



ATN 7 – Sydney

Privacy and complaints handling

The complaint

The ABA received a complaint concerning the broadcast by Channel Seven (Seven) of the segment 'Street Fight' on *Today Tonight* on 28 November 2001 and the promotions for the program on the preceding few days.

The complainant alleged that the broadcast was not accurate, fair or impartial; was grossly defamatory; was an invasion of privacy and claimed to have received no response to her letters to the station.

Relevant code of practice

4.3 In broadcasting news and current affairs programs, licensees:

...

4.3.5 must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast;

...

7.9 Where a code complaint is made about material broadcast by a station within thirty days of its broadcast, the licensee must provide a substantive written response.

Clause 5 of Schedule 2 to the *Broadcasting Services Act 1992* (the Act) stipulates the requirements for broadcasters to keep a record of certain matters broadcast including the time frames for retention and where notice has been given informing the broadcaster that the record may be required for the purpose of legal proceedings, subclauses (5) and (6) state:

(5) If such a notice is given to a broadcaster in respect of a record, the broadcaster must,

subject to this clause, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.

...

(6) If the proceedings are not instituted within a period of 3 months after the notice is given to the broadcaster, subclause (5) ceases to apply to the record at the end of that period.

The decision

The ABA is of the view that the licensee, breached Clause 4.3.5 of the Commercial Television Industry Code of Practice (the code) by using material relating to a person's personal or private affairs and invading an individual's privacy with no identifiable public interest reason for the material to be broadcast; breached clause 7.9 of the code in regard to complaint handling and breached the licence condition at clause 5 of Schedule 2 to the Act by failing to retain a copy of matters broadcast for three months after receiving advice of possible legal proceedings relating to the matters broadcast.

Action taken

The licensee has taken appropriate steps to ensure that future breaches of clause 5 of Schedule 2 to the Act will not occur and has raised the matter of complaints handling procedures in relation to legal proceedings in the process of the code review, which is currently being undertaken. Due to the licensee's history of good compliance with the code, no further action was taken by the ABA.

