Corporation, Submission. 14, p. 398.

156 Australian Broadcasting Authority, Submission 20, p. 738.

arrangements are both appropriate and effective, and SBS strongly advocates their maintenance.[157]

157 Special Broadcasting Service Corporation, Submission 14, p. 395.