

Website

The Council's website (<http://www.presscouncil.org.au>) has recently been upgraded and improved. The main changes are to the site's navigation which now uses cascading menus, to make access to all levels of the site easier. Additionally, the Council has added a search facility, to enable keyword searches of the entire site. Finally, the Council has moved the site to a new server, which should improve the speed of delivery even more.

Comments on the website and suggestions for improvement should be addressed to the Council's Executive Secretary, info@presscouncil.org.au

Photos in the House

The Australian Press Council has written to the Leader of the House of Representatives expressing its concerns with actions by the Speaker of the House in enforcing unpredictable and out-of date rules relating to publication of images of activities within the parliamentary Chamber. Speaker Andrew withdrew access to the Press Gallery of several press photographers after their images of an intruder on the floor of the House were widely published the next day in the main newspapers.

In a previous instance, in 2000, the Council's then Chairman met with the Speaker about guidelines that should govern the taking of pictures within the House, in particular, as in the present case, on the floor of the Chamber. The Speaker was concerned primarily with the dignity of the Parliament, and ensuring that photographs were not taken of activities in the Galleries, taking the view, in a letter to the Council 'that proceedings of the House take place on the floor of the Chamber, where Australians elected by their fellow citizens participate in the legislative and other parliamentary processes'.

The Guidelines on access for Press Gallery photographers quite reasonably forbid the use of images for advertising or elections or for commercial purposes. They also forbid use of photographs for satire or ridicule. In the current case the images used did not fall within those forbidden categories. They were undeniably news photographs properly published to ensure public understanding of the possible threats posed by an intruder. To ban photographers because newspapers published images of a really serious intrusion make no sense.

In the Council's view, it makes no sense to approve journalists reporting the intrusion, and newspapers publishing those reports, while taking offence at the publication of images that allow readers better to understand what actually occurred. How is the public to understand fully the degree to which the security of the Chamber was compromised if such photographs are banned?

It cannot be that photographs *per se* are to be banned because the Speaker is still allowing AAP to transmit images of activities within the Chamber for publication by the banned newspapers. A worrying conclusion might well

be that the Speaker wishes to have *de facto* censorship rights, allowing only those who toe a particular line.

The Council has asserted that both interpretations are detrimental to the Parliament. It is an eighteenth-century view that the dignity and decorum of Parliament might be put at risk by photography. The reverse is true. Democracy can only function where citizens are fully informed. It is surely the right of the public to have access via newspapers' words and pictures to matters of public interest and concern. Particularly those that inform them on matters related to the legislature, the activities of government and other matters essential to an informed exercise of the franchise.

Thoughtless over-regulation and prohibition of images of the legislature at work, particularly as the images of this instance demonstrate, derogate from the public's ability to understand what is happening in the legislature. Australians need more, not a curtailed, understanding of their national legislature.

The Council recommended that the suspensions be lifted immediately and the guidelines rethought better to reflect contemporary society. It awaits a response either from the Leader of the House or the Speaker.

ASIO legislation

In December, the Australian Press Council joined with other media organisations in writing to the federal Attorney-General about concerns with the *ASIO Legislation Amendment Bill 2003* [No. 2]. The Council also wrote to the Attorney (and leaders of all political parties in the Senate) on its own behalf to reinforce some of its particular concerns with aspects of Bill.

The Council noted that earlier this year the Parliament agreed to an amended version of the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*. Under this legislation ASIO already has wide-ranging powers to deal with terrorist threats to Australia. That legislation retains a reversal of the burden of proof and allows for individuals, such as journalists, to be detained and interrogated when they have at best second-hand information on a possible terrorist act. The Council, not being aware of any occasion on which these powers have been tried and found wanting, was at a loss to see why further, more restrictive legislation is required.

The Council's main concern was with the proposed restrictions on disclosure of operational matters, broadly defined in the Bill. Where such disclosure would have an adverse impact on national security or defence it is already covered by changes made through the *Criminal Code (Espionage and Related Offences) Amendment Bill 2001*. The need, therefore, for even more draconian restrictions has not been demonstrated.

