The police and the media

AFP Commissioner Mick Keelty gave the 2006 Annual Address in March. Executive Secretary JACK R HERMAN reports on the speech and Chairman KEN McKINNON responds to it.

In a wide-ranging address to the Australian Press Council, Police Commissioner Mick Keelty expressed the hope that the headlines arising from the speech would not suggest an attack on the media. Instead, he hoped, that the remarks would be seen as a genuine attempt to try and build a better understanding of the current environment between the media and the Australian Federal Police (AFP).

Commissioner Keelty was delivering the Council’s 2006 Annual Address at a lunch in Sydney on 23 March. His topic was “Between the lines: New powers and accountability for police and the media”, and he started by acknowledging the significance of the occasion: he had just commenced his second five-year term as AFP Commissioner.

In reflecting on what he had achieved, learnt and observed, the commissioner said that the previous five years had brought into sharp focus his views on the relationship between the police and the media and our respective roles in society. Noting that the address was part of the Council’s activities promoting discussion of the freedom and the responsibility of the Australian press, he noted that “the Council’s Statement of Principles includes providing ‘first and dominant consideration to what it perceives as being in the public interest’. I suspect my perception and yours of what constitutes the ‘public interest’ will be poles apart.”

He denied that the police and the media are warring parties, but thought that certain elements of the respective roles meant that tensions can emerge when their paths overlap, a situation exacerbated by the competitive market in which the media operate. In fact, said Commissioner Keelty, his ‘strong views’ on the role and accountability of the media had formed as a result of his experiences during his first term.

He saw the relationship between the AFP and the media as very positive despite his belief that, until recently, the AFP wasn’t on the media’s radar and he found himself “having to explain who we were and what we did, especially when compared to our state counterparts”.

With the media’s interest today in the work of federal law enforcement, Mr Keelty asserted that the AFP is working hard to produce a strong and productive relationship. Further he saw similarities between the police and the media:

“We are both in the business of seeking out information, following up leads and serving the public interest. And these are objectives that often have to be achieved in difficult and time critical circumstances ... [and applied] without fear or favour. ...Importantly, we share a responsibility to ascertain the truth.

Commissioner Keelty said that the AFP recognised and valued the media’s role in keeping society informed, accountable and honest but wondered whether they shared the same standards of accountability. “This surely is where the Press Council has a role to play”, he argued.

He discussed changes he had observed in recent times in the way journalists report police matters. He saw a shift in journalism where “police roundsmen and women who were familiar with the criminal law and familiar with the court systems have been over-run by a new cadre of journalists who have been directed by their news editors to go out and report on the security environment. Some of these journalists have little or no understanding of our criminal justice system. There are inherent difficulties in sending people who are unfamiliar with law enforcement, unfamiliar with the court system; and unfamiliar with the genesis of legislation and policy to cover stories in the new environment”.

Commissioner Keelty argued that the media’s reaction to recent anti-terrorism laws had been characterised by a fear that offences such as sedition will affect the ability of journalists to express their views; and he asserted that reporting on these laws was not always balanced or based on an understanding of the laws. Additionally, national security matters had led to “insatiable” demands for information about AFP operations. This was unprecedented, he said, especially when contrasting the opposing needs to provide information to the media and protect operational integrity. Again he argued that some journalists did not understand the impact of reporting on “operational integrity” and the impact this reporting might have on potential terrorists.

The police and the media share a responsibility to be aware of the potential negative impact of events such as search warrants that can escalate tension in the community. Too often what the media describes as “raids” are sensationalised. These images impact upon community
attitudes and the marginalisation of groups. It is critical for the media and the police to work together to mitigate against the escalation of tensions.

He saw media treatment (“both the perception and the reality”) of these issues as affecting the likelihood of reform of alleged terrorists and potential recidivism, noting how quickly many sections of the Muslim world were ‘mobilised’ in their response to the Danish Mohammed cartoons.

Accountability

On the question of accountability, Commissioner Keelty recognised the need for the AFP to be open and transparent and expressed an appreciation of the media’s role as the community’s watchdog. He noted approvingly the media’s examination in detail of the level of accountability in other industries in society, citing HIH as an example of concerns when “inappropriate accountability mechanisms” are used. However, he was concerned with the incidence of opinion pieces, particularly concerning the terrorism laws.

They are one person’s opinion and rarely do you get a full insight into the background of the person providing the opinion.” Yet, he suggested, journalists writing articles will search for information and occasionally use opinion pieces as if they were infallible, whereas “they often contain information that has either not been well researched, cannot be substantiated or is incorrect.

He cited John Doyle’s Andrew Olle Lecture, which he paraphrased, “Newspapers are full of it. Any half-baked idiot who can string a few sentences together is given a go. Particularly if the opinion is inflammatory or somehow ratchets up the climate of fear or loathing. Simply and obviously because it sells more newspapers”. Commissioner Keelty was concerned that every time he spoke on these issues as affecting the likelihood of reform of alleged terrorists and potential recidivism, noting how quickly many sections of the Muslim world were ‘mobilised’ in their response to the Danish Mohammed cartoons.

New powers

The commissioner then turned to the introduction of new powers for the AFP to use control orders and preventative detention. In welcoming debate on these powers, he acknowledged that these are far reaching powers, bringing with them greater obligations. He saw the AFP’s main task, however, as protecting the public from acts of terrorism, and the new powers provide the AFP with additional useful tools. He discussed some of these powers in detail.

Control orders, for example, he saw a preventative measure when an individual poses a terrorist threat and are used in cases where they cannot be prosecuted because there is no offence with which they can be charged or available evidence is inadmissible and cannot be used without compromising sensitive operations. The intention here, he argued, is to protect the public from a potential terrorist act. Certainly they go beyond traditional law enforcement measures of arrest and charge, but they are not to be used as a substitute for arresting or charging a person. In any case, the AFP must first satisfy the Attorney General and then a Court that the Order is reasonable and it is necessary.

On the use of lethal force, he argued, “Some description of the
new laws has been sensationalised. For example, reports on what the media labelled ‘shoot to kill’ provisions were highly inflammatory. ‘Shoot to kill’ is a very emotive term but for years now ... the emphasis of police training has not been on shooting. The emphasis has been on de-escalation and providing police with the skills to ensure that the discharge of the firearm is the absolute last option.

The bottom line is that the inclusion of the lethal force provisions in the new legislation merely repeats the power that already exists in every police organisation in this country.

He was also concerned with the sensational reporting surrounding the recall of the Senate to consider the new laws. Without going into detail of the advice provided to the Government or about matters that are currently before the Courts, he noted the difficulty, if not impossibility of recalling the Senate without some public scrutiny. “The suggestion that the recall of the Senate was in any way related to diverting the attention of the media from other policy matters before Parliament, was ludicrous and in itself completely unfounded.”

Commissioner Keelty labelled the coverage of the new laws as “public interest hypocrisy”. He contrasted the Prime Minister’s determination not to go into any operational detail with some journalists, “needless to say the same ones who denounce police corruption”, acquiring operational details through leaks. He asked why a claim that there was a public interest in publishing such detail was justified. In his view “the public interest” in a terrorism investigation is to prevent the act from occurring and provide the best evidence to the court to convict any alleged participants.

“The loss of evidence, the fear induced in the minds of the public and the unfair treatment of the accused can never be ‘in the public interest’.”

He compared the police obligations in terrorism matters to those in blackmail or extortion offences. “Declaring a particular brand, a particular mode of transport, or a particular building as a terrorist target can have enormous impact on share prices, consumer confidence and on consumer use. Some of the new laws bring with them unprecedented responsibilities to not only get it right but to decide what is in ‘the public interest’.”

**Bali 9**

Turning to the Bali 9 drug case, Commissioner Keelty said that some media repeatedly reported that Scott Rush’s father had tipped off the AFP and that the AFP had promised to prevent Scott from leaving the country. “This was simply not the case. The AFP was never directly contacted by the Rush family. The AFP made no promises to the Rush family and the AFP investigation into the alleged drug importation was not sparked by a ‘tip-off’ from the Rush family.” He suggested that, in part, this misunderstanding might have arisen from one journalist misreading court documents that referred to a Queensland police officer, an error that was discovered “too late”.

