

Review of literature on commercial influence in news and current affairs programs on commercial radio

Research report commissioned by
the Australian Communications
and Media Authority

Prepared by Professor Catharine Lumby
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THE UNIVERSITY OF NEW SOUTH WALES

**Arts and
Social Sciences**

Journalism and Media Research Centre

**Report for
The Australian
Communications and Media
Authority**

**REVIEW OF LITERATURE ON COMMERCIAL
INFLUENCE IN NEWS AND CURRENT
AFFAIRS PROGRAMS ON COMMERCIAL RADIO**

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Table of Contents

1. Executive Summary.....	p. 4
2. Key Findings.....	p. 6
2. Introduction.....	p. 11
3. Methodology.....	p. 13
4. Research Findings.....	pp. 16
5. References.....	pp. 43
Appendix: Media Database	

1. Executive Summary

This report aims to identify, review, analyse and report on relevant literature on the themes which the Australian Broadcasting Authority expressed views on in the Final Report of the Commercial Radio Inquiry. Namely: Fairness in the presentation of programs; Disinterestedness and disclosure; Advertising; Political matter; Influence; Talkback and Ethics. It also seeks to understand the interrelationships between the themes and set this analysis within the emerging digital media landscape. We have been guided by a regulatory issues-based approach.

There is certainly a large body of literature across the fields of legal, journalism and media studies on the Cash for Comment affair that triggered the Commercial Radio Inquiry, on the co-regulation system, the codes of practice and on the standards which were enacted in the wake of the Inquiry. This report details that literature, much of which is sceptical about the ability of a co-regulatory regime to effectively police, in practice, ethics and disclosure in commercial current affairs radio. It also analyses industry and media commentary on the Cash for Comment affair and on disclosure and ethics in commercial talkback radio since 1999.

There is general agreement across the literature and in much public debate that commercial talkback radio is central to the setting of media and political agendas and there is little sympathy for the view put so colourfully by presenter John Laws that there is 'no hook for ethics' in commercial talkback because its presenters are mere entertainers. More recent research, however, suggests that the influence of commercial talkback on mainstream politics may be much more perceived than actual and also draws attention to the differences between the genres and audiences that define commercial talkback radio. The popularity of commercial FM radio talkback with younger listeners, the commercial power of some presenters, and the range of social and political issues these formats engage with, certainly suggest that more attention needs to be paid to ethics and disclosure in this sector.

The research on the emergence of new types of news and current affairs, as well as the fragility of traditional models of journalism in the present convergent media environment (with advertising migrating to online and search), adds weight to the suggestion that there needs to be a reconsideration of what the public interest in

commercial radio might be. The literature also suggests that regulators, broadcasters, and citizens all need to engage with the question of entertainment (from a different standpoint than purely seeing it as a way to sidestep obligations believed to go along with the opposed category of journalism).

We face a set of questions about how regulators and policy makers should engage with a new media environment in which media consumers are increasingly media producers; in which the lines between advertising and editorial are often openly transgressed in a range of popular media formats (for example, in embedded advertising in feature films); in which there is clear evidence that younger media consumers are, on the whole, far more attuned to the issue of commercial influence in editorial; and where the lines between conventional information formats (news and current affairs) and entertainment formats has become increasingly blurred; and where new media technologies are changing the way in which traditional mediums communicate with their audiences.

This is not to say that the authors of this report pre-emptively dismiss the historical importance of the public interest role of the media or the ethical obligations to disclose commercial interests that many scholars and commentators cited below argue should be recognised and regulated in commercial radio. It is rather, to situate the literature review that follows, in the context of an emergent media landscape which offers challenges, identified in the literature, to traditional ways of understanding the relationship between media formats, media production and media audiences.

2. Key Findings

Responses to the Commercial Radio Inquiry and to the regulatory approaches of the ABA and ACMA

- Legal commentators and scholars viewed the Commercial Radio Inquiry as highly significant however there is a marked scepticism across this literature about the capacity of the co-regulation system to effectively police a commercial radio sector which is understood by these commentators as indifferent to its ethical responsibilities.
- Similarly, the majority of media and journalism scholars viewed the Inquiry not as co-regulation in action but saw the need for the Inquiry as evidence that the co-regulation system is not working and that there is a systemic failure in the application of self-regulation at industry level. Graeme Turner, a key academic commentator in the field, argues that the wide range of views about ethical obligations espoused by commercial radio broadcasters at the time of the Inquiry demonstrated a genuine confusion over how the code of practice worked and who it applied to.
- The Inquiry generated enormous media interest which was characterised by strong criticism of Alan Jones, David Flint (then Chairman of the ABA) and John Laws.
- Criticism across the academic literature and the popular media tends to be almost exclusively focused on the perceived recalcitrance of the commercial radio sector in relation to its disclosure obligations.

The Commercial Radio Standards, Disclosure, Fairness, Accuracy and Ethics

- The majority of literature on the Commercial Radio Standards themselves is concentrated in media law journals. It is not a large body of work. There is a much larger and more general Australian literature on disclosure and ethics in

journalism but it very rarely includes a discussion of the Commercial Radio Standards, their operation in the wake of the Commercial Radio Inquiry or the commercial radio sector generally.

- The matters that the Commercial Radio Standards cover in terms of ethics has been well received generally by academic commentators.
- It is the effectiveness of the co-regulatory system in operation that has been the subject of general criticism across the legal, media and journalism studies fields. Two key commentators – Lesley Hitchens and Graeme Turner – question the capacity of co-regulation to deal with the nature and scope of commercial influence in commercial radio.
- There is a fresh debate emerging in the literature about what kind of regulatory framework is appropriate for news and current affairs programming in a commercial environment. Graeme Turner has modified his critique of self-regulation, following his extensive research into talkback radio, and now argues that regulation needs to be informed by a much deeper knowledge of contemporary radio structures and users about which there is currently a paucity of scholarly research.
- There is not a wide body of industry generated literature on the standards or on disclosure. A key document is the submission Commercial Radio Australia made to the Productivity Commission in 2009. The submission argues strongly that the current Disclosure Standard is onerous, places an excessive burden on the industry and is out of touch with industry practices. It also makes the point that other media sectors are effectively self-regulating in regard to disclosure and that it is only the commercial radio sector that has been targeted with strict disclosure obligations.

Commercial radio talkback formats and public interest responsibilities

- There is a considerable agreement across the academic literature that commercial talkback radio formats are engaged in news and current affairs

programming and that, as a result, they have public interest responsibilities.

- The arguments for the proposition that commercial talkback radio formats engaged in news and current affairs programming have public interest responsibilities are grounded in liberal democratic theories that conceive of the media as a Fourth Estate which keeps people informed about the public and private sectors, scrutinises those sectors and acts as a forum for public debate.
- There is a minority view which has been occasionally voiced by some in the commercial radio sector that presenters are 'entertainers' who should not be caught by ethical obligations. This view is at odds with key academic commentators who have argued that talkback hosts do have public interest responsibilities that are not cancelled out by the entertainment elements of the program.
- There is strong agreement across media commentary and academic research that commercial talkback is a format that is central to the setting of political and media agendas. More recent research in the media studies field, however, offers a more nuanced understanding of the extent to which talkback presenters influence their audiences. There is also a growing recognition that it is simplistic to treat all commercial talkback as equivalent and important to distinguish between different programs and approaches.
- Key researchers have identified a strong need for further research into the commercial radio sector, the diversity of formats and presentation styles, and the realities of broadcasting news and current affairs within an entertainment context.
- A number of key commentators – including Michael Gordon-Smith and John Hartley – have argued that we need to rethink the way we understand ethics and the public interest in a society where media consumers are actively involved opinion formation. Hartley has argued that media consumers have more power than is generally recognised in traditional ways of understanding media ethics. He and Gordon-Smith both emphasise the role media consumers can and should play in deciding the influence of the media in our democracy.
- Lesley Hitchens has argued forcefully that the Federal Government needs to consider legislative change to ensure strong and effective regulation of the commercial radio sector.

