



**Australian
Broadcasting
Authority**

Investigation Report No. 1471

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| File No. | 2004/2113 |
| Licensee | NBN Limited |
| Station | NBN |
| Type of Service | Commercial television |
| Name of Program | <i>60 Minutes</i> – ‘Devil’s Playground’ segment |
| Date of Broadcast | 21 March 2004 |
| Relevant Legislation/Codes | Clauses 4.3.1 (accuracy), 4.3.5 (privacy) and 7.9 (complaints handling) of the Commercial Television Industry Code of Practice 1999 |

Investigation conclusion

The ABA finds that in broadcasting the ‘Devil’s Playground’ segment of *60 Minutes* on 21 March 2004, the licensee of NBN:

- did not breach clause 4.3.1 of the Commercial Television Industry Code of Practice 1999
- breached clause 4.3.5 of the code by using material that invaded an individual’s privacy when there were no public interest reasons for the material to be broadcast and
- did not breach clause 7.9 of the code.

The complaint

On 4 November 2004 the Australian Broadcasting Authority ('the ABA') received an unresolved written complaint regarding a segment of the current affairs program *60 Minutes* broadcast by commercial television station NBN on 21 March 2004. The complainant had written to NBN, who had referred her complaint on to the Nine Network ('Nine'), the producer of the program in question.

As a result of this complaint the ABA wrote to the licensee of NBN seeking comments and a tape of the relevant segment. Nine responded to the ABA on behalf of the licensee.

The program

The segment of *60 Minutes* in question, entitled 'Devil's Playground', concerned a woman living on the NSW North Coast, Sue Powell, who took other women into her care and performed 'exorcisms' on them in the belief that they had become victims of satanic abuse. The segment included footage of several exorcisms being performed, an interview with Ms Powell, interviews with several women who are currently in her care, an interview with a woman who had previously been in her care, an interview with a doctor and interviews with two psychiatrists.

Overall the segment was critical of the methods used by Ms Powell, who is described in the segment as 'dangerous', and sceptical regarding her authenticity and sincerity.

Assessment

The complaint has been assessed separately against the following clauses of the Commercial Television Industry Code of Practice 1999 (the code):

1. clause 4.3.1 (accuracy)
2. clause 4.3.5 (privacy)
3. clause 7.9 (complaints handling).

Issue No. 1 – Accuracy

Relevant clause of the code

- 4.3 In broadcasting news and current affairs programs, licensees:
- 4.3.1 must present factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program;

Complaint

The complainant stated that footage of exorcisms being performed was filmed in 1994 but that this footage 'was presented in the report as being recent'.

Network's response

Nine submitted that:

The only aspect of [complainant's name] complaint that raises a section 4.3.1 issue is the allegation that the footage of her in the segment was misrepresented as being recent.

The segment does not, at any stage, expressly indicate or suggest that video footage of exorcisms was recent.

Assessment

The ABA can find nothing in the segment to indicate that the footage featuring the complainant was presented as being recent. There were no claims of this nature made during the segment and nothing to suggest that the producers of the program were attempting to mislead viewers in this way. The segment makes it clear that the woman performing the exorcisms has been doing so since the early 1990s.

Finding

For the above reasons the ABA concludes that the licensee did not breach clause 4.3.1 of the code during its broadcast of a segment of *60 Minutes* on 21 March 2004.

Issue No. 2 — Privacy

Relevant clause of the code

- 4.3 In broadcasting news and current affairs programs, licensees:
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- 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;

Complaint

The complainant had been alerted by one of her friends on the evening of the broadcast that footage of her was being used to promote a *60 Minutes* segment that was to be broadcast that night. The complainant contacted NBN and stated that she did not want her face to be shown. However she was unable to speak to anyone connected with the program until several days after it had been broadcast.

The complainant stated that within the segment, 'I was featured using 1994 confidential video footage without my knowledge or consent'. She was later informed by one of the segment's producers that the video was not obtained illegally and it did not show the complainant doing anything illegal. The complainant alleged that as a result of this footage being broadcast she had been called a 'witch', discredited, harassed and humiliated.

Network's response

Nine submitted that:

This Segment raises issues that are of significant public interest. For the last decade, Sue Powell has taken dozens of women under her care and convinced them that they are victims of satanic abuse. They often reject society and their families in the process. Most of these women are scared and vulnerable and fear leaving Sue Powell's watch. The footage in question demonstrates the rituals of a physical nature that the women were

subjected to and supports the version of events as described by [name of one of the interviewees].