Even if justification for such restrictions were given, the Council would be concerned with a blanket two-year extension on disclosure of operational information arising from a warrant.

The effect of the original restrictions and the extension of the restrictions is that the reporting of matters of public interest and concern could be suppressed. The Council believes that, unless otherwise determined on reasonable grounds, matters of public interest should be reported and the public should have access to information. The philosophy behind the currently proposed legislation is that matters are to be suppressed and that the public kept ignorant of developments in this area, except in exceptional circumstances.

For these reasons, the Council believes that further discussion, and a wider public consultation, on the proposals is justified and calls on the Senate to refer the matter to committee for such consultation and discussion. The Council would be happy to appear before such a committee to discuss these matters.

As a result of consultations with the ALP, the government was able to avoid a Senate committee hearing and a slightly amended version of the Bill was passed. Many of the matters of concern noted by the media and by the Council, including the reversal of onus of proof, remain in the Act as agreed to.

NSW Freedom of Information

The Australian Press Council has expressed its strong objections to the *Freedom of Information Amendment (Terrorist and Criminal Intelligence) Bill 2004*.

In addition to exempting documents "which could be reasonably expected to facilitate the commission of terrorist acts", the Bill, if it were passed, would provide blanket exemptions from FoI for all documents created by the NSW Police's Counter Terrorist Co-ordination Command, the State Crime Command, the Corrections Intelligence Group of the Department of Corrective Services and the NSW Crime Commission.

The Council believes that blanket exemptions from FoI are inappropriate, unnecessary and inconsistent with the notion of open and accountable government. It recognises that certain government agencies deal extensively with security sensitive information, which it is proper to keep confidential. However, it believes that, in determining whether such information should be disclosed under FoI, reference should be made to criteria which have been formulated for the purpose of assisting government officers to discriminate between information which should be kept confidential and information which should be accessible to the public.

Even those agencies which deal primarily with security sensitive information hold some information which is not sensitive and which might be considered appropriate for public consideration, or which has relevance to court actions. Agencies which deal with confidential information should be required to justify their refusal to disclose that information.

The Council believes that the *Freedom of Information Amendment (Terrorist and Criminal Intelligence) Bill 2004* is unnecessary and should be withdrawn, since current

legislation makes adequate provision for exemptions for sensitive information.

If, despite the Council's objections, the government decides to proceed with legislation to protect security sensitive information, that legislation should not rely on blanket exemptions to ensure the confidentiality of sensitive information. Instead, officers who refuse to disclose information should be required to justify that refusal. Legislation should set down criteria to be referred to when seeking to make such justifications.

The Council appreciates that such criteria cannot be framed in terms which require officers to disclose the nature of the material refused, but criteria can be framed in ways which put a clear onus on officers not to keep secret material that would otherwise be in the public domain simply because the material is embarrassing or because the officers are secretive by nature or training.

Refugees and asylum seekers

The Council at its January meeting considered the correspondence sent to the Council by a number of readers, raising questions about the 'appropriate' nomenclature that should be applied in the print media to asylum seekers and refugees. The UK Press Complaints Commission had earlier issued a general guideline for the British print media, arising from particular examples of 'inaccurate' language.

The Australian Press Council formed the view that it would be premature of it to issue a statement of general principles, or any guidelines to the press, in the absence of particular complaints citing articles in which 'inaccurate' terminology is used.

The Council still has no formal complaint before it, although a number of complainants have raised, informally, instances of 'inaccurate' terminology in three separate newspapers. In each of these cases, complainants have first taken the matter up with the newspaper concerned and none has brought the matter back to the Council as a formal complaint. Should one of these matters come to the Council for adjudication, the Council may deal, at that time, with the general issue of any 'appropriate' language as well.

Security Sensitive Information

The Australian Press Council has made a submission to the Australian Law Reform Commission on its Background Paper, *Protecting Classified and Security Sensitive Information*. It acknowledged the importance of protecting highly sensitive information in order to protect Australia's interests. However, this need to protect Australia's security must be balanced against the importance of facilitating democratic processes by granting the public access, through the media, to information on matters of public interest and concern, including information about government processes.