Advertising, sponsorship and commercial influence

- There are few systematic or reliable studies of commercial influence on program material in the commercial radio sector, despite the extensive media coverage of the role sponsors played in some talkback radio content. There is a clear identified need for further research here into industry practices, including practices in the lucrative FM talkback market.
- One small but reliable study by Sally Young found a pattern of commercial influence in commercial radio news selection. Her study agrees with the findings of the small amount of research that has been done into this subject.
- There are no systematic studies to date of commercial influence on the commercial FM talkback sector which has high appeal to young media consumers. The only study on commercial FM radio focuses on how regional radio talkback presents local voices (Ames 2007).
- There is little literature available on integrated advertising and product placement on commercial radio. However, this is an area that requires attention as regulation of broadcasting content is currently predicated on the separation of advertisements and program. A recent survey of consumer issues in broadcasting raises concerns about how standards can apply and be judged in the face of '[d]eep integration of selling messages into program' (Given & McCutcheon 2009, 109).

Talkback radio audiences, formats and interactivity

- A number of studies have identified the highly interactive nature of talkback audiences and the role this plays in structuring program content. There have been, however, no systematic studies made of the impact of this interactivity on the influence of advertising or sponsorship on commercial radio content.
- There is research into the impact of new interactive technologies on television and the implications for

ethics and broadcasting. This work suggests that further research is needed into the impact of these technologies and programming formats on radio.

- There has been a general shift in media studies research away from the idea that audiences are inherently passive. There is good evidence that younger audiences are increasingly literate and critical in their media consumption habits. There is, however, no research on audience literacy in relation to commercial radio and the impact of sponsorship on content.

2. Introduction

In July 1999, an ABC television program, *Media Watch*, alleged that a 2UE talkback radio host, John Laws, had struck a secret commercial arrangement with the Australian Bankers' Association and that, as a result, he had begun to make positive comments about Australian banks on air. The Australian Broadcasting Authority (ABA) moved to investigate these claims. Further allegations were made public that the 2UE talkback host Alan Jones was also involved in similar commercial arrangements. The ABA held public hearings in late 1999.

As Michael Gordon-Smith, who chaired the Authority after Professor David Flint stepped down, notes there were two Commercial Radio Codes of Practice that were directly relevant to the Commercial Radio Inquiry: Codes 2 and 3. The purpose of Code 2 is to 'promote accuracy and fairness in news and current affairs programs'. Clause 2.2(d) further provides that in presenting news and current affairs 'viewpoints are not misrepresented, and material is not presented in a misleading manner by giving wrong or improper emphasis...or by withholding relevant available facts'. Code 3.1 (a) provides that 'advertisements broadcast by a licensee must: a) not be presented as news programs or other programs' (Gordon-Smith 2002, 278).

In 2000, the panel presented its report into what had become known as the 'Cash for Comment' affair. It found that there had been 'a substantial failure' by 2UE to comply with the conditions of its licence and with the standards laid down in Codes 2 and 3 of the Commercial Radio Codes of Practice (ABA 2000, 4). Further key findings included:

- That John Laws had used talking points and questions provided by an industry association as a basis for interviews (ABA 2000, 58);
- That Alan Jones had contracts that encompassed on-air editorial conduct, that he was aware of these obligations in relation to two companies and had acted on them (ABA 2000, 41-46).

After the commencement of the 2UE investigation, the ABA expanded its inquiry, finding further breaches of the Codes by 5DN and 6PR and finding that 3AW did not have adequate systems in place in relation to code compliance.

The main findings of the Inquiry were as follows:

1. The commercial agreements examined by the ABA have led to a substantial failure by licensees to comply with the standards of conduct required by Codes 2 and 3 and in the case of 2UE with the 'political matter' licence condition.
2. There appears to be a systemic failure to ensure the effective operation of self-regulation particularly in relation to current affairs programs including a lack of staff awareness of the Codes and of their implications.
3. Within a significant proportion of current affairs programs, the Codes are not operating to provide appropriate community safeguards (ABA 2000, 4).

In the wake of the Commercial Radio Inquiry, the ABA determined three program standards for commercial radio licencees that applied to all broadcasters engaged in news and current affairs broadcasting. They required the disclosure of commercial agreement that have the potential to affect the content of current affairs programs, the separation of advertising from other programming and the establishment of compliance programs by licencees. Unlike the code of practice, compliance with the standards is a condition of the broadcaster's license.

The following literature review was conducted in order to identify, review, analyse and report on relevant literature on the themes which the Australian Broadcasting Authority expressed views on in the Final Report of the Commercial Radio Inquiry. Namely: Fairness in the presentation of programs; Disinterestedness and disclosure; Advertising; Political matter; Influence; Talkback and Ethics. It also seeks to understand the interrelationships between the themes and set this analysis within the emerging digital media landscape. The focus of the analysis is guided by a regulatory issues-based approach.

3. Research Methodology

The aim of the research review was to identify and examine relevant literature relating to commercial influence in news and current affairs programming on commercial radio. A comprehensive review of relevant literature in Australia and internationally was conducted. The main literatures reviewed were academic and public and private sector generated literature (through compilation of a database of articles and commentary in the press). The JMRC conducted a systematic search of Australian databases and a selective search of main overseas databases.

A substantial media archive comprising Australian print media literature was also compiled dating back to the Commercial Radio Inquiry and extending through to April 2009. This media archive focused on print literature because of the size of the media corpus on the Cash for Comment affair and related themes. Sampling print media across all states and across broadsheet and tabloid formats enabled the researchers to gain a broad picture of the media commentary, stakeholders and focus in a way that could be analysed in a database specifically designed to quantitatively capture key themes and terms that ACMA had identified as important. Key academic researchers and industry stakeholders were also contacted during the research to ensure we captured any work in progress. For a full list of search terms please see Appendix 1.

The following databases and journals were analysed. Searches were conducted to encompass all relevant material from 1999 to March 2009:

Databases:

Austlii
Communication & Mass Media Complete (via Ebsco)
Factiva
Informaworld
Informit: APA-FT: Australian Public Affairs Full Text
Informit: AGIS
IngentaConnect
Proquest 5000
Sydney University Library Catalogue
UNSW Library Catalogue
Libraries Australia
<http://www.publications.gov.au/>
Australian Parliament Infosearch

Academic Journals:

Australian Book Review
Australian Journalism Review
Australian Journal of Communication
Australian Journal of Forensic Sciences
Australian Law Journal
Communications Law Bulletin
Continuum: Journal of Media & Cultural Studies
Discourse & Society
Discourse Studies
Federal Law Review
Gazette of Law and Journalism
Harvard International Journal of Press/Politics
International Journal of Cultural Studies
Journal of Communication
Journal of Communication Inquiry
Journal of Communication Management
Journal of Language and Politics
Journal of Media & Cultural Studies
Journal of Pragmatics
Journal of Radio and Audio Media
Journal of Radio Law (1931-1932)
Journal of Radio Studies
Journal of Religious History
Journalism
Journalism Studies
Media & Arts Law Review
Media, Culture & Society
Media International Australia incorporating Culture and Politics
Pacific Journalism Review
Political Communication
Public Opinion Quarterly
Southern Review
Television and New Media

Industry Literature/Internet:

B&T Weekly
Commercial Radio Australia (Brand Campaign - eNewsletter)
www.jocksjournal.com/ (Jock's Journal is a source of information for Australian radio announcers, supplying latest news, jobs and gossip.)
www.radioinfo.com.au/ (an information site for the radio industry)
www.afa.org.au/ (Represents companies in advertising and marketing communications.)

