



A New Chair: Julian Disney

After nine years, Ken McKinnon has retired and the Australian Press Council has appointed Julian Disney as its new Chair

The Australian Press Council has announced the appointment of Professor Julian Disney as its new Chair, with his term commencing on December 1, 2009.

Julian Disney is currently a Professor in the Law Faculty of the University of New South Wales and Director of the Social Justice Project. He has a wide range of experience in the welfare sector and on various government advisory bodies.

Professor Disney will succeed Professor Ken McKinnon, who was appointed Chair of the Council in 2000. He will be the Council's seventh Chair since its inception in 1976.

Professor Disney

Julian Disney's background suits him ideally to the task. He has been, variously, a Law Reform Commissioner, Coordinator of the Sydney Welfare Rights Centre, President of the Australian Council of Social Service, President of the International Council on Social Welfare, and Director of ANU's Centre for International and Public Law.

He is also the National Chair of Anti-Poverty Week and is the independent chair of the National Affordable Housing Summit and the Community Tax Forum.

His experience with such bodies, and in his various roles with government bodies, means that he has the knowledge and ability to lead the Council in both its roles: to preserve the traditional freedoms of the press from outside threats; and to ensure that the free press is responsible in its reporting and commentary.

Professor Disney said, "It is an honour to have been invited to become Chair of the Press Council. I am looking forward to



working with other members to maintain and develop the important contributions to the interests of both the print media and the broader community that it has made under Ken McKinnon's outstanding leadership.

"The Council is charged with preserving and strengthening both the independence and the quality of the print media. This involves ensuring that journalists have reasonable access to people and information, whether in government or elsewhere, and that they report fact and opinion with care and integrity.

"I hope that we can further develop the Council's public profile and links with community groups, partly by letting more people know about the good work it does in handling, and very often resolving, public complaints. We could also explore new ways of responding effectively to complaints and of pro-actively promoting good practices and high standards amongst journalists, editors and publishers. Like the print media

itself, the Council must respond vigorously and imaginatively to the challenges and opportunities of the internet.

"These responsibilities will require us to strengthen our resources, not only financially but in other ways, and with longer-term security rather than being totally dependent on annual funding renewals. I am confident that we can make good progress in these directions over time."

Katherine Sampson, a Public Member of the Council and convenor of the Search Committee that recommended Professor Disney, said that the committee found that he was regarded as a person of considerable character, "firm but fair" as a Chair and is very well regarded and respected in many circles, even by those who may not always share his views.

The committee's view was that Julian Disney presented as a man of integrity, common sense and sensitivity, demonstrated a strong understanding of NFP entities and the effective chairing of a disparate group.

Former Vice Chair of the Council, Lange Powell, recalls Professor Disney's time as a leader in the welfare sector. "One of Julian's most important contributions was the key part he played in convincing the Hawke Government, and no less the social welfare sector itself, that the sector needed to become a front-line player in national economic policy discussion and taxation reform if its concerns were to gain any political traction.

"Julian has been an active and effective spokesman for the social policy dimensions of economic policy, starting with his membership of Hawke's Economic Planning Advisory Council (a distant precursor of the Productivity

Commission), and since then, in other economic and industry forums.

“In the mid-1980s especially, this role required strong leadership skills in a sector characterised by a wide diversity of interests, philosophies, and by varying levels of political sophistication. It also required great intellectual discipline and negotiation skill in dealing with government and with other sectors. I congratulate the Press Council on its appointment of Julian Disney as its Chair.”

A former Chair of the Council, Professor Dennis Pearce, also endorsed the appointment, “I have been following the matters affecting the Council in the last year with interest. I was also pleased to see Julian appointed to the Chairman’s job. I actually suggested his name as a possible Chair some years ago so all good things come around.”

Professor McKinnon

The outgoing Chair, Professor McKinnon, served nine years as Chair of the Council and has greatly enhanced the Council’s role and public profile.

“Professor McKinnon has extended the Council’s reputation as a vigorous, independent advocate for newspaper readers and for the freedoms and responsibilities of the Australian press”, said Council CEO Jack Herman. Professor McKinnon’s achievements have made the task of finding his successor all the more exacting.

Adrian McGregor, an independent journalist member of the Council, has conducted an interview with Ken McKinnon and his article about McKinnon’s time as Council Chair is on page 3 of this issue.

Professor McKinnon, when asked for comments on his time as Chair, noted, “When I first came to the Press Council as Chairman in November 2000 I thought the role would simply be that. The main task, it seemed, would be to give all members a voice and ensure speedy, fair resolution of complaints. Given the Council’s history, however, it seemed essential to strengthen continuously the public voice. Accordingly, recruitment of strong public members also became a priority concern.