The public interest value of a story of this kind, including the footage of exorcisms, is very high, particularly in light of the fact that Sue Powell continues to take women under her care.

Assessment

The question before the ABA regarding an assessment of the segment against clause 4.3.5 of the code is whether the broadcast of this segment, or parts thereof, related to a person's personal or private affairs or constituted an invasion of an individual's privacy and, if so, whether there was an identifiable public interest reason for that broadcast.

Personal or private affairs / invasion of privacy

The part of the segment relevant to the issue of privacy involves footage, which the complainant stated was filmed in 1994, of exorcism rituals taking place inside Sue Powell's home. Most of this footage showed a woman, screaming and shouting, being forcibly restrained by other women as an 'exorcism' was performed. The complainant, although never identified by name, was prominently featured in this footage and her face was clearly visible for a number of seconds on six separate occasions. In the ABA's view this footage would be sufficient to identify the complainant to persons who knew her or had dealings with her. She was seen:

- trembling and looking up in fear at a hand hovering over her head. She was heard to say 'don't you touch me' and was obviously in a distressed state
- sitting in the middle of a circle and surrounded by other women who were involved in some form of ritual
- sitting in a chair, cowering, while another woman stood over her
- (later) jumping up from the chair and attempting to run away. Sue Powell was heard saying, 'get her down there, get her down there, I don't want her knocked out, I want to deal with her'
- undergoing treatment during what was described as a 'group hypnosis session' and
- looking frightened and confused as she sat facing another woman.

The complainant's face also appeared as part of the background image shown behind the segment's presenter, Liz Hayes, as she introduced the segment.

In its report *Unfair Publication: Defamation and Privacy*,¹ the Australian Law Reform Commission suggests that privacy concerned:

Material which so closely pertains to a person to his innermost thoughts, actions and relationship that he may legitimately claim the prerogative of deciding whether, with whom and under what circumstances he will share it.

The ABA notes that clause 4.3.5 of the code is not only concerned with unwanted intrusions on an individual's privacy, but also extends to the use of material relating to a person's personal or private affairs. Examples of the types of material that may be considered private material include:

¹ Report No 11 (1979) at 110.

- personal information that can reasonably be used to identify a person, such as names or other personally identifying details
- information relating to personal relationships or other private affairs of a person, and
- conduct or activities that take place in private.

For the following reasons the ABA is of the view that the broadcast material featuring and visually identifying the complainant related to her personal affairs and was an invasion of her privacy:

- the footage was filmed on private property, not in a public place
- it is apparent from the circumstances at the time that the footage was taken that the complainant was in no position to give informed consent to being filmed
- the woman did not give permission for the footage of her to be shown, and in fact contacted NBN before the broadcast expressly requesting that her face not be shown on national television
- the broadcast of this footage would be likely to cause distress and embarrassment to the complainant
- in the opinion of the ABA a reasonable person would understand that the complainant would not have wanted the footage in question to be ‘observed’ or, in this case, broadcast on television. The complainant was shown in a distressed, frightened and confused state, taking part in an activity that any reasonable person would regard as highly personal and of an extremely sensitive nature and
- a ‘reasonable person of ordinary sensibilities’ would, in the opinion of the ABA, be highly offended by the broadcast of footage showing them in a situation such as the complainant was in when she was being filmed.

The ABA also notes that Nine did not make any submission regarding the question of whether the segment contained footage that related to a person’s personal or private affairs or that invaded an individual’s privacy. Rather, Nine submitted that no breach of clause 4.3.5 of the code had occurred because there was an identifiable public interest reason for the material to be broadcast.

Identifiable public interest reason

Although the code does not define ‘public interest’, there is a public interest in broadcasters informing viewers on matters of public concern.

Whether a matter is in the public interest, as opposed to merely being a matter in which the public is interested, depends on the circumstances of the particular case. The ‘public interest’ reasons claimed by the licensee essentially relate to the fact that Sue Powell continues to take women under her care and subjects them to what Nine describes as ‘horrific exorcisms’.

That there was an identifiable public interest reason for broadcasting the segment as a whole is not contentious. Broadcast of the 1994 footage showing ‘exorcisms’ being conducted on Sue Powell’s property was important to the story and hence also in the public interest.

The broadcast of private film footage does not automatically require that *all* identifiable faces be hidden in the absence of a public interest reason for allowing identification. However, judgments need to be made on a case-by-case basis before material is broadcast relating to a person’s private affairs or that invades a person’s privacy.