He looked at other examples of misreporting in the case alleging that some journalists had said that errors had resulted from rewriting by an editor or subeditor. He thought that such ‘isolated examples’ were occurring with concerning frequency. “The lack of accountability or acceptance of responsibility is a real problem that does not augur well for the new powers aimed at preventing terrorism”.

The commissioner was also concerned with what he saw as a recent trend for defence counsel to run their defence in the media because they offer a convenient stage to enlist public support. These comments, he said, should be seen merely as an attempt to garner public support.

And he asked, where are the editors checking the record? He accepted that journalists, like police, can become very passionate, in some cases so passionate that they lose objectivity. He asserted that police managers and Courts usually reign in such enthusiasm and that editors need to do the same.

He also thought that editors bore a responsibility to ensure that criminals could not use the media as a way of getting detailed information on “the methodologies employed by police to track terrorists ... As a society, I think we have to ask ourselves, is it responsible journalism to reveal confidential practices being used to track terrorists?” He thought the only result of such revelations was that criminals, particularly terrorists, would change their own methods so they can evade detection and capture.

Because such articles can set the police back in their quest to protect the public from a terrorist attack, the media need to weigh up the potential consequences of publishing material that could be detrimental to investigations and ultimately to public safety. “Terrorism is a high stakes, high risk, environment. It is not just up to the police to keep our community secure, we all have a role to play.”

**sedition**

According to Commissioner Keelty, the AFP has become aware of the problems created where people urge others, particularly the very impressionable, to undertake terrorist activity. The Internet, because of its reach and the ease in posting material, has multiplied this concern. The AFP raised these concerns with the Attorney General who agreed that the way to deal with the problem was to modernise sedition offences. The recently introduced sedition offences were aimed at the urging the use of force or violence where the use of force or violence will threaten the peace or the good government of Australia.

He drew an analogy with the “consorting” laws, noting that “consorting” can now take place over the Internet, with comparative anonymity. When such “consorting” could lead to planning of, and recruitment for, terrorist attacks, the AFP felt it necessary to have an offence that could be used for prosecution. The laws, he argued, were not directed at the suppression of the media or other forms of free speech.

**Conclusion**

Commissioner Keelty stressed that the relationship between police and the media is not all negative. He noted cases where media cooperation had assisted the police in safeguarding the community, focussing national attention on important issues. He cited the issue of sexual servitude as an example, praising the sustained campaign by the Australian to raise awareness of the issue, prompting a government response.

Another example was the cooperation between police and the media during the Bali bombing investigations. “Not only did the media assist with maintaining the flow of information to families and friends of the victims but responsible coverage of the joint investigations ... helped improve understanding about Australia’s close relationship with Indonesia.”
Additionally, the media’s coverage of the mission to the Solomon Islands had helped educate the community about the vulnerabilities surrounding weak states and the spread of transnational crime. In concluding, the commissioner drew attention to a section of the print media that he saw as having more potential to influence people’s attitudes than the written word: the cartoon, arguing that there had to be some ethical boundaries observed. He was mainly concerned with a lack of understanding shown by some cartoonists of the role of the AFP when they portrayed us as executioners in the Bali 9 case. He saw the decision on punishment as one for the courts and that such misrepresentations undermine the integrity of police in their role as protectors of the community. “Again, I believe this comes back to editors understanding and taking the responsibility for things that are published.”

Jack R Herman

[Editor’s note: The full text of the Commissioner’s Address and the Chairman’s response are on the Council’s website.]

The Chairman’s comments on the 2006 Annual Address

Commissioner Mick Keelty’s Annual Address reported above certainly did not disappoint. His suspicion that he and the media might be poles apart on what ought to be reported in the public interest in a time of unprecedented terrorism was amply borne out. He believes the press unreasonably sensationalises AFP action by calling them ‘raids’ (and seeking to report on-the-spot), that they should not inquire into and report AFP methodologies, comment negatively on the new powers of control and preventative detention, nor question the basis for a recall of the Senate. In short, newspapers should be more responsible.

He went on to say that the views aired in newspapers are often sloppy, ill-informed and unrepresentative (eg, minority civil libertarians). The implication is that editors ought to be more responsible about whose opinions they let loose on their pages. He did not believe many of them should be given space.

To say that newspapers would not agree would be an understatement. They would vehemently disagree. What are their respective accountabilities?

Characteristically Ministers and Commissioners control sensitive information. They release what they think the public ought to be told, usually partial, from a particular point of view and drip fed at that. Or information is leaked to selected sympathetic journalists. The best newspapers do not accept this as enough. Editors and journalists believe it is their duty to discover the whole truth and report that to the public. They explore all sources of information, official and unofficial.

There is no doubt that the job of the Commissioner is onerous. Terrorism situations will be tense and possibly dangerous. While newspapers may not want to add to his problems they don’t want to be gullible either. Some laws curtailing freedoms in the name of terrorism and security are so capable of being used in a totalitarian way that close scrutiny is essential. Laws that allow individuals to be incarcerated without anyone being allowed to know and secret trial provisions are very threatening. Newspapers no doubt feel that ultimately their accountability is to the public believing they will find in them accurate and full information.

Why don’t journalists meekly accept constraints authority seeks? Constraints that may, as the Commissioner asserts, have better public outcomes. Why do journalists doubt briefings and official press releases? The answer is that they have learned distrust the hard way. Too often they uncover information that should have been reported at the time that had been hidden by officials. The consequence is a perennial contest for information. Most often what is reported is undeniably in the public interest.

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These accountabilities are unlikely to change, nor should they. The Commissioner has to be on the safe side of risk and security. That is the nature of a vigorous democracy.

Nevertheless regulatory principles do govern newspaper behaviour. All major newspapers in Australia subscribe to the principles that the Press Council uses.

It is interesting that Commissioner Keelty was not happy with his one complaint to the Council in 2002. The complaint was about a Melbourne Herald Sun page one headline Terror Alert, a report that an AFP police pistol, security pass and radio had vanished at Melbourne airport as world leaders were gathering for a CHOGM Commonwealth leaders meeting due to open that day in Queensland. The AFP’s case was that the Federal agent had been travelling from Cairns to Perth, that neither he nor the contents of his briefcase were involved in CHOGM matters, and that the reporter had been told that prior to publication. The basis of the reporter’s assertions about a security scare was a Victorian police document alerting officers to the theft.

The complaint was upheld. Like some other complainants he wanted more. He felt that the Council should not have handled the complaint in-house and criticised the adjudication for not projecting sufficiently emphatic outcomes.

A further instance he raised concerned a complaint lodged on Christmas Eve 2005 by General Cosgrove over a page one story about the army experience of his sons. It cannot be discussed in detail because it has not been completed, in part due to delays occasioned by General Cosgrove’s involvement in the Cyclone Larry clean-up. What is important is that, although the complaint was received after office hours, the Executive Secretary was in touch with the editor immediately; a second story (which has not resolved the issue) was published by the paper as a result.

From the point of view of the Press Council this year’s Annual Address initiated an excellent debate. It is very helpful to have self-regulatory processes questioned by a commentator of Commissioner Keelty’s standing. Leaving aside the strength of his comments, which are views unlikely to make newspapers any less bold in reporting what they see as the news, he raised interesting points about print media regulation. These are issues that the Council is discussing internally, with the industry and with the public.

As host for the Address jokingly advised Commissioner Keelty at the outset that I had the privilege of the last word. On reflection this will not be anywhere near the last word. So far the many suggestions for tightening the regulatory regime are matched by as many assertions that newspapers cannot properly inform the public if subjected to more restrictions. That does not mean future debate will cease. Adjudications disappoint those whose cases they do not uphold. Complainants get upset; editors get furious. One inevitable consequence is advocacy of reform of principles or processes. The Press Council is always open to such suggestions, the more so when a successful complainant sees shortcomings.

Ken McKinnon
News by email

Press Council publications are now sent by email to those who ask for delivery in that form. If you want the News sent direct to you (in pdf format), please send an email to info@presscouncil.org.au with subject line News by email and you will be placed on the direct email list.

