27 May, 2005
Senator Eggleston,
Chair,
Senate Committee on the Environment, Communications,
Information Technology and The Arts.

Dear Senator,

ALLEGED BREACH OF THE "OFFICIAL SECRETS ACT"

In the Senate Estimates hearing of the Committee on 23 May, 2005 Senator Conroy made a most serious allegation against me.
Senator Conroy said that I had committed an offence under the criminal law- the "Official Secrets Act"-in my recent book, *Malice in Media Land,* published by Freedom Publishing of North Melbourne.
However, Senator Conroy actually confirmed, on several occasions, that he had not read my book. He then proceeded to discourage those witnesses whom he insisted should prosecute and take other action against me, not to read the book.
It is difficult to understand how Senator Conroy could come to his conclusion, and call for a prosecution not only without any apparent competent advice, but also without the most elementary knowledge of the matter.
It is even more difficult to understand why Senator Conroy then invited those he would have prosecute me, to be as completely ignorant of the facts as he openly declares himself to be.
In this context, I am not aware of the Senate rescinding its previous laudable resolution (Privileges Resolution 9) enjoining all senators to exercise their undoubted privileges responsibly.
Unlike Senator Conroy, I did not publish my book with reckless indifference as to whether it was was true or false, or in the public interest, or indeed, whether it was in breach of the law. The law and regulatory requirements were very carefully considered, and where appropriate, the advice of counsel was sought.
Malice in Media Land was never, *never*, intended to be -and it is not- a scandalous exposi. But because statutory agencies enjoy considerable powers over the rights of citizens, discussing the principles which members of statutory agencies believe they should apply is a a matter of overriding legitimate public interest. This is of course crucial to the rights of those affected or potentially affected. They have a right to know what issues are in contention, and on what basis members of statutory agencies believe they may determine affect the rights and obligations of their fellow Australians.it is obviously of considerable importance to the freedom of political speech which Australians enjoy, and the media rightly endorse.

I was extremely careful in my book to discuss issues, and not personalities. I avoided, on most occasions, identifying other members. Moreover, I studiously avoided any reference whatsoever to events where, because of the language used, the emotions exposed or the actions taken, prurience could have been too easily satisfied.

The points I have raised are important, and not only to broadcasting. They are relevant to the administration of other laws by yet other agencies.
All of these issues were in serious contention on the ABA Board and it is in the public interest that they be known and debated. They are:--

1.Prosecutions should be reserved for serious cases, and not when the breaches are inadvertent and trivial, particularly where the object of the regulation is being achieved by other measures taken by the accused.

So John Laws' inadvertence, either in failing to acknowledge some sponsorships, or in not doing so according to an arcane formula, should have been balanced against independent evidence that 2UE listeners were well aware of those sponsorships. In fact, a list of sponsors was read out daily.

(This procedure is identical to that which the ABC Media Watch presenter David Marr adopted when he disclosed his Fairfax connection. This is highly relevant: Mr. Marr has been a leading media critic of commercial talkback radio. He did not announce his continuing Fairfax connection when relevant stories were discussed; the fact that he was on leave from the Sydney Morning Herald was only revealed in the final credits, more fleeting than the list read on 2UE.)

2. A prosecution should never be recommended by a statutory agency when any intention to commit the breach - normally an essential criminal law element - is demonstrably absent.

In the case of 2UE, the information from 2UE was that the station was seriously endeavouring to comply with the ABA regulatory requirements to the letter. Legal advice to the ABA was that intention remained a necessary ingredient of a successful prosecution.

3. A recommendation to prosecute should not be announced by a statutory agency - particularly where there is doubt as to whether criminal intention is present - before the DPP can assess whether it is justified, otherwise serious damage to those named can result.

In my experience, the DPP, when properly briefed, will indicate as soon as possible whether a prosecution should be initiated. I suggest therefore that any announcement be delayed until the DPP takes his or her decision, at least for some reasonable period after a brief of the evidence available is presented.

4. If the same result can be achieved by a simple, easily observed rule, rather than one which is complicated and onerous, a regulator should always be bound to choose the simpler alternative.

The present ABA regulatory requirement on 2UE , the Standard, is unnecessarily complicated and the same result could be achieved by a more simple requirement to do what Media Watch does-explain any potentially conflicting relationship in the credits.

5. A statutory agency has a duty to protect, to the fullest extent possible, confidential information, which if improperly published, could be damaging to an individual or corporation.

6. When a citizen leaves one employer or business for another, he should not, without further evidence, be held to be an "associate" of his former employer or business partner.

So when Brian Powers went from PBL to chair Fairfax, in the absence of evidence, he should not have been assumed to be still working with or for Kerry Packer.

7. No person should be held to control a company merely because he is its presiding officer.

So Brian Powers should not, in the absence of evidence, have been assumed to control Fairfax.

Conclusion

From my experience, I have come to the conclusion that there should be a statutory obligation on the broadcasting regulator , and possibly many other staturory agencies , to record any dissent from decisions, and for this to be available to those most affected and also generally under Freedom of Information legislation. This will assist them in taking decisions on how they should best protect their rights.

It remains my considered view that a member of a statutory agency is presently entitled, but not necessarily legally obliged to reveal a dissent from a decision which he or she believes is in serious error and inimical to the rights of those most affected.

These are serious issues affecting the rights of fellow Australians, and they deserve serious discussion.

I am of course available to expand on these matters.

Yours Sincerely,

David Flint