“In the succeeding years, trust in the Council did increase, to judge from complaints received from a wide variety of sources, and from individuals both

prominent and private. Complaints are the daily business of the Council. Whether the complainant is great or humble, they have been handled with equal concern.

“But my hope that I could sail through serenely with only the foreshadowed modest work-load was dashed by delays in the embrace by governments of the concept of freedom of information, by anachronistic defamation laws, and most of all by a raft of law-making by the federal government ostensibly combating terrorism, preventing leaks and other restrictions, laws that were unprecedented in limiting the flow of information to the public.

“By its charter and despite limited resources, the Council could not avoid taking up many of these issues. Not without misgivings and a great deal of personal effort. One good outcome is that the Council now has well respected capacity and experience in advocacy, resulting in relief from some of the worst excesses.

“Core tasks for the future will not diminish. In the last few years News Ltd and Fairfax have come to dominate the ownership landscape. The public reads what these owners, and particularly their editors, feel is fit to print. Owner attitudes and the ethics of the editors of those two organisations determine what appears in news and opinion pages, what is omitted, what innuendo and gossip is included, and what is said about other areas of life. Innuendo and gossip are on the increase. An understanding, supportive, but sceptical press-regulator is therefore an increasingly essential component of the national public information landscape. Now that there are fewer journalists in newsrooms, now that editors are being challenged to produce even more enticing newspapers and establish a profitable presence in cyberspace, errors of omission and commission are even more likely than in the past.

“So I finish an eventful three terms completely certain that a strong Press Council is an essential part of the future regulatory landscape. It will work well with its recently revised membership. But the other outcome of recent changes, limitations on resources, will mean that it will not be able to fully realise the aspirations of the founders of the Council. That is, unless Contributing Bodies see the error of their ways. Accusations of the Council being a mere satrap of owners, are not now heard, but are likely to recur unless the Council is well supported.

“My best wishes to the new Chairman,

Professor Julian Disney.”

The Vice-Chair of the Council, Professor H P Lee says of Professor McKinnon, “I have often marvelled at the even temperament displayed by Ken, especially in his capacity as chair of the Complaints Committee and the Policy Development Committee. When he was of the view that a newspaper has failed in its ethical standards, or been unfair in relation to an aggrieved member of the public, he has put questions to the newspaper’s representative at the complaints hearing in a manner that clearly exposes the failing of the newspaper. A particularly important contribution from Ken lies in the strengthening of the advocacy role of the Council. Today, the Council is often sought for its views on legal developments relating to the ability of the press to carry out its role properly and proposed legislation impacting on freedom of speech generally and of the press in particular. The Council has been well served by Ken as its Chair.”

Long-time representative of the Country Press on the Council, David Sommerlad adds, “The departure of the Chairman is a significant loss, not only for the Press Council, but for the cause of a free press throughout Australia. I have been privileged to know the six Chairs of the Council since its creation in 1976 and to have served under all but the first, and there is no doubt Ken McKinnon’s leadership during the past nine years, through often difficult issues, has lifted the status and respect of the Press Council to new heights in its dealings with governments, the judiciary and educational institutions and gained for it a higher public profile.

“As a self-regulatory organisation handling reader complaints, its adjudications can never satisfy everyone, but what Council members have valued most has been the Chair’s skill, fairness, strength, balance and wisdom in steering often robust discussion of contentious viewpoints eventually to a thoroughly considered decision. His knowledge, experience and friendliness towards publishers, journalists and public members alike has garnered their enduring respect and appreciation of a challenging role faithfully fulfilled with dedication and distinction.

“Many thanks and well done!”

Jack R Herman

Professor Ken McKinnon

Press Council Journalist member, **ADRIAN MCGREGOR** examines at the Chairmanship of the retiring Press Council Chair

As chairman of the Press Council, Professor Ken McKinnon rarely minced words. Before the last federal election he took the Howard government to task for raising official secrecy to an unprecedented level. Now, even as he steps down, he has criticised the NSW Law Reform Commission report on privacy as the greatest threat to press freedom that he has encountered in his near-decade on the Council.

The report, he says, advocates allowing the courts to determine what matters should be regarded as private, and therefore what constitutes an invasion of privacy by newspapers. "It would give courts the power to determine what the penalty should be, including whether the newspaper should publish an apology, in what form, on what page and with what prominence, and to decide whether newspapers have to make financial reparations as well."

It reads as though McKinnon is departing the Council as he began, crusading to protect press freedom and for more open government. Yet it is not as though he joined the Council embarking on some campaign of controversy. Quite the opposite. "I intended to be the Chairman but not get too enthusiastic about everything," he says. "I thought, 'Hold back a bit so it doesn't eat you up with work.' But when we started to pick up on issues of public policy as they affect press freedom we just gathered momentum."

