



**Australian
Broadcasting
Authority**

Investigation Report

File No: 2002/1296
Investigation No: 1203

Licensee	TCN Channel Nine Pty Limited
Station	TCN 9
Type of Service	Commercial Television
Name of Program	Sunday
Date/s of Broadcast	17 and 24 February 2002 1 September 2002
Relevant Legislation/Codes	Clauses 4.3.1 and 4.3.11 of the Commercial Television Industry Code of Practice

Background

The Australian Broadcasting Authority (the ABA) received two unresolved complaints from the Australian Federal Police (AFP) on 24 September 2002 and 25 November 2002 respectively. The first complaint concerned a program entitled 'The Australian People-Smuggler' that was broadcast by TCN Channel Nine Pty Limited (the licensee) on the *Sunday* program (*Sunday*) on 17 February 2002. Extracts from this program were rebroadcast on 24 February 2002 in conjunction with new material.

The second complaint concerned a program entitled 'The Federal Police and People-Smugglers' that was broadcast on *Sunday* on 1 September 2002. The program contained some material that had been previously broadcast on 17 and 24 February 2002.

All three broadcasts concerned the activities of Mr A¹, an Australian living in Indonesia, who appeared to be involved in people smuggling while being paid as an AFP informant. Given that the subject matter of the three broadcasts is closely related, the ABA has decided to examine both AFP complaints in a single report.

The two letters of complaint raised general issues that are considered in the main body of this report. In addition, the AFP made a large number of complaints about individual statements that had been broadcast. These specific complaints are examined in Appendix A, which concerns the broadcast on 17 February 2002, and Appendix D, which relates to the broadcast on 1 September 2002.

Code provisions

For the purposes of this report, the relevant provision is clause 4.3 of the Commercial Television Industry Code of Practice (the Code), which provides:

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;
- ...
- 4.3.11 must make reasonable efforts to correct significant errors of fact at the earliest opportunity.

The licensee does not dispute that the broadcasts on 17 February 2002, 24 February 2002 and 1 September 2002 were current affairs programs.

THE FIRST COMPLAINT

The letter of complaint²

The AFP claims that the broadcast on 17 February 2002 did not present factual material accurately and did not present viewpoints fairly in breach of clause 4.3.1 of the Code.

In a letter to the ABA dated 24 September 2002, the AFP stated:

...the program aired material relating to the alleged criminal activities of Australian citizen [Mr A]. The program alleged that [Mr A] was responsible for facilitating the arrival of suspected unlawful non-citizens into Australia over a period of several years. The program further alleged that [Mr A] had conducted certain of these activities while being simultaneously engaged and funded as a Registered Informant for the AFP.

¹ The name of Mr A has been deleted from the investigation report. Mr A is also referred to as his alias, Mr A1. The program revealed both these names.

² The ABA did not investigate matters raised by the complainant which were not subject to the Code and/or the *Broadcasting Services Act 1992*, and therefore were not included in this report.

The AFP stated that, subsequent to the broadcast, it had conducted its own investigation into the assertions made in the program which revealed:

... no evidence exists to support the allegation made by *Sunday* that [Mr A] landed unlawful non-citizens in Australia. The investigation found that the Indonesian nationals relied upon by *Sunday* in producing the program of 17 February 2002 had conspired together to fabricate the allegations against [Mr A] with a view to extracting significant monies from *Sunday*.

Other information collected by *Sunday* in support of their allegations against [Mr A] is consistent with [Mr A's] role as an informant. ...

The AFP also asked the ABA to consider:

... whether Channel Nine, in offering significant financial inducements to persons described as 'employees' for their story, exercised due diligence in checking the accuracy of their subsequent story bearing in mind the alleged account of events readily unravelled during questioning by police.

Attached to the AFP's letter of complaint, was "an annotated transcript detailing *Sunday*'s allegations and the findings of the AFP investigation into these matters" (the annotated transcript).

The AFP complained that the licensee did not correct errors of fact at the earliest opportunity as required in clause 4.3.11 of the Code.

The annotated transcript

To create the annotated transcript, the AFP printed the text of the broadcast on 17 February 2002 from *Sunday*'s website and then added underlining and comments in bold-print.

The ABA has ascertained that the first two pages of the annotated transcript provided by the AFP only appeared on the *Sunday* website and was not broadcast by the licensee. Where a program refers viewers on to its website, the ABA would expect licensees to maintain the same high standards in relation to the website material as are required by the television code of practice. However, the ABA has no jurisdiction over such material under the Code. The ABA notes that the licensee provided comments to the ABA on each of the AFP's points in relation to these first two pages. The ABA is satisfied that the remainder of the transcript represents an accurate record of the material that was broadcast on 17 February 2002.

The ABA has individually considered each of the AFP's annotations that relate to broadcast material and has provided its comments on the annotated transcript in Appendix A to this report. The ABA's comments begin on page 25. Appendix A contains no breach findings.

The program

The broadcast on 17 February 2002 contained commentary by the reporter³ interspersed with hidden camera footage and extracts from various interviews. Some of the material was repeated in a subsequent broadcast on 24 February 2002, a transcript of which is in Appendix B. In the broadcast on 17 February 2002, the reporter made a number of assertions, which can be summarised as:

- That Mr A was a “crook” who had betrayed the Australian authorities who had paid him to provide information and had stolen money off asylum-seekers
- That Mr A was “a major player in the people-smuggling syndicates”
- That Mr A “used his police informant status as a boast - luring Indonesian crewmen into people-smuggling with the assurance that they wouldn’t be caught because he was the one who told the Australian navy where to look”
- That “boatloads of illegal immigrants organised by [Mr A]” had landed in the Kimberleys in Northern Australia.

The AFP made specific complaints about the first three assertions in the annotated transcript, which are considered in Appendix A to this report. In its letter of complaint, the AFP made a general complaint about the fourth assertion which is examined below.

The broadcast on 17 February 2002 contained the following statement:

REPORTER: As you’ll see, here in the Kimberleys in Northern Australia, the evidence suggests that boatloads of illegal immigrants organised by [Mr A] did get through undetected. SUNDAY has recorded several hidden camera conversations with crewmen who have worked on [Mr A’s] illegal voyages.

This statement was followed by footage of a conversation between an Indonesian go-between employed by *Sunday* and a man referred to in the transcript as “Mr B”⁴ who claimed to have undertaken three trips to Australia with “immigrants”. Mr B stated that he had met Mr A (known to him as Mr A1) once when embarking on the second trip when, “[Mr A1] said if you’re successful I’ll give you a bonus when you get back”.

Later in the program, *Sunday* broadcast further footage of the conversation between Mr B and the Indonesian go-between. It was claimed that, at the behest of Mr A, Mr B’s boat crew had dropped 17 “illegal immigrants” near Cape Leveque in February 1997 and had conducted a second voyage to Australia in April 1997 with 25 people.

³ The name of the reporter has been deleted from the investigation report.

⁴ The name of Mr B has been deleted from the investigation report.

The program also contained footage of a second boat crew that had allegedly taken people to Australia on behalf of Mr A. The transcript records the following statements:

REPORTER: We knew there were boat crews here in Kupang who had worked for Mr A. We hired two Indonesian locals to work for SUNDAY as go-betweens – telling them to pose as people-smugglers wanting information on how to get into Australia undetected. In front of our hidden camera, in great detail, this boat Captain – [Mr C]⁵ – drew on this map the route that he had taken to Australia on the instructions of [Mr A] – whom he calls? [Mr A]!

HIDDEN FOOTAGE MR C LOOKING AT NAUTICAL MAP.

MR C: [Mr A] gave me one like this.

MR D⁶: This is the one that was given to me by [Mr A].

MR C: This is Kupang. This is Kupang. We were taught by [Mr A] ‘when you depart and arrive here you set the compass at 142 degrees’.

Sunday then broadcast extracts from a conversation between the man referred to in the transcript as Mr C and an Indonesian go-between, interspersed with comments by the reporter. It was claimed that the men had dropped 26 illegal immigrants on the Australian mainland undetected in July or August of 1997. It was also claimed that Mr A had taken \$US5,000 per person and had assured the boatcrew that they would not be caught because he was working for the AFP.

Later, *Sunday* broadcast a description by Mr C and Mr D of the place in Australia where they claimed to have landed people. *Sunday* then attempted to support the assertion that Mr A had landed asylum seekers directly on to the Australian mainland by broadcasting footage of a beach in Northern Australia on the compass bearing of 142 degrees given by Mr C. In addition, the reporter interviewed a local resident whose description of the surrounding beach was said to match the details given by Mr C.

⁵ The boat Captain’s name has been deleted from the investigation report.

⁶ Mr D’s name has been deleted from the investigation report.

Assessment of the program

The AFP does not dispute that Mr A was a paid informant. However, it claims that *Sunday* had no reliable evidence on which to base its allegation that he landed unlawful non-citizens in Australia. Therefore, the first issue for the ABA to examine is whether, having regard to the circumstances at the time of preparing and broadcasting the program, the licensee accurately presented the factual material broadcast in support of the allegation that Mr A had facilitated the arrival of unlawful non-citizens into Australia.

The second issue is whether the licensee represented viewpoints fairly on whether Mr A had facilitated the arrival of unlawful non-citizens into Australia.

The third issue is whether the licensee made a reasonable effort to correct significant errors of fact at the earliest opportunity.

In assessing the program the ABA has considered the submissions made by the licensee in its letters to the ABA dated 6 December 2002, 18 February 2003 and 3 September 2003.

Issue 1: Whether the licensee presented factual material accurately

The licensee broadcast the following statement on *Sunday* on 12 May 2002:

This week our continuing investigation into [Mr A's] activities has cast doubt on one of the claims in our original story. It was alleged that [Mr A] had succeeded in landing two boatloads of illegal migrants on the north west coast of Australia. To back up that claim, we relied on evidence by contacts we'd employed in West Timor. We now believe evidence they provided to us was fabricated and we can no longer say with certainty that those landings took place.

The AFP investigation found that the Indonesian locals employed by *Sunday* fabricated the evidence that Mr A had landed non-citizens in Australia in order to extract money from *Sunday*. The AFP publically announced this finding in a media release dated 24 August 2002.

In a letter to the ABA dated 18 February 2003, the licensee contended that it did not accept that the factual material relating to paid information provided by Indonesian locals to *Sunday* was inaccurate and that the retraction on 12 May 2002 did not render the factual material presented in the report inaccurate. It stated that it made the retraction because it believed that it did not have the requisite level of proof to support the allegation that Mr A had landed asylum seekers directly on to the Australian mainland.

Under the Code, a licensee is obliged to ensure that factual material is presented accurately having regard to the circumstances at the time of preparing and broadcasting the program. This does not mean that a licensee is automatically liable if it broadcasts factual material that is later found to have been inaccurate. Rather, the circumstances that existed when the program was prepared and went to air can be

examined to ascertain whether the licensee could have reasonably considered that the factual material was accurate at the relevant time.

The ABA has seen no evidence that, at the time that the program was prepared or went to air, the licensee was aware that the statements of the persons purporting to be boat crewmen for Mr A (boat crewmen) had been fabricated. However, the AFP has requested the ABA to consider Nine's conduct in making payments to persons in the story.

The licensee does not dispute that it paid Indonesian locals to obtain the evidence but states, in its letter of 9 December 2002, that its conduct in this regard is not a matter covered by the Code. The licensee argues that it is a common practice for journalists to pay for information and to employ agents in their investigations, in particular those that are conducted in other countries.

While the issue is not specifically mentioned in the Code, the ABA considers that the fact that an interviewee or 'finder' is paid to provide information or contacts is a matter that is relevant to the licensee's assessment of the accuracy of the factual material obtained. In such circumstances, the licensee should take additional care to verify the factual material before putting it to air.

In its letter dated 3 September 2003, Nine states that while it broadly agrees with this statement:

... there is an important distinction to be made between a situation where the person providing the information is being paid directly and where the person being paid is assisting in the collection of the information.

In the current instance no direct payments were made to the crewmen. From Nine's point of view, the crewmen were admitting to conduct which they clearly knew to be in breach of Australian law. Further Nine had no reason to believe that there was any association between the finders and the crewman which would have led Nine to be suspicious of the information.

In such circumstances Nine does not accept that the fact that payments were made in any way affects the view it should have taken of the reliability or veracity of the admissions made by the crewmen and contained in the recordings.

The ABA accepts that Nine did not directly pay the boat crewmen and that it was not aware of any actual association between the finders and the boat crewmen. However, the ABA does not consider that this absolves *Sunday* of its obligation to verify the crewmen's evidence.

Sunday should have been aware that the payment of money to local persons to "find" information about people-smuggling activities carried a significant risk that the finders might induce others to provide fabricated evidence. Nine owed an obligation to its viewers to take adequate steps to test the accuracy of any evidence provided in these circumstances. The most obvious way to do this would have been for *Sunday*

journalists to interview the crewmen directly about their contact with Mr A and any voyages they had undertaken on his behalf. Instead, *Sunday* chose to covertly film its finders having a conversation with the crewmen.

Nine states that “[o]ne of the major purposes of the covert filming by [Mr E]⁷ and [Mr F]⁸ ... was to determine if the crewmen could convincingly relate how they sailed to Australia, including compass headings they took and any visible landmarks or lights along the route.” However, Nine has not explained how the covert nature of the filming enhanced *Sunday*’s ability to test the sailing knowledge of the crewmen.

Nine submits that it made significant attempts at corroboration by getting each crewman to indicate on a nautical chart where they had landed passengers and by checking the physical descriptions given of the landing point. However, in the ABA’s view, Nine did not adequately address the possibility that the crewmen may have collaborated to come up with a consistent story perhaps using their experiences on unrelated voyages or descriptions and maps provided by other people. Further, *Sunday* did not adequately corroborate the boat crewmen’s evidence of their dealings with “Mr A1” and that prove that these dealings were actually with Mr A.

By covertly filming conversations between the finders and the boat crewmen, *Sunday* lost an important opportunity to test the accuracy of the evidence. In its letter dated 3 September 2003, Nine makes the following statement:

... it was not possible for SUNDAY to directly approach the Indonesian crewmen who did these voyages before broadcast because both [Mr E] and [Mr F] had made it a condition of their assistance in the covert filming that their cover not be compromised.

... If SUNDAY was to directly challenge the crewmen about their involvement in people-smuggling, then there was and still is a serious risk of harm to the Indonesian researcher/assistants.

The ABA accepts that, in some circumstances, it may be necessary for a broadcaster to protect the identities of persons providing information or interviews. However, this does not relieve the licensee of its primary obligation to ensure that the public is provided with accurate factual material. If a licensee is not able to take adequate steps to check the accuracy of certain factual material, then it should consider whether to broadcast the material at all.

In its letter dated 3 September 2003, Nine submits that the following matters are also relevant to the issue of the level of corroboration of the allegation that Mr A was responsible for, or involved in, landing people on the Australian mainland:

- Mr A’s statements to Mr E that he was involved in people smuggling and had been responsible for landing people in Australia;

⁷ Mr E’s name has been deleted from the investigation report.

⁸ Mr F’s name has been deleted from the investigation report.

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- *Sunday's* approaches to the AFP and the AFP's failure to clarify whether Mr A was working as an informant;
 - *Sunday's* approaches to Government departments and Ministerial offices and their failure to confirm the nature of Mr A's role;
 - the statements of Mr G⁹ and Mr H¹⁰ that Mr A had told them that he had landed boat-loads of people on Ashmore Reef;
 - the accuracy of other information provided by Mr E to *Sunday*; and
 - advice to *Sunday* from a Sydney-based interpreter that the purported crewmen were convincing and showed no cultural or linguistic signs of lying or evasion.

The ABA notes that Mr A's statements and conduct are consistent with the AFP's explanation that he was impersonating a people-smuggler as part of his activities for the Indonesian National Police. Further, the ABA does not consider that the failure by the AFP or other Government offices to explain Mr A's role constitutes corroboration of the allegation that he had landed people on the Australian mainland. The ABA does not consider that *Sunday's* attempts at verification were adequate in the circumstances to dispel the possibility that the purported crewmen had collaborated to fabricate their stories.

Where a licensee is paying persons specifically to find or provide information, the ABA expects it to take additional care to check the accuracy of the material before putting it to air. The licensee should also consider whether the viewers' assessment of the credibility of the evidence would be assisted by knowledge of the payment. The fact that a licensee later broadcasts an apology does not excuse its responsibility in relation to its omission to adequately check the accuracy of material before it goes to air.

Finding

Having regard to the circumstances at the time of preparing and broadcasting the program, the ABA finds that the licensee did not accurately present the factual material in support of its assertion that Mr A had landed illegal immigrants on the Australian mainland. The ABA finds that the broadcast of this material breached clause 4.3.1 of the Code because the licensee presented unreliable material as factual material without making adequate attempts to obtain verification.

Issue 2: Whether the licensee represented viewpoints fairly

In its letter of complaint, the AFP stated that the broadcast on 17 February 2002 did not represent viewpoints fairly. The letter did not contain any details regarding this complaint. However, the annotated transcript referred to a number of specific

⁹ Mr G's name has been deleted from the investigation report

¹⁰ Mr E's name has been deleted from the investigation report

statements that the AFP claimed unfairly represented people's viewpoints. The ABA's comments on these statements are in Appendix A.

In its letter of 1 September 2003, the AFP states that it was not offered an opportunity to comment from an informed perspective. The AFP gave the example of the interview with a Federal Agent¹¹, which the AFP says was conducted by *Sunday* on the false premise that Mr A had actually engaged in people-smuggling.

The ABA considers that the AFP was given an adequate opportunity to comment on the issues raised in the program.

Finding

The ABA finds no breach of clause 4.3.1 of the Code in relation to the fair representation of viewpoints.

Issue 3: Whether the licensee made reasonable efforts to correct significant errors of fact at the earliest opportunity

The ABA considers that the material broadcast regarding Mr A's role in landing asylum seekers on the Australian mainland contained a significant error of fact.

As mentioned, the licensee broadcast a statement on *Sunday* on 12 May 2002 withdrawing its assertion that Mr A had landed boatloads of illegal immigrants on the north west coast of Australia because it now believed the evidence provided to support that assertion had been fabricated.

The AFP complained that when the licensee became aware of the fabrication, it did not correct the error of fact at the earliest opportunity as required in clause 4.3.11 of the Code. In its letter to the ABA of 24 September 2002 the AFP stated:

During the course of our investigation one of the main Indonesian 'employees' of Channel Nine, who appeared in the story of 17 February, was interviewed by police on 10 April 2002 in Bali. It was later discovered that *Sunday* producer [producer's name]¹² arrived in Bali on 9 April and spoke to this witness. *Sunday* would therefore have been aware of the admissions by these persons on or around 9 April 2002. *Sunday* did not disclose that they had been misled until four weeks later on May 12 and they then did so in a highly qualified way. The AFP asserts that *Sunday* should have corrected the public record earlier than it did and given viewers a more complete understanding of the events surrounding the fabrication.

In its letter to the ABA of 6 December 2002, the licensee contended it had complied with clause 4.3.11 of the Code, stating:

Nine has retracted one element of the initial story, namely that [Mr A] landed refugees on the Australian mainland. This allegation was retracted on 12 May 2002. That retraction did not arise from anything told to [the producer] while he

¹¹ The name of the Federal Agent has been deleted from the investigation report.

¹² The name of the producer has been deleted from the investigation report.

was in Bali as asserted by the AFP. It occurred as a result of information received by *Sunday* in the week prior to the broadcast of the retraction.

The ABA sought further information from the licensee, asking:

- what was the first occasion on which Nine, the producer or *Sunday* became aware of the inaccurate component of the initial story
- What was the information received by *Sunday* ‘in the week prior to the broadcast of the retraction’ which you say resulted in the retraction on 12 May 2002?
- Were any records kept of this exchange of information?

