



# Press self regulation: fatally flawed?

**Nigel Waters** assesses the Press Council's complaints handling procedures against standards set in other industries and those proposed by consumer bodies.

The main avenue for complaint about standards of journalism in the print media is the Australian Press Council. The Press Council is a voluntary association formed in 1976 by many (but not all) of the leading Australian publishers of newspapers and periodicals, with some members appointed to represent the general public interest, as well as nominees of the publishers, journalists and editors. One of the principal functions of the Council is to handle complaints, and for this purpose it has established a complaints committee, which hears complaints after an initial attempt at resolution by the publisher concerned has failed. This scheme is entirely self-regulatory: there are no statutory standards or requirements.

In 1994/95 the Council dealt with 422 complaints, of which 75 were settled by mediation and 86 adjudicated. Of those adjudicated, 45% were upheld in full or in part - a similar percentage to previous years. The complaints handled were about a wide range of aspects of reporting, the main categories being, consistently over the years, inaccuracy or misrepresentation, unfair treatment and breach of ethical standards. Other significant grounds for complaint which have been more variable from year to year are imbalance, invasion of privacy and offensive coverage.

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## Does the Press Council measure up?

The adequacy of the existing Press Council complaint mechanism, its characteristics and performance can

be assessed against the following 'composite' indicators derived from models of regulatory schemes proposed by the Australian Federation of Consumer Organisations and the former Trade Practices Commission. These models have been adopted in self-regulatory mechanisms in other business sectors, such as the Banking Industry Ombudsman scheme, two separate Insurance Complaints schemes, and the Telecommunications Industry Ombudsman scheme.

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### Coverage of the sector

The Press Council has maintained a broadly representative membership, although at times in its history major publishing groups have withdrawn, only to re-join. The Journalists Association (now the journalists' section of the Media, Entertainment and Arts Alliance) withdrew in 1987, although there are individual journalist members of the Council. The lack of support for the Council by the union clearly damages its credibility.

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### Independence

In order to be credible, any self regulatory mechanism needs to have a degree of independence. But what degree, and what indicators should be used to assess independence? Two critical factors are membership and method of appointment of the relevant oversight body, as well as the functions and objectives of that body.

The Press Council arguably fails both tests of independence. Whilst it has a number of 'public members', they are selected and appointed by

the Council on the recommendation of the Chairman, rather than nominated by outside interest groups. They are also in a minority relative to the number of publisher, journalist and editor members - and although the committee that hears first instance complaints must have a majority of public and ex-officio members, adjudications are made by the full Council.

The Press Council also seems to have a clear conflict of interest and confusion of role built into its articles of constitution. It is expressly intended to be a defender of the freedom of the press, and apparently sees its complaints handling role as subordinate to this primary objective. The Council's Statement of Principles provides: 'In dealing with complaints, the Council will give first and dominant consideration to what it perceives to be the public interest'. Although this may be an appropriate position in relation to complaints about reporting of significant public affairs issues, such as corruption, integrity or conflicts of interest, it is arguably the wrong starting point for consideration of standards of reporting in the majority of lighter weight 'infotainment' stories.

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### Standards

Whereas any regulatory scheme needs to have a set of standards or principles, the print media has no *externally* imposed standards which its member organisations are committed to meeting. The Press Council assesses complaints against its own Statement of Principles, which in-



## Media ethics: an evaluation

The media must strive to be responsive and responsible in order to engender the public trust and support that is the ultimate protector of media freedom, said Claude-Jean Bertrand, Professor Emeritus of the Institut français de presse, at a lecture on media ethics at the Alliance Française (Melbourne) on 17 October. Bertrand is the 1996 Australian Press Council Fellow.

Bertrand's comparative studies have identified approximately thirty 'media accountability systems'. Codes of ethics developed by the profession are ubiquitous. However, they tend to focus on prohibitions, rather than on what journalists should do. Prominent corrections, letters to the editor and the presentation of pro and con opinions on major issues contribute to accountability. Bertrand

stressed the importance of criticism expressed, for example, in journals such as the *American Journalism Review*, 'journalism about journalism' and scholarship about media ethics.

Press councils, press ombudsmen, liaison committees (eg legal profession and police) and consumer organisations seek to scrutinise the media and improve reporting. Journalists require ongoing training in media ethics and accountability and should have the opportunity to leave newsrooms for extended periods in order to undertake further studies or in-depth research. A major failing of the media, said Bertrand, is superficial and ill-informed journalism.

Recalling Liebling's maxim that 'freedom of the press is guaranteed only to those who own one', access to the media

is an important aspect of accountability. In addition, members of the public need to be made aware that they are not powerless in relation to the media and that their feedback matters.

Obstacles to media accountability include media conservatism and hostility to change, journalists' sensitivity to criticism and public ignorance of media accountability systems. The development of effective accountability systems requires significant financial commitment to fund, for example, press councils and the salaries of ombudsmen.

Bertrand cautioned that there are limits to which journalists can be held responsible for all the media's ills, when media organisations are making the major decisions. □

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clude generalised commitments to honesty and fairness, respect for privacy and sensibilities, truthfulness and accuracy. One does not have to see the worst breaches parodied by the TV programs such as *Media Watch*, *Frontline* and *Mercury* to be aware that these principles are routinely breached without any apparent sanction.

