

## CHAPTER 4

### RADIO

#### Introduction

4.1 This Chapter examines co-regulation in the radio industry by the Federation of Australian Radio Broadcasters (FARB) and the Australian Broadcasting Authority (ABA).

#### Federation of Australian Radio Broadcasters Commercial Radio Codes of Practice

4.2 FARB represents the interests of commercial radio broadcasters and is responsible for developing the self-regulatory codes of practice. As at December 1999 it had 221 members.<sup>1</sup> The FARB *Commercial Radio Codes of Practice and Guidelines* were first registered with the ABA in May 1993. The Codes, which were significantly revised in October 1999, apply to all commercial radio licensees, not just FARB members,<sup>2</sup> and comprise the following elements:

Code of Practice 1: Programs Unsuitable for Broadcast

Code of Practice 2: News and Current Affairs Programs

Code of Practice 3: Advertising

Code of Practice 4: Australian Music

Code of Practice 5: Complaints

Code of Practice 6: Interview and Talk-Back Programs

*Guidelines and Explanatory Notes on the Portrayal of Indigenous Australians on Australian Commercial Radio*

*Guidelines and Explanatory Notes on the Portrayal of Women on Commercial Radio.*

4.3 In September 1997, following discussions with the ABA, FARB commenced a review of its Codes of Practice. A draft of the revised Codes was circulated to FARB members in late August 1998. A public consultation phase followed between 19 April until 28 May 1999, with more than 250 listeners seeking copies of the draft code and 47 making submissions.

4.4 The revised Codes of Practice were approved and registered by the ABA on 26 October 1999. However, pending the outcome of the ABA's Commercial Radio

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1 <http://www.radiomarketing.com.au/>, as at 14 February 2000.

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

Inquiry, Codes of Practice 2 (News and Current Affairs Programs) and 3 (Advertising) remain unchanged. These may be further revised in view of the ABA's ultimate findings and recommendations.

4.5 The Committee was informed that the revised Codes of Practice:

... place increased emphasis on avoiding the use of gratuitous language, restricting programs with explicit sexual themes between 9.30pm and 5.00am, introduction of a quota for playing "new" (up to 12 months from date of release) Australian music and quicker responses to complaints handling.<sup>3</sup>

4.6 The Codes of Practice set out a range of content which is unsuitable for broadcast, ranging from issues such as violence, language, and simulated news that might mislead or alarm, to the presentation of the misuse of alcohol and the use of tobacco as desirable. News and current affairs programs are required to be accurate, impartial and balanced.

### **The Australian Broadcasting Authority**

4.7 A co-regulatory scheme applies for commercial radio that is similar to the co-regulation for commercial television. The scheme is based on the *Broadcasting Services Act 1992* (the Broadcasting Services Act). Under this model, radio stations have developed their own codes of practice that have been endorsed by the ABA. If the codes were not developed, or were not endorsed, the ABA's industry codes would apply in their place. As with commercial television stations, the ABA will hear complaints about radio station broadcasts.

#### *Complaints-handling process*

4.8 Complaints about a radio station broadcast are directed to the radio station in the first instance. 'Code of Practice 5 – Complaints' states that the radio station must respond within 30 days of receipt of the complaint. If the complaint is complex and requires further investigation, the radio station may take 45 days, but must acknowledge receipt of the complaint within 30 days.