In a letter to the ABA dated 18 February 2003, the licensee stated:

The information received by ‘*Sunday*’ which caused the retraction of that component of the story was a number of conversations between the person [Mr E] and *Sunday* employees including [the producer]. During those conversations the ‘*Sunday*’ employees sought further assurances from [Mr E] that the allegation of the landing of refugees on the mainland by [Mr A] was accurate. Although those people stuck to their stories, they wavered in some detail and were vague in their assertions. Accordingly ‘*Sunday*’ formed the view that it was not sufficiently certain of the evidence supporting the allegation, namely the statements of [Mr E] and the others, that it could sustain the allegation. The view was formed that if ‘*Sunday*’ believed that it could not sustain the allegations then they should be retracted.

The licensee did not disclose the date or dates that these conversations between [Mr E] and the *Sunday* employees, including [the producer], took place. Nor did it indicate when Nine, the producer or *Sunday* first became aware that the material may have been fabricated. The letter contained the following statement:

I note that you refer to the ‘inaccurate’ component of the initial story. Nine does not believe that this description is a fair one and Nine does not accept that it is inaccurate. The case is that during the conversations between the ‘*Sunday*’ employees and [Mr E], ‘*Sunday*’ felt that it did not have the requisite level of proof to support the allegation and in those circumstances it should be withdrawn. I understand some records were kept of these conversations.

The licensee did not provide any copies or further information about the records of these conversations.

The ABA also wrote to the AFP on 7 February 2003 seeking clarification of the basis for its conclusion that *Sunday* would have been aware of the fabrication of evidence on or around 9 April 2003.

The AFP responded by letter to the ABA on 28 February 2003 and indicated that the conclusion was based on the following information:

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- An Indonesian witness (Indonesian Witness One) told AFP investigators that he had had a conversation with the producer on the morning of 7 April 2002 in which “[producer’s name] was angry with him and worried about his job”.
 - According to the AFP, Indonesian Witness One told AFP investigators that a short time after he signed a statement on 7 April 2002, “[reporter’s name] (from the *Sunday* program) contacted him and asked if the story about the captains was a lie” and that “[h]e told [reporter’s name] that he had told the truth and that he had provided a statement”.
 - In a signed statement dated 10 April 2003, a second Indonesian witness (Indonesian Witness Two) stated that he had told the producer in a telephone conversation on 7 April 2002, that the “story about the [Mr C] voyage was false but that the story about the [Mr B] voyage was true”. Further, according to the AFP “Indonesian Witness Two told investigators that the producer was angry with him because it would ruin his reputation and that he would come to Bali. He asked that the statement not be signed by Indonesian Witness Two and to wait until [producer’s name] arrived.”
 - In a conversation with AFP investigators in Denpasar on 10 April 2002, the producer said “that he had spoken to Indonesian Witness Two on the days prior to 10 April 2002 but that Indonesian Witness Two had initiated all contact”. According to the AFP, the producer also said to the investigators “that he had not met with Indonesian Witness Two since arriving in Denpasar” and “that he was concerned that Indonesian Witness Two may have misled him”.
 - The hotel account for Indonesian Witness Two in Denpasar shows that calls were made from his room to the producer’s mobile phone between 2 and 8 April 2002.

The ABA has assessed the information provided by the licensee and the AFP. On the information available, the ABA is not in a position to make any findings about whether Indonesian Witness One alerted the producer and the reporter to the possibility that material had been fabricated on 7 April 2002.

The ABA does find that a telephone conversation took place between Indonesian Witness Two and the producer on or around 7 April 2002 and that this conversation alerted the producer to the possibility that material may have been fabricated regarding Mr A’s role in landing asylum seekers on the Australian mainland.

The Code requires a licensee to make reasonable efforts to correct significant errors of fact at the earliest possible opportunity. It appears that approximately 34 days elapsed between the producer’s telephone conversation with Indonesian Witness Two and the broadcast of the retraction by the licensee. Thus, there were four occasions on which the licensee could have made the retraction on *Sunday* prior to 12 May 2002. The issue for the ABA to consider is whether the licensee made reasonable efforts to correct the error prior to 12 May 2002.

The producer appears to have been told that the material concerning one of the voyages was false and that the material concerning another of the voyages was true. The ABA considers that the licensee was entitled to make enquiries before broadcasting a retraction, which is what the producer appears to have done. It is not clear when the licensee formed the opinion that the evidence was unreliable but it does not appear to be unreasonable to accept the licensee's assertion that this conclusion was reached in the week preceding the broadcast of the retraction. In this respect, the ABA notes that, according to the AFP Press Release, the operational stage of the AFP investigation was not completed until 21 May 2002.

Finding

Taking into account the relevant circumstances, the ABA is not satisfied that the licensee has breached clause 4.3.11 of the Code.

Conclusion

The ABA finds that the licensee breached clause 4.3.1 of the Code by failing to present factual material accurately, namely presenting unreliable material as factual material without making adequate attempts to obtain verification.

The ABA finds that the licensee did not breach clause 4.3.11 of the Code in relation to whether the licensee took reasonable efforts to correct significant errors of fact at the earliest opportunity.

THE SECOND COMPLAINT

The letter of complaint

On 22 November 2002, the AFP sent the ABA a letter of complaint concerning the broadcast on 1 September 2002. A transcript of this broadcast is in Appendix C to this report. Enclosed with the AFP's letter to the ABA, was a letter from the AFP to the licensee dated 24 September 2002. The AFP stated that its letter to the licensee "sets out the concerns of the AFP arising from the broadcast".

The AFP complained that the broadcast did not present factual material accurately and did not represent viewpoints fairly. The letter stated that accurate information was available to the licensee at the time of broadcast and contained the following details of the AFP's complaint:

... the program contained numerous assertions of wrongdoing or suspected wrongdoing on behalf of the AFP and continually asserted improper and illegal conduct on behalf of the AFP despite it playing no role in the relevant subject matter.

The program made wrong statements and speculative assumptions to support its hypothesis that the AFP had broken Australian and/or Indonesian laws. e.g. *"What is only now becoming apparent is the extent to which the Australian Federal Police played a part in [Mr A's] crimes and how much the AFP is implicated in those crimes", "tainted by his crimes", "what other crimes were authorised in our name"*.

The above is my primary complaint in relation to the broadcast being misleading. Nothing undertaken by the AFP was illegal. The speculative suggestions are nothing more than a beat-up. Additionally, the broadcast did not fairly represent the AFP's viewpoint on a number of issues, namely:

the nature of the AFP's relationship with [Mr A];
the circumstances surrounding the acceptance of money by [Mr A] from people seeking to illegally enter Australia; and
the use of informants by the AFP

By reason of the following:

its construction of the segment (including the specific matters which are set out below)
its use of vague assertions and allegations;
its use of inaccurate and emotive language; and
inaccurately presenting factual material;

Sunday's broadcast had the overall effect of not fairly representing the actions of the AFP and the relationship between the AFP and [Mr A]. [emphasis added by AFP]

The AFP then set out, in detail, ten specific items that it claimed were false or misleading which it indicated were "matters of individual complaint as well as forming part of the more general complaint set out above". Each item contained statements extracted from the broadcast. In some instances, the AFP stated that an assertion was not an accurate representation of the facts. In other instances, it claimed that an assertion did not represent the AFP's viewpoint fairly. The ABA has individually examined the ten matters that were identified by the AFP and its comments are set out in Appendix D to this report. Appendix D contains no breach findings.

The primary complaint concerning the allegation of illegality by the AFP is examined below.

The program

The program broadcast on 1 September 2002 contained footage from the earlier broadcasts of 17 February 2002 and 24 February 2002 together with further commentary from the reporter and extracts from interviews with:

- Professor Findlay, a criminal law expert
- Mr I¹³, an unsuccessful asylum seeker
- Mr J¹⁴ and his younger brother Mr K¹⁵, both unsuccessful asylum seekers

¹³ Mr I's name has been deleted from the investigation report

¹⁴ Mr J's name has been deleted from the investigation report

¹⁵ Mr K's name has been deleted from the investigation report

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- footage of Commissioner Keelty answering questions in the Senate Committee Inquiry into “A Certain Maritime Incident” in February 2002

In the broadcast, the reporter made assertions that the AFP was implicated in Mr A’s conduct in Indonesia by allowing Mr A to engage in people-smuggling activities and to take money from asylum seekers including the following statements:

What’s only now becoming apparent is the extent to which the Australian Federal Police played a part in [Mr A’s] crimes, and how much the AFP is implicated in those crimes.

....

The Federal Police were involved in a covert operation inside Indonesia that was quite possibly illegal.

Later in the program, the reporter made similar assertions:

Federal Police assert they and their informant, [Mr A] have done nothing illegal. Try telling that to twelve year old [Mr K] and his family, and the many other asylum-seekers who say they handed over their life savings to [Mr A].

[Mr A] stopped working for the Federal Police a year ago. But the questions about just what he did on Australia’s behalf are still unanswered. And that’s the way it may stay, because the only investigation into his activities was by the police force that is itself tainted by his crimes.

.....

What other crimes were authorised in our name?

In support of these assertions *Sunday* broadcast excerpts from an interview with Professor I, a criminal law expert, including the following opinion:

FINDLAY: [Mr A] carried out his activities with the knowledge of the AFP and perhaps some limited authority. He misrepresented himself and took money as a consequence. All of those issues tend to make me believe that offences were committed under Commonwealth law.

REPORTER: If the Federal Police knew that, for the period of time that he was working for them, and did nothing to stop it, did the Federal Police commit an offence?

FINDLAY: Again, I'd say that depends on the way in which we look at their involvement. But if we were to speculate that they did nothing to restrict [Mr A], that they supplied [Mr A] with money and some support, that they allowed [Mr A] to generate relationships with the Indonesian Police, then there's an argument to say that they were criminally involved.

Assessment of the program

The AFP's primary complaint is that the broadcast of 1 September 2002 contained false statements and speculations to support the argument that the AFP had broken Australian and Indonesian laws. Thus, the first issue for the ABA to examine is whether, having regard to the circumstances at the time of preparing and broadcasting the program, the licensee accurately presented the factual material on this issue.

The second issue for the ABA to examine is whether the licensee fairly represented the AFP's viewpoint on the nature of the AFP's relationship with Mr A, the circumstances surrounding the acceptance of money by Mr A from people seeking illegally to enter Australia and the use of informants by the AFP.

In making its assessment, the ABA has considered the submissions made by the licensee in its letter to the ABA dated 19 March 2003.

Issue 1: Whether the licensee presented factual material accurately

Sunday asserted in the broadcast that Mr A had committed crimes and that the AFP was implicated in those crimes, possibly to the extent of having committed crimes itself. *Sunday's* allegations regarding the AFP were based on the opinion that it had obtained from Professor Findlay.

In its submissions to the ABA, the licensee mentions that the AFP contacted Professor Findlay on 11 September 2002 in relation to the advice he gave *Sunday* and states:

... Professor Findlay advised SUNDAY that he told the AFP that he stood by his legal advice aired on the SUNDAY program, which stated that [Mr A's] activities and possibly also the AFP's actions were in breach of criminal law.

Professor Findlay tells us he made it clear to the AFP legal counsel that his opinion (that [Mr A] and possibly also the AFP committed crimes) was based on the AFP's own public admissions both in its media release reporting on the results of its investigation and in Hansard of the AFP's various Parliamentary appearances. He emphasised to us that his view was not based on any extra information provided by SUNDAY but on the public admissions made by the AFP.

The licensee pointed out that, on 26 September 2002, the Minister for Justice, Senator Chris Ellison, made the assertion to Parliament that:

The Australian Federal Police have also received legal advice from the Director of Public Prosecutions, Mr Damien Bugg SC, who has rebutted SUNDAY's claims that the AFP's actions, or those of [Mr A], may have been unlawful.¹⁶

¹⁶ Senate Hansard p 4730, 26 September 2002

The advice of the Commonwealth DPP was not tabled in Parliament and has not been provided to the ABA. In its letter of complaint, the AFP claims that nothing undertaken by it was illegal.

In its letter of 1 September 2003, the AFP states that it believed that “[Mr A] never smuggled people to Australia but only pretended to have done so in conjunction with his INP controllers”. In the AFP’s view the “whole suggestion that the AFP may have committed crimes is predicated on a false assumption”. The AFP stated that it had advised Sunday of the falsity but, in the AFP’s submission, *Sunday* chose not to believe this, the consequence of which was to allow Sunday “to portray the AFP in a negative and false light”.

The ABA makes no findings as to the accuracy of Professor Findlay’s opinion. However, aside from the assertions by the AFP and Senator Ellison that the actions of Mr A and the AFP were lawful, the ABA has no evidence that Professor Findlay’s opinion is inaccurate. Therefore, having regard to the circumstances at the time of preparing and broadcasting the program, the ABA is not convinced that *Sunday* presented the factual material inaccurately and makes no breach finding in that respect.

Issue 2: Whether the licensee represented viewpoints fairly

It is claimed that the broadcast did not fairly represent the AFP’s viewpoint on a number of issues. In the broadcast, the AFP’s viewpoint was represented in the following ways:

- excerpts from evidence given by AFP Commissioner Keelty to the Senate Committee Inquiry
- excerpts from a previous interview between *Sunday* and Mr Moses, the AFP Director of International Operations
- statements made by the reporter

In relation to the latter, specific complaints have been made by the AFP that are examined in detail in Appendix D.

The AFP claims that the broadcast unfairly represented the nature of its relationship with Mr A. In the letter of complaint, the AFP has set out its view of that relationship:

In essence, [Mr A] provided information to the AFP over a period of time. He was a registered informant but was never an authorised agent. He was able to gather intelligence in Indonesia because of his contacts and he worked in conjunction with the Indonesian National Police (“INP”) in relation to various operations. While there was some co-operation between the AFP and INP because of the mutual interests of our respective governments in border security, [Mr A] was never operating in Indonesia under the control of the AFP. The knowledge of the AFP came only from the information derived by [Mr A] as an informant and from the INP in relation to any information they passed to us for our information.

To summarise, the AFP's view appears to be that, while it knew that one of its informants, Mr A, was working with the INP in relation to people-smuggling issues, it did not have advance knowledge of his INP-related activities and did not give him permission to engage in them.

The ABA considers that the AFP's view was presented in the program. The following excerpts of AFP Commissioner Keelty's evidence to a Senate Committee Inquiry were broadcast:

KEELTY: In other words we knew he was engaged in people-smuggling because he was telling us what was going on. But there was nothing to indicate from the information that's been provided about his activities from other authorities in Indonesia that we considered was outside the realm of information that we already had.

...

KEELTY: The people who conduct the disruption are the people with the power to conduct the disruption, or the intervention. That being, the Indonesian National Police, the Indonesian defence and sometimes the Indonesian Immigration. We find .. we obtain information from informants but informants do not disrupt. They have no power to disrupt.

It was also claimed that the broadcast unfairly represented the AFP's view on the circumstances surrounding the acceptance of money by Mr A from people seeking illegally to enter Australia. In its letter of complaint the AFP states:

The AFP has been advised that [Mr A] undertook undercover activities for the INP in relation to persons attempting to illegally leave Indonesia to deal with him.

These activities required [Mr A] to assume the identity of a people smuggler and to convince those involved in people smuggling attempting to illegally leave Indonesia to deal with him.

The AFP had no advance information about those activities and does not believe that they were in breach of Indonesian law or Australian law. The only activities known to the AFP were directly controlled by the INP.

The broadcast included the following extract from an earlier interview *Sunday* had conducted with Mr Moses, AFP Director of International Operations:

REPORTER: Has the Federal Police ever authorised any informant to involve themselves in people-smuggling?

MOSES: No, that's categorically no. The Australian Federal Police has not done so.

REPORTER: Has the Australian Federal Police ever authorised any informant to take money off asylum seekers intending to get illegal passage to Australia?

MOSES: My answer to that is categorically no. The Australian Federal Police has never done so.

As mentioned, the program also contained footage of AFP Commissioner Keelty giving evidence at the Senate Committee Inquiry that the AFP knew Mr A was “engaged in people-smuggling”. In the ABA’s opinion, the broadcast fairly represented the AFP’s view that it knew Mr A was posing as a people-smuggler but that it did not explicitly give him permission to do this nor to accept money from asylum-seekers.

In the program, the reporter queried whether the AFP’s ‘knowledge’ that Mr A was involved in people-smuggling activities might constitute ‘authorisation’. This does not constitute an unfair representation of the AFP’s viewpoint. The Code does not require a broadcaster to agree with a person’s point of view in order to represent it fairly.

Lastly, the AFP has complained that the broadcast did not fairly represent its viewpoint on its use of informants. The letter of complaint contains the following statement:

The management of informants is complex and difficult. However the AFP never authorised [Mr A] to [assume the identity of a people-smuggler], or indeed to do anything. He merely passed information. He was under the operational control of the INP and the AFP and the INP are not aware of any unlawful conduct by [Mr A] in relation to people smuggling.

In addition to other evidence extracted above, the broadcast included the following comments of AFP Commissioner Keelty:

KEELTY: The AFP, in tasking the INP to do anything that would disrupt the movement of people-smugglers has never asked, nor would it ask them to do anything illegal. If we became aware that they were doing something illegal or something that was inhumanitarian, then it would be brought to our notice and we would ask that they not do it that way. The difficulty is once we ask them to do it, we have to largely leave it in their hands as how they best do it ...

In the ABA’s opinion, the program did present the AFP’s view that it was not responsible for the activities of informants who were working for the INP.

The reporter disputed this view, arguing that the AFP was responsible for Mr A’s disruption activities with the INP. As mentioned, the Code does not require a broadcaster to agree with a person’s point of view in order to represent it fairly.

Lastly, *Sunday* submits that it attempted to obtain the AFP’s viewpoint on the issues raised in the program by seeking an interview with Commissioner Keelty, requesting a full report of the AFP investigation and submitting thirty-seven questions in writing to the AFP but that the AFP refused to co-operate. In its letter of 1 September 2003, the AFP states that it considers “any reluctance to reappear on *Sunday* following its portrayal of events is quite understandable” because “[a]fter efforts to resolve the matter had broken down, the AFP could not be confident that its position would be fairly represented by the licensee”. Nonetheless, the ABA notes that, when a person refuses the opportunity to present their viewpoint on a program, it becomes more difficult for them to establish that their viewpoint has not been represented fairly.

The ABA notes that *Sunday* also broadcast comments by Commissioner Keelty on the application of the controlled operations legislation to informants. These are discussed in Appendix D to this report.

Finding

The ABA finds that *Sunday* fairly represented the AFP's viewpoint by broadcasting excerpts from Commissioner Keelty's evidence to the Senate Committee and Mr Moses' comments in an earlier interview with *Sunday*.

Conclusion

In relation to the second complaint, the ABA finds that there has been no breach of the Code.

Decision

At its meeting of 18 December 2003, the Australian Broadcasting Authority determined, for the above reasons, that on 17 February 2002, TCN Channel Nine Pty Limited (the licensee) breached clause 4.3.1 of the Commercial Television Industry Code of Practice.

The Common Seal of the Australian Broadcasting Authority was affixed to this document in the presence of:

Signature of Member

Signature of Member/General Manager

Name (please print)

Name (please print)

Dated this _____ day of _____ 2003.

APPENDIX A

This Appendix contains a transcript of the *Sunday* website, as provided to the ABA by the AFP. The AFP has provided its comments on the website transcript in bold and underlined some parts of the transcript. The ABA has inserted its comments in boxes in respect of each of the complaints.

The Australian People-Smuggler

February 17, 2002

Reporter:

This week on the *Sunday* program, a major exclusive international investigation.

Sunday reveals extraordinarily-detailed evidence proving that an Australian citizen living in Indonesia is one of the Mr Bigs in the criminal people-smuggling rackets from Indonesia to Australia.

The ‘evidence’ Sunday refer to was primarily sourced from covert video recordings undertaken with 6 witnesses who have since admitted to AFP, in signed statements, that they contrived the allegations against [Mr A] with a view to extracting money from [producer’s name].

