

The nature of Mr Brooking's complaint seems to fall into two categories:

1. That some stations have not broadcast the recording; and
2. That some stations have not broadcast it often enough.

We have no jurisdiction in respect of material not broadcast.

There is no basis for requiring repetition of material already broadcast.

As far as consideration of breaches under section 24 is concerned, the Tribunal therefore considers that, for the reasons set out above, it has no jurisdiction to deal with the complaint.

However, the principal burden of his complaint was to claim under section 95O (1) (b) (i) of "unjust and unfair treatment in programmes broadcast by any broadcasting body". That type of complaint is dealt with by the Broadcasting Complaints Committee. Under section 95O (2) that Committee may not entertain any complaint not falling within that category.

We do not think it is necessary to decide the point raised by the BCNZ that we have no right to review a decision of the Broadcasting Complaints Committee. We consider that section 95O (c) gives the Tribunal the right to give a direction to the Committee to hear a complaint if the Tribunal considers that the Committee has jurisdiction to do so.

Mr Brooking is complaining about the unfair treatment of his recording. His recording has no right of complaint. Other persons who might like the recording to be played clearly have no right to complain of unjust treatment of the recording. The only possible right can be that unfair treatment of the recording in which he has an artistic and financial interest amount to unjust and unfair treatment of him. Essentially Mr Brooker seeks a remedy through section 95O (1) (b) for unjust and unfair treatment of himself by unjust and unfair treatment of his recorded material in that it was not broadcast often enough. We are not satisfied that there can be such a link between him and his recording. We find that the failure to broadcast at any time a recording of an artist cannot constitute unfair or unjust treatment of the artist capable of complaint under section 95O (1) (b) (i).

The whole framework of the Act is designed to leave the decisions about broadcasting to the warrant holders subject only to the maintenance of certain standards and rules. Unless the treatment complained of can be brought within those standards or rules or unless there is an unjust or unfair treatment of any person in programmes that are broadcast, there is no jurisdiction for the complaint. If we take a programme as a period of broadcast, we cannot find that failure to include some particular recording in that period is unfair or unjust treatment of someone with an interest in that recording.

The purpose of the procedure before the Broadcasting Complaints Committee is to enable a redress informally for persons suffering unjust and unfair treatment. It is not a body set up to supervise the programming of stations whether it be musical programmes or any other programming.

The question of programme content is one of judgment for warrant holders and their responsibility under section 95. This particular complaints procedure is for those who have been unjustly or unfairly treated in that broadcast programme. To rule otherwise, the Tribunal would be required to assess the recording itself and make a decision as to how often it ought to be broadcast, which is an untenable proposition. Mr Brooking's particular case illustrates that there can be a number of differing views about the quality and attractiveness of a record and its suitability for broadcast by certain stations. It would be quite impossible for the Broadcasting Complaints Committee or this Tribunal to assess suitability in respect of each Radio New Zealand station without at the same time weighing programme objectives and other competing claims for air-time from both musical and spoken programme

elements. The Tribunal or the Committee could become involved in programming broadcasting stations on the complaint of artists, recording companies and financial backers. There could be complaints that the excessive broadcast of some other artists was unfair to the complainant. These matters are not capable of resolution by judicial process nor was it ever contemplated by the Act that they might be.

The Tribunal emphasises that it has not considered the complaint itself but is giving this ruling on whether or not there is any basis for giving a direction to the Broadcasting Complaints Committee to hear and determine the complaint. The Tribunal finds there is none.

There could be a situation where the allegation might be made that, to achieve a balance in news or when controversial issues of public importance are discussed, programmes already broadcast should be examined to see whether significant points of view have been broadcast. Such an inquiry might lead to a decision which, in effect, compelled some step to be taken to comply with section 24 (1) (d) and (e) of the Act. That would fall short of a direction that a particular element or, as in this case, a specific recorded performance of a piece of music should comprise part of a programme.

A few days before we decided upon this ruling, Mr Brooking submitted a supplementary argument based on the Race Relations Act. He claimed he was refused service as an artist by the radio stations on the grounds of national origins because more air-time was given to British and American music. The stations are therefore providing their service to New Zealand recording artists on less favourable terms than those upon which they make them available to others. Stations do that simply because of an underlying assumption that New Zealand music is not as commercial as that which comes from overseas.

We do not find it necessary to go into the question of whether or not the stations do provide a service to artists in playing their records; we would rather have thought it was the reverse.

We simply find that this is another way of expressing the real nature of his complaint: namely, that the stations have failed to comply with section 24 (1) (b) where they have responsibility for maintaining in their programmes and their presentation standards which will be generally acceptable in the community, and in particular have regard to the need to ensure that a New Zealand identity is developed and maintained in programmes.

As previously stated, section 95B (as does 95C in the case of private stations) provides a complaints procedure in respect of some other standards set out in section 24, but not this particular one.

The Tribunal has no jurisdiction to hear Mr Brooking's complaints.

We trust that on reflection Mr Brooking may appreciate that the proposition he is putting to us for a ruling would, if we could "find a way" to accept it, make programming of music on radio stations virtually impossible.

Signed for the Tribunal:

B. H. SLANE, Chairman.  
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Decision No. 14/88

COM. 18/87

### Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **Noel Vickers Frykberg** of Pauanui.

**Warrant Holder: Broadcasting Corporation of New Zealand, (Television New Zealand and Radio New Zealand):**

**Chairman:** Judge B. H. Slane.

**Members:** Ann E. Wilson and Robert Boyd-Bell.