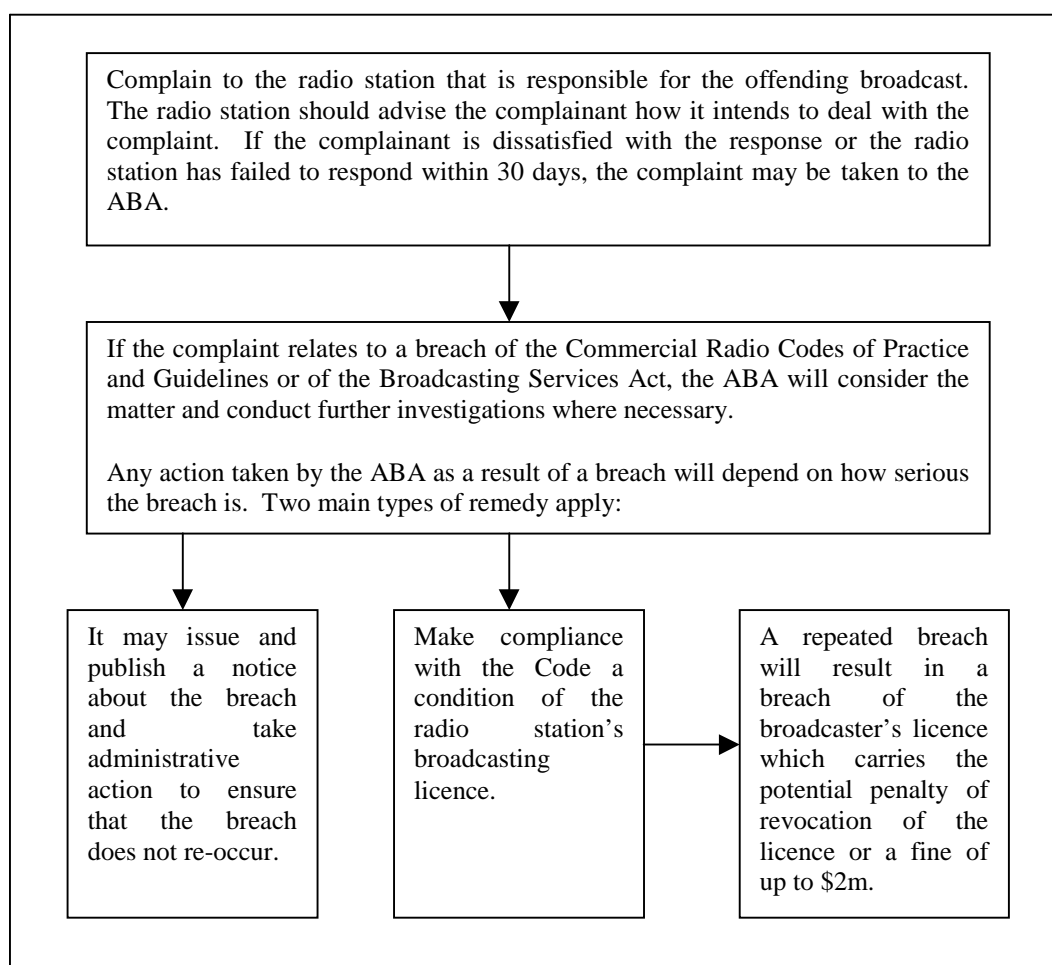
4.9 The radio station does not have to follow up on a complaint if it is made more than 30 days after the broadcast, or if the complainant is anonymous. Further, clause 5.9 states that if the complaint is 'vexatious, frivolous or an abuse of the complaint process under the Code', the radio station is not compelled to hear the complaint.

4.10 An outline of the complaint-handling process is included in Figure 4.1. If the matter is not resolved at the first instance between the complainant and radio station, the ABA may adjudicate on the matter. The processes followed by the ABA, including the penalties that it may apply where it finds a breach of the Codes of Practice, mirror those for complaints brought against commercial television.

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3 FARB, Written Answers to Committee questions, 21 August 1998, p. 1.

Figure 4.1

*The complaints-handling process for radio broadcasts**Record of complaints*

4.11 ‘Code of Practice 5 – Complaints’ requires commercial radio stations to keep a comprehensive record of complaints from listeners. Clause 5.11 provides that:

A record of complaints must be kept by the licensee in written form and must include:

- (a) the date and time the complaint is received;
- (b) the name and address of the complainant;
- (c) the substance of the complaint;
- (d) the substance and date of the licensee’s response(s)

and each such record must be retained by the licensee for a period of one (1) year from the date of receipt of the complaint.

4.12 The Committee notes that FARB was able to provide comprehensive detail on the number of complaints received by commercial radio stations.