We also reveal how, until Sunday confronted [Mr A] about his illegal activities last year, he was one of the principal informants for the Australian Federal Police (AFP) on the illegal people smuggling trade.

[Mr A] was indeed one of the AFP’s principal informants on the illegal people smuggling trade. Until September 2001 when Sunday raised the issue of [Mr A] being an AFP informant, [Mr A] had been providing a regular stream of people smuggling intelligence to both AFP and POLDA. During the period that [Mr A] was working for AFP and POLDA, he was directly responsible for the interdiction of 451 asylum seekers attempting to make their way to Australia.

In a major embarrassment for Australia's premier crime-fighting force, this Sunday investigation outlines how [Mr A] went on to the payroll as a paid Federal Police informant. Australian taxpayers have effectively been funding one of the principals in the very same illegal trade our Government has been trying to stop.

AFP expended \$25,527 associated with the management of [Mr A] as an AFP informant. The interdiction of the 451 asylum seekers resulted in a saving to the Australian government in excess of \$22 million.

Worse still, Sunday's cameras have caught the Australian boasting to Indonesian accomplices that they won't be caught by the Australian Navy boats waiting off the coast to catch people-smugglers because, as a major informant for AFP, he is the one who tells Australia where to look to catch the illegal boats.

Part of [Mr A's] cover story designed to convince asylum seekers who deal through him so he in turn can report back to POLDA who in turn then interdict those asylum seekers. Although POLDA knew the identities of most of the actual smugglers, people smuggling as such is not an offence known to Indonesian law. POLDA, in conjunction with [Mr A], were engaged in strategies designed to both disrupt the activities of the smugglers and, on behalf of Australia, interdict asylum seekers where possible before they could depart for Australia.

In a six month investigation, Sunday reporter [reporter's name] and his producer colleague [producer's name] have unravelled the lies and deceit perpetrated by this smooth conman on both Australian and Indonesian authorities.

The AFP investigation has revealed that it was in fact [producer's name] and [reporter's name] who have been conned by their own paid 'employees'.

The program raises serious concerns about the quality of checks Australian Federal Police make about informants before putting them on the payroll. It highlights a desperate need for Australia to improve the quality of its intelligence on the people-smuggling gangs and also for Australia to improve its relations with Indonesia. One senior Indonesian Government official tells the reporter how he warned the Australian Embassy in Jakarta months before Sunday confronted Mr A that the Australian was a suspected criminal, involved in people-smuggling. His warning appears to have been ignored.

The current Chief of Immigration in Kupang has told AFP investigators that his department has no evidence that [Mr A] was a people smuggler.

Sunday reveals how, just as [Mr A] wooed Australia's Federal Police with tantalising insights into the people smuggling trade, he also fed Indonesia's regional police, the Polda, with information. The warnings of other Indonesian police and immigration officials to their own top police force also went unheeded. Despite being officially deported from Indonesia, [Mr A] is living in Surabaya, Indonesia, with the knowledge of senior police in the Indonesian Polda.

The reason “warnings ... went unheeded” was that those in power within Polda knew [Mr A's] true role as an informant. Those who did need to know [Mr A's] true role assumed that [Mr A] was involved with people smugglers which is exactly the impression that they were meant to have. Indonesian immigration authorities were never briefed by Polda on [Mr A's] status. There were elements within Indonesian Immigration who suspected that [Mr A] was a smuggler and knew that he was at least associating with smugglers and asylum seekers however those associations were with the complete knowledge and control of a limited number of POLDA officers, including Kupang Police chief, Brigadier-General Jackie Uly, the head of his intelligence department and [Mr A's] actual controllers.

[Mr A] was never formally departed from Indonesia, however by May 2002 Indonesian Immigration had formally blacklisted him.

As Sunday has discovered, the evidence of [Mr A's] complicity in people-smuggling is there to be found in Indonesia. In extraordinary hidden camera vision, the *Sunday* cameras capture people-smuggling associates of the Australian detailing how, on [Mr A's] orders, they landed illegal immigrants on the Australian mainland undetected. They explain how it was that [Mr A] who told them which route to take – and how he told them that because he was working for the Federal Police, they would not be caught.

The ‘evidence’ now shown to have been contrived by *Sunday's* paid Indonesian ‘employees’.

Mr A claims to *Sunday* that all his people-smuggling activities were authorised by the Australian Federal Police – including taking money off asylum-seekers, who had paid him to get them into Australia. But in an interview with the Sunday program, the

Director of International Operations for the Australian Federal Police, Dick Moses, categorically rejects any suggestion that any informant would ever have been authorised to involve themselves in people-smuggling.

Mr Moses' statement is correct. The AFP investigation has established that insofar as *Sunday's* allegations are concerned, [Mr A] was purporting to be a people-smuggler and reporting to either his POLDA controllers. On at least one occasion, and in connection with an interdiction operation being controlled by POLDA, money was passed by asylum seekers, to [Mr A], with the full knowledge of POLDA. That money was used to transport, accommodate and feed the asylum seekers prior to their thwarted attempt to leave Indonesia for Australia. Those moneys were accounted for by POLDA however, in any event, those matters have nothing to do with AFP. [Mr A] was simply providing AFP with information. The level of active assistance he was providing to INP was a matter for INP.

February 17, 2002

PART ONE

REPORTER: It's quiet for now along Australia's desolate northern Kimberley coastline. But when the Indonesian monsoon subsides in the next month or so, the people-smugglers are likely to resume their illicit trade across the Timor Sea. Stopping the boats has become a major political imperative for our Police and Defence forces. They thought they had a secret weapon—a paid informant at the heart of the people-smuggling syndicates.

[MR A] IN DILI: I've been working for the Australian Federal Police

REPORTER: And you've also been doing a bit of work on the side yourself?

[MR A]: And for what?

REPORTER: He's an Australian: [Mr A]. And for nearly two years Australian authorities thought he was working for us.

REPORTER: Do you think you can put us onto people in Federal Police in Australia who can confirm your story?

[MR A]: Yes. I'm sure.

REPORTER: But Australia's trust in [Mr A] was misplaced. Because, after months of investigation, SUNDAY has proved [Mr A] is in fact a crook. He betrayed the

Australian authorities he was paid to serve, and he stole off those asylum-seekers desperate enough to deal with him.

‘Australia’ trust in [Mr A] has been well established and supported on the one hand by actual interdiction results and following a 3 month AFP investigation, by a complete absence of evidence involving himself in people smuggling activities other than those connected with his role as an informant to and under the direction of POLDA.

The AFP investigation has established that it was in fact ‘*Sunday’s* employees’ who could be classified as crooks, at least in the sense that they duped [producer’s name] and [reporter’s name].

ABA comments

The AFP disputes the accuracy of the statement that “Australia’s trust in [Mr A] was misplaced. Because, after months of investigation, Sunday has proved [Mr A] is in fact a crook”.

In its letter to the ABA dated 6 December 2002, the licensee made the following comment:

SUNDAY believed that at the time of its 17 February broadcast that those statements were demonstrably true on the information it had and which had been provided to it by the AFP. SUNDAY also believes that those statements are demonstrably true now.

In support of this assertion, the licensee cites evidence gathered after March 2002 but does not indicate which material it relied upon at the time of the broadcast. Nonetheless the ABA considers that statements made by Mr A that he was involved in people smuggling coupled with the denials made by Mr Moses were sufficient to support the assertion at the time the program was broadcast on 17 February 2002.

OUTSIDE AUSTRALIAN EMBASSY, JAKARTA, INDONESIA - REPORTER:
SUNDAY now has the evidence to suggest that [Mr A] has been playing a dirty double game on his Australian Federal Police handlers here in the Jakarta Embassy. There's no doubt he's been a very valuable informant for them on the people-smuggling trade. But he's also, we believe, been a major player in the people-smuggling syndicates. And worse still, Australian taxpayers may well have unwittingly funded his criminal activities.

See previous discussion re funding quantum vis a vis savings to Australian government.

ABA comments

The AFP appears to be referring to the following comment reproduced on page 1 of Appendix A:

AFP expended \$25,527 associated with the management of [Mr A] as an AFP informant. The interdiction of the 451 asylum seekers resulted in a saving to the Australian government in excess of \$22 million.

The licensee submitted that the sentence underlined above "... is not an unfair or untrue representation of the facts as SUNDAY knew them at the time of the broadcast".

The point that *Sunday* appeared to be making is that, unbeknownst to Australian taxpayers, the Australian government was paying a person who was involved in people-smuggling activities. The ABA finds that there was sufficient factual material available to support the assertion that Mr A was involved in people smuggling activities in Indonesia. The ABA accepts that, at that time, this was a criminal offence under an Australian law with extraterritorial application. The ABA also accepts that, under Australian law at that time, it was not possible for Mr A to be involved in a controlled operation in respect of people-smuggling.

It is self-evident that, at the time of the broadcast, most Australian taxpayers would not have been aware that Mr A was involved in people-smuggling activities while being paid by the Australian Government.

The ABA does not consider the AFP's argument that the payments to Mr A represented good value for money to be relevant in respect of the accuracy of the statement.

Therefore, the ABA finds that the statement does not raise any breach of the Code.

REPORTER: Kupang, Capital of West Timor. Just 500 kilometres from the Australian mainland - a few days sailing by fishing boat. This town is one of the centres of the people-smuggling rackets. For years now, [Mr A] has been a major player in the criminal syndicates exploiting the steady stream of asylum seekers among the passengers on the ferries from Jakarta - offering them illegal passage to Australia.

REPORTER: Here in Kupang, the locals will tell of [Mr A's] active role in encouraging and organising people-smuggling into Australia. For he was no passive player as he suggests. It was [Mr A] whose men touted for business here at the ferry wharf. It was [Mr A] who took money of asylum seekers desperate enough to attempt the voyage to Australia. And it was [Mr A] who used his Police informant status as a boast - luring Indonesian crewmen into people-smuggling with the assurance that they wouldn't be caught because he was the one who told the Australian Navy where to

look.

The locals referred to *Sunday* included the 2 Indonesians recruited by [producer's name] and referred to in a follow-up *Sunday Program* as paid 'employees', who in turn recruited 6 other Indonesians, all of whom collectively conspired to dupe *Sunday*.

ABA comments

The AFP appears to take issue with the sentence: "Here in Kupang the locals will tell of [Mr A's] active role in encouraging and organising people-smuggling into Australia".

The licensee states that *Sunday* has "acknowledged in several broadcasts that it can no longer sustain the one allegation that [Mr A] landed asylum-seekers directly on to the Australian mainland". However, it argues that there is other evidence that "[Mr A] was active in encouraging and organising people-smuggling into Australia".

The ABA has found a breach in respect of the licensee's broadcast of material that Mr A had landed asylum-seekers on the Australian mainland (see p 9 of the main report). However, the ABA finds that there was other factual material available to adequately support the assertion that Mr A was involved in people-smuggling at the time that the program went to air. This included statements by the former business partners of Mr A.

SUNDAY HIDDEN CAMERA/AUDIO RECORDINGS OF [MR A] AND SOME BOAT CREWS WHO WORKED FOR HIM.

REPORTER: To prove our suspicions about [Mr A], we found Indonesian locals who were prepared to help us infiltrate his syndicate. Over many months, we secretly tracked his duplicitous tactics against Australian and Indonesian authorities. Speaking in Bahasa, this is what [Mr A] told an Indonesian contact last year when asked if a boat-load of illegal immigrants organised by [Mr A] might be caught by the Australian Navy:

The contact has been identified as [Mr E]¹⁷. [Producer's name] travels to Dili with [Mr E] who entraps [Mr A] into discussing people smuggling issues by purporting (falsely) to have 5 asylum seekers wishing to travel to Australia. [Mr E] has told [producer's name] (falsely) that he has these 5 ready to travel.

¹⁷ The name of the contact has been deleted and is referred to in the investigation report as 'Mr E'.

[Producer's name] believes [Mr E]. [Mr E] is ultimately paid over US \$5,000, plus expenses, for his role in producing 'evidence' to [producer's name].

ABA comments

The AFP appears to dispute the accuracy of the statement, "this is what [Mr A] told an Indonesian contact that last year when asked if a boat-load of illegal immigrants organised by [Mr A] might be caught by the Australian Navy". In particular, the underlining suggests that the AFP disputes that [Mr E] was an Indonesian 'contact' of the program.

In its letter to the ABA, the licensee contradicted the AFP's comment that the producer believed that [Mr E] had 5 asylum seekers wishing to travel to Australia. According to the licensee:

SUNDAY requested [Mr E] to ring [Mr A] with an offer of five potential asylum-seekers. SUNDAY invented the five people and told [Mr E] to ring him offering them to see what [Mr A] did.

The licensee further disputes that [Mr E] was paid over \$US5,000 for his role in producing evidence to the producer and states that:

[Mr E] was in fact engaged by SUNDAY for months to assist in checking a wide range of allegations against [Mr A]".

The ABA accepts that the *Sunday* program set out to entrap Mr A into making admissions by paying Mr E to impersonate a person who had 5 asylum seekers wishing to travel to Australia. While the ABA considers that *Sunday* could have described the relationship between itself and Mr E in more detail, the ABA does not consider that it was inaccurate to describe Mr E as a "contact".

Therefore, the ABA finds that the statement does not raise any breach of the Code.

HIDDEN CAMERA FOOTAGE: MR A IN A DILI CAFE

[MR A] IN BAHASA: I know their plan. I contact them directly and tell them. We cooperate. The Australian Navy contacts me and asks where they should patrol. I tell them where to patrol and catch them.

[Mr A] is playing his POLDA sanctioned role as an informant. He invented the Australian Navy story to lend credibility to his claim, to asylum seekers, that he was the best person to deal with in getting them into Australia and as a prelude to having them interdicted by POLDA.

ABA comments

The licensee states, “[s]ince it is a direct quote of [Mr A’s] statements to SUNDAY’s fixer, [Mr E], it is hard for the AFP to deny that [Mr A] said it or that he was taken out of context.

In the ABA’s view, *Sunday* was entitled to believe that the statement was accurate. The ABA notes that *Sunday* later approached Mr A for an interview affording him an opportunity to put his comments into context. The ABA does not consider that Mr A’s viewpoint was represented unfairly.

The ABA notes that the broadcast of hidden camera material relating to a person’s private or personal affairs may be a breach of clause 4.3.5 of the Code where there is no identifiable public reason for the material to broadcast. In this case, the ABA does not consider that clause 4.3.5 of the Code has been breached.

REPORTER: As you'll see, here in the Kimberleys in Northern Australia, the evidence suggests that boatloads of illegal immigrants organised by [Mr A] did get through undetected. SUNDAY has recorded several hidden camera conversations with crewmen who have worked on [Mr A's] voyages. This Captain describes the orders that were passed on by a [Mr A] henchman.

HIDDEN CAMERA FOOTAGE: [MR B] AND CREW IN KUPANG.

[MR B]: [Mr L's]¹⁸ order was that if you were caught in Australia never ever mention the name of the agent who'd organised sending people there. That's never to be mentioned. He promised if you can keep your mouth shut you'd get a bonus when you got back.

[MR B] was one of two ‘actors’ recruited by *Sunday*’s employees, [Mr F] and [Mr E], to play the roles of SIEV captains working for [Mr A]. Mr B’s real name is [Mr B1]. He was recruited by [Mr F] and [Mr E] to play the role of a SIEV captain because of his specific knowledge of transporting asylum seekers to Ashmore Reef. [Mr B1] had been arrested by AFP, as the captain of the vessel ‘Cahaya Marwah’ which was intercepted by RAN near Ashmore on 30 June 1999. [Mr B/Mr B1] used his experience to lend credence to his narration (on covert video operated by [Mr E] on behalf of [producer’s name]) of the circumstances of two runs he pretended to have done on behalf of [Mr A]. [Mr B/Mr B1] have never met Mr A. The SIEV he captained in June 1999 was undertaken on behalf of another people smuggler.

¹⁸ Mr L’s name has been deleted from the investigation report.

Mr L is a well known people smuggler who had been operating out of West Timor at the time. [Mr B] has used Mr L's name to lend credence to the false story.

ABA comments

The licensee submits, "as detailed previously, SUNDAY has already acknowledged in several broadcasts and on its website that it can no longer sustain the allegation that [Mr A] landed asylum-seekers directly on the Australian mainland."

In the main body of this report (see p 8) the ABA has found a breach in respect of the broadcast of the allegation that Mr A landed asylum-seekers on the Australian mainland. The ABA considers that, given the nature of the statement and the circumstances in which it was provided, *Sunday* should have been more careful to check the accuracy of this statement before it was broadcast.

REPORTER: The crew members rarely saw the mastermind of the operation – [Mr A]. A man they knew as '[Mr A1]'.

INDONESIAN GO-BETWEEN: During the three trips to Australia with the immigrants, how many times did you meet [Mr A]?

[MR B]: Only once. At night on the second trip, while embarking at Airchina.

INDONESIAN GO-BETWEEN: What did [Mr A] say?

[MR B]: [Mr A] said if you're successful I'll give you a bonus when you get back.

REPORTER: While living in Indonesia, [Mr A] has cultivated the image of the reputable Australian businessman. SUNDAY has learned that in November last year he was a member of a top-level Northern Territory Government trade delegation to Jakarta, promoting the mining industry. Yet [Mr A] is no stranger to controversy. In 1999 he was criminally charged here in the Kupang Court with fraud and embezzlement offences. Those charges stemmed from a complaint laid by these two Australian businessmen based in Jakarta: [Mr G] and [Mr H]. They'd hired [Mr A] in Kupang to help set up a fishing company. At first, [Mr A] impressed them as a man with powerful and useful connections in Indonesia.

[MR G]: Supposedly when he first told us when we met him in Darwin "Oh don't worry about corruption in this country, I've got everyone in my pocket". Now he had a complete infiltration into the Police Department, into the court system and his ability as a freelancing consultant who has manipulated people in

so many different ways.

REPORTER: Early on, [Mr A], seen here on the left, and [Mr G] became close as they organised the boats and equipment they would need for the fishing venture. During this time in 1998 [Mr G] says [Mr A] admitted having smuggled illegal immigrants.

[MR G] I was very close with [Mr A] at the time. He turned around and went on to explain what he was all about. He was telling me directly about his past experience with another Australian fellow. And on a couple of occasions they'd successfully had you know smuggled people to Ashmore Reef and made a lot of money at it.

[Mr G] and [Mr H] were one-time business partners of [Mr A] in a failed fishing industry venture planned to operate out of Kupang. All three had a falling out, the details of which are not important here but are touched upon by *Sunday* with some but not with entire accuracy.

[Mr G] has been interviewed by AFP regarding his claim to *Sunday* that, in 1998, he had a conversation with [Mr A] in which [Mr A] “admitted having smuggled illegal immigrants”. [Mr G] stands by his claim that that conversation took place. [Mr A] has been interviewed by AFP and denies that that conversation took place or that he was in any way involved in people smuggling during 1998. [Mr A] claims that in 1998, he had not turned his mind to people smuggling issues and only did so in late 1999 during his incarceration in a Kupang prison where he associated with asylum seekers detained by Kupang authorities. It was at that time (post December 1999) that he decided to offer his knowledge/services to Australian authorities in Jakarta ultimately leading to his recruitment, as an informant to AFP and later to POLDA.

ABA comments

The AFP asserts that the details of the “falling out” between Mr A, Mr G and Mr H were not explained “with entire accuracy”. The licensee has pointed out the AFP “does not say what it is in the SUNDAY program transcript of 17 February which is inaccurate”. Without these details, the ABA cannot assess the accuracy of this factual material.

Mr G’s statements that Mr A “admitted having smuggled illegal immigrants” and had told him that “on a couple of occasions ... [he] successfully had ... smuggled people to Ashmore Reef and made a lot of money at it” are direct quotes.

The AFP indicates that Mr G confirmed to its investigators that the conversations with Mr A had taken place. The fact that Mr A has since denied that he made the comments does not establish that the statements are inaccurate.