When he was appointed Chairman in 2000, McKinnon stated that he admired the newsgathering skills of the Australian press, publishing as they did in an environment of antiquated state defamation laws. "I gave myself three years to push for a uniform defamation law for all states and territories," he says. "It took us five and the Council is acknowledged as the driving force behind its success." It is arguably McKinnon's greatest achievement on the Council.

For years the Council laboured under the label of "toothless tiger"- even the ABC's *Media Watch* disinterred the term "publishers' poodle" in a recent program. McKinnon found these soubriquets didn't gel with fending off incensed newspaper editors required to publish adjudications upholding complaints against them. Nor that, not since 1990 had a major newspaper refused to publish a Press Council adjudication against it. McKinnon's incumbency has seen an enhanced public recognition of the Council's reputation for unbiased and independent processing of complaints, now up to 500 a year. Among those who have entrusted the council with their complaints in recent years have been the Governor-General, the NSW and South Australian attorneys-general, the West Australian premier, and various State ministers. Other complaints dealt with have come



from an Asian embassy, an east-Asian high commission, and any number of prominent public and legal figures.

Most rewarding has been McKinnon's success in raising the Council's status in the eyes of the nation's governments and lawmakers. "One of the major ways to do this was to involve the Council in issues with constant, well-researched and balanced submissions," he says. "We took a policy officer on board because we were progressively surprised at how many fields - an amazing range - in which action was taking place." In his nine years the Council contributed some 70 submissions to a wide variety of inquiries and reports. The Council now regularly receives requests for opinions from government organisations.

McKinnon's experience in running universities and heading government commissions proved invaluable this year when the Council faced emasculation via a savage budget cut by the newspaper proprietors who fund the Council. Fighting a rearguard action he, and the Council's public members, forestalled the worst of the proposed cutbacks. Though the Council has been financially reduced, McKinnon's leadership was instrumental in retaining a part-time policy officer to continue the public research that has become so much the Council's contemporary signature.

Adrian McGregor

INSIDE THIS ISSUE

- **A New Chair** 1
The Council has appointed Julian Disney.
- **Professor Ken McKinnon** 3
Adrian McGregor profiles the retiring Chair.
- **Press Council News** 4
News and information about reform of the Council; the *News*; the Prize and case studies; changes on the Council, and in the office; a new guideline on 'asylum seekers'; privacy; submissions; and conciliated complaints.
- **Letter to the editor** 10
Judy Macalister-Passauer on reporting bushfires
- **Press Council adjudications** 11
Rulings from July, September and October 2009.
- **About the Council** 16

NEWS

Reform of the Press Council

As noted in the previous issue, members of the Press Council have been discussing various reforms of the Council. At the July meeting, the Council endorsed by the required majority a change to its structure. This was given effect at the October meeting by requisite changes to the Constitution, to give effect to the changes:

That the Constitution be altered to give effect to the following:
That the Council consist of 15 members, of whom, in addition to the Independent Chairman, 6 represent the contributing bodies of whom five are from industry bodies and one represents the MEAA, 6 are members of the public (from a panel), one is an independent editor member (from a panel), and one is an independent journalist member (from a panel); and

that the make-up of the five industry representatives in 2009-2010 is: one representing News Limited; one representing Fairfax media; one representing the magazine publishers; one alternating between WAN and AAP; and one alternating between APN News and Media, Community Newspapers of Australia and Country Press Australia.

The effect is the reduction of the size of the Council from 22 to 15. Where there had previously been seven public members on a 22-person Council, there will now be 6 representatives of the public on the smaller Council. The change has strengthened the proportion of public membership of the Council.

A major impetus for the reform is the current economic downturn. The publishers who fund the Council sought budget cuts similar to those applied to their own budgets.

To reform and make its operations more efficient, the Council, which consists of representatives of the publishers, of journalists and of members of the public, and has members from every state in Australia, decided to reduce the size of the Council.

The Council's Chairman, Professor Ken McKinnon, said that the new Council would come into effect in October, at the end of his nine years as Council Chair.

"Regrettably, the Council has had to make savings in its budget and the range of its operations but these will not unduly effect the work of the Council. The Council will place a greater emphasis on the speedy and effective resolution of complaints from readers about material in newspapers and magazines (and on their websites), a move the publishers have undertaken to support strongly."

Professor McKinnon concluded: "The Council's independent role in advising governments and advocating policies that will maximise the free flow of information to the public will continue to be an important aspect of the Council's on-going activities."

Press Council News

From 2009, there will be three editions only of the *APC News* in any year. The publication months will now be March, July and November. There will be three issues only of the *News* in 2009, so this is the last of the year.

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.