Press Council Prize

There will be no Essay Prize in 2006. As in 2005, the Council will be making a series of awards for outstanding scholarship through the various journalism departments and faculties at Australian tertiary institutions. The Council will endow prizes for such courses, particularly in the study of ethics.

Thirty years

This year the Council celebrates its thirtieth anniversary. Formed in July 1976, by an agreement between the publishers and the then Australian Journalists Association, the Council has always had a mixture of industry representatives, journalists (originally elected by the AJA) and members of the public. When the AJA left the Council in 1986, it reconstituted, with journalists represented by independent and freelance journalists and retired editors. The MEAA (the union that includes the old AJA) re-affiliated in 2005 and again nominates members to the Council. At the time of writing, as it ends its thirtieth year, the Council has formally dealt with close to 10,000 complaints, of which about 3,700 have been mediated or otherwise settled to the satisfaction of the complainant. It has adjudicated close to 2,000 of the complaints, issuing 1316 decisions, which closed 1316 adjudications, of which over 40 per cent have upheld the complaint in whole or part. Additionally it has sent out 271 press releases or reporting guidelines, published 29 annual reports and 74 issues of the APC News. Its website has close to 1,000 separate files, searchable by keyword. It does all this from one office with 3 full time and one permanent part-time employees. Not bad for an organisation that was never going to last.

Annual address

The Council’s 2006 Annual Address was held in Sydney on 23 March 2006. Australian Federal Police Commissioner Mick Keelty delivered the address at a lunch in Sydney. The speech, Between the lines: New powers and accountability for police and the media, addressed some of the contemporary issues for the police and for the press arising from recent anti-terrorism laws and other recent developments.

A report on the speech and of some remarks in response offered by Council Chairman, Professor Ken McKinnon, starts on page one of this issue. The full speech is available on the Council’s website.

On the Council

John Morgan has retired from the Council. He joined the Council as a representative of the Australian Newspaper Council in August 1980 and subsequently represented the Herald and Weekly Times until his retirement when he was appointed one of the inaugural editor members of the Council. He has been a member of the Council continuously since his first appointment and his twenty-six years of service mark the longest term enjoyed by any member of the Council. In noting John’s retirement, Professor Ken McKinnon noted that, in addition to his longevity, Mr. Morgan had performed a number of useful functions for the Council, not the least of which was his ability to edit on the run and to correct the grammatical solecisms of complainants, publications and other members of the Council. Professor McKinnon noted that Mr. Morgan would be greatly missed by the Council. At a special dinner to mark his retirement, John Morgan made some remarks.

They have been ringing around in my head for some considerable time, the words of my favourite general, Oliver Cromwell. He marched into the Long Parliament and said, “You have sat too long for any good you have been doing lately… Depart, I say; and let us have done with you. In the name of God, go!” And I think that applies to me.

You must understand that I’ve been on the edges of the Press Council from the very beginning. I’ve suffered under all the Chairmen, starting with Sir Frank Kitto. He was a very forceful Chairman; if he could find the complainant, the defendant and the Complaints Committee guilty, he would have.

After Kitto came Geoff Sawer, who was with us only a short time for health reasons, but he lived as the author of the book on defamation that we all followed in those days. Then came Hal Wootton. Hal unfortunately was not prone to compromise. The difficulty was that the Press Council itself might have fallen apart as the AJA opted out. And it was worth saving.

David Flint moved in on that, from the Vice-Chairman to the Chairman. The outstanding thing about David, to me, was that he never showed any sign of prejudice. I think it is greatly to his credit that he did. By the way, I rather liked David. I don’t think he liked me. I think it was his bete noire, to put it in terms he likes. In fact, at some public meeting, he described me as the enfant terrible. I was at least 70 when he said it.

After David came Dennis Pearce. He was not as forceful as at least one member of the Council thought he should be – and told him so. I told the Council member, with equal force, that I didn’t think he should have said it. Anyway, that produced the result that we have before us now. I’ll come to him later on.
I’m not going to go back to the cases, sometimes idiotic, that we’ve had over the years. I’m going back to the people of the Council. Dear old David McNicholl was a terrible snob, but he was a nice bloke. It was a pleasure to see him snoring in the corner, and then breaking out with an incisive remark. He would disappear for lunch at twelve o’clock no matter what. We had a member who fell foul of the law. I always liked him. He always said what he thought. We had a war correspondent, who was quietly dying in the corner. It slowly became obvious that he wasn’t in the grip of the situation. Then we had the silent knight, who rarely said anything, but he wrote at least one good adjudication.

Then we’ve had the lawyers, of course. ... The one I liked particularly was Kevin McCreanor. I’ve never seen a more complete demonstration of the way lawyers operate. At the meeting of the Complaints Committee he violently put one point of view, logically and completely and with utter conviction. He was then voted down by the committee – everybody spoke against it. The following day, as the rapporteur of the adjudication, he was equally determined to present the case in entirely the opposite direction. And that explains what the hell lawyers are about.

And then of course we’ve had the monstrous regiment of women. I have to tell you that my reputation for misogyny and all that is quite wrong. It is a protection I’ve devised in order to keep you butterflies away from my undoubted charm. The truth is I’ve learnt a lot from women in the Council. I am quite serious about this. I’ve learnt about a woman who was beaten up by her husband regularly. I’ve learnt about a woman who wasn’t quite able to do the things that perhaps he might be able to do. All these things are quite a way from my masculine world. After all, I was a journalist all my life and I was never at home. I never saw the damn kids except perhaps once a week. My wife was responsible for bringing up the children. I really have learnt an awful lot from the women on the Council and I thank them for all that.

The public members as a whole? I’m quite amazed at the standard that has been achieved. In the early days, I remember I spent the first year of their membership explaining what a newspaper was. The standard has improved. I’m amazed at how well the public members deal with the problems that are presented to them.

I must point out that there was rarely disagreement between me and the opinions of the Council, both in adjudications and in statements of various sorts. The one I particularly remember was the one down in Ballarat. The thing that was outstanding in statements of various sorts. The one I particularly remember was the one down in Ballarat. The thing that was outstanding about that, in my opinion, was that the division was entirely in the grip of the situation. Then we had the silent knight, who rarely said anything, but he wrote at least one good adjudication.

I’m afraid you’re all bloody tone deaf. I’ve even tried to deal with pronunciation. Let me assure you, Shakespeare did not write Tamara and Tamara and Tamara. Please improve.

Now I must admit I’ve picked up some clues myself, on spelling, for instance. My spelling is appalling. It always has been. I regard it as purely mechanical. On the other hand, I’ve even learnt something about pronunciation. I once made the mistake of saying hyperbowl instead of hyperbole. But, then, it’s all Greek to me.

Finally, like all good feature writers, I will finish up with Cromwell, well in the penultimate par anyway. I’m not quite sure to whom he said it – I think it was a collection of churchmen. He said, I beseech you, in the bowels of Christ, think that you might be wrong, think that you might be wrong. I’ll hold to that.

And now a little bit from another old general, Douglas MacArthur, who finished his final address to Congress by saying, "Old soldiers … “ But I will say:

“One editors never die, they simply huff … and puff away.”

John Morgan’s replacement on the panel of editors will be Lloyd Whish-Wilson, a former member of the Council, who retires as General Manager of The Canberra Times in July. He will join the Council following his retirement.

In May, Mark Baker, who represents The Age on the Council, has coincidentally accepted appointment as the new editor of The Canberra Times. As a result he will be leaving The Age and has resigned from the Council. His replacement has not as yet been named. Helen Elliott, who has served as an independent journalist member of the Council for a little over three years has retired as well, citing the pressures of freelance writing as the cause of her leaving the Council. The Council will decide on the appointment of her replacement on the panel of journalist members in June.

In May, the Council reappointed Francesca Beddie, a public member from NSW, and Brenton Holmes, a public member from the ACT, to second three-year terms on the panel of public members. It also endorsed the nomination to further terms of Chris McLeod, representing the Herald and Weekly Times, and Phil Dickson, representing AAP.