The ABA considers that *Sunday* represented Mr G's viewpoint fairly. Prior to the broadcast of these statements, *Sunday* made it clear that Mr A had been charged with criminal offences as a result of a complaint that Mr G had made to police in Jakarta. *Sunday* let the viewer assess the weight of Mr G's statements in the knowledge that there was a history of acrimony between the two men.

Therefore, the ABA finds no breach of the Code in relation to these statements.

REPORTER: [Mr H] also says that, on another occasion, [Mr A] tried to recruit him into the people-smuggling racket.

[MR H]: He said 'Look, I've got all these contacts. It's very easy to do. There's no risk to it. Especially with all the people that I know and am involved with. We organise funds coming from the people who want to go, purchase a vessel - job done'.

REPORTER: [Mr H], who admits having been in trouble with the law in the past, declined Mr A's offer. And - perhaps foolishly, as things turned out - both men went into business with [Mr A] as their man in Kupang. Very soon things went sour.

[MR G]: We purchased a fishing vessel with unit holders or investors money. That was all to be completely turned into a messy situation where investors were completely robbed.

REPORTER: And you're saying it was [Mr A] that did the robbing?

[MR G]: Absolutely.

REPORTER: [Mr G] and [Mr H] alleged to the Indonesian court that [Mr A's] fraud and theft had destroyed their company's efforts to create a real business and employment for locals in Kupang. [Mr G] claims a \$35,000 haul of fish went rotten because [Mr A] took the generators, that were powering the freezers, off the boat. In mid-1999 [Mr A] was imprisoned here at the Kupang gaol for six months, supposedly while he waited for his trial. But nearly three years later the charges have gone nowhere - and no one here can explain why the case has not had a hearing. Court officials claimed to SUNDAY that no-one could find [Mr A]. [Mr G] and [Mr H] both believe [Mr A's] powerful connections helped the charges go away. [Mr H] recalls that around the time [Mr A] got out of jail in December 1999, [Mr A] openly claimed he was on the Federal Police payroll as an informant on people-smuggling.

Indonesian authorities have told AFP that [Mr A] was in prison , on remand whilst awaiting a court determination that he had a case to answer or otherwise. The court was unable to proceed by the end of the maximum allowed remand period (180 days) and Indonesian law required that he be released.

ABA comments

The licensee submits

... everything it stated in this paragraph is absolutely correct . It fairly and accurately represents what we were told by the Chief Registrar of the Kupang Court in a meeting on 31 January 2002 in Kupang. She wrote out a signed a list of the criminal offences which she assured us were still outstanding against [Mr A]. A copy of this was provided to AFP investigators in March.

It was this same Kupang Court official who told SUNDAY that no-one could find [Mr A] to being the charges against him. SUNDAY asked her to check the Court records to see if there was any indication that the charges laid against [Mr A] had been resolved. She told us it would be normal for some formal finding to be made by the Court to withdraw the charges if the decision had been made not to proceed.

The AFP does not indicate the exact source of its information and it is not clear that the information contradicts the statement made on the *Sunday* program. It appears that the makers of the *Sunday* program took reasonable steps to verify the accuracy of the information before broadcasting the statements. The ABA considers that there has been no breach of the Code in this instance.

REPORTER: Did he ever tell you if the Federal Police were providing him with money to facilitate the intelligence gathering that he was doing?

[MR H]: Yes and in fact I don't hold grudges against people for too long and I associated with him in Kupang while I was there, even after he got out of jail. I lent him a small amount of money because the Federal Police hadn't, he hadn't yet received his income from that source.

REPORTER: So he was talking about money he received from the federal police?

[MR H]: Yes.

REPORTER: Tell us exactly what he said.

[MR H]: Well something to the effect that he was still waiting for his monthly cheque to arrive or whatever.

REPORTER: But the clear understanding that you obtained directly from [Mr A] is that the Federal Police were paying him money?

[MR H]: Absolutely.

REPORTER: There's no doubt in your mind about that.

[MR H]: None whatsoever.

REPORTER: What was that money for?

[MR H]: Well that was for supplying information about vessels of which he knows a lot of vessels in Indonesia. He also knows a lot of the people involved in illegal immigrant smuggling, names, phone numbers, aliases, which phone numbers they use with which alias etc. etc.

[Mr H] has been interviewed by AFP and states that sometime after [Mr A] was released from Kupang prison (December 1999) he had a conversation with [Mr A] in which [Mr A] discussed people smuggling and the potential for them ([Mr H] and [Mr A]) to make some money. [Mr H] says he did not trust [Mr A] and that [Mr A] may have been contemplating setting him up. At a later time [Mr A] told [Mr H] that he was in fact working for the AFP.

[Mr A] denied to AFP that he ever asked or, by implication, suggested to [Mr H] that he get involved in people smuggling. [Mr A] agrees that he did tell [Mr H] that he was in fact working with AFP.

ABA comments

The AFP does not state what was inaccurate or unfair about the broadcast of Mr H's answers to the questions posed by the reporter.

The answers indicate that Mr A told Mr H that he was receiving money from the AFP in return for providing information while Mr A appears to have confirmed to the AFP that he told Mr H that he was working with the AFP.

There does not appear to be any material that indicates that the Code has been breached.

REPORTER: So brazen did [Mr A] become that he told an Australian newspaper late last year that he was an informant for Australian authorities. SUNDAY has now confirmed with senior Federal Police sources that [Mr A] was a paid registered informant until last year. The Director of International Operations for the Federal Police, Dick Moses, was not prepared to comment on [Mr A's] status but he was very clear on what any informant is not allowed to do.

REPORTER: Has the Federal Police ever authorised any informant to involve themselves in people smuggling?

DICK MOSES, DIRECTOR, INTERNATIONAL OPERATIONS, AUSTRALIAN FEDERAL POLICE: That's categorically no. The Australian Federal Police has not

done so.

REPORTER: Has the Australian Federal Police ever authorised any informant to take money off asylum seekers intending to get illegal passage to Australia?

MOSES: My answer to that is categorically no. The Australian Federal Police has never done so.

IMMIGRATION DEPARTMENT IN TIMOR PROVINCE ? SURYA PRANATA ENTERS BUILDING.

REPORTER: Surya Pranata, seen here on the right, is the deputy chief of the Indonesian Immigration Department for Timor Province. He says he personally warned an Australian Embassy official visiting Kupang about 18 months ago that Indonesian Immigration suspected [Mr A] was involved in people-smuggling.

SURYA PRANATA [IN BAHASA]: I informed my colleague in the Immigration Section at the Australian Embassy in Jakarta, Mr [*****] . I told Mr [*****]: 'there is one of your citizens who is behaving strangely. In my opinion he's taking part in smuggling.' But they just took down his name. Colleague [*****] just noted it. But no, basically there wasn't any further reaction. The last I knew he was being used by the Australian Police.

DICK MOSES - FEDERAL POLICE: I would say if it came to our notice that any informant was involved in criminal activity and was playing the other side of the fence, we would certainly sever our relationships and examine the situation.

Until Sunday were duped by their paid 'employees' and aired their 'expose' on television, there had been no substantive information, or allegations from any source suggesting that [Mr A] was 'playing the other side of the fence'.

ABA comments

The AFP appears to object to the broadcast of the statement by Surya Pranata that he informed a colleague in the Immigration section of the Australian Embassy in Jakarta that, in his opinion, Mr A was "taking part in smuggling".

The licensee has pointed out in its letter of 6 December 2003 that "the AFP has admitted under oath that Indonesian authorities notified the AFP that [Mr A] was engaged in people smuggling". The source of this information is page 193 of the transcript of the testimony of AFP Commissioner Keelty at Senate Estimates on 19 February 2002.

The ABA considers that, in the circumstances, it was reasonable for the licensee to broadcast the statements of Surya Pranata and finds no breach of the Code.

REPORTER: Has there, I appreciate you can't talk about [Mr A] specifically, you can't disclose informants. Has there ever been an instance to your knowledge where the Indonesian authorities have warned Australia about a person whom they know to be an informant for Australia being involved in people smuggling?

MOSES: To my knowledge categorically not. That's to my knowledge.

IMMIGRATION OFFICES - PRANATA GOES THROUGH MR A'S FILES.

REPORTER: Surya Pranata has thick files on [Mr A]. In the months after he says he warned Australia, Pranata's intelligence officers made regular reports about [Mr A] meeting known criminals. Increasingly concerned, Pranata made inquiries of his own with asylum-seekers who'd done business with the Australian.

PRANATA [IN BAHASA]: The reason I suspected him was because the illegal immigrants I spoke to often mentioned his name. They said he demands money.

REPORTER: What would be your response if we could show you that one of your informants was organising people smuggling into Australia and taking money for that purpose?

DICK MOSES, FEDERAL POLICE: If you were able to show the Australian federal police that sort of evidence, we would willingly take that on board, we would examine it and investigate it.

REPORTER: So let me be clear about this. When [Mr A], or let's say any federal police informant says to us that he's been involving himself in people smuggling with the authority of the federal police, that's a lie?

MOSES: In relation to any informant, if any informant says that, that is categorically not correct, it's a lie.

Again, *Sunday* are asking these questions in the context of AFP sanctioning [Mr A] committing criminal offences whilst contemporaneously working as an AFP informant. Mr Moses' response is accurate. The AFP investigation has not uncovered any evidence suggesting that [Mr A] was involved in any people smuggling activity contrary to Australian or Indonesian law. Indeed, the AFP investigation has established that *Sunday* were clearly duped by their Indonesian 'employees' and, in attempts to provide corroboration, relied to some degree on interviews conducted with parties with a vested interest in discrediting [Mr A] ([Mr G] and [Mr H].)

ABA comments

The AFP appears to be complaining that these statements unfairly represented the view that the AFP had sanctioned Mr A to commit criminal offences whilst working as an AFP informant.

However, the ABA does not accept that the broadcast presents that view. Rather, the footage contains Surya Pranata's reasons for suspecting Mr A of involvement in criminal activities involving asylum seekers together with the view of Mr Moses that the AFP would not authorise an informant to be involved in people smuggling. It leaves open the possibility that, contrary to Mr Pranata's suspicions, Mr A may not have been involved in people smuggling or that, even if he was, he may not have had the authority of the AFP to do so.

The ABA finds no breach of the Code in relation to these statements.

REPORTER: In his years in Kupang, [Mr A] had cultivated many powerful friends in Government, including officers here in the Polda, the regional Police. The Police Chief, Brigadier General Jackie Uly, told us [Mr A] was also providing the Polda with information.

BRIG-GEN JACKIE ULY, POLDA COMMANDER KUPANG: He always came to our office here, special intelligence office, to give, they extract information from [Mr A], information and our own information and we got a lot of illegal immigrant. We swapped information between [Mr A] and our office.

REPORTER: Have you ever had information presented to you from the illegal immigrants that [Mr A] is involved in people-smuggling?

ULY: No, never got the information regarding that.

REPORTER: But SUNDAY has learned that hard evidence of [Mr A's] complicity in people-smuggling was in fact provided to officers in the Polda Police intelligence section in Kupang early last year. Fed up with their warnings about [Mr A] being ignored, Indonesian Immigration obtained this formal statement from six Afghans who'd paid money to [Mr A] in February last year. The Afghans testified that [Mr A] had taken about 2000 Australian dollars from them to introduce them to a "Ka-chuck-chi" their word for a people-smuggler.

Both [Mr A] and his POLDA controllers have been interviewed by AFP regarding the so-called Afghan's statement and confirm that a transaction of that nature did take place albeit that the money was not handed to [Mr A] by the Afghans but indirectly through a 3rd party. Nevertheless the transaction was undertaken with the full knowledge of POLDA and in conjunction with [Mr A's] role as a POLDA informant and during what was effectively a controlled

POLDA operation. That the above was in fact part of a POLDA controlled operation was corroborated by IOM in Kupang who had been briefed in advance.

ABA comments

The AFP does not dispute that Mr A took money from Afghan asylum seekers by posing as a people-smuggler. However, it asserts that the money did not go directly to Mr A but went indirectly through a third party.

In the ABA's view the broadcast did not contain the statement that the money had been paid directly to Mr A and it is sufficient, for the purposes of accuracy under the Code, that the money reached Mr A, whether through a third party or not.

The AFP appears to dispute that the statement obtained from the Afghans who paid money to Mr A constituted "hard evidence of [Mr A's] complicity in people smuggling". The basis for the AFP's objection appears to be that the transaction was undertaken with the full knowledge of POLDA and in conjunction with [Mr A's] role as a POLDA informant".

This information seems to have come to light well after the broadcast, during the AFP's interviews with Mr A and his "POLDA controllers". It is not information that appears to have been available to *Sunday* at the time that the program went to air on 17 February 2002. At that time, *Sunday* was in possession of the somewhat conflicting statements of Mr Uly and Mr Pranata. In the ABA's view, it was not a breach of the Code to broadcast the differing views.

GRAPHIC OF STATEMENT reads: -To chief of Immigration Officer and to Chief of Police- [Mr A] has taken our 10 million rupees for this reason that help us to bring [Mr M]¹⁹. But he didn't bring him, yet now we want our money.'

REPORTER: Is it possible that [Mr A] has been playing a double-game with you and the Australians?

JACKIE ULY - INDONESIAN POLDA POLICE: In my opinion. In my personal opinion, it can be happening if [Mr A] playing with double, double cover, something like that.

Brig-Gen Jackie Uly has been interviewed by AFP. His response to *Sunday* to the effect that [Mr A] could be working for both sides was made in the context that anything is possible. ULY is particularly upset and embarrassed that the

¹⁹ Mr M's name has been deleted from the investigation report.

interview he gave [to the reporter] was selectively reported in that he went to great lengths to advise [the reporter] that [Mr A] was providing valuable intelligence to his officers and that his officers were in turn cooperating with AFP in terms of related intelligence exchange.

ULY is adamant that [Mr A] was not otherwise involved in people smuggling activities.

ULY is particularly embarrassed in that he gave that interview after accepting, on face value, [the reporter's] undertaking that he had the authority of the Australian Embassy and the AFP to undertake the interview. (Sunday have since declined to assist AFP further and we have not been able to put questions to them re the process leading up to ULY agreeing to be interviewed.)

ABA comments

The AFP's complaint appears to be that Mr Uly's comment was selectively reported and presented as an admission that Mr A was involved in people-smuggling.

The licensee stated that "the Brigadier-General very clearly expressed his view that it was a possibility that [Mr A] was playing a 'double-game' and our use of his view was completely in context".

The ABA has no evidence that Mr Uly's comment was selectively reported and considers that it was presented fairly as his personal opinion that there was a possibility that Mr A could have been involved in people-smuggling.

The licensee denies the AFP assertion that the reporter represented to the INP chief that he had the authority of the Australian Embassy and the AFP to undertake the interview. According to the licensee, such a representation "was not made, either orally or in writing to INP. Nor could have been inferred from anything that [the reporter] said to the INP".

Further, the licensee states that "the AFP was advised that SUNDAY would answer their questions if they gave us an indication in writing of exactly what it was that it wanted to put to SUNDAY".

The ABA considers that the licensee did not act unfairly in broadcasting Mr Uly's statement.

REPORTER: Kupang is a dangerous town for any law enforcement officer who cracks down on people-smugglers. The deputy Immigration chief Surya Pranata took us to his private home to show us where a bomb went off in the middle of the night in September 2000.

PRANATA SHOWS THE REPORTER THE BOMB DAMAGE OUTSIDE HIS HOUSE.

REPORTER: You heard a big bomb, a big bang?

PRANATA: Yeah a big bang. I'm very survived?.

REPORTER: The day before, Pranata had publicly declared his intention in the media to go to nearby Sabu island to stop a people-smuggling boat leaving for Australia. Hours later, the bomb went off only metres from his wife and children sleeping inside.

REPORTER: Do you think the intention was to scare you, to frighten you?

PRANATA: Yeah, I think the syndicates maybe the bomb for me and my family. They don't want me to care about catch for the people smugglers.

REPORTER: This is [Mr A's] house in Kupang. In July last year, the Polres - the city Police in Kupang - wrote this confidential intelligence report detailing how [Mr A] had taken 29 middle eastern illegal immigrants from the ferry terminal to his home. The Polres police officer was in no doubt that [Mr A] was intent on smuggling them to Australia.

GRAPHIC OF POLRES POLICE DOCUMENT ON [MR A] reads: -[Mr A] is the Australian citizen who is the mastermind of the illegal immigrant smuggling from the Middle East to Australia?'

Kupang Police Chief Brig-Gen Jackie ULY advises that that document is a formal Information Report submitted by one of his officers from the local city police jurisdiction. Officers from that jurisdiction were not aware of [Mr A's] status as a POLDA informant no that the issue of 29 asylum seekers being housed in [Mr A's] residence was part of a formal interdiction operation. ULY is happy that Information Reports of that nature were submitted as it shows him that [Mr A's] cover had not been blown.

ABA comments

The AFP does not seem to raise any issue as to the inaccuracy of the contents of the Polres Police document. In the ABA's view, the broadcast of the contents of the document appears to be a fair representation of the views of the author of the document.

REPORTER: Immigration officer Pranata raided the house with his men, and interviewed the 29 foreigners. [Mr A] tried to claim the whole thing was a Polda - regional Police - operation.

PRANATA: I check one by one. I open all, immigrants still asleep in the house of [Mr A]. Full of people. I ask 'who are you - are you registered?' He is angry with me. Say 'this is police, this is police activity. Police operation.' I don't care. I must check one by one. And then I ask 'how much you pay?' 'Yes I pay. My wallet in [Mr A], they take.' Why this police operation, they take wallet. They take money?

REPORTER: It does not make any sense does it that, if it was a Police operation?

PRANATA: Ya.

REPORTER: Why would he take money?

PRANATA: Yaaa

REPORTER: Polda Police officers did arrive four hours later, claiming it was a Police operation. But Immigration wasn't buying it. They finally had their excuse to get rid of him. This order for [Mr A's] deportation out of Indonesia was signed a few weeks later in August last year. That should have been the end of the matter. But it wasn't. An officer from Australia's Federal Police in Jakarta rang, demanding to know why [Mr A] was being deported.

PRANATA: One of the officers in the Australian Embassy phoned me. He asked me 'Mr Surya, is [Mr A] to be deported?' 'Yes' I said. 'Why is he being deported?' 'Because he's broken the rules. We also know he is suspected to be a member of an illegal syndicate.'

Surya Pranata has been interviewed by the AFP. He is now based in Jakarta. Pranata states that he had no evidence of [Mr A's] involvement in organising the transport of asylum seekers to Australia. He states that he was aware that [Mr A] was associating with smugglers and asylum seekers and formed a suspicion that [Mr A] may have been involved.

ABA comments

In the program, Mr Pranata explains what happened during the raid of Mr A's house and how it contributed to him forming a suspicion that Mr A may have been involved in people smuggling, leading to the signing of a deportation order. The AFP does not dispute that the events related by Mr Pranata took place but disputes that they were evidence of Mr A being involved in people smuggling. The AFP was given an adequate opportunity to put forward its views during the program. In the opinion of the ABA, there is no basis for a finding of inaccuracy or unfairness in relation to the broadcast of Mr Pranata's statements.

REPORTER: By this stage, in September last year, SUNDAY was secretly watching on as [Mr A] met his Polda Police friends before leaving the country for East Timor. We knew we could prove he'd taken money off desperate asylum seekers with the promise of illegal passage to Australia. But, unlikely as it seemed, we couldn't rule out the possibility that he truly was acting with the authority of Australia's Federal Police - in Australia's best interests. In Part Two of our investigation we'll detail the evidence which shows that this man was conning Australia's top crime fighting force - how Australian taxpayers actually funded a people-smuggler.

PART TWO

REPORTER: September last year. We've followed [Mr A] on the eight hour drive across the border from West Timor to East Timor. He's just been deported by Indonesian authorities and is now setting up his base in Dili. Is he the honourable spy for Australia that he claims to be, or the double-dealing crook that we suspect he is? We put [Mr A] to the test.