### Promotion and public awareness

Even the best known complaints schemes find it difficult to maintain high levels of public awareness. In practice, most complainants are informed about industry complaint mechanisms by the organisation to which they first complain. This places a premium on the honesty and integrity of publishers in advising potential complainants.

The nature of the print media, combined with high levels of public criticism, justifies much more prominent notification of the Press Council's role than is current practice. However, as the satisfaction and avoidance of complaints creates less

of a commercial return than in other industries, publishers are unlikely to recognise the value of generating them. A management committee with greater consumer representation might be more likely to see the contribution that better publicity could make to rehabilitating the image of the press.

### Cost and ease of use

While complaints to the Press Council do not incur a fee and a majority of complainants surveyed regarded its processes as speedy, informal and approachable, only a bare majority of the complainants surveyed would use the Council again if a similar complaint arose, and 75% would not consider it if they had to pay a fee.

### Remedies, enforcement and sanctions

Publishers are requested to print Press Council adjudications upholding or partially upholding complaints with 'appropriate' prominence. The Chairman, Professor David Flint, proudly reported that in 1994/95 '...every ad-

verse adjudication against an Australian newspaper or magazine was published' and the rate of publication has consistently been above 80% in earlier years. The Council believes that, 'This [publication of the adverse finding] is of course the only response to such breaches which is consistent with a democratic society'. There is no explanation why the Council considers the sort of self-imposed but binding sanctions accepted by banks, insurance companies and telephone companies would strike at the heart of democracy.

Flint also argues that tougher sanctions would convert the Council into a court, with legal representation, appeals, costs awards and a strict burden of proof. Again, there is no recognition of the precedent of other industry schemes in which participants voluntarily agree to accept the award of monetary penalties without requiring the forfeiture of a complainants' rights.

Readers who have accidentally stumbled across Press Council adjudications at the bottom of an inside page can be forgiven for doubting if publication of the finding rep-



resents a significant sanction, particularly given the graceless way many of them are presented. The Council's own survey showed only 38% of complainants felt that they had achieved some or all of their goals, and 59% felt that there had been no long term positive effect on the media organisation's performance as a result of the case.

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### Waiver of other remedies

A particularly disturbing characteristic of the Press Council's processes is that the Council requires complainants to waive any rights to take formal legal action before a complaint will be considered. The telecommunications, banking and life insurance complaints schemes do not require a prior waiver of this sort, although mediated settlements will often involve an agreement not to litigate in exchange for compensation.

Although the Press Council's position may strike most people as outrageous, publishers justify it on the basis that complaints could otherwise be used as a 'fishing expedition' for information to be used in legal proceedings. This argument would be easier to defend if the complaints procedure offered more effective remedies, as it could then be legitimately regarded as an alternative to expensive and time consuming litigation, particularly for those potential litigants more interested in vindication or apology than damages.

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### Publicity for complaint outcomes

Although resolution of individual complaints must be the primary objective of any complaints procedure, there is a much wider benefit to be gained from effective and widespread publicity with the aim of influencing general standards - the normative effect. The Press Council emphasises

this role, claiming that its 'adjudications are widely read, examined and discussed' and 'have an impact on ethical debates within the media'. The Council is certainly quite active in publicising its activities, producing a quarterly newsletter as well as its Annual Report, although the emphasis in its seminar program is on defending press freedom. The educational and standard raising influence of the Council's adjudications is debatable, as they seem to be regarded with a high degree of cynicism by most journalists.

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### News versus infotainment

Sections of the media appear unwilling to acknowledge a distinction between serious news and current affairs programs, and the lighter coverage which forms an increasing proportion of all newspaper and magazine output. When considering a complaint, the Press Council could place less emphasis on the generalised value of editorial independence and look more specifically at the public interest in the particular case.

Many of the Council's adjudications find that there has been a breach of its principles, but stop short of condemning the breach because of an almost mystical attachment to the 'marketplace of ideas' as the only legitimate arbiter of reporting standards. The justification for this approach appears to be that publications consistently breaching community standards will be penalised through loss of circulation, and therefore in advertising revenue, while those setting high standards will be rewarded. However, the practical reality of consumer behaviour, combined with the concentration of media ownership that has in many cases left no real competition, mean that such arguments carry little weight, except in very extreme cases of public reaction to high profile stories.

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### Reform

The Press Council clearly sees its main role as defending the freedom of the press. Although this is a vital objective, it dominates the perceptions of those involved in handling complaints so that only the very worst breaches of standards of journalism are ever taken to task. The Council routinely gives journalists and publishers the benefit of the doubt, making frequent references to their public interest role. Furthermore, undue sensitivity about editorial and the independence of journalists have prevented the Council from adopting a regime of sanctions and penalties which will be necessary to effect real change.

Since 1993, the Senate Standing Committee on Legal and Constitutional Affairs has been conducting an inquiry into the rights and obligations of the media, covering such issues as to ethics of journalism, the right to privacy and disciplinary processes for journalists. The Committee has already given some indication of its views in its first report, *Off the Record - Shield Laws for Journalists' Confidential Sources*, released in 1994. Its recommendations include a closer relationship between the Press Council and the MEAA, the adoption of a code of ethics by editors and proprietors, and greater powers for the Press Council to impose and enforce sanctions.

Levels of public concern about reporting standards rise and fall, but appear to be relatively high at present. If the industry is to continue to stave off statutory regulation - with its concomitant threat to important freedoms - then it will have to take individual complaints and general public concerns more seriously, and provide a complaints procedure which is seen to be more independent and more effective. □

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