**Dan O’Sullivan**

The Council has noted with regret the passing of one of its distinguished former members, Dan O’Sullivan. Dan started in newspapers as a copy boy in 1943 and worked his way to be editor-in-chief of The West Australian from 1975 to 1987. He served on the Press Council first as a representative of the Australian Newspaper Council from January 1982 to his retirement from The West in January 1987. Subsequently he was appointed as one of the inaugural editor members of the Council in 1988 and served in that role until November 2002. He was a strong advocate of responsible journalism but also active in defending the traditional freedoms of the press, consistently lobbying in WA for legislative reform to ensure the continued flow of information on matters of public interest. A particular interest was the establishment of a closer relationship with Indonesia, and he helped foster the development of a free and responsible Indonesian press. He died in early May after a long battle with throat cancer.
Principles and procedures
With the changes recently made by Council to its principles and complaints procedures it has reprinted its information booklet. The changes in procedures have also been posted to the Council’s website, together with a new guide to the completion of the Complaints Form, a sort of FAQ for those wanting to inform the Council of the exact nature of their complaint.

The Council is now asking complainants to concentrate on the main thrust of the complaint and to summarise their concerns in about 400 words. Complaints will generally be received within 60 days of publication and both parties to the complaint will have a strict time limit of two weeks in which to respond to correspondence from the Council before it is deemed that they are in default. These steps, together with a more concentrated effort on the quick settlement of complaints, are aimed at speeding up the process, and ensuring that any mediation of the complaint is timely.

Copies of the booklet are available from the Council or, as a pdf, on the Council’s website.

Defamation seminar
Following the success of its seminars in Sydney and Melbourne, Lexis-Nexis is convening a half-day conference on the new Defamation legislation in Brisbane on Wednesday 12 July. Once again the Council is endorsing the conference. A flyer for the Brisbane seminar is enclosed with this issue of the News.

Suppression
In earlier issues of the News there were reports on the Council’s efforts to develop a uniform, and more effective, method of notifying suppression orders in the various state and territory jurisdictions. The Council of Chief Justices agreed to consider the Council’s submission at its 19 April meeting. Subsequent to the meeting of that council, a letter from Murray Gleeson, Chief Justice of the High Court, was received. It said in part

It was pointed out in the course of discussion that, in many, perhaps most, Australian jurisdictions, suppression, when it occurs, is mandated by legislation, and is not the result of an exercise of judicial discretion.

It was also pointed out that circumstances, including legislative provisions, and available resources, vary between individual jurisdictions. The Chief Justices, while happy to examine the issue in the light of circumstances in their respective jurisdictions, did not consider a standardised, Australia-wide procedure, to be a feasible course.

The Press Council has decided to collect and collate statistics on the issuing of suppression orders, and the basis for their issue, in the separate states. On the basis of that information, it will make further approaches to the Chief Justices on the question of how such suppressions should be notified and whether a register should be maintained.

Freedom of Information
The Press Council has lodged an amicus curiae (friend of the court) brief with the High Court in its consideration of the appeal from The Australian against a Federal Court ruling that upheld the issuing of conclusive certificates by the Treasurer when the newspaper’s FoI editor, Michael McKenzie, sought information about the impact of bracket creep on income taxes and on certain aspects of the first home buyers scheme.

The appeal was heard by the High Court on 18 May in Canberra, with the Press Council as the only party seeking to intervene.

The acceptance of the Council’s written brief was opposed by the counsel for the government. He argued that, on the basis of some principles enunciated by Sir Gerard Brennan in Levy v Victoria, the brief should not be received. The counsel for The Australian simply stated that the brief should be received and the Chief Justice agreed.

The executive summary of the brief read:

The Australian Press Council’s principal concern is the adverse impact on the flow of information which the public has the right to access, that would be the outcome of upholding of the majority decision of the Federal Court of Australia in McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 (2 August 2005). As Lord Simon of Glaisdale said, a free and responsible press is a principal instrument in ensuring that people can adequately influence the decisions which affect their lives and be adequately informed on facts and arguments relevant to the decisions. Accountability of government to the people through the public’s access to information must not be subject to government discretion so broad as to be contrary to the intentions of the Freedom of Information Act 1982.

The Australian Press Council seeks leave to file an amicus curiae brief and, if it is the wish of the Court, to attend as amicus in this matter.

The full brief, with supporting arguments in law and on policy grounds, has been posted to the Council’s website.

Anti-terrorism legislation
The federal Attorney-General has asked the Australian Law Reform Commission (ALRC) to review the sedition provisions of the Anti-Terrorism Act and the Crimes Act. The Council’s Chairman and its Policy Officer met with Commissioner David Weisbrot of the ALRC to discuss the reference and the Council’s position on the necessity for sedition provisions.

Subsequently, the Council made a written submission to the ALRC, the executive summary of which read:

The Australian Press Council, which has as one of its Objects “keeping under review, and where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest, and may consequently threat the public’s right to know”, argues that any legislation that grants powers to authorities that may impinge on the traditional freedoms of Australians, including freedom of communication, must be drafted to ensure that the granted powers are sufficient to meet the envisaged threat, without going too far in inhibiting rights.

The Council’s primary concern with Schedule 7 the Anti-
The executive summary of the submission to the Minister read:

The Australian Press Council is of the view that the limitations on cross-media ownership in the Broadcasting Services Act should be removed. However, the Press Council has a number of concerns about the specific proposals put forward in the government’s discussion paper, Meeting the Digital Challenge. The Press Council is of the view that the regulation of ownership of Australia’s media should be by the Australian Competition and Consumer Commission under the Trade Practices Act, subject to a media-specific public interest test. That test should place a high value on the need for media diversity and the significance of local content.

The full submission has been posted to the Council’s website.

Cross-media ownership

The Press Council has sent a submission to the Minister for Communications, Information Technology and the Arts in response to the government’s discussion paper, Meeting the Digital Challenge, on media reform options. The Council’s primary concern was with the section detailing proposed reforms to the rules governing ownership across different media and with proposed changes to foreign ownership rules. Currently cross-media ownership is governed by provisions in the Broadcasting Services Act limiting the stake in electronic media for owners of newspapers and vice versa. The Council’s principal concern with any changes to such rules was any involvement by the Australian Media and Communications Authority (ACMA) in the determination of mergers and acquisitions, which might give the authority some de facto power of regulation over the print media. The Council argues that cross-media ownership rules should be in line with those governing other industries, with the Australian Competition and Consumers Commission being the supervising authority, regarding the news media as a single industry.

The executive summary of the submission to the Minister read:

The Australian Press Council is of the view that the limitations on cross-media ownership in the Broadcasting Services Act should be removed. However, the Press Council has a number of concerns about the specific proposals put forward in the government’s discussion paper, Meeting the Digital Challenge. The Council argues that cross-media ownership rules should be in line with those governing other industries, with the Australian Competition and Consumers Commission being the supervising authority, regarding the news media as a single industry.

The full submission has been posted to the Council’s website.

Adoption

The Council has sent a submission to the NSW Department of Community Services on its review of the Adoption Act 2000, the executive summary of which read:

The government of NSW should aim toward the uniformity of adoption legislation throughout Australia. With regard to the publication of the names of parties involved in adoption proceedings, the Australian Press Council believes that section 180 of the Adoption Act 2000 should be brought into line with section 121 of the Victorian Adoption Act 1984. This would involve the insertion of a clause which would permit the publication of names of parties where those parties have given their consent.

The full submission has been posted to the Council’s website.

Joe Hight in Australia

In March, the Press Council sponsored a visit by Joe Hight, the editor of The Oklahoman, to Australia. He was here principally to speak at a seminar in Hobart, organised by the Dart Centre for Trauma and Journalism. His newspaper had been involved in reporting the Oklahoma bombing, and in 2005, the tenth anniversary of the bombing, so he was in a good position to advise the Australian media on reporting of the tenth anniversary of Port Arthur. It was to discuss how the anniversary should be reported that was the main reason for the Hobart seminar. In addition to Mr Hight, local journalists and academics addressed the seminar. The Council was represented by its Vice Chairman, Professor HP Lee, who provided a summary of the issues at the end of the seminar, Hobart-based public member, Cheryl Attenborough, an industry representative, Sharon Hill, and the its Office Manager, Deborah Kirkman.

