



John Corker resigned as the ABA's General Counsel in October 2000. He had been with the ABA, and formerly with the Australian Broadcasting Tribunal, since 1990, when he joined as a senior legal officer. In those ten years, he witnessed and participated in the rethinking of how broadcasting is regulated in Australia and the migration from the *Broadcasting Act 1942* to the *Broadcasting Services Act 1992*.



The power to investigate

Personal reflections on the 'new' legislation

In your time at the ABA (and before at the Australian Broadcasting Tribunal), you witnessed the introduction of the Broadcasting Services Act 1992 — what do you consider to be the most important features of the transition from the previous regime?

A very significant feature of the Broadcasting Services Act is the flexibility given to the ABA to investigate industry issues of its own volition and in the way it sees fit. This did not exist previously. This has allowed successive Chairmen and their Members to put an emphasis on the issues they considered to be important and

to exercise quite different styles in dealing with industry issues.

The 1942 Act [*Broadcasting Act 1942*] provided for an almost endless regime of considering applications against prescriptive criteria and the making of decisions often through public hearing. The 1992 Act did away with a lot of this and cast the ABA in an industry monitoring role. It also reduced staff numbers by about a third. Because of the greater discretion afforded to the ABA as to how to go about its business, the ABA has been closer to Government than the ABT was. There have been more Ministerially directed inquiries and a closer relationship with the Department of Communications.



John Corker during his farewell by ABA staff

How has the approach to implementing the legislation changed over the past eight years. What future direction is it likely to take?

In 1992 the new 'light touch' regulation was to be given a chance to succeed. This phase allowed a lot more dialog to take place between the industry and the regulator than previously had taken place. The industry was given significant latitude to regulate itself and to develop codes of practice concerning program content. In the mid-period some issues arose and major transactions took place requiring the



ABA to play a more interventionist role such as Canwest's second investment in TEN.

After eight years, the inadequacies in self-regulation have emerged, particularly in the commercial radio sector. The ABA is likely to take a firmer hand with any breaches of codes, licence conditions or provisions of the Act.

Does the legislation still protect the public interest?

The ABA is there to protect the public interest within the broad policy parameters set by Parliament. It is its responsibility to do so. One of the ABA's primary functions is to report on the operation of the Act. If there are legislative problems that make it difficult to protect the public interest then it can and should report these matters to the Minister.

A continuing issue is cross-media rules — how effective is the legislation in achieving its initial aims? How appropriate/effective are they now that there are more sources of influence such as the Internet and pay TV?

My own opinion is that the newspaper/television cross-media rule is still relevant and important in avoiding a greater concentration in media ownership and control of those entities from where most people get their daily news.

Influential news sources about Australia on pay TV and the Internet are still owned and controlled by the large existing media players. i.e. ABC, Fairfax, Seven, Nine, News Ltd. The ABA's current research on sources of news should provide very useful information on the 'diversity of views' issue.

Formal investigations have been a highlight of your time at the ABA — What comments do you have about these investigations?

I have been closely involved in the development

and implementation of effective formal investigative methods over a number of years.

The 2UE public hearing was the best example of this but also the second Canwest investigation whose results withstood a Full Federal Court challenge and in the process made some useful common law. Two other investigations were the Seven/News investigation when Kerry Stokes took control of the Seven network and the Packer/Fairfax investigation when Brian Powers moved from PBL to Fairfax. These investigations have shown that the ABA is serious in carrying out its statutory duty to ensure that the rules laid down in the Act are observed.

The formal investigations have given me the opportunity to examine on oath a lot of Australia's top media executives and directors. For this I am very grateful. In my view formal investigations act as sanctions in their own right. Those examined have to answer questions where their own conduct is put in the regulatory context. There is public scrutiny through media reporting of process and findings.

Formal investigations are resource intensive for the ABA. Final findings require detailed scrutiny of evidence taking into account the comments of those potentially adversely affected.

For all of the above reasons they should not be embarked on lightly. However they are a vital tool in regulating the broadcasting industry and should be funded and supported accordingly.

John Corker is now a senior associate of Clayton Utz, solicitors, seconded to the Communications Law Centre for 12 months to establish and manage the CLC's new National Internet Legal Practice.