Prize and Case Studies Seminars

The Council's initiatives related to tertiary journalism courses will continue in 2009-2010. As in previous years, the Council will be making a series of awards for outstanding scholarship (the Press Council prize) through the various journalism departments and faculties at Australian tertiary institutions. The Council is endowing a prize worth \$300 this year, either for outstanding achievement in a course directly related to the study of print journalism, particularly in the area of ethics, or for a particular piece of work in that area. The Council will continue to offer the Case Studies seminars to university journalism departments and faculties, and they will largely be presented by members of the Council from the region concerned.

Annual Report No 33

In the Australian Press Council's thirty-third annual report, issued in October 2009, the outgoing Chair, Professor Ken McKinnon, placed the print media in the context of contemporary developments. In his Foreword to the report, Professor Ken McKinnon notes:

The Council is also reporting at a time when public culture makes life difficult for newspapers. ...

While journalists don't rate well in surveys, things are not getting worse. As the Council's statistical summary shows, there has been no major increase in complaints or matters brought to adjudication over previous years. Nor, despite public debate, has there been an increase in the low volume of complaints about intrusion of privacy under the federal Privacy Act 1988, administered for the print media by the Council.

But, he also raised some questions of editorial standards:

A more substantial concern relates to editorial standards, in the light of instances such as the 'Utegate' incident, which led to a barrage of media attacks from both broadsheets and tabloids on the Prime Minister on the basis of a single unchecked, forged email; the publication of photographs wrongly claimed to be of Pauline Hanson in provocative semi-dressed poses; and the extensive media splash made of NSW Minister Della Bosca's infidelity.

Neither of the first two instances had a basis in fact. The claims made by the newspapers fell short of the standards of probity expected of them. Ethics demand that the press make sufficient enquiries to ensure that what they publish is accurate, fair and balanced. This usually involves checking the facts with more than one source. Regrettably, Press Council research has shown that Australian newspapers rely far too frequently on a single source for a story, and do so more often than is the case in comparable countries.

The second and third instances bring privacy issues to the fore, in particular whether there is a genuine public interest in the publication of the matter, as distinct from the public being entertained at the cost of the privacy of the individuals.

The Chairman of News Limited rightly says that the credibility of newspapers' content is the key to their prosperity; a review of the accountability of editors is desirable.

The report also demonstrates that, despite a change of government at the national level, the Council has remained busy dealing with

matters relating to maintenance of the capacity of the print media to report matters of public interest freely, fully and fairly. While there have been areas of improvement, particularly in the current review of Freedom of Information laws at the federal, state and territory level, the report details thirteen submissions made in 2008-2009 on issues such as protection of whistleblowers, secrecy laws, restrictions on reporting of sports news and the development of a national charter of rights.

In addition to its activities in dealing with threats to a free press, the Council encourages a responsible press by dealing with complaints from the public about newspapers and magazines and the annual report demonstrates that fewer complaints received by the Council are now dealt with by means of an adjudication. Many complainants have their matters mediated successfully by the Council or are satisfied by actions taken by the publication. Close to 48 per cent of all complaints are now settled amicably in these ways.

In 2008-2009, the Council received 506 written complaints (many other complainants do not proceed to a formal complaint after telephone call or email to the Council leads to contact with the publication that settles their concerns). Very few of these needed an adjudication from the Council and there were 33 such findings issued, of which 14 upheld the complaints in whole or in part.

The major areas of complaint continue to be inaccuracy (27 per cent) and imbalance, which accounts for about 24 per cent of complaints. There was an increase in the sensitivity of readers to confronting images and material alleged to have disparaged ethnic or religious groups – these totaling about 17 per cent of complaints. Complaints about invasion of privacy by the press were, again, a minor component of the complaints received (around 4 per cent).

During the year the Council was also compiled the third *State of the News Print Media in Australia* report. The 2008 edition remains available from the Council's office and has been posted to its website.

Also included in the annual report are detailed statistics on the formal complaints received by the Council, a report on its activities during the year and circulation figures on all major publishers, provided by the publishers themselves.

Copies of the report are available from the Press Council office and a pdf of it has been posted to the Council's website (<http://www.presscouncil.org.au/pcsite/pubs/ar33.pdf>)

On the Council

There will need to be some reduction in the number of members of the Council as a result of the changes noted above. The panel of independent journalist members was reduced to two from three, when former member Bruce Baskett decided not to re-apply for appointment. Bruce has been a journalist member since July 2003.

The new roster of industry members means that there will no longer be a representative of the Regional Dailies and, thus, Bruce Morgan, Manager of the Ballarat Courier and a member since August 2007, has retired.

News Ltd and Fairfax Media will each be represented by one member each. Campbell Reid, the Group Editorial Operations Manager at News Ltd, will continue in his role as the member nominated by that company, but John Trevorrow, who has represented the Herald and Weekly Times since December 2007 will step down. Mr Trevorrow has, in any case, recently been appointed editor in chief of Leader newspapers.