4.13 FARB advised the Committee that commercial radio stations had received 7 082 written or telephone complaints in the period 17 May 1993 to the end of September 1997. In the period June 1997 to June 1998, FARB member stations recorded a total of 1 194 complaints, of which 531 (44 per cent) arose from talk-back and discussion programs. Other categories of programs giving rise to complaints were news and current affairs (88 complaints, 7 per cent), music programs (192 complaints, 16 per cent), advertising (120 complaints, 10 per cent) and miscellaneous (263 complaints, 22 per cent).<sup>4</sup>

4.14 Of the 7 082 complaints received by radio stations since 1993, only 60 were referred on to the ABA by complainants dissatisfied by the station's response. A complaint may raise more than one issue, and 100 issues were raised by these 60 complaints. Of the 56 completed investigations, nine complaints resulted in findings of 12 breaches of the codes of practice.<sup>5</sup> FARB advised that in each case the station involved took remedial action.<sup>6</sup>

4.15 The issue of complaint handling by radio stations was raised 30 times, with the ABA finding a breach of the complaints procedures on seven occasions.<sup>7</sup> Other issues relating to the code, that were raised by the unresolved complaints brought before the ABA, were that programs were unsuitable for broadcast because they: (i) incited violence, simulated news to mislead or alarm, or presented as desirable the misuse of drugs or alcohol (11 issues); (ii) contained offensive language (17 issues); or (iii) perpetuated hatred or vilification (18 issues). There were 17 complaints relating to issues regarding the lack of accuracy, fairness and balance in news and current affairs programs.<sup>8</sup>

### **The effectiveness of self-regulation in radio**

4.16 FARB pointed to the relatively small number of complaints, of which a high number were satisfactorily resolved by the stations, as a clear indication that commercial broadcasters were taking the Codes of Practice seriously. The Committee also heard in evidence that the Codes of Practice are operating effectively in safeguarding the privacy of the community.

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4 Compiled from quarterly tables in *ABA Update*, December 1997-January 1998, p. 24, April 1998, p. 21, August 1998, p. 20 and November 1998, p. 19.

5 Australian Broadcasting Authority, Submission 20, p. 735.

6 Federation of Australian Radio Broadcasters Limited, Submission 43, p. 1194.

7 Australian Broadcasting Authority, Submission 20, p. 736.

8 Australian Broadcasting Authority, Submission 20, Appendix A, Table 2.

4.17 However, evidence to the Committee suggested that the Codes of Practice fail to cover all facets of radio broadcasts. For example, the regulation of adult content was found to be inadequate.

4.18 Further, the ABA's recent report on its hearing into Radio 2UE Sydney Pty Limited, indicates a lack of awareness about the specific requirements of the Codes of Practice, even among senior and prominent radio announcers.<sup>9</sup>

### *Privacy*

4.19 The Codes of Practice protect privacy in two ways. 'Code of Practice 2 - News and Current Affairs Programs', requires that a licensee must ensure that 'respect is given to each person's legitimate right to protection from unjustified use of material which is obtained without an individual's consent or other unwarranted and intrusive invasions of privacy' (clause 2.2(e)).

4.20 In addition, 'Code 6 - Interviews and Talk-Back Programs' states that a licensee must not broadcast the words of an identifiable person unless:

- (a) that person has been informed in advance or is aware that the words may be broadcast; or
- (b) in the case of words which have been recorded without the knowledge of the person, that person has subsequently, but prior to the broadcast, indicated consent to the broadcast of the words.

4.21 Issues about privacy were raised in only two of the 60 complaints taken to the ABA between 17 May 1993 and the end of September 1997.<sup>10</sup> FARB indicated to the Committee that 'From monitoring of the Codes and discussions with the ABA, the privacy of the public, in relation to commercial radio broadcasting, is adequately protected'.<sup>11</sup> It advised the Committee that radio was the least intrusive of the three main media because:

- it did not have a visual element;
- in most cases its news bulletins are short and do not delve into the details of a story, and are unlikely therefore to raise privacy implications; and
- talk-back programs rely on the voluntary input of listeners who could expect their call to be broadcast without fear of being identified on air.<sup>12</sup>

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9 A copy of the report is available at:  
[http://www.aba.gov.au/what/investigate/commercial\\_radio/index.htm](http://www.aba.gov.au/what/investigate/commercial_radio/index.htm), as at 8 February 2000.