While there was an ‘identifiable public interest reason’ for the broadcast of the footage that was the subject of the complaint, there was no obvious public interest reason to disclose the complainant’s identity. On the other hand, the invasion of privacy was serious, having regard to the following combination of circumstances:

- the footage was filmed on private property and not in a public area
- the complainant was shown in an extremely personal and sensitive situation
- the complainant is not a public figure and did not willingly or knowingly put herself into the public domain, or place herself in a position to be the subject of public comment
- the sequences showing the complainant are numerous and prolonged
- the complainant’s face is clearly visible during these sequences
- the visual identification of the complainant could have been avoided without the segment losing any coherence or meaning and
- it was broadcast against the express wishes of the complainant.

Given these circumstances and given that the footage depicts, in the words of Nine, ‘scared and vulnerable women’ who have been subjected to ‘brainwashing, violation and exorcism’, the ABA believes that more care and sensitivity should have been exercised in the selection and presentation of material for broadcast.

The complainant’s identity could have been easily hidden by ‘pixelating’ her face. ‘Pixelating’ is a frequently used technique for hiding the identity of someone who is being filmed and, given the nature of the footage complained about, it should have been used in this instance. The ABA notes that in the footage shown of the exorcisms, the identity of at least one of the other women involved was hidden in this way. It is unclear why the complainant’s face was not pixelated as well.

In response to the ABA’s request for comments regarding its preliminary finding, the licensee contended that it was necessary to show the woman’s face in order to demonstrate the effect of the exorcisms on the individuals involved and that to pixelate the face of the complainant ‘would liquidate the effectiveness of the footage and make it impossible to convey the story’. However, the ABA remains of the view that the nature of the exorcisms and the impact of the exorcisms on those taking part could have been easily conveyed without broadcasting images of the complainant’s face.

Finding

For the above reasons the ABA concludes that the licensee breached clause 4.3.5 of the code during its broadcast of a segment of *60 Minutes* on 21 March 2004.

Issue No.3 – Complaints Handling

Relevant clause of the code

- 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.

Complaint

The complainant did not receive a substantive written response from either NBN or Nine to her letter of complaint to NBN.

Network's response

Nine stated that as the written complaint was not made until October 2004, seven months after the broadcast in question, the code requirements regarding a timely written response were not applicable.

Assessment

The broadcast in question took place on 21 March 2004. The letter of complaint regarding the broadcast was not sent to NBN until 19 October 2004. The complainant has stated that this delay was because it had taken her a long time, 'to recover sufficiently, with the assistance of a legally certified professional, to be able to write to you [NBN] concerning these segments'.

Clause 7.4 of the code states that:

- 7.4 If a written complaint is made to a licensee more than 30 days after the broadcast to which the complaint refers, this Section does not oblige the licensee to comply with the requirements of this Section in responding to the complaint.

The ABA notes that the complainant had called the licensee to make a formal complaint the evening of the broadcast and had provided the licensee with reasons for the delay in lodging her written complaint. However, as the written complaint was made more than thirty days after the broadcast being complained about the requirements of clause 7.9 are not applicable and the licensee was therefore not required to provide a timely written response.

Finding

For the above reasons the ABA concludes that the licensee did not breach clause 7.9 of the code in its handling of a written complaint made about a segment of *60 Minutes* broadcast by NBN on 21 March 2004.

Summary

The ABA finds that in broadcasting the program material in question the licensee of NBN:

- did not breach clause 4.3.1 of the code
- breached clause 4.3.5 of the code by using material that invaded an individual's privacy when there were no public interest reasons for the material to be broadcast and
- did not breach clause 7.9 of the code.

Action taken by the licensee

The ABA notes that, in response to the breach finding, the licensee has undertaken that:

- a copy of the ABA's final report will be circulated and discussed with producers and reporters at *60 Minutes* and
- the report will be used as an example in Nine's ongoing training in relation to the application of the code.

The ABA considers these actions address the compliance issues raised by the investigation and notes that this is the first time that the licensee has been found to be in breach of clause 4.3.5 of the code. The ABA will continue to monitor the licensee's performance in this regard.

Decision

I, Andree Wright, Director Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Broadcasting Authority, determine for the above reasons that the licensee of NBN, NBN Ltd, in broadcasting the 'Devil's Playground' segment of *60 Minutes* on 21 March 2004:

- did not breach clause 4.3.1 of the code
- breached clause 4.3.5 of the code by using material that invaded an individual's privacy when there were no public interest reasons for the material to be broadcast and
- did not breach clause 7.9 of the code.

Signed: -----
Andree Wright

dated this 18th day of May 2005