In particular, the Council

- opposes any greater restrictions on media access to

government information beyond those restrictions that are already in place;

- opposes absolutely any proposal to introduce an *Official Secrets Act* in Australia;
- believes that the current laws should be reviewed in order to ensure that whistleblowers are given adequate protection and that a public interest defence is available in any prosecution for disclosing security sensitive information;
- would like to see the Commonwealth government introduce reforms which would protect the rights of the Australian public to have access to government information, by placing an onus on government officers to classify information appropriately; and
- favours a review of Commonwealth government's classification scheme for security sensitive information and the introduction of mechanisms to facilitate the review of security classifications.

The complete submission has been posted to the Council's website as a *pdf* document.

The commission has subsequently written an Issues Paper, developing ideas from the Background Paper and from submissions made to it. The Issues Paper moves towards the positions made by the Council in its submission. The Council is making further representations to the commission before it makes its final recommendations on any proposed legislation.

Uniform defamation

The Press Council has for many years been pressing the Standing Committee of Attorneys General to place on its agenda the question of uniform defamation law. At present, there are eight jurisdictions (state and territory) with separate defamation laws. Most larger periodicals publish in more than one jurisdiction and many, including the national newspapers and magazines, in all eight. Last year, the issue was placed back on the SCAG agenda and an officers' working group established to develop proposals towards harmonisation or uniformity. At a recent SCAG meeting, the federal Attorney, Phillip Ruddock, indicated that he would proceed to the introduction of an overarching national defamation law if the states and territories were not able to reach agreement on a uniform law. The Council has agreed to co-ordinate a publishers' group to develop proposals for a uniform law that can be fed into the SCAG process, and has liaised with the officers' working group about feeding into its processes. It hopes to complete this process by mid-year.

Canberra

The Council will hold its March meetings in Canberra on 24 and 25 March. It will use the visit to meet with the Minister for Communications and the Secretary of the Department of Communications, Information Technology and the Arts, and with other senior politicians, bureaucrats and editors. There will be no Public Forum.

Visitors

In November, a delegation from the Singapore police visited the Council. The delegation was visiting Australia to conduct a study of the protocols and practices of police services in dealing with the media. It visited the Council to discuss its responsibilities in overseeing and investigating the print media. Tan Puay Kern, senior Assistant Commissioner and delegation leader, gave examples of the relationship between the police and media in Singapore.

In December, a delegation from the Shanghai Legal System Journal in China visited the Council. They met with the Council to discuss complaints mechanisms in Australia and how the local media handle court reports.

In January, 20 students from Pacific Lutheran University in Washington state visited the Council. They were in Australia as a part of an elective study, and were primarily interested in the plurality of the Australian press and the press law and practices affecting the local media.

Mediated complaints

The Council office tries to solve matters by direct contact with the publication concerned. This often leads to a settlement of the matter satisfactory to both parties. On rare occasions, a Public Member of the Council will convene a face-to-face mediation, by agreement with the parties. Below are some examples of the matters recently settled in these ways.

- A regional daily published a report which stated that a particular person was the inaugural president of an Association. The complainant requested a correction of the report stating that he, in fact, was the inaugural president. Upon receipt of supporting material from the complainant, the paper published a correction.
- A national newspaper published a report that an (ex) priest had been excommunicated. The complainant, a minister of religion, advised that the report was inaccurate. The newspaper published a correction of the inaccurate material.
- A metropolitan newspaper published an article about a drug recall. The complainant believed that the headline to the article was misleading. The paper conceded that the headline was misleading, and immediately published a correction of its error.
- A regional daily published a court report in which the complainant's surname was spelt incorrectly. The complainant is a recidivist. The correct spelling of the complainant's name has been pointed out to all editorial staff in a memorandum.
- A metropolitan newspaper published a photograph of the complainant and her late husband (who had been murdered). The photograph had been provided to the paper on the basis that the complainant's image would not be published. The paper acknowledged its error. The complainant was happy with the correction, and apology, which the paper published.