10 Australian Broadcasting Authority, Submission 20, Appendix A, Table 2.

11 Federation of Australian Radio Broadcasters Limited, Submission 43, p. 1193.

12 Federation of Australian Radio Broadcasters Limited, Submission 43, p. 1193.

*Regulation of adult content*

4.22 The Committee heard evidence relating to a sex talk-back show that was broadcast twice a week in Sydney, Melbourne and some other centres on Triple M commercial radio from 10.00 pm to midnight. In particular, the details of a broadcast in which a sexual act was broadcasted live was presented to the Committee.

4.23 The details are presented below as a case study in Case Study 4.1.

### Case Study 4.1 - Sex talk-back show

The program broadcast by Triple M includes explicit discussion on sexual matters and allows phone callers to describe their sexual activities in detail. Phone sex services, brothels and massage parlours have been among those advertising on the program.<sup>13</sup> One broadcast contained a live broadcast from a brothel and included a live sexual act. The show's host, Ruth Ostrow, was quoted as saying that she was 'very proud' of this broadcast: 'We narrated it like it was a sports event ... We knew we were really pushing the boundaries that time but everyone wants to know what really goes on inside a brothel'.<sup>14</sup>

The Committee asked Mr Graham Carroll from FARB and Ms Catherine O'Connor, the General Manager of Triple M, if the program complied with the FARB Codes of Practice. Ms O'Connor said that in her view 'a couple of the incidents' from the brothel broadcast 'were unsuitable for broadcast' and steps had been taken to rectify that: she specifically referred to the broadcast of a sexual act as unsuitable.<sup>15</sup>

Ms O'Connor also said that there was nothing specific in the Codes that suggest or determine that a radio station should have any warning or disclaimer at the beginning of a program to alert listeners to its content.<sup>16</sup> However, she said that the program in question did in fact carry such a warning. Subsequently, FARB advised the Committee that in the revised Codes being prepared it was proposing that a warning be required prior to the airing of any programs which have an explicit sexual theme as their core component.<sup>17</sup> The revised Codes contain such a warning provision, but nonetheless authorise the broadcast of a feature program which has an explicit sexual theme as its core component between 9.30 pm and 5.00 am.<sup>18</sup>

The Committee asked what the actual audience for the program was, and in particular how it could be assured that children were not listening. Mr Carroll said he doubted if anyone could provide this information.<sup>19</sup> Ms O'Connor said that the program had been deliberately structured as an 'adult program'.<sup>20</sup> She said it was aired late at night when it would not be expected that young children would be listening. However, she agreed that secondary school students could be listening through earphones without their parents' knowledge.<sup>21</sup> Ms O'Connor explained that the station had no data on the actual make-up of its audience: the ratings data compiled by AC Nielsen McNair merely identified audiences by time bands across seven-day periods.<sup>22</sup>

4.24 The case study clearly illustrates a deficiency that had existed in the radio industry's Codes of Practice, prior to the October 1999 revision. The revised version specifically addresses sex and sexual behaviour in radio broadcasts.

13 'The Full Monty', *The Australian*, 28 May 1998, p. 9.

14 'The Full Monty', *The Australian*, 28 May 1998, p. 9.

15 *Official Committee Hansard*, Canberra, 11 June 1998, pp. 547-48.

16 *Official Committee Hansard*, Canberra, 11 June 1998, p. 543.

17 FARB, Written Answers to Committee questions, 21 August 1998, p. 1.

18 The Federation of Australian Radio Broadcasters Limited, Submission 9/39, Attachment.

19 *Official Committee Hansard*, Canberra, 11 June 1998, p. 543.

20 *Official Committee Hansard*, Canberra, 11 June 1998, pp. 545-49.

21 *Official Committee Hansard*, Canberra, 11 June 1998, pp. 542-43.

22 *Official Committee Hansard*, Canberra, 11 June 1998, p. 546.

4.25 In responding to the Triple M incident, Mr Graeme Carroll, Manager of Public Affairs, FARB, stated that:

In order to survive, a broadcaster needs to provide advertising clients with the largest audience that it possibly can. But they clearly will not persist with programming that offends the listeners because in offending listeners you are not delivering the audience that the advertisers on your station seek. But in terms of the codes, the program, as I understand, has not elicited complaints to the station from listeners and the ABA itself. On that basis, the listener reaction is such that the program is acceptable to the target audience of that station.<sup>23</sup>

4.26 The ABA advised the Committee on 11 June 1998 that it had received no unresolved complaints about the Triple M program and no written inquiries about how to make a complaint about it. In the previous week it had received six general letters of concern about the sexual nature of programming on both radio and television, some of which mentioned the Triple M program.<sup>24</sup>

4.27 In relation to whether the Triple M program breached the Codes of Practice that applied at the time, Mr Carroll referred to paragraph 1.2. This provides that a 'licensee shall not broadcast language which would offend to a substantial degree the contemporary standards of decency held by the audience of the station'. The Committee notes two points that flow from this.