Media:

ABC.net.au (online archive of broadcast stories and interviews)

Major Metropolitan and National Newspapers

Magazines:

Metro Magazine

The Monthly

Proctor

Independent Organisations:

The Australia Institute (an independent public policy research centre)

Conferences:

UnAustralia, The Cultural Studies Association of Australasia's Annual Conference

Australian and New Zealand Communication Association conference, University of Sydney (2004)

Commercial Radio Australia: National Radio Conference 2008

Special Issues:

Journal of Radio and Audio Media (2005) Issue 12 (2): a special issue on Radio, mostly articles about community radio.

Journal of Mass Media Ethics (2004) Volume 19, No. 2: on Media Ethics in Australia

International Journal of Cultural Studies (2000) Issue 3 (2): on Radio

Television and New Media (2005) Issue 6 (3): on Radio in Latin America

Media International Australia (2007) No. 122 February. Special issue on talkback radio.

Media International Australia (2008) No. 128. Special issue on Digital Literacies.

4. Research Findings

For the purposes of clarity we have grouped our responses to research questions into a series of headings under which cognate themes are addressed. In each case we have attempted to summarise the central thrust of commentary in different sectors and to highlight key commentary. Given the scope of the broader literature in each area, we have confined our analysis to material that directly relates to the questions we were given to guide this literature review. We have also used our academic expertise to exclude material of marginal scholarly relevance which would not be regarded as authoritative in the field (for example, textbooks that merely gloss other research). It should be noted, however, that there is an overlap between many of the issues and that the responses to the research questions should be read as a continuous document.

4.1 Responses to the Commercial Radio Inquiry and the regulatory approaches of the ABA and ACMA

The Commercial Radio Inquiry and the key themes that emerged in the final report from that Inquiry need to be understood in light of broader and ongoing scholarly research in the field of legal and media and journalism studies on the following: media ethics in a changing media landscape; the shifts in the relative power of media producers and consumers; and shifts in ideas about how the media might be best defended in policy and legislative terms to assist in guaranteeing democracy. These debates are directly relevant to the events that triggered the Commercial Radio Inquiry, germane to the academic response to the findings, and pertinent to future directions.

In the following section we will analyse literature drawn from legal scholars, media and journalism scholars, industry bodies or practitioners, and the popular media. The academic literature which directly responded to the Inquiry and the Final Report of the Australian Broadcasting Authority was evenly divided across research grounded in the discipline of law and research in the fields of media and journalism studies. There is very little publicly available material generated by industry groups and practitioners apart from submissions to the Inquiry itself and some submissions to other government agencies. The media archive (which is analysed in detail

in Appendix 1) was the largest source of commentary with 589 stories specifically referring to the Commercial Radio Inquiry in the period 1999 - 2009.

We will now offer an analysis of the key themes that defined responses from commentators in different sectors to the Inquiry and to the role of the ABA and, later, ACMA:

Legal scholars and commentators:

Legal commentators on the Commercial Radio Inquiry and on related commercial radio standards include legal practitioners, public policy stakeholders, media commentators, and legal academics. In general, legal commentators across this spectrum tend to take a traditional Fourth Estate view of the function of the media in the public sphere. This view frames media consumers of commercial radio as inherently vulnerable to influence by media producers and argues that liberal democracy must be underpinned by a transparency when it comes to commercial, political or personal interests. While, as is apparent in the analysis of other academic commentary below, there is broad support this view it should also be noted that a significant number of key media studies scholars (for example Graeme Turner, John Hartley, Terry Flew) have argued that a traditional Fourth Estate view of the media's role does not always take sufficient account of changing media technologies, platforms and audiences.

Roy Baker, a legal practitioner, was one of the few legal commentators who viewed the outcome of the Inquiry as a sign that the ABA was able to assert authority in regulating commercial radio broadcasters. He saw the imposition of new requirements on all commercial radio licence holders as evidence that the ABA viewed the Inquiry's findings seriously and was prepared to depart from Australia's general policy of co-regulation for broadcasters. He notes that, in doing so, Australia followed the USA where the practice of being paid cash for editorial comment is known as 'payola comment' and is not prohibited but must be disclosed. He commented approvingly that Australia has 'bolstered political discourse by requiring disclosure of commercial interests' and 'denied commercial expression the opportunity to gain authority through disguise as disinterested comment'. He noted further that, in strengthening political discourse at the expense of commercial expression, the ABA's move was 'entirely

consistent with its [Australia's] constitution, which only protects political forms of expression'. He went on to argue that even more regulation is required and that the ABA should move to prohibit payola in current affairs radio, as in the UK and Germany (Baker 2002, n.p.).

Senior legal academic Lesley Hitchens called the Inquiry significant because 'it was concerned not just with isolated breaches but with breaches across a number of radio stations broadcasting across Australia' and 'raised significant issues about the relationship between commercial interests and broadcasting content', and the 'overlap between advertising and programming content, and political broadcasting'. In essence, she concludes, that 'the Radio Inquiry was concerned with whether commercial broadcasting services were meeting public interest standards in the provision of news and current affairs coverage' (Hitchens 2004, 80). However Hitchens equally argued that the outcome of the Inquiry 'offers no comfort; it is apparent that there are continuing causes for concern, and that there can be little confidence that under present regulatory arrangements there will be any sea change in commercial broadcasters' behaviour and attitudes' (Hitchens 2004, 106). Her comment is characteristic of a scepticism that can be discerned throughout the academic literature about the potential of co-regulation to reign in a commercial radio sector which, according to key commentators such as Bridget Griffen-Foley and Graeme Turner, was found to exhibit an indifferent, if not cavalier, attitude to its ethical responsibilities in relation to disclosure in the past.

It should also be noted that legal scholars and practitioners are strongly represented in the popular media archive referencing the Commercial Radio Inquiry and the Final Report. They make up almost a third of stakeholders who were asked to comment by the media. Legal practitioner Richard Ackland, who was the host of *Media Watch* when the program first raised the allegations of Cash for Comment, was a prominent commentator throughout the public debate on the Inquiry and the role of the ABA as a regulator. In 2004 Ackland wrote a *Sydney Morning Herald* opinion piece commenting on a preliminary ABA report on allegations that Alan Jones had breached the commercial radio codes and standards when broadcasting material about Telstra on his 2GB breakfast show. In it he commented: 'The ABA's commercial radio standards require disclosure in situations where a presenter has a deal with a sponsor, but not where a

licensee has a commercial relationship with a sponsor that benefits a presenter' (Ackland, 2004).

Scholars of media and journalism studies:

The response of the majority of media and journalism studies scholars to the Commercial Radio Inquiry was one characterised by the claim that the Inquiry provided evidence that the co-regulation system was unworkable and that the ABA was unable or unwilling to impose serious sanctions on commercial radio broadcasters who breached their obligations.

In her overview of the Inquiry and the effect of its recommendations, media historian Bridget Griffen-Foley concurs with a range of academic commentators in noting that it exposed a 'systemic failure' in self-regulatory codes and that, despite the imposition of standards on commercial radio licences, John Laws turned 'the disclosure of the sponsorships he was "proud" to have into something of an advertisement, replete with cowbell sounds'.

In the Australian academic field one of the leading commentators on talkback radio and the quality of news and current affairs journalism is Graeme Turner who led a three year ARC funded study into talkback radio in Australia which examined the content, influence and consumption of the programs as well as presenting a detailed investigation of the processes of production.