In addressing the Press Council at its March meeting, Mr Hight outlined some of the issues that arose from the reporting of the Oklahoma City bombing and then from the reporting of the tenth anniversary, drawing comparisons with the Port Arthur incident. He noted that his visit was in part to alert the Australian media to the traps and pitfalls he’d discovered in the coverage of his local activities and to the issues of trauma and journalism and the ways in which the anniversaries of tragic events should be covered.

In addition to the Hobart seminar, the Council organised events for Mr Hight in Sydney and Brisbane, where he visited newsrooms and addressed seminars at universities. In Brisbane he met with senior staff at Queensland Newspapers and attended a seminar organised by QUT. In Sydney, he discussed the relevant issues with editors at News Limited and at John Fairfax Publications. A seminar at UTS was organised by journalist member of the Council Sandra Symons, and was attended by students from UWS and the University of Sydney as well as those from UTS. The visit was regarded as a success and the seminars worthwhile, although there was a small attendance in Hobart due to the state election being held the same day.

Townsville

The Press Council held its May meetings in Townsville on 4 and 5 May 2006. While in the city, the Council conducted a case studies seminar with students at James Cook University and hosted with the Townsville City Council a civic reception for local community leaders, including representatives of the local print media. The reception enabled the Council to promote its
services and enabled the locals to know better how the Council can assist them if they have a complaint about the print media.

Additionally, while there, the Chairman of the Australian Press Council, Professor Ken McKinnon, convened a Media Conference on 3 May 2006, World Press Freedom Day. Professor McKinnon marked the occasion by offering some remarks on the current state of press freedom in Australia, in particular how well the state of Queensland is meeting its obligations in making available information on matters of public interest and concern and responded to questions on a wide range of issues. In his prepared remarks, Professor McKinnon said:

On World Press Freedom Day, 2006, the report card on press freedom in Australia must be characterised as chilling. It is not an iron curtain over access to information, but for some forms of information of public interest it might as well be. Public discourse is increasingly hindered by restricted information, cover-ups, deliberate misleading spin and suppression. It is not just the effects of recent draconian security laws. More serious is the cynical, even ruthless inhibition of the previous reporting of normal government and other public activity.

During Prime Minister Howard’s regime, the Commonwealth has centralised power to an unprecedented degree and used the buzzword ‘security’ to erect a seamless protective wall around information flows. Every instance of uncensored flows of information and leaks has been chased down and ‘the shocks put in’. It is as evident in Queensland as elsewhere.

The Freedom of Information case, challenging the Commonwealth Treasurer’s prevention of public access to documents about such mundane issues as the grants made under the home owner scheme and about tax bracket creep, is going to the High Court next week with the support of a Press Council amicus curiae brief. Let’s hope that that case is influenced by the very recent decision of the NSW Court of Appeal that imposed tough new tests before there can be refusal to release documents. Here in Queensland Premier Beattie a few months ago boasted about Freedom of Information releases being 82 per cent of requests; no reference to the fact that the 18 per cent not released were undoubtedly public interest documents. Queensland is notorious for wheeling potentially embarrassing documents through Cabinet to give them ‘Cabinet-in-Confidence’ status, protecting them from public access through FOI requests.

The latest and most obvious ‘closing down’ instance, of course, has been the revival by the Commonwealth of sedition laws, obsolete for over fifty years. Already theatre people and academics report that they have served, as no doubt intended, to deter free speech on the stage, in literature and in universities. And security laws that prevent us from knowing about even an arrest, much less the evidence that is relevant, helps create the atmosphere that compromises free speech.

Sadly our courts also exemplify the same trends. The traditional principle of open courts and freedom to report court proceedings is being seriously eroded by a significant increase in suppression orders. There has even been an instance of an order suppressing the fact that there has been a suppression order. The Council has taken up this issue with the Council of Chief Justices, to no avail. The broader culture of suppression is coming to the fore even in the courts.

Queensland Premier Peter Beattie, in the A N Smith Lecture at Melbourne University in December 2005, challenged the media by expressing serious dissatisfaction with its standards and regulation, calling for a press ombudsman in every newspaper. You have to wonder about his motives considering the fact that he personally has unfettered access to the media, several times a day if desired. He has a ‘bully pulpit’ to comment about anything that interests him, to rebut criticism in any media, or to attack anything and anyone he finds offensive. Maybe, like the late Indonesian President Sukarno who wanted ‘guided democracy’, Mr Beattie wants ‘controlled press freedom’.

His claim of unfair reporting by newspapers does not have credence because he has never tested the fairness of his complaints against any newspaper articles through complaints to the Press Council, let alone the three Courier-Mail stories he instanced. He can’t expect to judge his own claims and be taken seriously. He seems not to know that the Council’s brief is to maintain a free and responsible press.

You might think his claims of the slanting of articles, instancing the use of words like ‘claimed, divulged, reported, or stated’, resonate. Undoubtedly, colourful words, often some that carry baggage, are used in particular articles. Cutting out descriptors would also presumably apply to positive words like ‘clever, thoughtful, intelligent, strategic and farsighted’. An impartial observer, probably even Mr Beattie himself, would have to admit that he has very much been a net beneficiary of the way newspapers report.

Newspapers that do not have local competitors, such as the Courier Mail, do have a special responsibility for ensuring balanced, responsible reporting, and diversity of opinion. I agree that even though in recent times there are more examples of published corrections, the reluctance of editors Australia-wide to take the initiative, that is, to express regret, apologise, or correct inaccuracies does need more attention.

The Press Council acts on complaints received. After a complaint has been received it takes time to ensure natural justice, that is, for the complaint to be received, referred to the newspaper, and its reply to be reviewed and answered by the complainant, iteratively until the stances of both parties are clear and an adjudication hearing concluded. So it is also fair comment that a speeding-up of that process, a more streamlined process, is desirable.

All that said, Mr Beattie’s own report would certainly be the assessment ‘can do better’. He is as much responsible for information access problems as anyone else. His FOI record is woeful. He should do better. Where once Queensland reporters could tune in to police radio enabling them to report crime, breaches of security and accidents on the spot, the changeover to digital radio has resulted in police being selective with what newspapers are allowed to know (and tell the public about). Police do not like sensitive issues being aired in the papers. He should do better there, too. Another instance is the law preventing access to and reporting of prisoner information.

It is a never-ending struggle for reporters to ‘get-the-story’ at the best of times, in all democracies. News is after all often defined as what someone does not want the public to know. Fortunately Australia has some of the most tenacious and resourceful journalists in the world. Even through the blizzard of ‘spin’ they often get to the bottom of things. To the chagrin of would-be ‘controllers’ of news, North Queensland newspapers during Cyclone Larry, particularly the Innisfail Advocate, certainly exemplified that energy. Not even losing the newsroom roof, flooded roads and loss of electricity and other physical impediments prevented them from getting the next day’s edition out.

[concluded on page 16]
Reporting the courts

The question of contempt of court by the media has been in the news recently with high-profile cases in Melbourne and Adelaide. Industry member of the Council, CHRIS McLEOD, looks, first, at what Victorian judges have been saying lately and then in detail at a recent acquittal.

1. A question of openness

A casual observer sitting in on some recent Supreme Court cases in Melbourne might conclude that relations between the judiciary and the press have collapsed. Two judges in high-profile cases have been scathing of press coverage. Both have excluded the press from covering various aspects of trials before them. One judge suggested he had lost confidence in the media being able to report proceedings properly and another has held sessions behind closed doors, not even entering the hearings in the published court lists.

A number of media outlets face the real risk of contempt of court charges in coming months. These are some of the recent remarks made by judges in the Supreme Court about media coverage:

“I have to say when I read the [article], which was brought to my attention by my Tipstaff on the morning, I just couldn’t believe that it had been written by any responsible journalist. I just couldn’t accept that they would really write this knowing that the trial was about three weeks away.”