[Mr A] was never deported . He left voluntarily prior to any deportation notice taking effect. At Indonesian law, he was free to return and/ or remain in Indonesia until a formal 'blacklist' took effect in May 2002.

ABA comments

The AFP disputes the accuracy of the statement that Mr A was deported from Indonesia indicating that he had left voluntarily before a formal 'blacklist' came into effect. The AFP does not indicate the source of this information. In contrast, the licensee asserts that "the allegation that [Mr A] was deported was made to SUNDAY by the two Indonesian Immigration officers who personally supervised his deportation".

In addition, the program contained the following statement by Mr Pranata:

PRANATA: one of the officers in the Australian Embassy phoned me. He asked me 'Mr Surya, is [Mr A] to be deported?' 'Yes' I said.

The issue for the ABA is whether the licensee could reasonably rely on the accuracy of the information when the program was made or went to air. Aside from the AFP's assertion, there is no material before the ABA that indicates that the licensee should have questioned the accuracy of the statement. The ABA finds no breach of the Code in this instance.

[MR E]: AN INDONESIAN GO-BETWEEN FOR SUNDAY, ON THE PHONE TO [MR A] IN BAHASA: Hello Boss...

[MR A]: Yeah, how're things

[MR E]: How're you?

[MR A]: Good, Good.

REPORTER: Over several years, Kupang local [Mr E] has been a spotter for [Mr A]. People-smuggling is a competitive business. [Mr A] promised [Mr E] \$200 a time for every person he sends to the Australian's syndicate. But now [Mr E's] helping us because, like many people in Kupang, he's still waiting for [Mr A] to pay him much of his money.

[MR E]: Ah, I've seen the five people. I've seen the five men boss.

[MR A]: Are they there now?

[MR E]: Yes, I've seen them already. They say \$3,000, no problem.

REPORTER: [Mr A] has taken the bait. They agree to meet at a Dili night spot to discuss how much to charge five middle-eastern men. [Mr A] has been told they want illegal passage from Kupang to Australia.

As discussed earlier, [Mr E] had conned [producer's name] into believing that he did in fact have 5 potential asylum seekers seeking passage to Australia. [Mr E] now admits to AFP investigators that he fabricated that story to convince [producer's name] that he was capable of coming up with evidence of [Mr A's] involvement in people smuggling. [Mr A] in turn presumed that [Mr E] had 5 asylum seekers and on that basis continued to act out his role as a 'people smuggler'. Had [Mr E's] claim materialised, [Mr A] would have dealt with that issue, in his role as a POLDA informant, as he had done on previous occasions.

ABA comments

This issue has been examined above. The licensee has said:

 this was not a situation where [Mr E] was conning [producer's name]. SUNDAY conceived the scenario of the five fictitious refugees to see if [Mr A] would take their money bait.

The ABA accepts that the *Sunday* program set out to entrap Mr A into making admissions by paying Mr E to impersonate a person who had 5 asylum seekers wishing to travel to Australia. While the relationship between *Sunday* and Mr E could have been explained in more detail, the ABA does not consider that there is any inaccuracy in *Sunday* broadcasting the conversation between Mr E and Mr A.

The AFP appears to be concerned that the broadcast of the conversation misrepresents the underlying situation. However, the AFP was interviewed in respect of the program and given an adequate opportunity to present their view.

The ABA finds that the statement does not raise any breach of the Code.

HIDDEN FOOTAGE: MEETING [MR A] IN DILI RESTAURANT [IN BAHASA].

[MR A]: If you can get 3,000, 5,000 each, take it. Anything more is up to you. Give my man 2,000. Get the money when the people come in the boat.

REPORTER: A Dili breakfast bar, two days later. Our concern at this stage of our investigation is that [Mr A] might be running some elaborate sting that is truly part of his informant status. He's certainly nervous this conversation not be overheard.

HIDDEN FOOTAGE: MEETING [MR A] IN ANOTHER DILI BAR [IN BAHASA].

[MR E]: Make sure the boat is good? a big boat or small?

[MR A]: [Holds up his hand to quieten [Mr E] and grimaces in alarm]

[MR E]: I'm sorry, I'm sorry.

REPORTER: And rather than keep his Federal Police informant status secret, [Mr A] boasts it gives him a competitive advantage because he knows the location of the three Australian Navy boats off the Indonesian coast.

[MR E]: Boss, before you said to me. Same. It's difficult. Three boats stand by there. Navy boats. So maybe they still stand by?

[MR A]: But it doesn't matter. I know all their ships.

[MR E]: Oh you have the place ? good!

[MR A]: I know their plan. I contact them directly and tell them. We cooperate. The Australian Navy contacts me and asks where should they patrol. I tell them where to patrol and catch them.

As discussed earlier, the Australian Navy issue was concocted by [Mr A] as part of his cover story designed to instill confidence in the minds of asylum seekers that he could deliver.

ABA comments

The AFP appears to be objecting to the presentation of Mr A's statements as truth when they were a concoction.

The licensee has stated that the material:

... is persuasive to the allegation made by many refugees that [Mr A] was representing himself (falsely) as an Australian Police officer.

However, the ABA notes that the transcript does not indicate that Mr A called himself a police officer. Rather, Mr A says that he contacts the Australian Navy and they contact him.

The reporter suggests that Mr A could not have been involved in a "sting" that was part of his informant status because he openly declared that he had links to the Australian Navy. In the ABA's opinion, it was reasonable for the reporter to present this view. The ABA notes that both Mr A and the AFP were later given an opportunity to present their point of view on the program. The ABA finds no breach of the Code.

[MR E]: Ah, that's the way it is! Good! It means we'll get through all the way this time. It's like that? Good! It means you can organise everything good and safe because

you know all the positions, where the safe places are.

REPORTER: [Mr A] then admits what we've long suspected, that customers who won't pay [Mr A's] syndicate to get them to Australia are the very ones that he shops to his Australian Federal Police pay-masters.

[MR A]: [Mr E], don't waste your time. If they don't believe, it's up to them. Don't discuss it. Just say 'if you don't believe go and find another one'. Then you contact me and I'll have them arrested.

REPORTER: It was time for SUNDAY to pay [Mr A] a visit.

REPORTER WALKS INTO MR A'S OFFICE IN DILI.

REPORTER: [Mr A]? I'm [reporter's name] from Australian television, Channel Nine. We'd like to do an interview with you to talk about your role in people smuggling.

[MR A]: Well you'd better turn the camera off. You'd better turn the camera off just now.

REPORTER: Do you deny that you're a people smuggler?

[MR A]: Am I a people smuggler?

REPORTER: Do you deny that you're known to the West Timorese Police as a people smuggler?

[MR A]: Yes I definitely deny that I am.

REPORTER: Can I put this to you - do you deny that you have ever had a role in people smuggling?

[MR A]: No I don't deny that I've ever had a role in people smuggling but I deny that I'm a people smuggler.

REPORTER: That's what [Mr A] says when he knows the cameras are rolling but the story changes when he believes we've stopped filming.

[Mr A] presumed (somewhat naively) that Sunday had in fact turned off their camera/audio recording.

ABA comments

The AFP has not identified what it objects to in relation to the hidden camera footage. The ABA presumes that the AFP considers that it was unfair for *Sunday* to film Mr A without his knowledge and then to broadcast that footage.

Indeed, the reporter admits that Mr A was unaware that *Sunday* was continuing to film him.

The licensee made the following comments:

SUNDAY made no representations to [Mr A] that all its cameras and recording equipment were turned off. He merely assumed it. If he had asked us directly to turn off all recording equipment then we would have done so.

The decision to use hidden camera and audio equipment on [Mr A] was not made lightly. We believe that since our story has now led to the revelations that [Mr A] was part of a much wider covert people-smuggling disruption operation inside Indonesia our original judgment that the significance of the allegations against him warranted such intrusion ...”

The ABA does not approve of the practice of tricking interviewees into believing that they are not being filmed. Such practices are an invasion of privacy and may amount to a breach of clause 4.3.5 of the Code unless there is “an identifiable public interest reason for the material to be broadcast.” In the circumstances of this case, the ABA accepts that there was a public interest in broadcasting the material.

[MR A]: I've been working for the Australian Federal Police

REPORTER: And you've also been doing a bit of work on the side yourself?

[MR A]: And for what?

REPORTER: Been doing a bit of work for yourself ? Profiting from people smuggling?

[MR A]: Oh God, not at all.

REPORTER: And do you think you can put us on to people in the Federal Police in Australia who can confirm your story?

[MR A]: Yes, I am sure. Not in Australia, in Jakarta. To the Federal Police in the Australian Embassy.

REPORTER: And do they know you're actively involved in people smuggling operations?

[MR A]: Yes, yes, yes, they know.

REPORTER TO DICK MOSES: Has the Australian Federal Police ever allowed an informant to represent themselves as a Federal Police Officer and seek money from asylum seekers?

DICK MOSES, DIRECTOR - INTERNATIONAL OPERATIONS - AUSTRALIAN FEDERAL POLICE: That's categorically no.

REPORTER'S INTERVIEW WITH [MR A] IN HIS DILI OFFICE, CONTINUED.

REPORTER: We have current evidence of you organising and people who are prepared to testify of you accepting money from refugees or intending refugees. So this is something that you have to think about, as to whether you've told your Federal Police handlers?

[MR A]: Oh everything. They know totally everything.

REPORTER: So do they know?

[MR A]: Totally everything

REPORTER: So they've turned you basically?

[MR A]: What?

REPORTER: They've turned you.

[MR A]: Huh

REPORTER: You were a people smuggler and they've turned you?

[MR A]: Look stop talking shit with me. I was never ever a **** people smuggler okay.

REPORTER: Well I just think we need to test your story.

[MR A]: Okay you can ***** need to test. We can put this straight to the Australian Federal Police that know ***** everything. Okay

REPORTER: Right.

[MR A]: Don't come with a ***** smartass smirk with me man.

REPORTER: I'm not?

[MR A]: I'm the **** ***** that get in the *****, that get into the bloody, down in the shit and ***** try to fix our country, man. And you ***** deadshits come

along with a smirk like that. I'm the **** that gets in the ***** place, that gets put in there.

REPORTER: Let's, let's test your story [Mr A].

REPORTER: We knew there were boat-crews here in Kupang who had worked for [Mr A]. We hired two Indonesian locals to work for SUNDAY as go-betweens - telling them to pose as people-smugglers wanting information on how to get into Australia undetected. In front of our hidden camera, in great detail, this boat Captain – [Mr C] - drew on this map the route that he'd taken to Australian on the instructions of [Mr A] - whom he calls '[Mr A1]'.

HIDDEN FOOTAGE [MR C] LOOKING AT NAUTICAL MAP.

[MR C]: [Mr A1] gave me one like this.

[Mr C], whose true name is [Mr C1], was the second of two players (the other was '[Mr B]' discussed earlier) recruited by [Mr F] and [Mr E] to act out the role of SIEV captain purporting to have sailed 2 SIEV's to Australia on behalf of [Mr A]. [Mr F] and [Mr E] coached him in what to say and pre-warned him that he would be talking on hidden camera. [Mr C1] was the first witness to be interviewed by AFP investigators and, when questioned on his sailing/navigation skills (of which he had none), realised he could not continue with the story he had effectively acted out for *Sunday*. He agreed to cooperate fully and provided a detailed and signed statement outlining his recruitment by the *Sunday* 'employees' [Mr F] and [Mr E] for the purpose of concocting the allegations against [Mr A].

ABA comments

The AFP objects to the broadcast of the statements of Mr C. This objection is similar to the AFP's previous comments regarding the broadcast of the statements of Mr B.

In response to the AFP's comment, the licensee states:

SUNDAY prominently and promptly retracted this allegation and continues to do so in successive broadcasts. We are happy to acknowledge, as we have done, that we accept we can no longer sustain this allegation.

As previously stated, the ABA considers that, given the nature of the statement and the circumstances in which it was provided, *Sunday* should have been more careful to check the accuracy of the statements of Mr C before they were broadcast.

Consequently, in the main body of the report (p 9), the ABA has found a breach in respect of the allegation that Mr A landed illegal immigrants on the Australian mainland.

[MR D]: This is the one that was given by [Mr A1].

[Mr D] is another of the 4 'actors' recruited by [Mr F] and [Mr E]. His role was to purport to be an engineer on the SIEV's 'captained' by [Mr C]. He too has provided a detailed and signed statement admitting his role in the fabrication.

ABA comments

The AFP appears to object to the broadcast of the statements of Mr D. This objection is similar to the AFP's previous comments regarding the broadcast of the statements of Mr B and Mr C.

In response to the AFP's comment, the licensee states, "SUNDAY prominently and promptly retracted this allegation and continues to do so in successive broadcasts. We are happy to acknowledge, as we have done, that we accept we can no longer sustain this allegation".

As previously explained, the ABA considers that, given the nature of the statement and the circumstances in which it was provided, *Sunday* should have been more careful to check the accuracy of the statements of Mr D before they were broadcast. Consequently, in the main report (p 9) the ABA has found a breach in respect of the allegation that Mr A landed asylum-seekers on the Australian mainland.

[MR C]: This is Kupang. This is Kupang. We were taught by [Mr A1] 'when you depart and arrive here you set the compass at 142 degrees'.

REPORTER: Perhaps the most disturbing admission these men make is that in July or August of 1997 they dropped 26 illegal immigrants on the Australian mainland undetected. They say [Mr A] had assured them they would not be caught because he claimed even back then to be working for the Federal Police.

[MR C]: He guaranteed our safety and said 'you won't get caught'. I mulled it over, firstly because of the money and secondly because he really assured us that he worked with the Australian Police.

INDONESIAN GO-BETWEEN: Is that what he said about a guarantee?

[MR C]: He said that you don't have to worry. What is important is that you just follow this route and you'll arrive there safely. In case we were caught by the other side he then gave me a phone number. I forget now where I put it. But he told me if I got caught to immediately contact him and we could come back safely. Even if we

were caught we'd still escape. He guaranteed it 100 percent.

REPORTER: They claim [Mr A] took 5,000 US dollars a person ? If they were carrying 26 people, that's about a quarter of a million Australian dollars for that one voyage. Their second trip for [Mr A], they claim, was in the year 2000 - with 48 passengers, an extraordinary number of people to have slipped into Australia undetected. But someone knew they were coming. This time, a vehicle was waiting to pick people up:

[MR C]: On the second time, I was really frightened. When I arrived there was a car and I was scared half to death. But the car was only picking people up apparently.

REPORTER: These men say [Mr A] admitted he had organised other illegal voyages.

[MR C]: He persuaded me by saying 'you are not the first one. I'm hiring you because?'

INDONESIAN GO-BETWEEN: He had repeatedly sent people?

[MR C]: Yes. He said he'd repeatedly sent people to Australia. Yes. He guaranteed my safety. He said 'I help a lot of crews and they become rich because of the money I give them'.

HIDDEN FOOTAGE OF DIFFERENT BOATCREW IN KUPANG.

[MR B]: We didn't wait around. It was a 'dump and run' operation.

REPORTER: Another Indonesian crew from a completely different boat told our go-betweens of even more illegal [Mr A] voyages. One in February 1997 with 17 illegal immigrants. A second in April 1997 with 25 people. A well-known [Mr A] henchman called [Mr L] had ordered them to keep the Australian's involvement quiet if they were caught.

[MR B]: [Mr L's] order was that if you were caught in Australia never ever mention the name of the agent who'd organised sending people there. That's never to be mentioned. He promised if you can keep your mouth shut you'd get a bonus when you got back.

INDONESIAN GO-BETWEEN: Did he really say that?

[MR B]: Yes.

INDONESIAN GO-BETWEEN: During the three trips to Australia with the immigrants, how many times did you meet [Mr A1]?

[MR B]: Only once. At night on the second trip while embarking at Airchina.

INDONESIAN GO-BETWEEN: What did [Mr A1] say?

[MR B]: [Mr A1] said 'if you're successful I'll give you a bonus when you get back'.

REPORTER: This captain had been given a different route by [Mr A]. He drew a spot on our map around Cape Leveque near Broome.

[MR B]: When we disembarked the people, we didn't hang around too long. We moved out immediately.

INDONESIAN GO-BETWEEN: Was it day or night?

[MR B]: Night

REPORTER: All the crews who admitted having worked for [Mr A] are simple fishermen, desperate for money. All of them told the same story of how [Mr A] had demanded they take their radios out of their boats for the voyage.

MR C: [Mr A1] would not allow us to contact anybody during the whole trip. It wasn't permitted. We were not allowed to have a radio.

REPORTER: It was one way of ensuring radio silence but it was surely a recklessly dangerous demand to make on any vessel travelling the Timor Sea.

REPORTER TO DICK MOSES, DIRECTOR, INTERNATIONAL OPERATIONS, AUSTRALIAN FEDERAL POLICE: Have you ever had any suspicion that any of your informants in Indonesia on people smuggling are feeding you information so that they can get their own illegal vessels through to Australia?

MOSES: No I've had no reason to believe that's the case with any informant.

REPORTER: But you can't rule it out can you?

MOSES: It is a potential, there is a potential yes as I said. We are dealing with people, these sort of people that are passing criminal intelligence who are involved or associated with criminal activity or are involved in criminal activity, that's the nature of the beast, but we have to be very alert to this situation and monitor it and put fences around it.

REPORTER: [Mr C] gave a detailed description of the place where he claimed to have landed people.

[Mr C]: You get there, there's a kind of strait. You enter. Then there is white sand.

INDONESIAN GO-BETWEEN: There is white sand, what else?

[MR D]: Mangroves, mangroves.

[MR C]: Around there was some kind of oil tank and a building. About the beach, have you been to Lesiana or not? It is just like that.

REPORTER: This is Lesiana Beach in West Timor - the beach that [Mr C] says is similar to the one in Northern Australia on which he says he was ordered by [Mr A] to drop his cargo of illegal immigrants. We decided one way of corroborating the captain's claims that he successfully dropped people off in Northern Australia without being detected was to see if on the specific bearing point of 142 degrees whether there was a beach in Northern Australia, similar to this one with some kind of building with a tank beside it and a road behind as he describes.

‘[Mr C]’ was coached by Sunday ‘employee’ [Mr F] on the compass bearing he was to purport to have followed when landing asylum seekers on the West Australian coast.

ABA comments

The AFP objects to the broadcast of these further statements of Mr C. This complaint is similar to previous objections. In relation to this complaint, the licensee states:

SUNDAY prominently and promptly retracted this allegation and continues to do so in successive broadcasts. We are happy to acknowledge, as we have done, that we accept we can no longer sustain this allegation.

The ABA considers that, given the nature of the statement and the circumstances in which it was provided, *Sunday* should have been more careful to check the accuracy of the statements of Mr C before they were broadcast. Consequently, in the main report (p 9) the ABA has found a breach in respect of the allegation that Mr A landed asylum-seekers on the Australian mainland.

REPORTER: The Kimberley range at the top of Western Australia is one of the most isolated places in the country. Along the coast there are only a few roads with the vehicle access described by the Indonesian crew we'd secretly taped in Kupang. We'd made sure the map we asked the Indonesians to draw their landing spot on did not show roads. But, intriguingly, the two spots the two crews described were two of just three places in the Kimberley where there is road access from the coast?Cape Leveque, near Broome. And Cape Londonderry, near the Aboriginal Mission at Kalumburu. Somewhere around here was where [Mr C] gave such a detailed description of the beach where he'd landed people. The chairman of the Kalumburu Aboriginal Mission, Les French, was very happy to show us around his beautiful part of Australia. And he took us to one beach that sounded familiar.

REPORTER: Well, West Timor's that way. Here we are in the Kimberley's in Northern Australia. And if you were to draw a straight line on the compass bearing

given by [Mr C] in Kupang, this is almost exactly where you'd end up. It's called Honeymoon Beach. And, just as the Indonesian captain said, it is very similar to Lesiana in West Timor. Lesiana has the same shape, mangroves, and cliff-tops. And over here at Honeymoon, there is good road access. You could easily get a truck or car in here during the dry season when the road is graded. The sea was too rough to take a boat out but Les French told us that his house and especially this large water tank are easily identifiable landmarks for boats off the coast.