4.28 Firstly, the previous Codes of Practice did not that expressly deal with many of the issues that a program of this type raises. For example, the broadcast of live sexual activity. Mr Carroll said that FARB was looking at improving the Codes of Practice in this respect. Subsequently, the Chairman of FARB was reported as agreeing that the Codes of Practice are deficient in relation to sex and language.<sup>25</sup> FARB later informed the Committee that the revised Codes would include specific reference to these matters which it was confident would satisfy community concerns.<sup>26</sup> It would establish more defined limits on what was and was not acceptable. Pending adoption of the revised code, FARB was proposing that its members voluntarily adopt these limits. The Committee notes that clause 1.6 of the revised Codes of Practice provides that 'licensees must not broadcast audio of sexual acts'.

4.29 Secondly, the reference in clause 1.2 of the previous Codes to the 'audience of the station' coupled with the station's reliance on the absence of complaints, suggested to the Committee that a station could in effect broadcast whatever it liked as

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23 *Official Committee Hansard*, Canberra, 11 June 1998, p. 541. See also p. 556 where Ms O'Connor states 'we have had very few complaints' about the program.

24 *Correspondence*, Mr S Atkins, Acting Manager, Codes and Conditions, Australian Broadcasting Authority to the Committee, 11 June 1998, pp. 1-2.

25 'Radio to clean up its image', *Courier Mail*, 19 June 1998, p. 5; and 'Radio gives up chase for X-ratings', *Daily Telegraph*, 19 June 1998, p. 7.

26 FARB, Written Answers to Committee questions, 21 August 1998, p. 1.



long as its audience did not complain. It could in practice be indifferent to whether children might be listening without their parents' knowledge, provided no-one was making complaints.

4.30 It appears from the information provided to the Committee that the way in which ratings data is compiled requires that listeners state what they listen to.<sup>27</sup> The Committee considers that this survey method is not likely to detect children listening to 'adult' programs without their parents' knowledge.

4.31 The Committee notes that the relatively small number of complaints is not a good indicator of the performance of radio stations in adhering to the Codes of Practice. People may be reticent to complain to the station about a program, or may believe that making a complaint will not result in any change. Alternatively, people may not be aware of where to complain and what this course of action involves.

4.32 The Committee asked FARB if it monitored or spot-checked to determine if its members were observing the Codes of Practice. Mr Carroll said that it did not, and that it was not something it saw as part of its functions.<sup>28</sup>

4.33 Having noted that the Codes of Practice did not contain anything specific about 'adult' radio programs, the Committee asked FARB how it ensured that its Codes reflected community standards and concerns. Mr Carroll responded that the Codes were developed by a subcommittee and then put to the full FARB membership. After this process it was circulated to the public for comment. Mr Carroll said that the opportunity for comment had been advertised 'quite extensively' over a two-week period.<sup>29</sup> He said it had been estimated that some 11.5 million Australians over the age of 10 would have heard the announcement. Some 276 people sought copies of the draft code, and 20 responded with comment. Those responses were taken into account and the Codes were then registered by the ABA.<sup>30</sup>

#### *Radio station 2UE*

4.34 On 12 July 1999 the ABC program 'Media Watch' broadcast a story concerning an alleged financial arrangement between 2UE presenter Mr John Laws and the Bankers' Association. The 'Media Watch' story received widespread media coverage. On 15 July 1999 the ABA announced that it would conduct an inquiry into the issues raised by the 'Media Watch' program, in order to determine whether the allegations, if proven correct, involved breaches of the Commercial Radio Codes of Practice.

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27 *Official Committee Hansard*, Canberra, 11 June 1998, pp. 545, 549-50.

28 *Official Committee Hansard*, Canberra, 11 June 1998, p. 550.