“I think there is a change and this court must be very careful to ensure that the media does not overlook its obligations and overstep the mark … The idea that you can deal with the media after you have aborted a trial at huge expense to the community strikes me as nonsense, and if the media cannot regulate themselves then I think the court must make sure they do.”

“I have noticed a change and I think the media has to look at itself. There are many criminal trials going on in this State and it is very important the media does not overstep the mark.”

“I am concerned about a risk that if there is an avalanche of media coverage of this case and I suspect there would be, it may not be a fair and accurate report, it may be unbalanced and knowing the media as I do, the media will want to highlight some of the more sensational aspects of the case which may have a prejudicial effect upon the accused. I am not prepared to run the risk and in the circumstances I think it appropriate that I should order that there be an embargo on the publication of any matters concerning this trial until verdict or further order, and I propose to so rule.”

Some in the press believe judges have become overly anxious about the conduct of the complex trials they are presiding over, resorting to suppression and closed-court orders without paying sufficient attention to the principles of open justice and justice being seen to be done.

It is true that the press transgresses from time to time. But is there a concerted effort to push the envelope as some might seem to be saying? No.

Human error

Human error can’t be discounted. And neither can argument about whether the possibility exists of tainting a jury when a trial may be at least a year away. And the robustness of juries has been highlighted by a number of judges themselves and academics, undermining claims that juries are susceptible to outside influences.

A Melbourne newspaper included information that was not intended to be included for 90,000 copies before someone realised a mistake had been made. The print run was stopped and the information was removed.

It was a mistake but human error is punished severely under contempt of court law, specially when the offender is the press.

Judges who make mistakes (and they from time to time acknowledge that they do) escape more lightly than the press.

A retrial ordered at appeal for misdirection of a jury, for example, carries no penalty that we ever hear about for a judge who got it wrong. That’s not to say there should be a penalty – but it contrasts with the threat of penalties faced by the press that include fines and jail terms. And it highlights the need for the press to be given every assistance possible to get things right.

A good history

The Victorian press has been covering court cases for more than 160 years, mostly on a daily basis. Yet the convictions for contempt probably amount only to a handful. The potential for error is great, yet the errors are relatively few.
It is clear that some judges don’t like the way the press reports cases and judgments. There are two important considerations here – the press is the eyes and ears of the community.

Open justice principles require that the public is able to find out what is going on in the legal system. It simply isn’t practical for a million or so members of the public to try and find out for themselves what’s happening, even though they’d be entitled to do so. Enter the press, amid another practical issue.

Judges may prefer proceedings and pronouncements to be reported verbatim. Short of a live broadcast of proceedings, that just isn’t possible. Pages and pages of legal language could not be properly understood by every single person in any event. Space and time constraints mean the press has no hope of publishing everything. Even less hope when a wad of material is made available right at the end of a trial.

Complex material has to be summarised and put to the audience in terms that they understand. If the press isn’t able (or permitted) to do this, then application of the law becomes the domain of practitioners only. There is already a feeling among some in the community that this is the case anyway. This shouldn’t be the case and the press won’t let that happen. The press, in the interests of the public, aims to continue reporting court proceedings and scrutinising them.

Closed-door proceedings are unhealthy – they can breed rumour, suspicion and distrust.

While some judges see a recent trend in the press to push the boundaries of reporting, what cannot be ignored are the circumstances that have prevailed over the past few years in Victoria in particular – a swag of killings involving notorious people, a string of police facing corruption charges and a number of high profile drug cases. Many of these matters are interwoven.

Some complexity

The press, like the judges, is trying to deal with complex legal matters. Unlike judges though, the press doesn’t always get access to all the material presented to a court. Add to that suppression orders and various statutory prohibitions (such as the Witness Protection Act) and a reporter can end up with a Swiss cheese story – full of holes.

That might suit the court, but it tells readers little about the judicial process and the reasons decisions are made. Little if any consideration is given to what the press’s audience might make of things. At times it appears as though that’s not even a consideration. Yet isn’t it the public at large that is being served by the judicial system?

In a recent contempt case against a media outlet, the prosecution argued that no comment on sentencing should be made until the last avenue of appeal has been exhausted.

That would mean, for example, a sentence handed down today if successfully appealed might not be able to be reported for another two to three years. Does that satisfy the principles of open justice? It certainly would make a mockery of the principle of contemporaneous reporting of proceedings. Of course, some judges recognise the importance of fair and accurate reporting by the press and will go out of their way to help the court reporters get things right. There can be no harm in that, particularly if the judge is anxious that there be no interference to the trial in progress.

The infallibility of the courts

These issues raise questions about the infallibility of the court.

If judges are going to expect mistake-free performance from the press, what then of their own conduct?

A Victorian country magistrate was called back to Melbourne in March after it was revealed he had heard speeding charges against two court officials in chambers and gave them reduced penalties. It was acknowledged that the charges involved were minor, and both the Attorney-General and the Chief Magistrate said there was no evidence of dishonesty or impropriety but they agreed the matters should have been heard in open court.

How did this come to light? Press scrutiny.

In a recent contempt of court case, the presiding judge observed about the roles of the press and the courts: “Each has a role in exposing and correcting the mistakes of the other. Each ought to do so while giving practical acknowledgment to the vital part the other plays in the maintenance of a decent, humane and civil society. Each, albeit that both are encumbered with the defects of their humanity, is worthy of respect. Each ought to accord that respect to the other. They each in their different ways serve as a reminder of both the light and dark sides of human nature of humankind’s capacity for reason and justice that makes free government possible; and of its capacity for passion and injustice that makes such government necessary.”

This is a message that could well be taken on board by the judiciary and the press.

Chris McLeod
2. Calculated to interfere?

The Sunday Herald Sun and its then editor have been cleared of contempt of court for editorialising that Victorians would look with special interest at the jail term imposed on a double killer Justice David Harper’s decision in the Victorian Supreme Court on March 20 gives some valuable insight into the relationship between the courts and the press.

His decision also contains some messages for the press about how it handles references to the courts. While the commercial considerations of the press were acknowledged, there was a note of caution about putting them above public interest.

The editorial was published between the defendant’s guilty plea and sentencing.

Its last paragraph said: “Justice Bernard Bongiorno will make his sentencing decision soon. Given the climate of community concern over what are perceived to be soft penalties for serious crimes, Victorians will be watching with special interest”.

The day after publication, Justice Bongiorno directed contempt charges be laid against the then editor, Alan Howe, and the Herald & Weekly Times Pty Ltd.

He said at the time: “Yesterday, on page 38, the Sunday Herald Sun published an editorial concerning the case of R v Sharpe, which was heard before me on Friday afternoon last, 20 May, in Melbourne. I adjourned the case part heard to 6 June next. The publication of that editorial would appear to have constituted a prima facie case of sub judice contempt of this court. The case had not been completed. It is part heard and, particularly, Sharpe has not been sentenced.”

The resultant contempt of court charge was particularised as follows:

The prosecution did not allege that there was actual interference with the administration of justice, instead alleging that the editorial had a tendency to interfere. It argued that the editorial would give rise to a serious risk that the court would not appear to have been free from any extraneous influence – that even if the editorial wasn’t likely to influence Justice Bongiorno the public might think that it did.

Justice Harper set out the issue this way: “A charge of contempt must be proved beyond reasonable doubt; and the test is whether there is either an actual interference with the administration of justice or a real risk, as opposed to a remote possibility, that justice will be interfered with.

A gruesome case

The Sharpe case was particularly gruesome. Evidence revealed about the killing of his wife and jury would have turned the stomach of most readers. The editorial set out the facts simply and succinctly, without sensationalism. Said Justice Harper:

But would readers think that the Sunday Herald Sun was trying to tell Justice Bongiorno what to do? Justice Harper:

Editorials in the Sunday Herald Sun, directed to the pending result of a particular case, are extraneous to the considerations to which the courts may have regard in considering that particular case. The respondents know this; or, if they do not, their knowledge of the theory of democratic governance is sadly deficient. They nevertheless chose to publish the editorial between the plea and the sentence.