REPORTER: When you're out at sea, do you see a house with a tank?

LES FRENCH: Yeah, when I'm out there about probably five or six kilometres you can see the house and the tank at the background, the black tank. It's about forty foot high.

REPORTER: Les French told us that 3,000 people visit this remote beach every year. The main highway to Broome and Darwin is only six hours down the track. But it would have required a carefully planned operation to pick up a large number of illegal immigrants. Just dumping them on a beach would have attracted too much local attention.

REPORTER TO DICK MOSES: You see there is a nightmare scenario that comes out of this story for us that one of your own informants paid for by the Australian tax payer was in fact a people smuggler. Can you conceive of a worse scenario for the Australian federal police?

MOSES: If that is the case I would welcome the evidence to come forward and the Australian federal police would examine it.

REPORTER: But I mean the ramifications of it are that the Australian tax payers were funding a people smuggler.

MOSES: Look I think, let me say at this time that I have not seen such evidence and we would be, we would welcome such evidence coming forward so that we could look at it and examine it.

REPORTER: Surabaya, Indonesia. We're in millionaires row, the rich part of town. Where lawns are hand trimmed and private security keeps out the riff-raff. This is where [Mr A] now lives. We're assured by Indonesian Immigration that he's been formally deported from Indonesia. They even told us they wanted to know where he is so that they could arrest him. And yet, here in Surabaya, as we watched on late last month, [Mr A] was clearly very friendly with a visiting Indonesian Police officer. Just how Australian and Indonesian Police ever allowed themselves to be hoodwinked by [Mr A] is anyone's guess. But as Australian taxpayers possibly paid for part of this house, we thought it only right to ask him one final question:

[Mr A] has never been deported and at the time was living lawfully in Surabaya.

[Mr A] had, and continues to have, an ongoing relationship with Indonesian Police in the capacity of informant/controller.

That [Mr A] was living in a salubrious part of Surabaya was co-incidence. The house he was living in is leased by [Mr A's] Darwin based employer. [Mr A] was occupying same at no cost to him.

ABA comments

The AFP objects to the statement that Mr A had been “deported”. In response, the licensee states that “Indonesian Immigration advised that [Mr A] was the subject of a deportation order”.

A similar complaint is examined on p 42.

As mentioned, the issue for the ABA is whether the licensee could reasonably rely on the accuracy of the statement when the program was made or went to air. Aside from the AFP’s assertion, there is no material before the ABA that indicates that the licensee should have questioned the accuracy of the statement.

The AFP has underlined the statement that Mr A was “clearly very friendly with a visiting Indonesian police officer”. By explaining the basis for the relationship, the AFP does not contradict the statement. Similarly, the AFP does not contradict the assertion that Mr A lives in the “rich part” of Surabaya although it gives an explanation of how he has come to live there.

Rather, the AFP appears to be objecting to the way that the factual material was presented, in particular, the suggestions that the AFP and Indonesian police have been “hoodwinked” by Mr A and that Mr A may have benefited financially from this.

Sunday’s view that Mr A “hoodwinked” the AFP and the Indonesian police appears to be based on the factual material that was broadcast on the 17 February 2002 and 24 February 2002. Some of this material, such as the interviews with Mr B, Mr D and Mr C and the assertion that Mr A landed asylum seekers on the Australian mainland, has proved to be unreliable.

The ABA has considered whether, on 17 February 2002, *Sunday* was in possession of reliable material that supported the view that Mr A “hoodwinked” or deceived the AFP and the Indonesian Police. At the relevant time, *Sunday* had on tape statements by former business associates of Mr A, Mr G and Mr H, that suggested that Mr A had been involved in people smuggling in 1998/1999. *Sunday* also had statements by Mr Pranata of Indonesian Immigration that indicated that Mr A had taken money from asylum seekers and a Polres document that stated that Mr A was a “mastermind” of illegal immigrant smuggling. In addition, *Sunday* had footage of Mr A agreeing to arrange passage to Australia in return for money and implying that he could control where the Australian Navy patrolled.

Sunday also had footage of Mr Moses, Director of International Operations for the AFP, denying that the AFP had ever authorised any informant to take money off asylum seekers intending to get illegal passage to Australia and from Brigadier-General Uly, stating that he had never had information presented to him from illegal immigrants that Mr A was involved in people-smuggling.

In the ABA's opinion, it was open to *Sunday* to present the view that the AFP and the Indonesian Police may have been deceived by Mr A. The ABA notes that Mr Moses and Mr Uly were given an opportunity to comment on whether this was a likely scenario. The ABA has no evidence that *Sunday* unfairly represented the viewpoints of Mr Moses and Mr Uly.

The AFP does not indicate the source of its information regarding Mr A's living arrangements. The licensee states that "SUNDAY's speculation that [Mr A's] house was possibly funded by the Australian taxpayer was exactly that: speculation. It was not asserted as a fact".

There is no evidence before the ABA that *Sunday* should have been aware that Mr A was living rent-free in the house. The ABA considers that, at the time that the program was broadcast, it was not unfair for *Sunday*, to present the viewpoint that taxpayer funds paid to Mr A by the AFP may have been used to pay for the accommodation.

[Mr A's] HOUSEKEEPER OPENS DOOR.

REPORTER: Hello I am looking for [Mr A]. Hello looking for [Mr A], can you explain to him we have a question for him. Tell him that we want to know did the Australian and Indonesian Police know that he really was a people-smuggler?

[Mr A]: No comments [reporter's name], turn the camera off and we'll have a chat.

[MR A] SLAMS THE DOOR.

Important Note: The transcript of this story contains an allegation that [Mr A] successfully landed asylum seekers on the Australian mainland undetected. *Sunday* now believes that some of the information upon which this claim was based is false, and we can no longer sustain this allegation. For further developments in this story, [click here](#).

ENDS.

APPENDIX B

Transcript of the *Sunday* program broadcast on 24 February 2002

JIM WALEY

Struggles with the truth have not been confined to the children overboard scandal. Last Sunday we revealed that an Australian was smuggling asylum seekers out of Indonesia for a price while at the same time acting as an informant for the Australian Federal Police. In that story, a senior member of the AFP categorically denied that any informant had been authorised to engaged in people smuggling. Two days later at the Senate Estimates Hearing the AFP Commissioner admitted under oath that the Federal Police knew full well what [Mr A] was doing and it had paid [Mr A] \$25,000 while he was breaking Australian Law. [Reporter's name] reports now on how the AFP is attempting to justify this deceit.

UNIDENTIFIED MALE 1

We've launched an investigation as a result of the Sunday program as I mentioned before.

UNIDENTIFIED MALE 2

Yes.

UNIDENTIFIED MALE 1

I wouldn't like to disclose the progress of that.

REPORTER

Did the Australian Federal Police mislead a parliamentary committee? Last week the Federal Police categorically denied that any informant had been authorised to engage in people smuggling. This week, under oath Federal Police Commission Mick Keelty admitted that the AFP knew full well that their informant [Mr A] was engaged in people smuggling.

[MR A]

That I've been working with the Australian Federal Police.

UNIDENTIFIED MALE

You've also been doing a bit of work on the side yourself?

[MR A]

And for what?

REPORTER

Last week Sunday showed how Australian authorities thought [Mr A] was working for us as a spy inside the Indonesian based people smuggling syndicates.

UNIDENTIFIED MALE

Do you think you could put on to people in Federal Police in Australia who can confirm your story?

[MR A]

Yes, for sure.

REPORTER

Sunday revealed [Mr A] for what he truly is. After months of investigation we proved he is in fact a crook.

UNIDENTIFIED MALE

This is something that you have to think about is whether you've told your Federal Police.

[MR A]

That's everything, they know totally everything.

UNIDENTIFIED MALE

So do they know - - -

[MR A]

Totally everything.

UNIDENTIFIED MALE

So they've turned you basically?

[MR A]

What?

UNIDENTIFIED MALE

They've turned you, you were a people smuggler and they've turned you.

[MR A]

Stop talking shit with me. I was never, ever a (indistinct) people smuggler,
Okay?

UNIDENTIFIED MALE

I just think we need to test your story.

[MR A]

Okay, you don't (indistinct) need to test. We could put this straight to the
Australian Federal Police (indistinct) that know everything. Okay?

REPORTER

[Mr A] betrayed the Australian authorities he was paid to serve and operating out of Kupang in West Timor he stole off many asylum seekers who dealt with him.

Here in Kupang the locals will tell of [Mr A's] active role at encouraging and organising people smuggling into Australia. He was no passive player as he suggests. It was [Mr A] whose men touted for business here at the ferry wharf. It was [Mr A] who took money off asylum seekers desperate enough to attempt the voyage to Australia and it was [Mr A] who used his police informant status as a boast luring Indonesian crewman into people smuggling with the assurance that they wouldn't be caught because he was the one who told the Australian Navy where to look.

Our hidden camera caught [Mr A] boasting how he duped his Federal Police paymasters by feeding them information so that they Australian Navy could novel his rivals.

(LISTENING DEVICE PLAYED)

[MR A]

I know their plan, I contact them directly and tell them. We cooperate. The Australian Navy contacts me and asks me where they patrol. I tell them where to patrol and catch them.

REPORTER

The Fed's rouge informant actually admitted that would be boat people who don't pay his syndicate to get them to Australia get shopped to Australian authorities.

(LISTENING DEVICE PLAYED)

[MR A]

Then you contact me and I'll have them arrested.

REPORTER

Our hidden cameras also caught Indonesian fisherman making the extraordinary admission that [Mr A] paid them to land boatloads of illegal immigrants in Northern Australia undetected.

(LISTENING DEVICE PLAYED)

UNIDENTIFIED MALE

He persuaded me by saying, "you're not the first one. I'm hiring you because ... He had repeatedly sent people? Yes, he said he'd repeatedly sent people to

Australia. Yes, He guaranteed my safety. He said, I help a lot of crews, they become rich because of the money I give them.

REPORTER

We also told you how this senior official of Indonesia's Immigration Department in Timor Province Mr Syria Pronarta warned Australia it's informant was a people smuggler only to have his warnings ignored.

MR SYRIA PRONARTA

I informed my colleague in the Immigration Section at the Australia Embassy in Jakarta, Mr **. I told Mr ** there is one of your citizens who is behaving strangely. In my opinion he's taking part in smuggling. But they just took his name.

REPORTER

Both our own sources and this sworn statement provided to Indonesian Immigration told of [Mr A] taking money off asylum seekers for the purpose of people smuggling.

MR SYRIA PRONARTA

The reason I suspect him was because the illegal immigrants spoke to often mentioned his name. They said he demands money.

MICK KEELTY

He was paid in Rupee so I've done conversations here.

REPORTER

At the same time parliament was told this week how [Mr A] was paid \$25,527.00 as a Federal Police Information.

UNIDENTIFIED MALE

Do you think you could put us onto people in Federal Police in Australia who can confirm your story?

[MR A]

Yes, I am sure. Not in Australia, in Jakarta. In the Federal Police from the Australian Embassy.

REPORTER

Do they know that you're actively involved in people smuggling operations?

[MR A]

Yes, yes, yes they know.

DICK MOSES

We operate with the approval.

REPORTER

This is what Australian Federal Police told you last Sunday. Has the Federal Police ever authorised any informant to involve themselves in people smuggling?

DICK MOSES

No, that's categorically no. The Australian Federal Police have not done so.

REPORTER

Has there ever been an instance to your knowledge where the Indonesian Authorities have warned Australia about a person whom they know to be an informant for Australia being involved in people smuggling?

DICK MOSES

To my knowledge, categorically not, that's to my knowledge.

JOE LUDWIG

Was information passed to the Australian Federal Police by Indonesian officials from West Timor about [Mr A] alleging activities as a people smuggler?

REPORTER

But on Tuesday, the Australia Federal Police changed their story. Commissioner Mick Keelty admitted Australia was warned about [Mr A] on at least four occasions.

MICK KEELTY

Information was passed to the AFP on the 17th of June, 2001 and again on the 23rd of September, 2001 and on two other occasions that [Mr A] was a people smuggler - - -

REPORTER

Australia's top cop made yet another statement to parliament this week which was starkly at odds with what his office told you on the Sunday program. He admitted that Federal Police did know that [Mr A] was involved in people smuggling.

MICK KEELTY

So in other words we knew he was engaged in people smuggling because he was telling us what was going on. There was nothing to indicate from the information that's being provided about his activities from other authorities within Indonesia that we considered was outside of the realm of the information that we already had.

REPORTER

Late this week, the Federal Police told Sunday in a statement that they had not authorised any informant to engage in criminal acts. They declined us an interview.

JOE LUDWIG

How was the information passed, was it via the Embassy in Jakarta or was it telephone calls or - - -

REPORTER

What especially concerns Sunday is that the Federal Police Commission misrepresented to parliament the central question we asked his Director of International Operations.

JOE LUDWIG

Now in relation to the report from, the reporter [reporter's name] in the Sunday program it says that the Director of International Operations for the Federal Police Dick Moses categorically rejects any suggestion that any informant would ever have been authorised to involved themselves in people smuggling. Is there a distinction between authorised and knew or was aware of or is that statement still correct or now incorrect?

MICK KEELTY

The statement is correct. That answer to that question from my recall was specially related to, would you have authorised him to be involved in people smuggling about which you had no knowledge? Whilst it's not stated by [the reporter] my understanding of that is, the sense of the question - - -

REPORTER

But as the Federal Police well know that was not the sense of our question at all. Until last week Federal Police had never suggested they had any knowledge of [Mr A's] people smuggling.

Let me be clear about this. When [Mr A], well let's say any Federal Police informant says to us that he's been involving himself in people smuggling with the authority of the Federal Police, that's a lie?

MICK MOSES

In relation to any informant, if any informant says that, that is categorically not correct, it's a lie.

MICK KEELTY

The answer from Mr Moses is quite correct as it would be with any informant, informing on any criminal activity they're not authorised to engage in criminal activity about which we have no knowledge.

REPORTER

The fact is, the Federal Police have no legal authority to allow an informant to commit crimes such as people smuggling even in Indonesia. That would be illegal but the Federal Police have now admitted that they gave [Mr A] the green light to involve himself in people smuggling. The difficulty they now face is that this human trafficker committed crimes in our name and with the help of Australian Taxpayer Dollars. The Federal Police say they are capable of investigating themselves but if this week's performance is any guide, don't hold you breathe.

JIM WALEY

[Reporter's name] reporting there producer [producer's name].

APPENDIX C

Transcript of a part of the opening in the 'Sunday' program broadcast on 1 September 2002

PRESENTER : Earlier this year, we reported on the role of an Australian in the Indonesian people smuggling rackets. Sunday's [reporter's name] tracked down [Mr A] and caught him trying to organise a voyage for boat people. In his defence, [Mr A] claimed that he was working secretly as an informant for the Australian Federal Police. At that time, the AFP denied that it ever authorised an informant to get involved in asylum seeker trade. Well, the truth is now beginning to emerge: the AFP has admitted that it allowed [Mr A] to take money, thousands of dollars from desperate boat people. And this week, the AFP tried to defend the indefensible, by attacking us – an attack that simply raised more questions: Whether [Mr A] was involved in sinking refugee boats? Whether the Federal Police themselves may have committed crimes.

[EXCERPTS OF REPORT]

REPORTER : I'm [reporter's name] from Australian television, Channel Nine. We'd like to do an interview with you to talk about your role in people smuggling.

REPORTER : He was taking money from desperate refugees. He was claiming to be a police officer himself.

[MR I] - ASYLUM SEEKER : He said I am police, Australian Police, and I can send you to Australia and I can help you.

REPORTER : What's only now has becoming apparent is the extent to which the Australian Federal Police played apart in [Mr A's] crime.

PROF MARK FINDLAY - CRIMINAL LAW EXPERT: I believe that [Mr A] represented himself as a people-smuggler, most probably was a people-smuggler.

[END OF EXCERPTS]

PRESENTER : The Federal Police and People Smugglers. Our cover story to be reported by [reporter's name].

Transcript of the "Sunday" program broadcast on 1 September 2002

The Federal Police and People Smugglers

PRESENTER: At the height of the asylum seeker crisis last year, *Sunday's* investigative reporter, [reporter's name], set off on the trail of the people smugglers. He was told by Indonesians in the know that one of the Mr Big's of the boat people trade was an Australian, [Mr A]. This man admitted being involved, but claimed he was working in Indonesia as a secret agent of the Australian Federal police.

Our story went to air in February of this year during the Senate hearings into the children overboard affair. The AFP denied to *Sunday* that it had ever authorised an informant to get involved in the boat people trade. That was not true. But this week the AFP released a summary of its investigation into our allegations. In it the AFP exonerated itself and criticised Sunday. [Reporter's name] has continued his investigations, and it appears there's a lot more to be told.

REPORTER: Nearly one year ago in Dili, East Timor, *Sunday* confronted an Australian man, [Mr A].

[Mr A], I'm [reporter's name] from Australian television, Channel Nine. We'd like to do an interview with you, to talk about your role in people smuggling.

[MR A] - ALLEGED PEOPLE SMUGGLER: Well...

REPORTER: We had evidence he was heavily involved in the Indonesian-based criminal people-smuggling trade, taking money off asylum-seekers on the promise that he could get them into Australia. But [Mr A] made an extraordinary claim.

[MR A]: I'm not an agent, that's the wrong word, but I've been working with the Australian Federal Police.

REPORTER: And you've also been doing a bit of work on the side yourself?

[MR A]: For what?

REPORTER: In light of what we knew about his activities, it was a startling assertion - that this man might be an agent of Australian intelligence.

REPORTER: Do you think you can put us on to people in Federal Police in Australia who can confirm your story?

[MR A]: Yes, I am sure. Not an Australia, in Jakarta. In the ... to the Federal Police from Australian embassy.

REPORTER: And do they know that you're actively involved in people smuggling operations?

[MR A]: Yes, yes. They know.

REPORTER: We set about checking [Mr A's] claim that he was working for the Federal Police. That, amazingly, would turn out to be true. But, as Federal Police and [Mr A], he held himself out as a people-smuggler.

Can I put this to you, do you deny that you've ever had a role in people smuggling?

[MR A]: No, I don't deny that I've ever had a role in people smuggling, but I deny that I'm a people-smuggler.

REPORTER: He was taking money from desperate refugees. He was claiming to be a police officer himself. We caught [Mr A] on hidden camera claiming to be able to guarantee passage to Australia because he knew the movements of the Australian Navy.

REPORTER: But, with the knowledge of Australian Police, [Mr A] was playing a double game, turning in his victims to the authorities.

REPORTER: How much did you pay [Mr A1]?

[MR J] - ASYLUM SEEKER: Ten thousand dollars.

REPORTER: That's ten thousand American dollars.

[MR J]: Yeah, eight person, eight people.

REPORTER: What's only now becoming apparent is the extent to which the Australian Federal Police played a part in [Mr A's] crimes, and how much the AFP is now implicated in those crimes.

When [Mr A] first claimed to us that he was working for the AFP we went straight to them and gave an undertaking. We would lay off the story if they assured us [Mr A] was or had been legitimately working as an informant in the national interest and if our broadcast would jeopardise an ongoing operation. We never got that undertaking. All we got was evasion and lies. And now we know why.

The Federal Police were involved in a covert operation inside Indonesia that was quite possibly illegal.

PROF MARK FINDLAY - CRIMINAL LAW EXPERT: I believe that [Mr A] represented himself as a people-smuggler, most probably was a people-smuggler.

REPORTER: *Sunday* has engaged one of Australia's top criminal law experts, Professor Mark Findlay of Sydney University, to give us his view on whether [Mr A] or the AFP broke Commonwealth laws.