29 *Official Committee Hansard*, Canberra, 11 June 1998, p. 558.

30 *Official Committee Hansard*, Canberra, 11 June 1998, p. 559.

4.35 After further allegations appeared concerning financial arrangements between 2UE's breakfast program presenter Mr Alan Jones and commercial interests, the scope of the ABA inquiry was extended to include other 2UE presenters and other radio stations.

4.36 In conducting the inquiry, the ABA investigated whether the commercial arrangements led to a breach of the Codes of Practice. At issue were clauses 2.2(d) and 3.1(a) of the Codes:

2.2 In the preparation and presentation of current affairs programs, a licensee must ensure that:

(d) viewpoints are not misrepresented, and material is not presented in a misleading manner by giving wrong or improper emphasis, by editing out of context, or by withholding relevant available facts.

...

3.1 Advertisements broadcast by a licensee must:

(a) not be presented as news programs or other programs.

4.37 The Panel found that Code 2 had been breached 60 times by the conduct of Messrs Laws and Jones, and Code 3 had been breached 30 times.

4.38 In finding a breach of clause 2.2(d), the ABA had to find that: (i) there was a commercial arrangement in existence; and (ii) that the commercial arrangement affected the content of broadcast. Both Messrs Jones and Laws had entered into numerous commercial arrangements with various corporations. This was evidenced by written contracts. Therefore the major finding for the ABA was whether the arrangements had affected the content of broadcasts, and therefore required disclosure. Case study 4.2 describes one instance where the ABA found that Mr Jones' conduct resulted in a breach of clause 2.2(d).

#### **Case Study 4.2 - Breach of clause 2.2(d)**

As part of his commercial arrangements with Cable and Wireless Optus Limited, Mr Jones was given talking points to incorporate into his radio broadcasts. For example, on 22 June 1999 Cable and Wireless Optus provided Mr Jones with the following talking points:

Cable & Wireless Optus today delivered on its commitment to shareholders and institutional investors to install 170,000 directly connected local telephony customers prior to the end of the financial year (30 June 1999).

The commitment was made prior to the company's listing on the Australian Stock Exchange in November of last year and has been reaffirmed on several occasions since.

'This is another example of Cable & Wireless Optus delivering on promises – doing what we said we would do,' a company spokesman said.

‘By meeting our forecasts for directly connected local telephony customers, we are building real value in the broadband HFC network.

‘The recent announcement of a joint venture with the world’s leading aggregator of broadband content and service provision Excite@Home, as well as the launch of cable modems this year, will continue to build the value of this asset,’ the spokesman said.<sup>31</sup>

On 23 June 1999, Mr Jones’s broadcast included a commentary on the services provided by Cable and Wireless Optus. The Commentary incorporated many of the talking points that had been provided to Mr Jones on the previous day:

But Cable and Wireless Optus have announced that they’ve installed 170,000 - that’s a lot – directly connected local telephony customers prior to the end of this financial year. That’s something. When they listed on the Stock Exchange last year, they said they’d do that. In other words, Cable and Wireless Optus are connecting local telephone customers. It’s in the broadband HFC network, and they recently announced a joint venture with the world’s leading aggregator of broadband content and service provision, which is Excite at Home, which will provide through the same broadband a range of services right into your home.

Now, remember when Optus came into the long distance calls way back, and mobile calls, the prices dropped. This is the only way the consumer’s going to get some benefit out of local telephone call costs. So if you’re looking to support the notion of competition in telecommunications, start with the local phone call and think about Cable and Wireless Optus.

The ABA Panel found this broadcast to be a breach of clause 2.2(d), concluding that:

The Panel finds that this available fact was relevant because:

- the issue was of concern to Optus. Optus sent a fax to Mr Jones the day before the broadcast referring to the matter as ‘significant’;
- the broadcast was favourable to Optus. During the broadcast, Mr Jones says ‘when Optus came into the long distance calls way back, and mobile calls, the prices dropped. This is the only way the consumer’s going to get some benefit out of local telephone call costs’; and
- Mr Jones used the information provided to him by Optus.

The financial arrangement between Mr Jones and Cable and Wireless Optus was a relevant available fact within the meaning of clause 2.2(d) and as such should have been disclosed. Because it was withheld, clause 2.2(d) was breached.

