



**The advice to the ABA by the Director of Public Prosecutions, that the 2UE prosecution will not proceed, highlights how difficult it is for the ABA to impose appropriate sanctions when it finds breaches of licence conditions and program standards.**

## 2UE prosecution not to proceed

The ABA has received advice from the Commonwealth Director of Public Prosecutions that, on the evidence available, there would be no reasonable prospect of a conviction of Radio 2UE Sydney Pty Ltd in relation to breaches of the commercial radio disclosure standard and the matter would not be approved for prosecution.

'The burden of proof in criminal cases is much higher than in civil cases and for a successful prosecution in this case it would have to be proven that Radio 2UE engaged in the conduct with the requisite criminal intention,' said Ms Maddock.

'This outcome highlights how difficult it is for the ABA to impose appropriate sanctions when it finds breaches of licence conditions and program standards,' she said.

'The only civil law-based remedies available to the ABA are imposition of further licence conditions (which must not be punitive), or suspension or cancellation of the broadcaster's licence. The ABA has imposed a stringent monitoring condition on Radio 2UE, but would always be extremely reluctant to deprive the public of a popu-

lar service by suspending or cancelling the broadcaster's licence.'

'The present case demonstrates the forensic difficulty of mounting a criminal prosecution under the existing law. However the ABA has not ruled out the option of seeking criminal prosecutions in the future.'

The ABA is working on a proposal to expand the range of civil law sanctions that may be appropriate for dealing with these kinds of breaches. The ABA plans to provide the proposal to the Government within the next six months.

### **The investigation**

In December 2003 the ABA found that the licensee of commercial radio service 2UE Sydney had breached the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000* on 19 occasions. The ABA also found six breaches of the special licence condition imposed on the 2UE licensee following the ABA's Commercial Radio Inquiry in 2000.

The ABA regarded the breaches as serious. The Dis-

closure Standard and the special licence condition imposed on 2UE were aimed at ensuring that current affairs programs on the influential medium of commercial radio are accurate and that information is not presented in a misleading manner by withholding relevant facts.

If a radio presenter is personally sponsored by third parties, and the presenter comments on matters directly related to those third parties, listeners are entitled to know that a commercial relationship exists between the presenter and those parties. The ABA found the licensee of 2UE had repeatedly failed to maintain the standards of disclosure relating to commercial radio presenters, and decided to refer the matters to the Director of Public Prosecutions for its consideration.

The ABA also imposed a further licence condition on 2UE, that 2UE, at its expense, engage an approved independent third party to monitor the John Laws program, for limited periods nominated by the ABA. It must also provide a report, including a transcript, direct to the ABA. This condition will provide an ongoing incentive to ensure compliance with the disclosure

requirements by enabling the ABA to undertake spot checks on the program. 2UE appointed an independent monitor in June 2004.

In October 2003, the ABA released research that indicated strong endorsement by the community of the requirement for on-air disclosure of commercial agreements by talkback presenters introduced by the ABA in 2001.<sup>1</sup> More than three-quarters of commercial AM radio listeners said it is important to be informed by radio presenters about their personal sponsors.

The ABA's investigation began in November 2002, following a complaint from the Communications Law Centre.

<sup>1</sup> Understanding Community Attitudes to Radio Content, *Australian Broadcasting Authority, 2003.*

### **Investigation report**

The ABA's report, *Investigation into Radio 2UE Sydney Pty Ltd – Sponsorship of Mr John Laws by Telstra Corporation Ltd and NRMA Insurance Ltd* is available on the ABA web site, [www.aba.gov.au/radio/investigations/past.htm](http://www.aba.gov.au/radio/investigations/past.htm)