I have no reasonable doubt that by doing so they intended to influence their readers into thinking that, unless the court imposed upon Mr Sharpe imprisonment for life without remissions, its sentence would be less than adequate; and if this opinion were brought to the attention of the judge, so much the better for the respondents. To that extent, they put the commercial interests of the first respondent (HWT) – which are generally well served by the generation of controversy, fear and (so long as it is not directed at itself, or those it favours) “outrage” - above the public interest.

The public did of course have a legitimate interest in the imposition of appropriate punishment upon Mr Sharpe, as upon all offenders. So did the Sunday Herald Sun. The problem is that the two interests are not the same, although - in common with the media in general - the Sunday Herald Sun likes to portray the two as in alignment.
The public interest

Justice Harper referred to public interest in the case as this:

The public interest is in a measured and fully informed discussion about sentences and sentencing policies both in the broad and in the particular case, including a dispassionate analysis of the correctness or otherwise of an individual sentence, and of the costs and benefits of punishment for the individual offender, for his or her family and dependants, and for the general community. Above all, the public interest is in the imposition of sentences which are based upon such an analysis by a judge beholden to nothing else but those matters to which he or she must by law have regard. To the extent that these interests do not coincide with the commercial interests of the first respondent, it will be tempted to prefer the latter.

Doubtless it will often succumb to that temptation, as it did in this case. In any event, the respondents are entitled to express their views, informed and balanced or otherwise, provided they are not in the process guilty of an actual interference with the administration of justice, or behaviour which gives rise to a real risk, as opposed to a remote possibility, of such interference.

In this case, the editorial in question was informed and balanced - except for its timing.

And of the possibility of contempt in this case?

I am not satisfied beyond reasonable doubt that the editorial had a tendency or was objectively likely to influence Bongiorno J in his decision-making process. Nor am I satisfied beyond reasonable doubt that the editorial had a tendency or was objectively likely to undermine public confidence in the administration of justice by giving rise to a serious risk that the Court would appear not to be free from any extraneous influence.

And, significantly, he pointed to the public’s role:

Each case must be judged against its particular circumstances. One relevant consideration is whether the editorial was so strident that, if its message was ignored by the judge when sentencing the accused, there would arise a real possibility of uninformed public clamour of the kind which would bring the courts, and therefore the administration of justice, into disrepute.

This was not such an editorial. Not only was it a measured recitation of the facts, but the facts were such that a severe punishment, involving a long period of incarceration, was, one would have thought, inevitable. Had it not been imposed (as in fact it was) the public would have been entitled to a careful and thorough explanation from the judge of his reasons for deciding otherwise. The public could then - assuming that the sentencing remarks were reported carefully and in appropriate detail - make an informed decision about the merits of the sentence. A public expression of dissent that did not descend into a personal attack on the judge would in those circumstances have been entirely within the democratic right of those who disagreed with him.

Strident views

And to the question of whether the press could ever be in contempt for expressing strident views about cases and sentences. Yes, said Justice Harper, it was possible that such a case could arise:

An editorial published between conviction and sentence, in which the mitigating circumstances were ignored and the severest possible sentence stridently demanded, might well amount to a very serious contempt.

That’s a clue for editors: when professing criticism or analysis of decisions and options, don’t ignore any mitigating circumstances that had been presented to the court.

While suggesting it was inappropiriate for the newspaper to recommend a particular sentence, he said this did not amount to contempt, saying not every wrongful act was a crime.

He observed:

A sentencing judge reading the editorial would not, I think, be influenced in the slightest by it, while acknowledging with wry appreciation the respondents’ skill in testing the boundaries of the law of contempt. The Sunday Herald Sun’s reading public would, I also think:

(a) accept that here was a sentence to watch;
(b) be reinforced in its assumption that there was in the community a climate of concern over what are perceived to be soft penalties for serious crimes;
(c) give not a second’s thought about whether that concern was warranted;
(d) make a mental note to expect outrage were anything much less than life without parole to be imposed; but
(e) not conclude that the judge had already been trapped, or even affected, by any extraneous influence.

Justice Harper said he had noted previous litigation involving HWT in which contempt of court had been alleged but not found.

The appropriate conclusion is that there was not a serious risk that the court would appear by reason of this editorial to be subject to outside influence.

And in dismissing the application for a contempt conviction, he concluded:

I am satisfied that no judge faithful to his or her oath would have been swayed consciously or unconsciously by the editorial in question into doing other than that which his or her conscience dictated.

Chris McLeod
The Press Council has upheld in part a complaint brought by the King Khalid Islamic College of Victoria against the Sunday Herald Sun regarding a two-page table entitled How Your School Rates published in the 10 July 2005 edition of the paper.

The thrust of the complaint was that the table produced an incorrect ranking of the performance of the students of the College.

The College, through its solicitors, sought the publication of a correction which would have placed the college on a higher ranking. The newspaper pointed out a confusion in the correction proposed by the College.

The heading to the table clearly stated the criteria selected by the newspaper for the ranking:

The Tables represent students who applied for university courses and show the percentage of those who received at least one university offer. The average is calculated from the results of each year since 2002.

The proposed correction had included offers from other tertiary institutions, such as TAFE colleges, which fell outside the published criteria.

A slightly revised correction was then sent to the newspaper, which said that it stood by its table, relying on data which are “publicly available from the Victorian Tertiary Admissions Centre [VTAC]” and do “not refer to information which is available only to schools by using a password to access the VTAC database”. The revised correction was not published.

The College maintained that the newspaper had relied on “false data” not obtained from VTAC to produce the “league” table and that the only source of data to effect such a ranking exercise should have been VTAC.

The issue of contention is whether the data supplied by VTAC” instead of ‘data were not supplied by VTAC’. It would not be unreasonable for the complainant to perceive a lack of good faith on the part of the newspaper in resolving the matter.

To the extent that no redress to its concerns has been offered to the College, the complaint is upheld.

On the general issue, the Council notes the importance of including in newspaper “league” tables methodology information that allows independent validation of the rankings in the tables.

The Australian Press Council has upheld a complaint by Mosman City Councillor Dom Lopez against the Mosman Daily over an article published on 13 October 2005.

At the centre of the complaint are comments attributed to Cr Lopez about the future purchase of a Christian Science property being offered for sale.

The article, headed Councillor’s worry over “bearded men in gowns “, said that Cr Lopez had said one thing was for certain, a place of worship for any group other than Christian or Jewish faiths “would not be welcome.”

The article continued:

Cr Lopez told the Daily that he was concerned with rumours that “men in flowing gowns and with flowing beards” were seen looking at the primary property.

“This is a Judeo Christian area and it would not welcome people of another faith,” Cr Lopez said.

The following day Cr Lopez wrote to the Mosman Daily saying he had been misquoted and demanded a retraction.

No retraction was forthcoming and the Mosman Daily letters pages subsequently carried many letters critical of Cr Lopez’ alleged comments.

Cr Lopez raised his concerns with the newspaper claiming his comments had been taken out of context and not used in full but received no satisfactory reply.

Cr Lopez issued a press release on 24 October saying that two weeks previously a reporter from the Mosman Daily had telephoned and asked “have you heard rumours about men in flowing gowns and flowing beards inspecting the Christian Science property?”

Mr Lopez said he replied saying, “I have heard those rumours from residents nearby and I feel as Mosman is predominantly a Christian/Jewish area, another faith would not be welcome unless they integrate with the local community, in the same way that my mother and father did when they came from Italy over 70 years ago to make a better life for themselves and future generations.”

The Mosman Daily published excerpts from this release but did not publish the additional comment concerning his family’s origins which qualified his remark concerning the religious make up of the area.

The newspaper did, after further complaint by Cr Lopez, run several letters supporting his remarks in an endeavour to balance the debate which followed the original publication. This debate was also aired in the Mosman Council with calls for Cr Lopez to resign.

By not qualifying Cr Lopez original remarks promptly the newspaper allowed the debate to continue and left itself open to criticism of sensationalism and lack of fairness and balance.

For that reason the complaint is upheld.
in an accusation, as he saw it, that the complainant had been untruthful.

The newspaper stands by the content of the article. It believes it has “caught short” the complainant and that it published information, particularly about the disciplinary matter, in the public interest. It asserts that, in a town the size of Condobolin, “most” of the information published was “fairly common knowledge”.