Fairfax Publications have nominated Phil McLean, the Group Executive Editor at Fairfax Media as its representative on the restructured Council, with Mark Baker, the Senior Deputy Editor of The Age, Melbourne, as his alternate. That has seen the retirement of Peter Kerr, Executive Editor of Herald Publications, and his alternate, Leonie Lamont, as well as of Roslyn Guy, Opinion Editor at The Age. Mr Kerr was appointed in October 2008 and Ms Guy in June 2006.

The other public, journalist and industry members of the Council will continue in their current roles.

The Office

As noted in the July 2009 edition of the News, the Council has changed the conditions of two of its office position to permanent part-time (three days a week) positions.

The position of assistant to the Executive Secretary has been filled by Andrea Hart. After completing her Honours degree in Communications Studies in the UK in 1999, Andrea set off to travel around Australia and has been here ever since. Prior to having her son last year, Andrea worked in the recruitment industry as a consultant for several years. She has a long-held interest in new and traditional media stemming from her university studies and further by her last consultant role for digital media specialists, LaVolta. Andrea works Tuesday, Wednesday and Thursday and ensures the phones are answered, the letters typed and the office is ship-shape.

The other appointment has seen Leta Webb join the Council as part-time policy and research officer. This role includes reviewing legislation and policy documents that have an impact on freedom of communication, freedom of the press and the public right to know and providing advice to the Council where comment and advocacy is needed. Leta has a diverse background in policy, planning, organisational change and management at both State and Local Government levels and at intergovernmental level. She has provided policy advice to government departments, to Ministers and to Local Councils. Most recently she was Executive Director to the Shore Regional Organisation of Councils.

Leta holds a BA (majoring in sociology and drama), Graduate Diploma in Education, Post Graduate Diploma in Environmental Studies, a Bachelor of Laws and Master of Laws degree. Her legal studies included study in both administrative law and media law. Leta is a qualified planner, holding corporate membership of the Planning Institute of Australia and was admitted as a Legal Practitioner in the Supreme Court of NSW in 2001, and is a member of the Law Society of NSW. Leta's interests include politics, planning and social change, environment, theatre and film. Leta has previously taught film studies at the University of NSW and was previously on the Board of the Sydney Film Festival for 15 years.

Describing "asylum seekers"

In October, the Australian Press Council updated its guideline on "asylum seekers", replacing General Press Release 262 with the attached guide. The Council issues guidelines from time to time. These are, in essence, amplifications on particular issues arising from the Council's Statement of Principles. The guidelines apply the Principles to the practice of reporting and are intended to guide the press on how it should report certain matters. These guidelines are not intended to be prescriptive instructions to the press but act as a series of advisories on the application of the Principles that the Council seeks the co-operation of editors in maintaining. A list of the extant guidelines (and links to them) can be found on the Council's website at <http://www.presscouncil.org.au/pcsite/activities/gprguide.html>.

The Council has from time to time received complaints about the terminology used to describe people who arrive in Australia through means other than regulated immigration and visa transit processes. They are often referred to by the press and others as “illegal immigrants”, “illegal boatpeople” and so on - or simply as “illegals”. The descriptor “illegal(s)” is very often inaccurate and typically connotes criminality.

The press has, by and large, abided by the Council’s 2004 Guideline about the use of inaccurate and derogatory terminology to describe such people.

Having considered the matter further, the Council believes that the term “asylum seeker” is a widely understood descriptor, generally a fair and a sufficiently accurate one, and one which avoids the kinds of difficulties outlined above. The Council recommends its use as the default terminology in relevant headlines and reports both by the press and others.

Balancing information & privacy

In November, the Council wrote to the NSW Attorney-General, John Hatzistergos, on issues arising from the NSW and Australian Law Reform Commissions reports on privacy.

As you are aware, getting the right balance between freedom of information and individual privacy is already, and likely to continue to be, an on-going problem. In its role as an advocate for the public in respect to the print media, the Australian Press Council is inevitably involved in advocacy relating to both and offers its assistance in searching for the right balance.

Two cherished national values, the right of individuals not to have their personal privacy invaded and the public’s right to know, expressed through the freedom of the press, have frequently been in contention. That tension can only increase unless there is careful consideration of both in contemplating possible additions to privacy law.

The Council has been aware of the momentum for changes in privacy law. It contributed significantly to the consultation into privacy law and practice in Australia and overseas undertaken by the ALRC and is largely in accord with its conclusions. While the Council notes that the Commonwealth Government has so far only endorsed some of its recommendations its attitude to the further development of privacy law will not be known until the second tranche of decisions is made known at a (unspecified) later date.

A most important consideration, especially from the point of view of balancing the public’s right to know and the right of citizens to personal privacy, is that any development in this area of law should be uniform and national. Any major variance will surely lead to chaotic forum-shopping.