4.39 Clause 3.1(a) of the Codes states that radio stations must clearly indicate when a broadcast is an advertisement, and not a news or other program. Therefore, in finding a breach of clause 3.1(a), the ABA had to assess whether the content of a radio broadcast which appeared to be a news or other program, was in fact an

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31 *Commercial Radio Inquiry, Report of the Australian Broadcasting Authority Hearing into Radio 2UE Sydney Pty Limited*, [http://www.aba.gov.au/what/investigate/commercial\\_radio/index.htm](http://www.aba.gov.au/what/investigate/commercial_radio/index.htm), Schedule 11, p. 31.

advertisement. Case Study 4.3 provides an example of a broadcast by Mr Laws that purported to be a news program, but which the ABA found to be an advertisement.

### Case Study 4.3 – Breach of clause 3.1(a)

Mr Laws had entered into a financial agreement to promote the goods and services offered by NRMA Pty Limited. On 30 October 1998 Mr Laws broadcast the following about insurance claims lodged with the NRMA:

We've got to be fair to the NRMA. You've got to praise their generosity in paying claims by people affected by floods in New South Wales, in Wollongong. They really have taken a bit of a beating, but there were plenty of other insurance companies involved, I mean we should have been climbing into everybody.

The NRMA could have refused some of those payments because legally, they weren't liable. And they weren't liable. I mean legally that's it. But the NRMA, smart organisation, well some smart people in it anyway. And certainly it's smart enough and compassionate enough, to take a more human approach and pay the claims.

So, another 127 flood victims will receive what are known as ex-gratia payments, of a couple of million dollars. That takes the NRMA payout to about \$25 million. Which is big isn't it? Now of course the pressure will come from the other flood victims.

Protesters will try and convince the GIO, I suppose, to meet its Wollongong claims as well and you can bet the other insurance companies will also be targeted. But I have to say, that the thing that bothers me about it was that the poor old NRMA being the first to do the right thing, seem to be the ones that got all the flak.

...

This time flood victims will get some compensation, but it might not happen again, because it need not happen again because legally, NRMA didn't have to do it. But they did it.

So, if you do live in an area that is susceptible to flooding, be very, very careful and the sensible thing to do, obviously, is simply to check the policy.

In responding to the broadcast and whether or not it was a legitimate news story and not an advertisement for NRMA, Mr Laws made the following submission:

His submission is that the material which is broadcast should be regarded by the Authority as having been broadcast for the primary purpose of informing, assisting and comforting his listeners about a matter of great concern, both to them and to the general community. Mr Laws accepts that some of his comments may have reflected favourably upon the response of the NRMA to those flood claims and this might have had the effect of promoting the image of the NRMA to his listeners. However, Mr Laws submits his comments were both truthful and represented his genuine opinion upon these matters reasonably based upon the information available to him.

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It is respectfully submitted that none of these broadcasts was an 'advertisement' within the meaning of this provision of the Code. Instead, it was, and was intended to be, a part of Mr Laws' program in which he commented upon matters of public interest in order to inform and assist his listeners.

The ABA found that Mr Laws had breached clause 3.1(a):

The Panel does not accept Mr Laws' submission that this broadcast is not an advertisement

The Panel finds that a substantial purpose of the broadcast is to promote the NRMA in accordance with the agreement between Mr Laws and the NRMA. The submission that Mr Laws' comments were 'truthful and represented his genuine opinion' is irrelevant in determining whether the broadcast is an advertisement.

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For the following reasons the Panel finds that this matter is an advertisement:

- it is calculated or designed to promote an organisation, the NRMA, by being mainly concerned with the NRMA's record in compensation victims of flooding in Wollongong, by comparing positively the action taken by the NRMA in this regard with that of other insurance companies, and by making mention of the NRMA six times, each time favourably; and
- valuable consideration was provided to Mr Laws by the NRMA.

4.40 The ABA report is yet to be finalised, and its findings may be revised into the future, pending a response from 2UE. The Committee notes the preliminary recommendations of the ABA, which are that two conditions be imposed on 2UE's radio licence – that is: (i) on-air and off-air disclosure of relevant commercial arrangements; and (ii) the development and implementation of a compliance program by 2UE.