FINDLAY: [Mr A] carried out his activities with the knowledge of the AFP and perhaps some limited authority. He misrepresented himself and took money as a consequence. All of those issues tend to make me believe that offences were committed under Commonwealth law.

REPORTER: If the Federal Police knew that, for the period of time that he was working for them, and did nothing to stop it, did the Federal Police commit an offence?

FINDLAY: Again, I'd say that depends on the way in which we look at their involvement. But if we were to speculate that they did nothing to restrict [Mr A], that they supplied [Mr A] with money and some support, that they allowed [Mr A] to generate relationships with the Indonesian Police, then there's an argument to say that they were criminally involved.

REPORTER: Last week the AFP released a summary of their investigation into our report. The AFP found that no evidence exists to support the allegation made by *Sunday* that [Mr A] landed unlawful non-citizens into Australia.

They also found that other information collected by *Sunday* in support of their allegations against [Mr A] is consistent with [Mr A's] role as an informant.

But as you'll see this morning, the AFP's investigation has serious short-comings. It fails to deal with the possibly criminal implications of [Mr A's] involvement in people-smuggling.

For several months last year, we held off broadcasting, fearing our story might jeopardise an undercover operation. Then [Mr A] outed himself - boasting in the media about his role.

In our original story earlier this year we detailed [Mr A's] clear involvement in people-smuggling, including evidence from two Australian businessmen, former colleagues of [Mr A], that [Mr A] invited them to join his people-smuggling racket.

[MR H] - AUSTRALIAN BUSINESSMAN: He said, look, I've got all these contacts. It's very easy to do. There's no risk to it, especially with all the people that I know and I'm involved with. We organise funds coming from the people who want to go, purchase a vessel, job done.

REPORTER: Since our program aired earlier this year, the truth has slowly begun to emerge about a covert disruption operation run inside Indonesia that has been kept secret from the Australian public until recently.

As the Federal Police Commissioner described it to Parliament, disruption activity against people-smuggling in Indonesia sounds quite harmless.

[Excerpt of Senate Inquiry]

MICK KEELTY - AFP COMMISSIONER: ...that it's to prevent the departure of a vessel. So in this context, and it can take many forms, either by the arrest of individuals or by the detention of individuals, or by ensuring that the individuals don't reach the point of embarkation if that was known.

[End of excerpt]

REPORTER: Commissioner Keelty also went to great pains to emphasise that no Federal Police informant got involved in such disruption activity.

[Excerpt of Senate Inquiry]

KEELTY: The people who conduct the disruption are the people with the power to conduct the disruption, or the intervention. That being, the Indonesian National Police, the Indonesian defence and sometimes the Indonesian Immigration. We find ... we obtain information from informants but informants do not disrupt. They have no power to disrupt.

[End of excerpt]

REPORTER: But, on any reading of the admissions Federal Police made in their own press statement last weekend, that's not what happened with [Mr A]. Federal Police boast how [Mr A] a hugely successful player in what was clearly the disruption of people smuggling by allowing him to pose as a people smuggler, to entrap asylum seekers and to take their money.

Is there any way in which the Federal Police can argue that because [Mr A] was involving himself, quite obviously, in disruption activities with the Indonesians that Federal Police is not responsible for that behaviour?

FINDLAY: No, because the police claim him as their informer and also they gain information from him which they use as a result of this disruption activity that he might be engaging in with the Indonesians. So, they're quite clearly involved in those activities if it is only that they benefit from the information that comes from them.

REPORTER: Either way, [Mr A] is damned if he was and damned if he wasn't. If he was a people smuggler, he was a criminal and, from what you're saying, if he was merely representing himself as a people smuggler, he's also committing a crime.

FINDLAY: That's right and this is why I think the claims made by the AFP that they could have the benefit, both the AFP and [Mr A], of immunity under Australian law are so important. To claim that in part is a recognition of the fact that [Mr A] was

involved in questionable behaviour, behaviour which in fact might require immunity.

REPORTER: The Federal Police's public statements on their investigation make no mention of any efforts by police to track down asylum seekers who dealt with [Mr A] to find out what possibly criminal representations he made to them.

Two months ago, in Jakarta, we went looking. And for the first time today, we can bring you the claims of several asylum seekers who allege [Mr A] took large sums of money off them on the promise he could smuggle them to Australia.

This Afghani man, [Mr I] told us how he paid [Mr A] one thousand US dollars to get him to Australia. It's impossible for us to verify such claims, but as you can see [Mr I] quickly identified [Mr A] out of a line up of faces as the man who approached him on a beach Kupang in West Timor last year.

Tell me if you see him in any of these pictures? Are you sure that's [Mr A1]?

[MR I] - ASYLUM SEEKER: Yeah.

REPORTER: What is particularly disturbing about [Mr I's] claims is that [Mr A] boasted he was an Australian policeman who could send him to Australia if he paid him money.

[MR I]: He said I am police, Australian Police, and I can send you to Australia and I can help you. At first he says, I want one thousand five hundred US dollar, but after that he is ... he said ... we said to him now we are losing big money in here. We are ... so you please some concession with us [sic] but he says, yeah, one thousand dollar.

REPORTER: If [Mr I's] account is true, it's clear that far from concealing his informant role, [Mr A] actually used his association with Australian and Indonesian police to boost his credibility as a corrupt cop who could get them to Australia.

FINDLAY: Impersonation of a police officer and the representation that a police officer can do things to exercise his power for money are very serious offences.

REPORTER: [Mr I] claimed to know many other asylum seekers who paid [Mr A] money.

How many people do you know who have paid [Mr A] money?

[MR I]: Nineteen.

REPORTER: Nineteen people.

ABDUL: One-nine.

[MR I]: Yeah.

REPORTER: And how much money have they paid [Mr A]?

[MR I]: Nineteen thousand.

REPORTER: Nineteen thousand dollars.

ABDUL: Per person, yeah. Per person, one thousand dollars.

[MR I]: One thousand ... per person, one thousand dollar [sic].

REPORTER: And none of them have ever got their money back.

[MR I]: No. He's go away [sic].

REPORTER: [Mr I] explained that as [Mr A] had told them he was an Australian policeman, it seemed pointless to complain to Australia about his behaviour. And no one from Australia came looking for him and his friends.

Can I ask you, do you know of any of your friends, have any of them been spoken to by the Australian Federal Police?

[MR I]: No.

REPORTER: Eighteen year old Pakistani [Mr J] and his little brother, twelve year old [Mr K] are part of a separate family of eight asylum seekers which claims it paid [Mr A] ten thousand US dollars to get them to Australia last year.

They say, they actually sailed for Australia on a boat organised by [Mr A] but mechanical problems led to the trip being aborted. When we interviewed them in June, they were stranded in Jakarta living off United Nations handouts.

REPORTER: Where did you get the money from? Ten thousand dollars is a lot of money.

[MR J]: I have one house in Pakistan.

[MR K] - ASYLUM SEEKER: One car.

[MR J]: One car.

[MR K]: We sold the car and sold the house also.

REPORTER: So, when you return to Pakistan, you will have no home.

[MR K]: We will see about it when we return to Pakistan. We'll live in our ...

[MR J]: Our friend house ...

[MR K]: ... cousin's ...

[MR J]: Cousin's house.

[MR K]: Cousin's room because ...

REPORTER: But you've had to sell your house in order to try to get into Australia.

[MR K]: Yes.

REPORTER: *Sunday* understands the Federal Police were told during their investigation in Jakarta of the allegations made against [Mr A] by [Mr J] and [Mr K's] family, but it does not appear that police made any effort to interview them.

Two weeks ago, they were repatriated with their family by aid agencies back to Pakistan. Last week, we spoke through an interpreter to [Mr J] in Pakistan and he confirmed his willingness to testify against [Mr A].

REPORTER: If the Australian Police contacted you, would you be prepared to give evidence?

([Mr J] speaks over the phone)

MALE SPEAKER - INTERPRETER:
Yes, I am ready to tell them the truth.

REPORTER:
And you would be prepared to tell them that [Mr A] is the man who organised your boat and to whom you paid money.

([Mr J] speaks over the phone)

MALE SPEAKER:
Yes, I will tell them.

PRESENTER: And after the break, an allegation that will send shock waves around the corridors of parliament. The AFP's informant [Mr A] boasts of how he was involved in deliberately sinking boats packed with asylum seekers when we come back.

[Commercial Break]

PRESENTER: The Federal Police now admit they paid [Mr A] at least twenty-five thousand dollars while he held himself out as a people-smuggler. They also not admit he took money from asylum-seekers who thought they were buying passage to

Australia. But that may be the least of the AFP's problems as it struggles to explain just what control it had over the activities of [Mr A]. [Reporter's name] continues our cover story.

REPORTER: There is another much more serious claim about [Mr A's] activities, one made to us by [Mr A] himself, which was not resolved in the Federal Police's public report of its investigation.

Last year [Mr A] boasted to myself and two other colleagues about how he had paid Indonesian locals on four or five occasions to scuttle people-smuggling boats with passengers on them. When we reacted with horror he was unrepentant, saying the boats were sunk close to land so everyone got off safely.

The police make no comment about [Mr A's] claim in their public report. But they admit the lack of accountability for their disruption activities in Indonesia means it's possible they wouldn't even know about illegal activities. And there are other allegations of sabotage in this disruption operation that we are now investigating and cannot detail today.

FINDLAY: We have the recent allegations made to you by [Mr A] being treated by the AFP as if they are of no worth. And yet for a year and a half, certainly over a year, they were happy to receive information from [Mr A], which they took as fact.

REPORTER: There is also an intriguing precedent in Australia's recent history to suggest that sabotage has been used before by some working for Australia to stop asylum-seeker boats.

In this 1992 ABC documentary, a former Australian Immigration officer admitted sinking vessels during disruption activities in the 1970s. Vessels carrying Vietnamese boat people were deliberately holed just off the Malaysian coast to stop them continuing to Australia.

GREG HUMPHRIES - FORMER IMMIGRATION OFFICER: We took a pretty broad interpretation of the terms of reference to stop these boats. We did because we had some very capable fellows with the screwdrivers and brace and bit. And we bored holes in the bottom of the ships and the boats and they sunk overnight. So they had to be landed. We were successful in stopping a lot of boats - by one way or another.

REPORTER: This week we asked the Federal Police to tell us if they have even investigated [Mr A's] claims to have sunk boats. But they failed to answer that question and many others we put to them in writing earlier this week, demanding instead that we not put this story to air.

Indeed this week, rather than respond to detailed allegations, the Federal Police continued to smear *Sunday*. To imply, as Federal Police, do that *Sunday* paid witnesses to make up false stories is completely untrue.

Three months ago *Sunday* publicly and promptly acknowledged that we could no longer support one allegation in our original program - that [Mr A] landed asylum-seekers on the Australian mainland. Unlike Federal Police, we were prepared to admit problems with our informants, and as we revealed, two locals we hired in Indonesia to help us find crewmen who worked for [Mr A] appear to have fabricated evidence.

Of what little detail is on the public record about Australia's disruption activities in Indonesia, it has only come about as a result in part of *Sunday*'s story on [Mr A] and some very patient questioning in the Senate. What has emerged is that Australia has been - to use the AFP's own words - tasking Indonesian Police to stop asylum-seekers getting onto the smuggling boats. How Indonesia and [Mr A] did that seems to have been left up to them.

[Excerpt of Senate Inquiry]

KEELTY: The AFP, in tasking the INP to do anything that would disrupt the movement of people-smugglers has never asked, nor would it ask them to do anything illegal. If we became aware that they were doing something illegal or something that was inhumanitarian, then it would be brought to our notice and we would ask that they not do it that way. The difficulty is once we ask them to do it, we have to largely leave it in their hands as how they best do it, but it is not ...

[End of excerpt]

REPORTER: Federal Police admits they paid [Mr A] at least twenty-five thousand dollars as an informant. And in last weekend's very carefully worded statement, they admitted [Mr A] did take money off asylum-seekers on at least one occasion. They claimed the money was used to transport, accommodate and feed the asylum seekers.

Well, would it be a crime for [Mr A] to purport to be a people-smuggler who could get people to Australia and then to take money from those people for that purpose?

FINDLAY: Well, under Australian law if he's a people smuggler it's a crime. If he's not a people smuggler but he's purporting to be one, that's a misrepresentation. And to obtain financial advantage as a consequence, that's a crime - you can't have it both ways.

REPORTER: The law is also clear that taking money by fraud is still criminal even if [Mr A] passed it on, as Federal Police claim. They say the cash received by [Mr A] was accounted for by Indonesian Police.

[Excerpt of Senate Inquiry]

JOHN FAULKNER - OPPOSITION SENATE LEADER: So what accountability, controls and constraints are on those Indonesian agencies that are conducting this activity? How are you satisfied that its ... that those activities are conducted in an appropriate way?

KEELTY: That is not for me to say. I don't have any power over the Indonesian authorities.

[End of excerpt]

REPORTER: In evidence to Parliament as recently as last month, Commissioner Keelty admitted that despite the growing concerns about aspects of these disruption activities he still hadn't asked his lawyers if it was legal.

[Excerpt of Senate Inquiry]

FAULKNER: Did the Australian Federal Police at any level during this period seek legal advice as to the disruption activities in Indonesia?

KEELTY: Not that I'm aware of.

FAULKNER: Well, if that had happened, you would have been aware of it, wouldn't you?

KEELTY: I would be aware of it by now I'm sure.

[End of excerpt]

REPORTER: Federal Police used [Mr A] for the laudable reason that they wanted to bust the people-smuggling syndicates. But they never asked if what they were doing with him was legal.

Well, we have. Today you will see how in their zeal to catch the criminals, Police let their informant commit crimes under Australian law. For as Police well know, [Mr A] went far beyond the normal role of an informant. If we even accept just what the Federal Police have now admitted, [Mr A] was allowed to be an agent-provocateur. To pose as a people-smuggler to asylum-seekers, to be an active player in a criminal trade. Without any legal authority, our top cops unwittingly gave the green light to crime.

FINDLAY: Simply by doing nothing, by sitting back and allowing a paid informer to do what quite clearly here was problematic activity could be seen as authorisation in the de facto sense.

REPORTER: So, by standing and watching and doing nothing, the Federal Police possibly allowed [Mr A] to commit crimes?

FINDLAY: And to some extent could be implicated because of that, depending on where the crimes were committed.

REPORTER: There's probably a lot of people watching this saying, oh come on, this

guy is helping Australia catch people-smugglers - so what? So what if we represented to asylum-seekers that we could get them to Australia? In the end it was helping Australia's national interest.

FINDLAY: Well, how far do your viewers who take that opinion want to push it? Is it okay for the police to allow the commission of activities that might be criminal because we are dealing with people smugglers, but it's wrong if we deal with someone else? Was it okay many years ago in New South Wales for police to fabricate evidence simply because they believed people were guilty? Are we happy to turn over the responsibility for deciding between guilt and innocence to the police and not the courts?

REPORTER: At the beginning of this year, this is what Dick Moses, Australian Federal Police's Director of International Operations, told Sunday:

Has the Federal Police ever authorised any informant to involve themselves in people-smuggling?

DICK MOSES - AUSTRALIAN FEDERAL POLICE: No, that's categorically no. The Australian Federal Police has not done so.

REPORTER: Has the Australian Federal Police ever authorised any informant to take money off asylum-seekers intending to get illegal passage to Australia?

MOSES: My answer to that is categorically no. The Australian Federal Police has never done so.

REPORTER: Then came the back-flip. Over months of parliamentary hearings, the truth has begun to emerge. First, in February the Federal Police Commissioner, Mr Keelty, flatly contradicted his own Director of International Operations, admitting he knew [Mr A] was involved in people-smuggling.

[Excerpt of Senate Inquiry]

KEELTY: In other words, we knew he was engaged in people-smuggling because he was telling us what was going on. But there was nothing to indicate from the information that's been provided about his activities from other authorities within Indonesia that we considered was outside of the realm of information that we already had.

[End of excerpt]

REPORTER: In the same hearing, Commissioner Keelty then presented an implausible explanation to the parliamentary committee of what it was that *Sunday* had put to his Director of International Operations.

[Excerpt of Senate Inquiry]

JOE LUDWIG - LABOR SENATOR: In relation to the report from the reporter [reporter's name], in the *Sunday* program it says that the Director of International Operations for the Federal Police, Dick Moses, categorically rejects any suggestion that any informant would ever have been authorised to involve themselves in people-smuggling. Is there a distinction between authorised and knew, or was aware of, or is that statement still correct or now incorrect?

KEELTY: No, the statement is correct. That answer to that question, from my recall, was specifically related to, would you have authorised him to be involved in people-smuggling about which you had no knowledge? Whilst it's not stated by [reporter's name], my understanding of that is the sense of the question.

[End of excerpt]

REPORTER: But that wasn't the sense of our question at all. What we very clearly asked was if any involvement by [Mr A] in people-smuggling had been authorised by Federal Police.

Has the Australian Federal Police ever authorised any informant in Indonesia to involve themselves in people-smuggling?

MOSES: Categorically no.

REPORTER: The question we've been asking ourselves for months is why Federal Police were so evasive. Despite the fact that he admits he never asked for legal advice, the Federal Police Commissioner has consistently claimed that neither AFP nor [Mr A] broke any Australian laws.

Then, the Commissioner claimed to Parliament that even if an informant like [Mr A] had committed a crime, he'd be protected under what are called controlled operations laws - immunity provisions under the Crimes Act.

[Excerpt of Senate Inquiry]

KEELTY: The controlled operations legislation protects the informant being involved in criminal activity.

[End of excerpt]

FINDLAY: He certainly was wrong. There's three things here to remember. Firstly, was it a controlled operation in Indonesia? I don't think the legislation covers that. Secondly, even if the legislation was in force, the act does not cover informers, and in addition to that it does not cover individuals who are involved in entrapment procedures, and in many situations this is exactly what [Mr A] was doing. So my answer to your question would be he was not covered.

REPORTER: So what the Commissioner told the parliament was false.

FINDLAY: The Commissioner's understanding of it was wrong.

REPORTER: Incredibly, the Commissioner's evidence suggests Federal Police just seem to have assumed they and [Mr A] would enjoy immunity from the criminal law.

REPORTER: They've turned you. You were a people-smuggler and they turned you.

[MR A]: Look, stop talking shit with me. I was never ever a [beep] people-smuggler, okay?

REPORTER: I just think we need to test your ...

[MR A]: Okay, you can [beep] the test. We can put this straight to the Australian Federal Police that know [beep] everything, okay?

REPORTER: Right.

[MR A]: Don't come with a [beep] smart-ass smirk with me, man.

REPORTER: I'm not.

Federal Police assert they and their informant, [Mr A], have done nothing illegal. Try telling that to twelve year old [Mr K] and his family, and the many other asylum-seekers who say they handed over their life savings to [Mr A].

[Mr A] stopped working for the Federal Police a year ago. But the questions about just what he did on Australia's behalf are still unanswered. And that's the way it may stay, because the only investigation into his activities was by the police force that is itself tainted by his crimes.

FINDLAY: Are we simply happy to have the police managing the law, deciding what is lawful and what isn't, doing what they want in relation to illegal activities, using criminals for their own purposes and at the end of the day telling us it's for our benefit?

PRESENTER: [Reporter's name] reporting there. The producer, [producer's name].

We have asked the Federal Police Commissioner, Mick Keelty, for an interview on these issues - he's refused. We've asked the AFP the full report of their investigation - they've refused. We've submitted thirty-seven questions in writing to the AFP and the AFP has refused to answer them. All those questions demands answers.

Exactly how much money did [Mr A] take off asylum-seekers? What does the AFP know about claims that [Mr A] was involved in sinking refugee boats? What other crimes were authorised in our name? And rest assured, we'll continue to pursue the

answers.

APPENDIX D

This Appendix contains the AFP's complaints about specific statements broadcast on 1 September 2002. The statement that is the subject of each complaint is reproduced in italics followed by the exact terms of the AFP's complaint. The ABA has inserted its comments in boxes in respect of each of the complaints.