Unfortunately the NSWLRC *Report 120 – Invasion of Privacy* is a cause for alarm. Its proposals, and the draft Bill included in its report, to introduce a statutory cause of action of invasion of privacy are imprecise and insufficiently considered.

The Council’s concerns do not derive simply from its view that a statutory cause of action for breach of privacy is unnecessary. In the absence of a guarantee of freedom of expression, the Bill as drafted is in fact a threat to democracy including the freedom of the press to report on matters of public interest and concern.

As its rationale for legislation, the NSWLRC says that in the absence of legislative reform a common law tort of invasion of privacy may evolve piecemeal and in a fragmented way, suggesting that it would be difficult for individuals and organisations, such as the media, to assess the effect of law on their operations and to implement appropriate policies to minimise their liability if the common law is developing at different rates and with variations.

In fact there have not been major changes in the last few years. In any case, that rationale falls far short of establishing a case for change.

It is difficult to see how the proposed Bill would provide greater certainty because it is itself fatally flawed by imprecision. Its major defect is that it provides only a skeleton and leaves the task of providing the flesh to the courts. As the ALRC noted, if there is to be further protection for personal privacy, either by way of tort or by way of a cause of action, it is important that it be through carefully drafted legislation rather than judicially developed.

The proposed Bill does not adequately respond to the complexities involved in regulating privacy that were identified by the ALRC papers; it does not provide sufficient policy guidance to individuals, organisations or the courts on what constitutes an actionable breach of privacy, and it does not provide a mechanism to adequately balance the public interest in the free flow of information on matters of public concern.

Bear in mind that information privacy is already well protected in legislation and that the recent federal government announcement signals agreement with recommendations for strengthening protection of information privacy so as to respond to the impacts of technology and the need for greater information security.

Similarly, remedies for invasion of personal privacy already exist through the laws of trespass, harassment and similar legislation. Within the common law there already exist various causes of action and remedies in tort and in equity to protect other aspects of privacy.

The NSWLRC approach does not even explore alternative approaches to resolution of privacy concerns. These might include self-regulatory approaches for organisations that have appropriate (approved) privacy standards, policies and dispute resolution procedures. As is now the case with nationally harmonised Defamation law, there should be greater use of offer-of-amends procedures or formal Alternate Dispute Resolution (ADR) to reduce costs, to provide timely remedies, to provide greater flexibility in relation to remedies and to reduce burden on the Court system. The Australian Press Council’s considerable experience and well-established reputation derived from mediating and arbitrating complaints about the press could be put to good effect, for instance.

Turning to other substantive issues, the ALRC papers identified that “privacy” is an umbrella term that applies to a number of separate but related concepts, that it has social, political, economic and normative dimensions. In short it eludes precise definition. The ALRC therefore proposed that legislation should include a non-exhaustive list of types of conduct that the legislation is seeking to regulate. Despite this, NSWLRC Bill relies on an ordinary language concept! It neither defines privacy nor provides a list of the types of acts and conducts that are invasions of privacy. Imprecision of this kind is part of the Bill’s fatal flaw.

From the point of view of the media, which will want to establish policies in conformity with any legislation, and act in ways that minimise liability, the legislation must define, by use of an exhaustive list, the acts or conduct that constitute invasion of privacy rather than leave to the views of individual judges responsibility for defining the term and therefore the scope of any law.

Most importantly, governments in making law must provide guidance as to how competing interests are to be balanced, particularly when some of the interests to be balanced, such as freedom of speech and of the press, are fundamental to the existence of democracy and are not themselves otherwise guaranteed in Australian law.

Recent discussions about the undesirability of “unelected” judges making their own versions of the law apply to both of the previous points.

To determine when a statutory cause of action would apply, the ALRC report supported a two part test to determine first if there is an invasion of privacy and, secondly, to determine if the invasion causes sufficiently serious offence to justify intervention. The NSWLRC proposed Bill does not establish an essential threshold of seriousness.

The Bill not only fails to provide a clear framework for dealing with the public interest but deliberately diminishes the weight of the public interest in freedom of expression by including the balancing of the public interest (including the interest of the public in being informed about matters of public concern) as simply a “circumstance” to which the court is to have regard in determining whether or not there is a reasonable expectation of privacy. The drafting totally devalues the importance of the need to balance the competing rights of privacy and freedom of communication (both of which are guaranteed in the International Covenant on Civil and Political Rights to which Australia is a signatory).

One of the primary roles of any legislation should be to define normative standards of behaviour, so any legislation should require that litigation should first have to establish that there has been an invasion of privacy (properly defined) and then to allow for defences, including a public interest defence. The proposed NSWLRC Bill does not do this. Any legislation should certainly include the clear defences proposed by the ALRC report “that the information disclosed was a matter of public interest” or was “fair comment on a matter of public interest”. Alternatively, it could include a media exemption.