In an essay published in 2001, Turner (Turner 2001) responds to the findings of the Commercial Radio Inquiry and argues the following:

- That the Commercial Radio Inquiry must be understood in the context of the wider deregulation of the radio industry formalised in the Broadcasting Services Act (1992) which encouraged the media industry to understand itself as a purely business enterprise, rather than as a cultural industry. Co-regulation, he says, amounted to trusting the industry to police their own ethical standards (Turner 2001, 350);
- That the Commercial Radio Inquiry highlighted both the lack of clarity provided by regulatory codes and industry based practices. Turner notes that the first response from the ABA demonstrated the lack of clarity offered by the Codes and Guidelines. Professor David Flint appeared on *Lateline* (20/7/1999) commenting that

he was unsure if the Broadcasting Services Act prohibited the activities being investigated by the NSW Director of Public Prosecutions (Turner 2001, 351);

- That the wide range of views espoused by commercial radio broadcasters at the time about the Inquiry demonstrates the genuine confusion in the industry over how the code of practice worked and who it applied to (Turner 2001, 351);

Public commentators

The level of public and media interest in the Cash for Comment affair and the subsequent Inquiry can be gauged by the fact that in 1999, the Prime Minister John Howard, publicly commented on it, expressing surprise and disappointment at the allegations faced by John Laws (Davies and Lagan 1999, 1).

The Cash for Comment affair prompted a wide-ranging discussion of media and business ethics. Public intellectual and political scientist, Robert Manne, commented on the ABC's *Lateline* program (20/7/1999) that the Cash for Comment affair should trigger a wider investigation of business ethics given the apparent contempt with which the commercial radio sector in question had treated its public.

Much of the initial public debate was focused on the individuals and the radio station involved. The commentary was characterised by concern over the actions of Alan Jones and John Laws. In the wake of evidence presented at the Inquiry, however, the bulk of the criticism in this sector was directed at Alan Jones.

The media archive gathered and analysed for this literature review shows that the majority of print media commentary was concentrated in the *Australian* newspaper, the *Daily Telegraph* newspaper and the *Sydney Morning Herald*, illustrating that the Cash for Comment allegations and subsequent Inquiry was most vigorously covered in Sydney opinion-leading media. 85 per cent of all media stories analysed focused on the Commercial Radio Inquiry directly or on its findings and the overwhelming majority contained negative evaluations of Alan Jones, David Flint or John Laws. The ABA, the Commercial Radio Inquiry and the Commercial Radio Codes of Practice were also the subject of some criticism but in a much lower proportion than the criticism directed at Jones, Flint and Laws.

4.2 The Commercial Radio Standards, Disclosure, Fairness, Accuracy and Ethics

There is a large body of work in media and journalism studies that looks at journalistic ethics and at the obligation to disclose financial or other interests to the public, both in Australia and internationally. We discuss relevant material drawn from that corpus throughout this literature review but focus largely on material that specifically discusses disclosure and ethics in the context of commercial radio talkback, and the issues raised by the Commercial Radio Inquiry in relation to commercial radio talkback.

The majority of academic literature on the Commercial Radio Standards themselves is concentrated in media law journals. It is not a large body of literature. There is a much larger and more general Australian literature on disclosure and ethics but it very rarely includes detailed discussion of the Commercial Radio Standards and their operation. We draw this broader literature into this review where it casts light on more specific debates around disclosure, advertising, or ethics in the commercial radio sector, and regulation. In the literature that does exist on the Commercial Radio Standards, a central criticism of the regulation of commercial radio regards the weakness of the Radio Codes, how they relate to the licence conditions, and the flaws in enforcement in relation to breaches.

The matters that the Commercial Radio Standards cover seem to have been relatively well received, though a number of commentators have found weaknesses in them. For example, Hitchens argues that the disclosure standards have crucial weaknesses (Hitchens 2006, 179). An interesting challenge is raised by Baker, who suggests that the ABA was wishing to entrench 'the distinction between advertisement and editorial, commercial and non-commercial speech' (Baker 2002). In so doing, Baker contends that Australia adopted the US approach, where payola (being paid cash for favourable comment) is allowed, but must be disclosed – rather than the prevailing approach in the UK, where payola is subject to a ban.

It is the effectiveness of the standards that has been widely questioned. This goes to the heart of a set of related criticisms made by a number of academic and legal commentators: that the self-regulatory scheme of codes of practice under the BSA is inadequate to deal with the

nature of commercial influence in areas of radio, where, many argue, there is a strong public interest in news and current affairs programming; that the co-regulatory buttressing of the codes of practice is ineffective, and little used (though obviously both the standards and licence conditions are an attempt to do so); and that the current regulatory arrangements are flawed (Hitchens 2004; Turner 2000).

The Radio Codes and how they operate are a topic of criticism generally across the legal, media studies and journalism studies commentators. The adequacy, coverage and length of the Codes have often been faulted according to Lesley Hitchens (Hitchens 2004). The complaints process of the Codes has also been the subject of substantial criticism in the academic literature, notably the rather archaic stipulation that the complaint be in writing, rather than telephone or email, which persisted until early 2010.

Interestingly enough the standards could be seen to address a key concern that comes indirectly from the empirically grounded media studies literature on talkback. Namely, that if it is difficult to distinguish between the mix of news, current affairs and entertainment blended into commercial radio, where is the 'hook to ethics'? More than anything the issue of informed knowledge of the listener, through disclosure of commercial arrangements, emerges as an important issue for radio stations to ensure, and regulators to safeguard – even in a quite varied landscape of commercial radio formats, programs, audiences, and expectations.

If the nature of the standards is worthwhile, what has their impact been? Here recent academic literature and public commentary is scarce, and in what literature does exist that addresses recent developments, opinion varies. The view of industry is that the impact is burdensome. Support for this view is found in the fact that there have been a number of investigations under the standards; further that licensees are required to keep a register of agreements, notify ACMA of agreements, and ensure disclosure announcements are made. In addition, licensees are required to develop, implement and maintain a compliance program. However, commentators outside the industry raise concerns that the standards and their implementation have fallen short in meeting their wider objects. While it has not been well discussed in the literature, it is worth raising the issue of the adequacy of the complaints-based model of regulation. Monitoring

and investigations under the Standard are often conducted after a complaint has been made (the same complaints-based model as in Codes).

Turner, for instance, wrote that:

The consequent official inquiry found it difficult to locate just what was the ethical principle being transgressed, partly because these were not (ethically bound) journalists but (ethically free) 'entertainers' and partly because of the general evacuation of such principles from the codes of practice required of the industry...Tellingly, in its defence, the media organisation concerned barely even pretended to acknowledge its responsibility to any broader community interests than those of the mass audience. The contest between commercial and community/democratic imperatives is at its most naked here and ultimately at issue is the very relevance of an ethical regime within an entertainment-based, rather than an information-based, 'tabloid' media (Turner 2001, 349).

It is worth contextualizing these comments with the ABA's statements on the salience of ethics in co-regulation, in the Final Report of the Commercial Radio Inquiry:

The philosophy underlying the Act is essentially one of co-regulation, which provides for industry administration of Codes of Practice, subject to Authority oversight. It recognises that ethical behaviour is behaviour which should be undertaken for its own sake, for the sake of the principles which underpin it (in this case the expectations a community rightfully places on holders of major public assets), although it also provides a regulatory safety net. In short, it is an essential part of such an approach that those promulgating and seeking to rely on self regulatory codes (as a defence against formal government intervention) are bound to ensure that the codes are living, working and workable guides to behaviour and conduct in the industry. The removal of the requirement for licence renewal hearings and the entrusting of significant self-regulatory responsibility to industry, indicates that a very high standard of compliance is expected of industry in the fulfilment of its self-regulatory responsibilities. (ABA 2000, 74)

Another key problem, discussed in both the academic literature and the popular media commentary, has been enforcement. Enforcement has also been a long-standing concern of the ABA and the government, especially occasioned by difficulties in policing breaches of commercial radio licence conditions. Following the Ramsey report, commissioned by the ABA (Ramsey 2004), the government released a discussion paper in November 2005 which eventually resulted in the *Communications Legislation Amendment (Enforcement Powers) Act 2006*, which came into effect in February 2007. The establishment of ACMA also provided an opportunity for discussions of the shortcomings of the existing ABA powers, especially in relation to the regulation of commercial radio (for instance, see Senate Environment, Communications, Information Technology and the Arts Reference Committee 2005). Additionally, enforcement powers were also conferred by the *Broadcasting Services Amendment (Media Ownership) Act 2006* (including the power to give remedial directions and accept enforceable undertakings).

