



Gareth Grainger, ABA Deputy Chairman, spoke on 'Broadcasting regulation in Australia 1992-1997 – A five year report card on the *Broadcasting Services Act 1992*' in his speech to the conference held by the Communications Law Centre, Clayton Utz and the Communication and Media Law Association (CAMLA) on 15 October, in Sydney. Following is an extract from the speech.

Codes, conditions and complaints

The role of codes of practice is to balance community standards concerning program content and the resolution of complaints with the commercial realities of providing a service.

The *Broadcasting Services Act 1992* for the first time placed the onus for the development of appropriate industry and community sector codes with the broadcasters. It has also for the first time given the regulator the role of overseeing the two national broadcasters' codes, those for ABC and SBS.

The objects of the Act have provided a sign post for the development of codes. Very early on in the life of the Act, the new regulator assisted industry bodies in coming to grips with responsibility for those bodies to develop and implement the new industry codes. Both the Federation of Australian Commercial Television Stations and the Federation of Australian Radio Broadcasters, the commercial television and radio industry bodies, finalised their codes in consultation with the public in 1993. The ABC and SBS had their codes registered in 1993 also. The Community Broadcasting Association of Australia, representing the community broadcasting industry, had its code registered by the ABA early in 1995. The last of the industry codes to be registered will be for the subscription and narrowcast sectors, represented by the Australian Subscription Television Radio Association. The narrowcast code was registered by the ABA in September 1997,

For the full text of Mr Grainger's speech, contact the ABA on (02) 9334 7700.

while the ABA expects to receive subscription television code shortly.

Complaints handling

The Act provides for broadcasters to handle complaints from the public. Only if the complainant is not satisfied with the response from the broadcaster can the complainant refer the matter to the ABA for investigation. Complaints that a broadcaster has breached a licence condition may be made directly to the ABA. Particularly early in the life of the Act the view was expressed that this two-step complaint process was cumbersome and so difficult and time-consuming to work through that the complainants would give up in despair. There is no evidence that this is so. Generally, broadcasters are dealing responsibly with their obligations and are using the complaints process as a means of taking valuable feedback from the public.

About one hundred complaints a year end up being the subject of a formal investigation by the ABA. About thirty are found to breach a code or a licence condition. The ABA focuses on broadcasters remedying the causes of the breach. This is thus not a punitive approach. However, the ABA does have the power to make particular code provisions a condition of an offending broadcaster's licence, and to refer breaches of conditions to the Director of Public Prosecutions. The ABA may also suspend or cancel a licence, but has resorted to neither at this stage. This 'softly softly' approach is consistent with the clear spirit of the Act but

invites the regular criticism that the ABA is weak or lacks sufficient teeth to be effective in its role as regulator. I would be more concerned about these views if there was any real evidence that the public feels dissatisfied about the current complaints handling process or outcomes.

That being said, there was room for the ABA to improve its own handling of these matters and it has done so. We are presently reviewing the way we handle these matters to see if further improvement can be achieved. I believe there is regular need for broadcasters to ensure that they are dealing promptly with complaints. I believe there is a lot to be said for formalising the role of swift 'on air' corrections and apologies as soon after a specific episode as possible. Broadcasters, including the ABC, are too prone to hide behind legalistic argument about potential litigation from possible defamation actions when a quick on-air apology would give the complainant what they really want.

Another aspect of this issue which I believe we will hear more of relates to the coverage of public issues by news media. The 1997 Clemenger *Silent Majority* report clearly identifies six of the top forty issues of concern to the general public relating to news coverage. This was published before public concern had increased arising from the Thredbo disaster and the death of Diana, Princess of Wales. There are real issues about privacy and the ABA will have to consider how best it can work with industry and the public to address proper community concerns about these issues. □