The Council urges you, and Attorneys in all jurisdictions, not to pursue regulation based on the NSWLRC proposals and to reconsider whether there is a strong enough case for a statutory cause of action for invasion of privacy.

Should you and governments across Australia decide to proceed with national legislation to establish a cause of action for invasion of privacy, the Council urges you to develop legislation that

- addresses only precisely defined and serious invasion of privacy,
- is clear in its scope and intent and in defining what are acceptable standards of behaviour;
- gives adequate weighting to countervailing public interests, particularly the public interest in the free flow of information;
- includes provision for alternate dispute resolution and self-regulatory alternatives.

The Australian Press Council would be delighted to arrange to meet with you and/or work with your staff to explore a better way forward on privacy matters.

Submissions

The Australian Press Council has made a number of submissions in the last three months. All have been posted in full to the Council’s website.

Electoral Comment

On August 5 it wrote to the Parliament of Victoria Electoral Matters Committee on its inquiry into provisions on misleading or deceptive electoral content in the *Electoral Act 2002*. The Executive Summary read:

The Australian Press Council makes two specific points:

- the *Electoral Act* should exclude from its ambit fair third party news reports, and commentary upon those reports; and
- if there is a decision to include a redress or corrections policy within the Act, the provisions of that policy should ensure that the person or entity responsible for the original statement is responsible for the publication of any correction.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/elect.html

Secrecy Laws

On August 12, the Council made a submission to the Australian Law Reform Commission in response to Discussion Paper 74, *Review of Secrecy Laws*, the Executive Summary of which read:

The Australian Press Council believes government information should be available to the public unless its disclosure would be likely to result in substantial damage to the public interest. Changes to secrecy laws should be viewed in the light of forthcoming amendments to Freedom of Information laws and should adopt a position in favour of open government similar to that that underlies the proposed changes to FoI

Any legislation permitting information to be kept secret should include an objects clause stressing the importance of open government. The default position must be that information is available, except in specific and carefully defined circumstances.

In scrutinising government conduct, it is essential that the media have access to information generated, or collected, by government bodies. The media must not be circumscribed by overly restrictive secrecy provisions intended to save officials from embarrassment.

The Council submits that action to address the inappropriate denial of access to information is long overdue. Legislative change to address the ridiculously high number of secrecy provisions in Australian law is required and the Council congratulates the Commission on its intention to recommend the removal of a majority of these provisions.

Further, the Council seeks the inclusion, in any recommendation, of rules relating to the declaration of any matter as secret. Those rules would need to define strictly the parameters of what should be secret in order to stop over-declaration of matters, and should make it easy to change the status of information from secret to open. Rules permitting information to be secret must include a provision making it an offence to withhold information from the public for an improper purpose.

The Council is particularly concerned with the impact that the proposed subsequent disclosure offence on media professionals. The importance of a public interest defence in such matters is paramount. Whether or not comprehensive public interest disclosure legislation is eventually approved by the Parliament, the Council submits that a public interest defence needs to be an integral part of the proposed subsequent disclosure offence.

The Council is also of the view that it is not appropriate to have offences of strict liability in legislation dealing with unauthorised disclosure. In all instances, the minimum requirement for a conviction should be that the offender knew that the information was confidential, or knew that he or she had a duty not to disclose the information, coupled with a reasonable foreseeability that the disclosure would be likely to cause damage to the public interest.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/secrecy09.html

Anti-Terrorism Laws

On August 28, in a submission to the Senate Standing Committee on Legal and Constitutional Affairs on its inquiry into the *Anti-Terrorism Laws Reform Bill 2009*, the Council argued:

Consistent with its long held position that sedition laws are an impediment to freedom of expression and have the potential to have a 'chilling effect', the Australian Press Council support the removal of sedition offences in s80.2 of the Criminal Code Act in their entirety.

In view of the lack of precision in the definition of a "thing" in s101.4 of the Criminal Code Act, the Council is concerned that journalists could be exposed to being charged with a serious offence should they inadvertently come into possession of material in the course undertaking their role. The current provision is unsafe and the Council supports that proposal in the Bill that the section be repealed.

Where it is practical to do so, the Council supports the proposed amendments to Division 102 of the Criminal Code Act that would bring the processes for proscribing a terrorist organisation in line with the requirements of administrative law. By ensuring publicity, public consultation, consideration of submissions by an independent advisory committee, notice and a right of appeal the proposed amendments increase transparency, public and media scrutiny and enhance the public right to know.

The Council supports proposed amendments to s102.7 of the Criminal Code Act to ensure that providing support to a terrorist organisation cannot be construed to apply merely to the publication of view favourable to a proscribed organisation.