4.41 The Committee is concerned at the number of repeated breaches, and that it was left to an independent television show to detect the breaches in the first instance. This suggests that the current system of co-regulation is failing to adequately monitor the practices of radio stations. Some of the contracts leading to the alleged breaches date back to May 1993.<sup>32</sup> The proposed MCC, as detailed in Chapter 6, will address these concerns, as it will be a more proactive regulatory body.

### Advertising

4.42 FARB advised that commercial radio generates a relatively small number of advertising complaints. In the June quarter of 1998, only 14 complaints related to advertising out of a total of 278 complaints received.<sup>33</sup>

4.43 The relationship between the commercial television code and the self-regulation of advertising was described in the previous chapter. A similar relationship exists between the FARB code and advertising codes. With respect to the content of advertising, the Codes of Practice provide, in clause 3.1(b), that advertisements broadcast by a licensee must comply 'with all other Codes of Practice so far as they

32 *Commercial Radio Inquiry, Report of the Australian Broadcasting Authority Hearing into Radio 2UE Sydney Pty Limited*, [http://www.aba.gov.au/what/investigate/commercial\\_radio/index.htm](http://www.aba.gov.au/what/investigate/commercial_radio/index.htm), p. 31. On 4 May 1993 Optus entered into the first of a series of agreements in which he was to promote Optus.

33 FARB, Written Answers to Committee questions, 21 August 1998, p. 3.

are applicable'. FARB informed the Committee that this was intended to refer to the other elements within the FARB Codes, a matter which it has stated more clearly in its most recent draft codes. It does not refer to other industry codes like the advertising code of ethics of the Australian Association of National Advertisers (AANA) or the product-specific codes such as the therapeutic goods code.<sup>34</sup>

4.44 FARB informed the Committee that if an advertising complaint related to the Codes of Practice, the radio station would deal with it. However, if the advertisement was produced by the station directly for a client, the complaint might be referred to the client for attention.

4.45 If the station is unable to take either of these courses and the complaint relates to deceptive or misleading advertising, FARB advises its member stations to refer the complainant to the appropriate State or Territory department of fair trading. If it relates to taste and decency, the complainant will be referred to the Advertising Standards Board established by the AANA. FARB said that it was supportive of the AANA's moves to establish the Board, and although the system had only been operating for a few months, it appeared to be working well.<sup>35</sup> If the complaint fell within both the FARB and the advertising codes, the complainant would have a choice of code avenues to use.

### **ABC and SBS Radio**

4.46 There are no substantial differences between ABC radio and ABC television in respect of their regulatory frameworks, codes of conduct, complaints handling mechanisms or the role of the ABA. The same is true as between SBS television and SBS radio.

4.47 The Committee notes that the ABA investigated a total of 22 unresolved complaints about code matters relating to ABC Radio between December 1992 and the end of September 1997. Some complaints raised more than one issue. The issues raised were: language (10 times); discrimination (3); accuracy, impartiality and balance in news and current affairs (7); and complaint handling (13).<sup>36</sup> None of the complaints related to privacy. Of the 20 completed investigations, two resulted in a total of three breach findings by the ABA: two of them related to complaints handling, and the third to balance in news and current affairs reporting.<sup>37</sup> In addition, the ABC's Independent Complaints Review Panel dealt with two complaints in 1996-97

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34 FARB, Written Answers to Committee questions, 21 August 1998, p. 3.

35 FARB, Written Answers to Committee questions, 21 August 1998, p. 3.

36 Australian Broadcasting Authority, Submission 20, Appendix A, Table 5.

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

arising from radio programs.<sup>38</sup> The ABC's Annual Report for 1997-98 shows one finding of the ABA against ABC Radio's 3LO concerning the forestry industry.<sup>39</sup>

4.48 Between March 1993 when the SBS code of practice was notified to the ABA and December 1997, the ABA conducted five investigations into unresolved complaints about SBS Radio programs. Of these, one resulted in finding of one breach relating to advertising and sponsorship.<sup>40</sup>

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38 ABC, *Annual Report 1996-97*, p. 113.

39 ABC, *Annual Report 1997-98*, p. 64, attached to ABC Submission 11/39.

40 Australian Broadcasting Authority, Submission 20, p. 739.