While ACMA sought to make good use of these new powers, a broad range of academic and media commentators still judged that there was still insufficient action. A much-discussed case was that of radio host John Laws, who failed to disclose his Telstra sponsorship while making multiple mentions of the company on his program on 28 August, 2006. ACMA negotiated an enforceable undertaking with 2UE, with the station agreeing to provide a six-monthly audit of its performance in relation to the standards, and also to monitor each *John Laws Morning Show* to ensure proper disclosures are read. ACMA was able to enforce this undertaking through the Federal Court, or request fines to be issued.

Since this time, ACMA has had a number of high-profile enforcements in radio. Examples include its April 2007 finding of breaches by 2GB, relating to the December 2005 broadcasting on *Breakfast with Alan Jones*, just prior to the Cronulla riots, that was likely to encourage violence or brutality and to vilify people of Lebanese and Middle-Eastern backgrounds on the basis of ethnicity, and the well-publicised enforcements across a range of other industries. Such ACMA actions would seem to go some way to addressing the earlier criticism that the regulator is not sufficiently proactive (Hitchens 2004, 96).

As well as discussion of the standards, their adequacy, and implementation, the question of impact has also been

seen to turn upon the nature of the broadcasting environment itself. Here analysts take different stances. Hitchens, for instance, underscores the need to identify how the 'commercial context may impact upon news and current affairs programming' (2004, 94) and whether such pressures it presents will be gainsaid by a stronger regulatory framework. Other leading scholars, such as Turner, also argue for the need to understand the commercial environment, and also the specific features of particular programs and audience – and suggest that this kind of reconsideration means we will need to think again about what kind of regulation is needed. It should be noted that Turner has modified his view from his 2000 paper which gave a sharp critique of self-regulation of commercial radio reminiscent of Hitchens and others – whereas he now appears to still see regulation as needing to be informed by a much deeper knowledge of contemporary radio structures and user consumption (Turner, Tomlinson & Pearce, 2006).

While it has not appeared in the literature, it would be interesting to generate research which compares the Australian case with that of the UK. The ABA considered international approaches in its final report in 2000 (ABA 2000, 75ff.), and an update would be worthwhile. For instance, commercial radio is subject to the Ofcom Broadcasting Code 2008, with clear provisions on fairness (section 7), sponsorship (section 9), and commercial references (section 10).

There is not a wide body of considered commentary on the Commercial Radio Standards disseminated by the industry or its practitioners. However, a submission by Commercial Radio Australia to the Productivity Commission Annual Review of Regulatory Burdens on Business in February 2009 argues forcefully that the current commercial radio current affairs Disclosure Standard is onerous, places an excessive burden on the industry and is out of touch with the realities of industry practices and resources. The submission makes the following points about the obligation to disclose commercial agreements between presenters and sponsors:

- The on-air disclosure must be made in 'the same breath' as the mention of the sponsor or other material caught by the standard. This requirement can be disruptive for the presenter and the listener and 'ignores the practical reality of the circumstances in which talk radio presenters operate, using unscripted listener reactive and spontaneous material'.

- Talk radio presenters have many demands on their time when on-air and cannot plan what callers or interviewees might say and have to control discussion to meet strict timelines.
- Some presenters work in small local or rural stations without the production or administrative support to enable them to comply strictly with the requirements.
- Commercial radio is the only medium required to comply with such regulations and there are no similarly onerous requirements under the Commercial Television Industry Code of Practice or the Australian Journalists Association Code of Ethics.
- Complying with the standard, including the obligation to keep a public register of current commercial arrangements between sponsors and presenters of current affairs programs, creates a substantial administrative burden and a substantial cost associated with administrative and legal fees.

The submission argues for a simplification of the Disclosure Standard on the basis that 'the generally accepted practices of commercial radio broadcasters have moved a long way since the introduction of the Disclosure Standard' and that: 'The principles enshrined in the Standard are now commonly accepted and universally applied in the industry'. The submission also recommends that disclosures of interest should be permitted to be broadcast at regular times rather than at exactly the same time relevant material is broadcast (Commercial Radio Australia 2009).

There was also a range of academic commentary in the wake of the Australian Productivity Commission's 2000 report on Broadcasting (Australian Productivity Commission 2000). This report suggested that guarantees of ethical media practice be premised on license obligations and not just on professional codes of practice (Australian Productivity Commission 2000, 455). As Turner notes: 'What the Productivity Commission report implied is more fundamental in that it proposes a charter of fundamental social responsibilities to the citizen and the nation, guaranteed in return for the commercial privilege of ownership of public space' (Turner 2001, 355).

In a chapter in an edited collection by Graeme Turner and Stuart Cunningham, Michael Gordon-Smith argues that the ABA Inquiry must be understood as something more than a legal exercise. It was important, he suggests, not only

because it confirmed a hidden layer of commercial influence in commercial radio editorial but equally because it engaged all stakeholders in a dialogue about ethics, commercial influence and democracy (Gordon-Smith 2002).

In the ABA's final report of the Commercial Radio Inquiry it notes that: 'The community at large, the licence holders and individual audience members are recognised and involved as stakeholders' in the effective operation of the codes of practice but go on to note that 'the process ignores the practitioners' (ABA 2000, 78).

It is interesting to consider these claims in the light of an Australian book that reports on submissions to the Ethics Review Committee of the Media, Art and Entertainment Alliance (MEAA, 1997). The section on disclosure notes that 'since journalists claim that to disclose is part of their *raison d'être*, they ought to disclose more about their internal practices and failings...Reporters may not be able to stop employers use of chequebooks to acquire interviewees' (MEAA, 1999, 27). The focus of the existing industry-based reflection on media ethics and disclosure proceeds from the assumption that it is the organisation and not the reporter or presenter who is subject to approaches from individuals or organisations to secure coverage that may be favourable. This reflects the different work practices and hierarchies that necessarily obtain in journalism. A high profile talkback or television presenter is a desirable advocate who may be in a strong bargaining position with their employer while a journalist working at a current affairs program who is not recognised as a 'personality' may be required to do interviews on the terms their employer has agreed to with a third party.

In the publication following the review of the MEAA Ethics, the Committee addressed the question of whether the issue of 'direct or indirect payments made for interviews, pictures or information' should be expanded or amended in the self-regulatory MEAA Code of Ethics. The Committee found that there was: 'no consensus on the issues of whether paying for information was itself unethical' (MEAA 1997, 39). They went on to say that the MEAA should 'impose an obligation on members to disclose the fact that access/material has been bought' (MEAA 1997, 40).

4.3. Commercial radio talkback formats and public interest responsibilities

Discussions of the public interest responsibilities of commercial radio talkback formats is situated within a much broader body of academic literature, much of it from the fields of media studies and journalism studies, that analyses the Fourth Estate role of the media. This role is grounded in liberal democratic theories of the conception of the media as a 'Fourth Estate of the realm' and of journalism's role in a functioning democratic polity. As James Curran and Jean Seaton explain the notion in their book *Power Without Responsibility*:

As the 'fourth estate', the press scrutinizes the actions of the executive, and relays public opinion to lawmakers. The press also keeps people informed about what is happening in the world, and provides a forum of public debate. It thus lubricates the working of democracy by facilitating the formation of public opinion. (Curran and Seaton 2003: 246).

There is voluminous literature on the public interest responsibilities of the media both internationally and in the Australian context. One of the best known local texts is Julianne Schultz's book *Reviving the Fourth Estate* (1998) in which she argues that the Fourth Estate has been corrupted by the increasing concentration of media ownership and by political, ethical and occupational interests. Schultz argues for a revival of the Fourth Estate based on journalistic independence and political autonomy.