The complainant submitted a letter to the editor immediately after the publication of the article on 20 January. The newspaper did not publish that letter. On 27 January, the newspaper published an editorial which was highly critical of the complainant. The editorial called for the complainant to be replaced in his senior police role in the area.

The Council recognises that the issue of police numbers, and their deployment in communities, is an issue of significant public interest and one which newspapers are entitled to pursue with vigour.

The Council is, however, of the view in this case that the newspaper should have allowed the complainant’s views to be included in the article, or failing that, the newspaper should have given the complainant the opportunity to provide balancing comment by publication of the letter submitted, especially when viewed against the fact that the newspaper subsequently called for his removal from his position. To the extent, that it did not provide such balance, the complaint is upheld.

Adjudication No. 1313

The Australian Press Council has upheld complaints against The Advertiser. Adelaide, from the Ceduna Area School and from Darcy O’Shea, the parent of a student and spouse of a teacher at the school. The complainants said that the articles, published in March 2005, covering community debate on dealing with violent incidents by students, breached six Press Council principles. They were that reasonable steps were not taken to check accuracy; that the newspaper failed to make amends; that it obtained photographs by dishonest or unfair means; that it did not treat readers fairly; that gratuitous emphasis was placed on colour; and that it failed to ensure balance and fairness when singling out a group for criticism.

Two versions of a front page article on 24 March were published under the headline, School Kids Segregated, along with a second heading, White and black separated in detention. They also featured two photographs: one labelled as a “white” detention room containing two desks and three chairs; the other of a room described as spacious, labelled “black”, and said to have a TV, couch and table tennis table.

Both versions of the article, the first written for the earlier state edition and the second for the later metropolitan edition, quoted a view that segregation of students at Ceduna Area School was “apartheid”. They reported opinions that the separation had contributed to increased violence at the school.

The first version was written hours before a public meeting to discuss the violence. It quoted the State’s education minister, the opposition’s education spokesperson, the school’s principal and others. The later edition was amended to include comments made during and after the meeting, including by the principal.

The school said the room labeled as “white” was in fact a focus room used by Year 6-12 students of any background. The so-called “black” room was used as a home room, not exclusively by Aboriginal students and not for detentions. It said that students were not segregated at the school. It also said that the newspaper failed to correct its mistakes after the principal had provided information about the inaccuracies.

Mr O’Shea said that no attempt was made to check that the two rooms photographed were segregated detention rooms. He said that the emphasis placed by the article on colour was insensitive and inflammatory, as well as being inaccurate.

The newspaper published a follow-up article the next day quoting Aboriginal community leaders saying that the “black” room was available to non-Aboriginal children. It also ran a number of letters in subsequent days, some critical of its coverage. The Advertiser said that it rejected the main thrust of both complaints and believed that its reports were accurate. It said that it tried to contact the school principal before the first article was published, but its calls were not returned. It also offered to participate in a mediated settlement. No such talks occurred.

It also offered to “set the record straight” by sending a reporter to Ceduna to report on school initiatives addressing the local community’s grievances and aimed at improving racial harmony. A year later it has not done so.

Newspapers are justified in reporting sensitive issues of colour and race in small, regional communities, particularly when it is done in the public interest and relates to serious matters such as violence. They have, however, a clear obligation to ensure the accuracy of all aspects of their coverage, including news reports, the presentation of photographs and the writing of headlines. It is important that the groups involved are given ample opportunity to comment on such matters so as to balance the impact of any such report. When concerns with the accuracy of reports are brought to their attention, newspapers have an obligation to correct or clarify matters promptly and prominently.

In this case, The Advertiser failed to fulfil its obligations.

Adjudication No. 1314

The Australian Press Council has dismissed a complaint from James Page, against The Australian regarding an item in the “Strewth!” column on 10 August 2005.

The item, under the heading Numbers up for Dems, is concerned with the re-election of Senator Paul Calvert to the position of Senate President, and made comment on how Democrat Andrew Murray voted on the position.

Mr Page contacted The Australian with his concerns which centre on the headline, seeking publication of a letter. He believes that the item unfairly attacks the Democrats on the basis of Senator Murray’s vote.

The item appears in a column which, in Mr Page’s own words, is ‘intended to be light-hearted’. The items and headlines are often meant to be tongue in cheek.

In the Council’s view, there was no breach of its principles.

Adjudication No. 1315

The Australian Press Council has upheld a complaint from the Noble Park Football Social Club that the Springvale Dandenong Leader misrepresented the club’s position, in an article about a state government review of club expenditure from poker machine revenue.

The report, under a headline Pokie venues face tax probe, suggested that some of the “taxation” claims made by clubs in the Greater Dandenong area could be questioned in view of the government’s expressed concern that there were “possible discrepancies” in the operation of the Victorian government’s community benefits scheme.

The complaint alleged that the article was inaccurate in implying that the club itself was facing a tax probe; that it unfairly questioned the legitimacy of the club’s claims that, the club said, were within government guidelines; and that, in any case, the club did not stand to gain benefits from such claims.

The article went to some lengths, by judicious use of words, to establish that only those clubs which had been “overstepping the mark” with their claims need be worried by the review. However the article highlighted what it termed “unusual” claims by some
clubs, such as those for plasma televisions and smoking rooms. By inviting Noble Park to be quoted defending exactly that expenditure, the newspaper largely undid its attempt to be non-specific as to which clubs, it thought, might be suspect in the government’s review.

In reports of this nature it is unfortunate that, amid controversies, often those who dutifully respond to media inquiries inadvertently attract suspicion to themselves. This certainly appears to be the case with the Noble Park Football Social Club.

It is the Council’s view that the review of government policy was deserving of wide community debate and the Leader’s canvassing of what constitutes a community benefit was reasonable. However the paper’s explanation of how revenue from poker machines is distributed is wrong. It should underline that while the Australians have access to information, there is an inaccuracy on the label, please advise the office of any mistakes publicly.

From 1 July, the Council consists of 22 members. Apart from the chairman (who must have no association with the press), there are 10 publishers’ nominees, ten public members (7 attend each meeting), two independent journalists, a nominee of the MEAA and a retired editor. The newspapers’ representatives are drawn from the ranks of metropolitan, suburban, regional and country publishers as well as from AAP. The public is represented by people with no previous connection with the press.

The Press Council is able to amend its Constitution with the approval of its Constituent Bodies. Significantly, great importance is placed on members acting as individuals rather than as the representatives of their appointing organisations.

Otherwise, on World Press Freedom Day 2006, regrettably the report card has to underline that while the Australians show in various ways how much they want to be kept informed, never before has accessing that information been more difficult, never has there been so much organised action to prevent the truth emerging, never have so many politicians at all levels fibbed so much, so often.

About the Press Council

The Australian Press Council was established in 1976 with the responsibility of preserving the freedom of the press within Australia and ensuring the maintenance of the highest journalistic standards, while at the same time serving as a forum to which anyone may take a complaint concerning the press.

It is funded by the newspaper industry, and its authority rests on the willingness of publishers and editors to respect the Council’s views, to adhere voluntarily to ethical standards and to admit mistakes publicly.

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Complaints Procedure

If you have a complaint against a newspaper or periodical (not about advertising), you should first take it up with the editor or other representative of the publication concerned.

If the complaint is not resolved to your satisfaction, you may refer it to the Australian Press Council. A complaint must be specific, in writing, and accompanied by a cutting, clear photostat or hardcopy print of the matter complained of, with supporting documents or evidence, if any.

Complaints must be lodged within 60 days of publication.

The Council will not hear a complaint subject to legal action, or possible legal action, unless the complainant signs a waiver of the right to such action.

Address complaints or inquiries to:

Executive Secretary  
The Australian Press Council  
Suite 10.02, 117 York Street  
Sydney NSW 2000  
Phone: (02) 9261 1930 or (1800) 02 5712  
Fax: (02) 9267 6826  
Email: info@presscouncil.org.au

A booklet setting out the aims, practices and procedures of the Council is available free from the above address.

It, together with other relevant material, is available from the Council website: http://www.presscouncil.org.au/