



3AB Radio Ethnos Melbourne

Retention of matter broadcast

Complaint

In February 2000, the ABA received a complaint concerning the program 'New Edition' broadcast on the open narrowcasting service 3AB Radio Ethnos (3AB) Melbourne. The complainant alleged that during the period 15 July 1999 to 1 August 1999, a person had allegedly been defamed by the program presenter. The complainant was not sure of the exact date of the broadcast but believed it took place during this period.

The complainant attempted to obtain a copy of the relevant broadcast from 3AB for use in legal proceedings against the licensee of 3AB. The complainant was advised by 3AB however, that the station's logging equipment was not in operation during the period 15 July 1999 to 1 August 1999 due to technical problems. Accordingly, no records of matter broadcast were retained during this period.

Relevant licence conditions

The Broadcasting Services Act provides at Schedule 2:

PART 2—SPECIAL CONDITIONS

Broadcasting of political or controversial material
5 Records of matter broadcast

- (1) In this clause, **broadcaster** means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form

approved in writing by the ABA.

(3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about the matter—for 60 days from the date on which the matter was broadcast;

or for such longer period as the ABA, in special circumstances, directs in writing.

11 Conditions applicable to broadcasting services provided under class licences

(1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:

...

- (d) the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6.

Decision

The ABA determined that the licensee of 3AB breached the condition of its licence set out at clause 11(1)(d) of Schedule 2 to the Act by not causing a record of matter broadcast to be made in accordance with clause 5(2) of Schedule 2 to the Act during the period 15 July 1999 to 1 August 1999 inclusive.

Action taken

The licensee advised that it had undertaken to do everything in its power to ensure that the same malfunction would not occur again, including regular discussions and regular maintenance checks of equipment.

In light of the assurances made by the licensee of 3AB and its past record of compliance with the code and the Act, the ABA will take no further action at this time. The ABA notes the seriousness of breaches of licence conditions, however, and may take this matter into consideration if it finds future similar breaches.