Situated within this broader framework of literature on the public interest responsibilities of news and current affairs based media, there is a considerable body of literature that holds that particular program formats in commercial media, especially those broadly associated with talkback radio, do carry with them important public interest responsibilities.

Both historical and current studies of talkback support the proposition that it plays a significant role in bringing indispensable elements of media to citizens in Australia – especially information and discussion of news and current affairs. It is important to note that in the public domain there is a vocal, but minor, claim sometimes voiced by those in the industry that talkback

is not about news and current affairs, but rather solely about entertainment, captured in the colourfully put view of John Laws that there was no hook for ethics because he is an entertainer.

Despite the claims described above, it is fair to say there is, across the general academic literature and public commentary, broad agreement there are important ethical and public interest obligations at stake in how commercial radio presenters - particularly talkback presenters with substantial audiences - present news and current affairs material and whether they disclose commercial or advertising interests in editorial commentary. As Michael Gordon-Smith notes, there is a need for station management, broadcasters and regulators to address the ethics of working pragmatically within commercial radio program formats as well as a need to engage individual presenters in the issues (Gordon-Smith 2002).

The pragmatics of commercial talkback broadcasting has been cited by industry stakeholders as a bar to compliance with the current disclosure standards (CRA 2009). There is also a growing body of academic research that is providing a much more nuanced knowledge of the varieties of talkback, on which there is currently very little useful Australian literature. While it has been a staple of commentary and research that talkback is a format that is central to the setting of agendas in media and politics in Australia (Faine 2005; Flew 2004; Salter 2006; O'Sullivan 2005), and the wielding of influence the available evidence for precisely whether and how it achieves such influence tends to complicate rather than confirm this perception (Hamilton 2006; Crofts & Turner 2007; Tebbutt 2006 a & b; Young 2008).

What is emerging from the limited amount of research is evidence that the influence of talkback on mainstream politics is much more perceived than actual, that there are complex struggles and relationships that are created among hosts, that their callers and audiences (Blood et al. 2007; Thornborrow 2001a) and that there is a great variety of kinds of talkback radio, that researchers need to distinguish between different programs and approaches and that the mechanisms of particular formats could operate quite differently than we currently think is commonly recognised.

Further, the research on the emergence of new types of news and current affairs, as well as the fragility of

traditional models of journalism in the present convergent media environment (with advertising migrating to online and search), adds weight to the suggestion that there needs to be a reconsideration of what the public interest in commercial radio might be. The literature also suggests that regulators, broadcasters, and citizens all need to engage with the question of entertainment (from a different standpoint than purely seeing it as a way to sidestep obligations believed to go along with the opposed category of journalism). However, the literature has not as yet moved from this general suggestion to a more detailed discussion of what this actually would mean.

Turner, for instance, makes a suggestive argument that ethics has declined as a regulatory discourse, but in the approach of the Authority in its 2000 Inquiry, as well as the Productivity Commission report, ethics 'operates as a means of framing certain aspects of the contract between the media licenses and the licensing state' (Turner 2001, 355). The question he raises is: 'What kind of regime – if any – do we institute for a media industry concerned primarily with providing entertainment?' (355). Here it is important to note that current affairs can be entertaining (as the Authority did in its Final report), however, the issue is one of degree. In response, developing this point, Turner makes two suggestions. Firstly that it is worth revisiting the older regime of 'content regulation based upon a particular consensus around assumptions of 'quality' – much like that exercised by the old Broadcasting Control Board' (356) in the UK at that time, or, de facto, by the Minister of the day (at that time Richard Alston) with respect to the ABC. Elsewhere Turner makes a useful comment that: 'even though entertainers running radio programs are not guided by the journalist's code of ethics ... in many cases they're dealing with issues ... of public debate... that are of concern to everybody...[In such cases] there should be at least some attempt to get a fair and balanced and well-informed point of view' (quoted in *Media Report*, 2003). Turner suggests that how to do this would vary, but that it is not currently a requirement – although many hosts do endeavour to do so. Secondly he notes that it is important to have a vibrant culture of criticism about the media, represented by shows such as *Media Watch*, or *A Current Affair*, and taken up by the then Communications Law Centre.

Drawing the evidence together, it would seem to direct attention to the need to:

- Empirically investigate the current business models, financial structures, and advertising and commercial arrangements in radio (as little literature exists);
- An imperative to gain a better understanding of different formats and programs, and how they work for particular audiences;
- A need for further thinking about the kind of ethics now responds to the realities and public interests in media consumption including a particular attention to whether 'news and current affairs' is a category that can be meaningfully understood separately from entertainment genres across the media

A subset of the literature on the public interest responsibilities of the media is the substantial academic literature on the commercialisation and the tabloidisation of news and current affairs media in print, radio and television, with a number of books and papers treating this topic (See for example Turner 2005; Manne 2005; Allan 2004; Glynn 2000; Lumby 1999). Much of this material, particularly in the Australian context, has focused on television and print media. Academic commentary on radio journalism and its role in democracy has tended to focus on the role of the public broadcasters, particularly the ABC. This links to the literature on diversity, and the argument that there is a need for diversity of quality commercial current affairs, as well as current affairs provided by public broadcasters such as the ABC. When commercial radio is studied in the recent academic literature in relationship to its role in the Fourth Estate the focus has been squarely on talkback radio of the kind found on 2GB and 2UE. The key areas of research have been into the questions of the role of commercial influence on editorial; the alleged promotion of racial hate speech by some commentators; and the question of whether individual broadcasters hold undue political influence.

As Graeme Turner, the key media and communications scholar in the Australian field working on talkback radio has written: 'Academic accounts of talkback are frequently sketchy and impatient of discrimination between instances...The problem is that many in media and cultural studies are simply not that interested in

talkback radio: they don't listen to it but they believe they know who does' (Turner 2007, 74).

Turner (2001), who has also written widely on the blurring of the boundaries between information and entertainment in Australian news and current affairs, notes that the 'sensationalising' and commodification of this genre is not simply a matter of individual journalistic or producer judgement, it is driven by structural considerations. He writes that: 'The commercial media, shorn of any checks and balances to exert a public policy influence over their activities, behave increasingly like a business' (Turner 2001, 352). That is, at this time Turner discerned a concerning shift away from a responsible media business, to one increasingly unconstrained.

Importantly, Turner notes that we should avoid being too black and white in dividing the media into 'corrupt' commercially driven media and publicly funded 'public interest' media. He notes that there are academics who have made a strong case that the commercial media can provide 'positive and diverse' social and political outcomes. He cites John Hartley, an internationally regarded Australian media studies academic, as an example. In a range of books (see for example Hartley 1996; Hartley 1999) Hartley has argued that the Western mass media are implicated in a move away from a traditional hierarchical framework of media production in which a select group of journalists and experts addressed a mass public. Now, Hartley argues, media producers seek a highly differentiated 'DIY citizen'. The by-product of what begins as a commercial endeavour, in his view is a new form of citizenship: a citizenship of the media.

It is worth quoting at some length from Hartley as his views reflect a key critical strand in contemporary Australian media and journalism studies debates about the role of the media in democracy and how we should understand and measure the quality and impact of journalism. He writes that this new mediated public sphere is:

Decentralised, post-adversarial, international, based on self-determination not state coercion, right down to the details of identity and selfhood. Its model is the 'remote control' exercised by television audience, and its manifestations include fan cultures, youth cultures, taste constituencies, consumer-sovereignty movements and those privatisations of previously

'public' cultures that succeed in democratisation without politicisation: extending to everyone membership of the republic of letters that was once reserved for literate/clerical elites (Hartley 1999, 161).

Hartley's view is clearly one at odds with the traditional understanding of how the Fourth Estate works as a guardian of public interest. It is certainly one that, on the basis of this literature review, is not endorsed or even canvassed by the majority of legal and media commentators, who still frame commercial media audiences as inherently vulnerable to manipulation and passive in the face of media producers. It is, however, an important perspective to bear in mind when understanding how the public sphere and the commercial radio media interact given that, as Turner acknowledges, it's a medium that has provided its audience with an alternative to sitting attentively listening to the voices of experts, elites and politicians and which has allowed non-expert voices to be given space in the public domain (Turner 2005).