The Federal Police and People-Smugglers

September 1, 2002

Item 1

Statement: *The AFP has admitted that it allowed [Mr A] to take money ...*

AFP Complaint: This statement, made in the introduction, is factually inaccurate. The AFP has not admitted that [Mr A] was permitted by the AFP to take money from persons seeking to buy travel to illegally enter Australia. The AFP had no knowledge of this conduct, no control over the operation and never gave anyone approval for it. The Media Release upon which Sunday relies does not set out such an admission.

ABA comments

The AFP disputes the accuracy of the statement that "The AFP has admitted that it allowed [Mr A] to take money ...".

In support of the assertion, the licensee relies on the statement made by Commissioner Mick Keelty to Senate Estimates on 19 February 2002 (p 193) that in June and September 2001, the AFP was alerted by Indonesian authorities that:

... [Mr A] was a people-smuggler, but the information that was provided was considered to be information that was already in the possession of the AFP. There was no specific information about activities outside those that were known to the AFP at the time. In other words, we knew he was engaged in people-smuggling because he was telling us what was going on. From the information that had been provided from

other authorities within Indonesia, there was nothing that we considered to be outside the realm of information that we already had. [emphasis added by licensee]

The licensee further relies on the AFP's answer to the following Question on Notice from the Senate Estimates Hearing:

Q: Was information about the operations of [Mr A] and people-smuggling passed to Canberra ...

A: Yes. During the period of the AFP's relationship with [Mr A], information about the operations of [Mr A] and people-smuggling were relayed by the AFP liaison office Jakarta to AFP headquarters, Canberra.²⁰

These statements suggest that the AFP knew that Mr A was engaged in people-smuggling. The AFP's chief complaint appears to be with the use of the word 'allowed'. The Macquarie Dictionary, 3rd edition, relevantly defines 'allow' as follows:

1. to grant permission to or for; permit ...
2. to let have, grant or give as one's share or suited to one's needs; assign as one's right ...
3. to permit involuntarily, by neglect or oversight ...

The AFP states that it had no prior knowledge that Mr A had taken money from asylum-seekers and never gave him approval to do this.

In the ABA's opinion, the AFP's knowledge that Mr A was engaged in people-smuggling is sufficient to support an inference that it knew asylum seekers were giving him money. The AFP had a choice as to whether to continue to use Mr A as an informant in these circumstances. In the ABA's opinion, by turning a blind eye to Mr A's conduct, the AFP could be considered to have permitted the conduct to continue to occur. Therefore, the ABA considers that it was not factually inaccurate for *Sunday* to make the statement that the AFP had admitted it had allowed Mr A to take money from asylum-seekers.

The licensee also relies on statements made by Mr A and Mr Pranata to *Sunday*. In the ABA's view Mr A's statements do not amount to an admission by the AFP. The licensee further states that the AFP has never sought to challenge its informant's assertions or dispute Mr Pranata's account. Again, the ABA does not consider that the failure to challenge an assertion or an account amounts to an admission.

Item 2

²⁰ Answer to Question on Notice No. 52 from Senator McKeirnan, 19 February 2002

Statement: *This man [Mr A] admitted being involved, but claimed he was working in Indonesia as a secret agent of the Australian Federal Police.*

AFP Complaint: This statement is a misrepresentation of [Mr A's] statement. It is factually inaccurate and implies an association quite different to that which existed, being that of [Mr A] as an informant.

[Mr A] has not claimed that he was working in this capacity. In his interview with *Sunday*, [Mr A] stated:

"I'm involved in people smuggling. I can give you any amount of information on people smuggling but I don't think that I'm in a position to be able to do because I've been working in Asia, not as an agent, that's the wrong word, but I've been working for the Australian Federal Police."

This statement appears in the unedited transcript of their covert recording of an interviewer between an interviewer and [Mr A]. This full statement by [Mr A] was not broadcast by *Sunday*.

ABA comments

The AFP appears to object to the description of Mr A as a 'secret agent' when he was an informant.

In response, the licensee argues that the use of the term 'secret agent' is "a perfectly reasonable colloquial usage which describes the nature of [Mr A's] admissions about his work for the Australian Federal Police". The licensee states that when Mr A "asserted that he was not an 'agent' he clearly meant that he was not a Federal Agent" and "[w]e did not and do not allege he was a Federal Agent".

The licensee submits that *Sunday* made it clear in the broadcast that Mr A was an informant working covertly for the AFP and that:

in common usage, the term 'secret agent' is regularly used as a colloquial description of someone giving assistance or information to an intelligence or police agency who is not an employee or officer of that agency.

In illustration of this point, the licensee gave recent common usage examples of the term 'secret agent'.

The Macquarie Dictionary, 3rd edition defines 'secret agent' as "a spy". In the ABA's opinion, this description could be applied to a police informant. The ABA therefore finds that the statement is not inaccurate.

Item 3

Statement: *In light of what we knew about his activities, it was a startling assertion – that this man might be an agent of Australian intelligence.*

AFP Complaint: This assertion is without a factual foundation.

It is not clear which of [Mr A's] 'activities' were known to *Sunday* when [Mr A] made the statement to which the comment applies. However, *Sunday* asserted in an earlier broadcast that it knew that [Mr A] had organised 4 boatloads of illegal immigrants to be transported to mainland Australia. At the time of the broadcast on 1 September 2002, *Sunday* knew that these allegations were fabricated after INP and AFP investigators discovered that those allegations were made up in order that persons making the allegations would receive payments from *Sunday*. There is nothing in the broadcast to suggest that this comment had a factual foundation. In fact, *Sunday* knew he was an informant rather than as an agent of the AFP. [Mr A] himself clarified in this in the passage set out above under the heading Complaint 2.

ABA comments

The AFP takes issue with the description of Mr A as 'agent' when he was not a Federal Agent but merely an informant. The licensee argues that, in common usage, the term 'agent' safely describes the informant relationship that the AFP is prepared to concede it had with Mr A as well as the broader activities that he was alleged to be involved in by the program.

The Macquarie Dictionary, 3rd edition, relevantly defines 'agent' as:

1. a person acting on behalf of another ...
2. one who or that which acts or has the power to act ...

The latter meaning is quite broad and appears to apply in this instance. At the very least, Mr A could be said to have 'acted' by conveying information about people smuggling to the AFP. In the ABA's view, the description of Mr A as an "agent of Australian intelligence" is not inaccurate.

Item 4

Statement: *When [Mr A] first claimed to us that he was working for the AFP we went straight to them and gave an undertaking. We would lay off the story if they assured us [Mr A] was or had been legitimately working as an informant in the national interest and if our broadcast would jeopardise an ongoing operation. We never got that undertaking. All we got was evasion and lies. And now we know why.*

AFP Complaint: This is not a fair and accurate representation of the facts and does not represent the AFP's viewpoint fairly.

On 21 September 2001, there was a telephone discussion by a representative of *Sunday* and Ms B Janz of the AFP about whether [Mr A] was an AFP informant. *Sunday's* own record of that conversation states:

“the repercussions of running that story, on relations between Indonesia and Australia, would be quite severe. We have no intelligence that this person is involved in people smuggling. If you run a story that includes those allegations it would bring a halt to our operations.”

When a representative of the AFP was approached by *Sunday*, this statement was offered as setting out a reason for *Sunday* not pursuing its story. Although the undertaking was not given in the precise terms sought by *Sunday*, its sense was clear at all times. Any assertion to the contrary is inaccurate and misleading. While the AFP was not controlling [Mr A] it knew that he was working for the INP on matters of significant potential benefits to Australia as well as providing valuable information to the AFP. In the face of justifiable caution coupled with the provision of sensitive information, *Sunday* asserted evasion and lies.

ABA comments

The AFP argues that Ms B Janz's response to *Sunday* in September 2001 constituted a clear assurance that Mr A was working as an informant and that the broadcast of the *Sunday* program would jeopardise an ongoing AFP operation. The ABA is unable to extract that meaning from the statement. Ms Janz appears to be making a general comment about relations between Australia and Indonesia and the effect of such a story on AFP operations. Nothing specific is said about Mr A. While the ABA appreciates that the AFP needs to be cautious about relaying sensitive information to the media, it can find no inaccuracy in *Sunday's* statement that the sought undertaking was not received.

The AFP also objects to the categorisation of its responses to *Sunday* as “lies and evasion”. In response the licensee argues that “the AFP chose to deliberately mislead SUNDAY by denying that [Mr A] was or had ever been an informant.” In support of this, *Sunday* refers to notes of a conversation on 8 February 2002 with Commissioner Keelty and Steve Jiggins of the AFP in which “Keelty admitted that the AFP's answer to *Sunday's* inquiries last year was wrong, misleading, and he apologised.” *Sunday* states that the note of this conversation was provided to the AFP investigators on 7 March 2002.

According to the AFP, Commissioner Keelty did not make admissions in those terms but was conciliatory, and with hindsight, recognised that the matter could have been better handled.

The ABA finds no inaccuracy in this instance.

Item 5

Statement: *But on any reading of the admissions Federal Police made in their own press statement last weekend, that's not what happened with [Mr A]. Federal Police boast how [Mr A] became a hugely successful player in what was clearly the disruption of people smuggling by allowing him to pose as a people smuggler, to entrap asylum seekers and take their money*

AFP Complaint: This assertion is without a factual foundation.

The AFP has not made any 'admissions' as alleged in the broadcast. The AFP rejects that they 'allowed' [Mr A] to pose as a people smuggler, to entrap asylum seekers and to take their money. He worked directly for the INP on this and the AFP did not know of or authorise any specific conduct by him.

ABA comments

Sunday refers to admissions in the AFP media release, which the AFP denies were made. The ABA has been provided with a copy of the media release which is dated 24 August 2002. The media release contains the following statement:

Other information collected by *Sunday* in support of their allegations against [Mr A] is consistent with [Mr A's] role as an informant. Put simply [Mr A] assumed an identity designed to convince asylum seekers to deal through him so he could report back to Indonesian authorities who could then interdict those asylum seekers. What *Sunday* observed, and was reported by others who were not aware of [Mr A's] formally sanctioned role, was [Mr A] acting out his cover story.

In the statement, the AFP appears to accept that Mr A posed as a people-smuggler in order to entrap asylum seekers and disrupt people-smuggling activities in Indonesia. In the ABA's view, the reference to Mr A convincing asylum seekers "to deal through him" acknowledges that Mr A role involved receiving money from asylum seekers. In the ABA's view, *Sunday's* references to a "boast" by the AFP and Mr A being a "hugely successful player" appear to be exaggerations. However, the ABA does not consider the exaggerations, by themselves, to be inaccuracies.

The main point of contention appears to be whether the media release admitted that the AFP had "allowed" Mr A to pose as a people smuggler. The ABA's comments on Item 1 mention that a Macquarie Dictionary meaning of 'allow' is "to permit involuntarily, by neglect or oversight". The paragraph extracted above indicates that the AFP considered that Mr A's assumed identity as a people smuggler was consistent with his role as an informant. In the ABA's view, this could be categorised as an admission that the AFP had involuntarily permitted Mr A to pose as a people smuggler, including taking money from asylum seekers. The ABA therefore does not find the statements by *Sunday* to be inaccurate.

Item 6

Statement: *Sunday understands the Federal Police were told during their investigation in Jakarta of the allegations made against [Mr A] by [Mr J] and [Mr K's] family, but it does not appear that police made any effort to interview them.*

AFP Complaint: This statement is false because it implies knowledge on the part of the AFP which it never had.

Sunday's 'understanding' that the AFP were told of these matters is incorrect. These names first became known to the AFP in the list of 37 questions submitted to the AFP on 28 August 2002.

ABA comments

The licensee notes that the AFP, "makes the qualification that it did not know of the names of these witnesses" but claims that "[t]he AFP did know, prior to our approach to them, about a new allegation that a Pakistani family had paid substantial sums of money to [Mr A] as a people smuggler."

According to the licensee, two witnesses, Mr G and Mr H told *Sunday* reporter [reporter's name] on 27 August 2002 about a telephone conversation they had with AFP agent Steve Hamilton during which they repeated previous offers they had made to provide the AFP with this new evidence. The licensee states that these conversations are corroborated by [reporter's name] shorthand notes.

There is no evidence before the ABA which contradicts the licensee's account. The ABA further notes that the impugned statement refers to the AFP being told of the allegations but does not state that the AFP was told the names of the persons who made them. Hence, the ABA makes no finding of inaccuracy.

Item 7

Statement: *This week we asked the Federal Police to tell us if they have investigated [Mr A's] claims to have sunk boats. But they failed to answer that question and many others we put to them in writing earlier this week, demanding instead that we not put this story to air.*

AFP Complaint: This statement is factually inaccurate.

The AFP did not demand, or even request, that *Sunday* not put the 1 September broadcast to air.

ABA comments

The licensee has responded that the AFP's Legal Counsel Michael Chilcott wrote to *Sunday's* lawyers on 28 August 2002 stating:

I am instructed to request that your clients refrain from further comment on these matters until after the resolution of the matters that are now the subject of complaint to the Australian Broadcasting Authority.

The ABA has no information to the contrary and therefore finds no evidence of inaccuracy.

Item 8

Statement: *Indeed this week, rather than respond to detailed allegations, the Federal Police continued to smear Sunday. To imply, as Federal Police, do that Sunday paid witnesses to make up false stories is completely untrue.*

AFP Complaint: This statement is factually inaccurate and does not accurately present the AFP's viewpoint.

The AFP rejects the suggestion that it smeared *Sunday*. The Media Release dated 24 August 2002 stated:

"The investigation found that the Indonesian nationals relied upon by Sunday in producing the program of 17 February 2002 had conspired together to fabricate the allegations against [Mr A] with a view to extracting significant monies from Sunday ...the activities of informants are a grey area and the AFP can appreciate how Sunday drew the conclusions they did from the information they had before them."

This is neither a "smear", nor a suggestion that *Sunday* paid witnesses to make up false stories.

Additionally, it is asserted that the Commissioner was asked to respond to 'detailed allegations'. This is a significant allegation in itself. The Commissioner was asked 37 questions. Those questions are not allegations.

It is unarguable that *Sunday* paid people who had in fact conspired to tell false stories to *Sunday* but there is no suggestion that they were paid to make them up.

ABA comments

The Macquarie Dictionary relevantly defines ‘smear’ as “to soil or sully, as one’s reputation”.

The licensee claims that the AFP tried to smear *Sunday* in a second media release that was issued on 29 August 2002 and by selectively leaking parts of the investigation to the ABC Media Watch program. The ABA has obtained a copy of the second media release. In the ABA’s view, several of the comments in the second media release could be construed as sullyng *Sunday*’s reputation. These include the statement that the AFP investigation found that “*Sunday* had interfered with witnesses and on at least one occasion, attempted to place a listening device on a witness in apparent contravention of Indonesian law.”

The AFP argues that, contrary to *Sunday*’s statement, it did not suggest that *Sunday* had paid people to tell false stories.

The ABA has closely examined both media releases and accepts the AFP’s argument. The issue then is whether, *Sunday*’s statement that the AFP implied this constitutes a breach of the Code. The ABA is of the opinion that minor factual errors may not amount to a breach of the Code. What is considered ‘minor’ and where a line should be drawn are not matters that are subject to prescribed rules. The ABA considers that *Sunday* should have been more careful in finding implications in the AFP’s media releases but does not find that this one-off inaccuracy is significant enough to constitute a breach of 4.3.1 of the Code in the circumstances.

In its letter of 1 September 2003, the AFP noted that, contrary to the information being selectively leaked, Media Watch had approached the AFP with a media inquiry.

Item 9

Statement: *The question we’ve been asking ourselves for months is why Federal Police were so evasive. Despite the fact that he admits he never asked for legal advice, the Federal Police Commissioner has consistently claimed that neither AFP or [Mr A] broke any Australian laws.*

Then, the Commissioner claimed to Parliament that even if an informant like [Mr A] had committed a crime, he’d be protected under what are called controlled operations laws – immunity provisions under the Crimes Act.

[Excerpt of Senate Inquiry]

KEELTY: “The controlled operations legislation protects the informant being involved in criminal activity.”

AFP Complaint: *Sunday* presented the statement by the Commissioner out of context and misrepresented his meaning.

Commissioner Keelty's response was taken out of context by *Sunday*. The Commissioner answered a question asked by Senator Cooney during Senate Estimates on 19 February 2002. the context of the Commissioner's response is:

Senator Cooney asked:

“Does the informants system have its basis in legislation: I am thinking of Ridgeway and legislation following that. It is a policy question in one sense, but you might care to comment. Do we need legislation to underpin the informant's system? Do we have it?”

Mr Keelty said:

“The controlled operations legislation protects the informant being involved in criminal activity. Largely, what we try to do is encourage the informant to tell us about the activity without actually getting involved in it- to be at arm's length – which was, I think, the answer that Mr Moses was giving to the Sunday program, that we do not sanction involvement in criminal activity where it is a crime.

ABA comments

The AFP claims that *Sunday* presented Commissioner Keelty's answer to a general question about the controlled operations legislation as if it was a specific comment that an informant like Mr A would be protected by the controlled operations legislation.

The licensee submits:

... when Senator Cooney asked the question of the Commissioner, it was clearly in the context of a Senate Estimates Committee investigating the concerns raised about the criminal involvement by an AFP informant in people-smuggling.

The licensee points out that the controlled operations provisions had no application to people-smuggling offences until 1 October 2001, after Mr A ceased working as an informant for the AFP and moreover, that section 151A Crimes Act 1914, which indemnifies law enforcement officers and other persons against liability incurred when engaging in controlled operations, specifically does not apply to informants of law enforcement officers.

The ABA accepts that while Commissioner Keelty was answering a general question about the application of controlled operations legislation to informants it was in the wider context of an inquiry into people-smuggling issues. Further, the Commissioner specifically linked his answer to the people-smuggling context by referring to Mr Moses's comments to *Sunday* on whether the AFP had authorised informants to involve themselves in people-smuggling. Consequently, the ABA does not find that Commissioner Keelty's statement was broadcast out of context.

Item 10

Statement: *We have asked the Federal Police Commissioner, Mick Keelty, for an interview on these issues. We've asked the AFP for the full report of their investigation – they've refused. We've submitted thirty-seven questions in writing to the AFP and the AFP has refused to answer them. All those questions demand answers.*

AFP Complaint: You have misrepresented the position of the AFP. During the broadcast you did not accurately state the facts in relation to the communications between us. This is an additional matter of complaint.

In letters to your solicitors, I twice offered to meet to discuss the issues that arose from the earlier broadcasts and the AFP investigation. In the broadcast, *Sunday* complains that the AFP failed to respond to their request to answer 37 questions and yet *Sunday* did not acknowledge, publicly or privately, the AFP's earlier invitations to them or their failure to respond.

ABA comments

The AFP claims that *Sunday* has misrepresented its position, given that it offered twice to meet with the program and complains that *Sunday* did not accurately state the facts in relation to the communications between them.

The licensee argues that each of *Sunday's* statements are accurate. The licensee states:

[I]t is true that there have been a number of approaches from the AFP for off-the-record chats but this is irrelevant to the truth of the assertions we made in our broadcast". Further, "[a]ll we have been offered ... is an off-the-record viewing of the report.

In relation to the 37 questions that were submitted to the AFP by *Sunday* the licensee asserts that the AFP refused to provide answers on the grounds that complaints about the previous programs had been lodged with the ABA and the licensee.

The ABA can find no factual inaccuracy with the statement that is the subject of the complaint. The ABA acknowledges that, in some circumstances, a broadcaster's omission to provide further information can result in viewers being left with an inaccurate impression. However, the ABA does not consider that viewers would have been misled by *Sunday's* omission to inform them of the AFP's offers of material 'off-the-record'. Considerations of fairness may sometimes require a licensee to broadcast a person's explanation for not answering questions. However, in the circumstances of this matter, the ABA's view is that it was not necessary for the licensee to broadcast the AFP's explanation for not answering the 37 questions.