While not wholeheartedly endorsing Hartley's view, it should be noted that Turner recognises that it brings an important new perspective on how we understand the commercial media's role in relation to commercial radio and its regulation. He writes of the debate:

One welcomes the proliferation of voices, access and diversity while the other is intent on controlling and reducing participation to those elements which are profitable for a very small number of beneficiaries. This conflict requires some managing through a regulatory structure which will privilege 'where necessary' (and this is a minefield I will leave alone in this argument) the interests of the national citizen over those of the commercial consumers (Turner 2001, 355).

Turner also observes that in understanding the function of commercial talkback radio we need to pay attention to class and other markers of socio-economic and educational inequality when it comes to assumptions about the capacity of media consumers to freely participate in and negotiate the media they consume. He writes: 'The Cash for Comment scandal is a perfect example where the possibility of effective political participation was restricted by those who had access to influencing media

content. That access was provided by their market power' (Turner 2001, 356).

A number of key questions are raised in this seminal article by Turner on talkback radio in Australia. What kind of contract now exists between media producers and media consumers? How do we reconcile the media consumer's desire for diversity and the commercially driven diversification of the media sphere with the demand to ensure that the media works to guarantee democracy by informing the general public?

There is now a growing, but still nascent body of work in Australia that seeks to understand the talkback audience, how it is constituted as a community and how we might relate this community of listeners to traditional ideas about the public sphere. Communications scholars Richard Fitzgerald and William Housley note that commercial talkback radio is increasingly seen as 'one of the main channels through which the perceived rise in anxiety in modern society is managed' (Fitzgerald and Housley 2007, 150). They explore the way in which the host and his or her audience work together to imagine themselves as a community, noting that the decline in trust of other institutions (the family, traditional politics, education) to effect change 'has created a space that the media increasingly tries to fill by providing avenues through which the viewer/listener is constituted as an active/democratic citizen' (Fitzgerald and Housley 2007, 152). With Hartley, they argue that there has been an increasing conflation between the citizen and the consumer. Analysing the John Laws program they note that listeners are 'far more complex' than the popular stereotypes of them as ageing and socially conservative suggest. They note that the majority of the calls to the program (as detailed in a study by Turner et al. 2006) have nothing to do with expressing political or social outrage but that the 'main reason for calling the show seems to be the opportunity for a chat with the host' (Fitzgerald and Housley 2007, 153). The audience for a commercial talkback radio show like the Laws show, they suggest, may be very different in its mode of engagement to the audience for a show like ABC radio's *PM* program but, ultimately, both audiences can be understood as participating in an imagined community that is seen by the host and others as a (political) public. It's a public that is accessed and represented by a host who speaks on behalf of 'his listeners'. In this sense, commercial talkback radio, they suggest, should not be

simplistically counterposed to the 'elite' audience for quality news and current affairs.

A related question that arises in the academic literature is the question of how much political influence commercial talkback hosts wield and whether it is disproportionate to the audience they represent. Political economist Clive Hamilton has been particularly critical of what he sees as the disproportionate political power ceded to talkback hosts such as Alan Jones. In an issues paper he authored for the Australia Institute Hamilton notes that: 'Alan Jones is considered the 'king' of breakfast radio in Australia. There is a widespread belief amongst Australia's political elites that Jones can decide elections' (Hamilton 2006, n.p.). He concludes that 'perceptions of Jones' influence and political sway are disproportionate to the size and nature of his audience' and that 'his listeners are much more conservative and authoritarian in their views than other Australians' and that his audience is small and highly concentrated among older listeners with well-established and inflexible political allegiance (Hamilton 2006, n.p.). It should be noted that Hamilton's claims are based on much less rigorous and broad research than that conducted by Graeme Turner and that his Australian Research Council funded study presents more nuanced findings around the nature of a similar audience and its interactions with the host. Turner's findings suggest that further detailed research into different audiences and formats would be very useful in developing future policy and regulatory responses.

In a 2002 academic article, Ian Ward examined then Prime Minister John Howard's use of commercial talkback radio as a vehicle for communicating with the public. He begins by noting that this is not a new phenomena and that former Prime Minister Gough Whitlam equally used talkback radio during the campaign that brought him to power in 1972. Importantly, Ward notes, citing other academic research, that there is a difference between the perception of influence and actual influence. He writes that: 'Whether talkback radio can actually drive public opinion remains an open question'. Possibly its influence on public opinion is overstated' (Ward 2002, 33). He concludes that there needs to be further and careful empirical research into the relationship between political influence and the perception of what media influences different publics in the sphere of political communications research. As former Australian Prime Minister Paul Keating once told the Bulletin magazine in

1997: 'If you can educate John Laws, you educate middle Australia'. There is a small but growing body of empirical research into the influence of talkback presenters.

Media and communications academic Carlyne Lee, in a necessarily limited but qualitatively rich study, analyses an ABC talkback program, Jon Faine's Morning Program broadcast on ABC Radio 774. While it does not fall into the commercial radio category, her conclusions are worth discussing in relation to the question of how given talkback hosts may or may not influence the political opinions of their audience through talkback interaction. Faine has himself written on the role of talkback radio in the public sphere arguing that it is a zone which offers a more interactive forum and a 'contest of ideas' (Faine 2005, 171). Lee concludes that;

There is no doubt that this format [talkback radio] does offer opportunities for democratic processes, although to a limited extent...Elite callers would seem to be able to garner more ready access to Faine, supporting the 'supermarket' rather than the 'marketplace' of ideas concept, where packaging is an important factor...Nevertheless, the evidence from my detailed observation of this iteration of talkback...suggests that it would appear to offer significant processes that enhance civil life in the Australian democratic public sphere' (Lee 2007, 130)

In 2002, Michael Gordon-Smith, who became Chair of the ABA Commercial Radio Inquiry after Professor David Flint stepped down, wrote an extended academic article reflecting on media ethics, journalism and democracy in the wake of the Inquiry (Gordon-Smith 2002). He notes that the Cash for Comment affair and the Inquiry cannot simply be understood in legal terms but must necessarily be understood in both moral and public interest terms. He writes that:

The outcomes of the ideas contests in public space, whether the space is an ideas market or an open forum, have important consequences. The results can shape popular opinion, move governments to action and influence the behaviour of individuals. Personal interests, fortunes or well-being are affected, sometimes determined by these opinions and actions (Gordon Smith 2002, 281)

Gordon-Smith notes that while a moral evaluation of the behaviour of those caught up in the Inquiry was not part of its terms of reference, 'ethical concepts were an inevitable part of the evidence given by participants at the hearing'. He suggests that the idea that we can neatly separate out the democratic function or the attendant ethical obligations of broadcasters to their publics from commercial interests is, in practice, not possible. He notes that while most of the arguments presented to the Inquiry were legalistic, 'even the protagonists argued ethics' and that 'they made moral arguments in defence of their own integrity' (Gordon-Smith 2002, 288). Gordon-Smith's analysis is particularly interesting in the light of John Laws' claim that he was an entertainer, not a journalist, and so there was 'no hook for ethics'.

Gordon-Smith argues strongly that news and current affairs media, and journalism more generally, must be understood in relation to its democratic function, while acknowledging the commercial realities that constrain and sustain media production. Ultimately, he suggests that safeguarding the democratic function of the media, including the role of commercial radio, cannot be left to presenters, licencees or regulators. It must equally be shared by media consumers who 'decide daily to what, and to whom, to give our attention' (Gordon-Smith 2002, 291). His view is in many ways in line with John Hartley's analysis of commercial media, democracy and the public interest.

Representing a more traditional view of the public sphere and the media's role in safeguarding democracy, Nicholas Cowdery, the NSW Director of Public Prosecutions, argues forcefully that commercial radio commentary and talkback, as exemplified by John Laws' show corrupts and distorts public discourse. He cites with approval a comment sourced to the Australian Broadcasting Tribunal that: 'Talkback encourages robust debate on issues by people who are not fully informed' (Cowdery 2002, 52). Cowdery argues that there is a fundamental inequity in the structure of the talkback conversation, that 'while one party to a talkback conversation (the host) puts emphasis on provision, for profit and influence of directed entertainment pitched at the level of emotion, the other party (often listeners) may be misled into thinking that it is a serious, rational and principled discussion of some enduring importance' (Cowdery 2002, 52). Cowdery expresses passionate opposition to the way talkback radio, as he sees it, distorts the political process by

foregrounding ignorant opinion, emotional rhetoric and commercial interest over rational public communication and policy-making.

In a detailed and nuanced academic article published in 2004, senior legal academic Lesley Hitchens analyses the relationship between commercial broadcasting and the public interest. Hitchens argues that the broadcasting of news and current affairs media is an essential source of information for citizens which enables them to make decisions about how they should be governed and how to exercise their democratic rights. She analyses what regulation might be required to protect that public interest and isolates three requirements: the adequate coverage of news and current affairs; the production of news and current affairs programming; and the need for quality news and current affairs programming. She is critical of co-regulation in relation to commercial media (discussed in detail in our analysis of the impact of Commercial Radio Standards).

4.4 Advertising, sponsorship, disclosure and influence

There is a long-standing debate on the relationship between advertisers and sponsors and commercial media, and what influence actually exists in this relationship. While high-profile cases – such as John Law's relationship with Telstra, or Alan Jones's contract with Optus – offered evidence of a strong and problematic influence between advertising and sponsorship on news and current affairs programs, it is difficult to evaluate what the current relationship is.

While anecdotally there are reasons to suggest that such influence still exists, there remain few systematic or reliable studies of the influence of advertising and sponsorship on news and current affairs programs, especially in Australia.

Young's small but well-designed and rigorous 2006 study finds that the more income a media organisation receives from government advertising, the less likely it will report criticisms of the practice. Interestingly in her discussion of commercial radio, she found that radio reporting of the issue of government advertising was more frequent – perhaps because of the greater number of outlets and sheer airtime. Young sees her findings as confirming a pattern of commercial influence on news selection and reporting established by earlier studies:

notably Lawe Davis's 1999 study finding that Australian journalists are increasingly work as part of the commercial strategies and environment of their employers; and the 2001 ABA study of how news is made found that many news producers accepted that they were inevitably going to be influenced by the commercial interests of their employers (cf. Flint 2001). Like the ABA study, Young specifically found that media outlets are 'particularly reluctant to report stories which relate to the commercial operations of their own outlets' (568).

In addition, there are new, or at least intensified, structural challenges to maintaining the relative independence of news and current affairs from advertising and sponsorship. One issue well-debated in the literature is the heightened role in news and current affairs played by public relations and marketing (Cadzow 2001). Another matter is the development of new practices of advertising, especially given that radio, like other media, is increasingly articulated across platforms.

Also pertinent is the difficulty across all media in separating advertising and program content (Baerns 2003). While here again there is little literature as yet on this topic, Jock Given and Marion McCutcheon raise concerns in their discussion of advertising accuracy and the boundaries of advertisements and program:

A central feature of the regulation of broadcasting content is the separation of advertisements and programs. Deep integration of selling messages into program challenges this separation, making it difficult to judge the appropriate standards to which the content should be held accountable. (Given & McCutcheon 2009, 109)

In their discussion Given & McCutcheon note that 'advertising and information programming are both expected to aspire to accuracy', whereas the self-regulatory codes that govern detailed requirements for programs such as news, current affairs and documentaries, which also provide information to consumers, do not provide for any significant sanctions 'unless they are especially flagrant or systemic': 'Failing to achieve accuracy does not amount to an offence' (Given & McCutcheon 2009). As well as the broadcasting laws and regulation, Given & McCutcheon also discuss recent leading court cases that turn on the limits of the so-called 'publisher's defence', taken by the ACCC (ACCC 2009). They observe that 'the case show that traditional

consumer protection concerns about misleading and deceptive conduct can be pursued in some forms of broadcasting as well as advertising' (Given & McCutcheon 2009, 111).

It is also worth noting that there have been no systematic studies to date of the FM talkback radio market which is particularly popular with younger populations of listeners. Programs broadcast on these stations, in particular breakfast and drive shows, frequently canvas political, economic and social issues in an entertainment-based format. The only available study on FM commercial radio focuses on local participation in talkback (Ames 2007). Research is certainly required into how ethical and codified standards are applied in these formats, how presenters understand their obligations to listeners and what scope there is for commercial influence on presenters of these programs.

4.5 Talkback radio audiences, formats and interactivity

As suggested earlier, research has provided support for idea that talkback radio plays an important role in the formation of audiences, indeed in community building also. There are a number of studies that have established the importance of interactivity to the constitution of the contemporary radio audience, and to the program content itself (Dunn 2001; Gillman 2007; Martin 2002; Martin & Wilson 2002). However, there are no studies we could find that specifically explore the impact of interactivity of the influence of advertising and sponsorship on commercial radio, especially news and current affairs content. So we would certainly suggest dedicated research is needed on this topic.

Where there has been a highly significant debate about competitions, interactivity and SMS, and its implications for ethics and broadcasting is in the UK participation television scandal of 2007-2008 (Goggin & Spurgeon 2008). Briefly, this fast-growing British participation television industry (that is, new formats featuring interactivity through website and premium rate mobile messaging) experienced a number of scandals where misleading information about competitions was given to viewers. This led to a number of national inquiries, and a crisis for the BBC, ITV, various respected British broadcasters and media identities, and the regulators themselves (Ayre 2007; Ofcom 2007). What it revealed was the complexity of the new value chains in interactivity

as it is incorporated into traditional media. While radio did not figure significantly, if at all, in the participation television scandal, it offers some object lessons about the need for disclosure, fairness and accuracy to underpin these new arrangements, and to bind all parties (including the new media companies involved in interactive technologies, as well as broadcasters).

In broad terms, there has been a strong shift in media studies research away from a 'media effects' model of understanding the impact of media (including advertising) on audiences. This model assumes an inherent passivity in audiences. As Sue Turnbull notes, contemporary academic audience research takes a more complex view of audiences and pays attention not simply to what the media does to people but looks closely at what audiences do with media (Turnbull 2006). There have been many ethnographic studies of media audiences that show how particular audiences for popular media develop media literacy in relation to a given genre and demonstrate that even children are capable of understanding the role of advertising in media (Buckingham 2000).

There is, however, little research on audience literacy in relation to commercial radio advertising and sponsorship. In 2002 Gail Phillips and Mark Balnaves conducted a qualitative study of the radio audience in Perth which tested assumption that media professionals make about listener reactions to programs. While this study focused on public broadcasting, the results have implications for the commercial sector. Their study showed that listeners are discriminating in what they choose to access and understand the conventions, routines, and ploys by which product-makers attempt to seduce them. They are also hungry for stimulating information with high quality content, rather than slick formatting and have 'a far more sophisticated grasp of the medium than planners and programmers may give them credit for' (Phillips and Balnaves 2002).

It should also be noted that there is a growing body of literature demonstrating that younger media consumers are increasingly aware of the conventions of media production because they are actively producing their own media (see for example MIA, *Digital Literacies*, 2008).

In the light of the well-known claims by John Laws that his audience knows his on-air editorial references to sponsors are essentially ads - 'I am sure my audience understood these comments to be what they were, namely

advertising plugs' – it is clear that more research is required in the Australian context into different radio audiences and their understanding of where the lines between advertising and editorial are drawn in a given program.

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