Consistent with its earlier submissions, the Council express its concerns that this Division 3 Part III of the ASIO Act poses a threat to freedom of speech and has the potential to obstruct the ability of the media to ensure that government agencies are held to public account and that the questioning and detention practices of ASIO do not go beyond what is necessary to facilitate the investigation and prevention of terrorism.

Consistent with its earlier submissions, the Council holds the view that the National Security Information (Criminal and Civil Proceedings) Act is a threat to freedom of the press and it potentially oppressive. The Council supports repeal of this legislation as proposed in the Bill.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/antiter09.html

Access to Personal Information

A submission on August 31 to the NSW Law Reform Commission on its inquiry, *Privacy and Access to Personal Information*, suggested that the Australian Press Council noted that, subsequent to the reference to the Law Reform Commission of June 1, the *Government Information (Public Access) Act 2009*, and associated legislation, has been passed and assented to. An interim Information Commissioner has been appointed and the interim commissioner is now working towards defining how the new rules applicable to public access to government information should work.

In the view of the Press Council, the Law Reform Commission should let the newly appointed Information Commissioner work through the issues related to the balance between the interest in protecting private information and the public interest in the release of government information, where that information deals with matters of public interest and concern. ...

The Council generally welcomes the reforms in the *Government Information (Public Access) Act 2009* and looks forward to a greater availability of government information.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/priv_access09.html

Register of suppression orders

In response to a proposal from the federal Attorney-General's Department for a national register of suppression and non-publication orders, the Council made a submission on September 24, starting:

The Council thanks the Attorney-General for his invitation to comment on the discussion paper that sets out the proposal for a national register of suppression orders.

As you would appreciate, the whole subject of suppression and non-publication orders is of vital interest to the Australian Press Council and its members. The Council has a strong commitment to the principles of open justice, which includes support for the principle of the public right to know and the consequential right of the media to publish information related to court proceedings and the administration of justice.

Breach of an order is a serious matter. It can have adverse impact on the rights of an accused person to a fair trial; adverse impact on the cost and efficiency of court processes if a proceeding is aborted or if contempt proceeding are pursued. A person, such as a journalist, who inadvertently releases information contrary to an order may be subject to criminal prosecution. This concern is exacerbated when journalists, particularly those writing outside the jurisdiction in which the order has been made is unaware of the existence of the order and works for an outlet that may publish or broadcast in the relevant jurisdiction. It is therefore in the interests of all to ensure that any national electronic register works effectively.

The Council congratulates the Attorney and the Standing Committee of Attorneys-General for the decision in November 2008 to progress the development of a legal and administrative framework for a national electronic register of suppression and non-publication orders. It is pleased to see that this commitment has been followed up with a discussion paper prepared by a SCAG working group, in consultation with the Federal Court, that proposes a national register.

The Australian Press Council welcomes a proposal for a single national register, and is pleased to see at point 3 of the discussion paper that the suppression orders project has two aspects being:

- development of a framework of, and detailed proposals for, the register and
- development of model laws about the making of suppression orders, to improve harmonisation across jurisdictions.

However, the Council has concerns about the details of the proposed scheme for a national register. These are set out below. The Council is also disappointed that the discussion paper does not address the second aspect of the suppression orders project, as the two aspects must be inextricably linked if there is to be an effective national approach to the use, issue, notification and registering of suppression and non-publication orders.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/suppress09.html

National Security legislation

On September 30, the Council made a submission to the Attorney-General's Department on its Discussion Paper, *National Security Legislation*. It started:

The Australian Press Council recognises the circumstances that led the Commonwealth to introduce legislation to enable authorities properly to deal with threats of terrorism within Australia. In the circumstances that existed in the wake of the September 2001 and October 2002 terrorists incidents, the government of the day was required to draft legislation that addressed the perceived threat to

Australia. Given the effluxion of time, with the better understanding of the situation that comes with greater knowledge, the Council agrees that it is time for a thorough rethink on the security legislation as it has been developed since 2001.

The Council's Charter for a Free Press has as one of its principles, "Laws, regulations and practices which in any way restrict or inhibit the right of the press freely to gather and distribute news, views and information are unacceptable unless it can be shown that the public interest is better served by such laws, regulations or practices than the public interest in the people's right to know". The Council argues that any laws granting powers to authorities that may impinge on the traditional freedoms of Australians 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 the existing security legislation is that, on occasion, it appears to go further than is required and should be reconsidered. This is particularly the case with the sedition provisions in the Criminal Code Act.

Given the issues raised in this submission, and in previous Council submissions, the effect that the existing legislation might have on the ability of the press to report on matters of public concern, the Council calls on the government to ensure that security legislation is reviewed more frequently than has so far been the case, and that any provisions with a tendency to restrict the ability of the press freely to report matters of public concern should carry sunset clauses.

It is the Council's general view that security legislation needs to be carefully thought through and drafted to ensure that the powers given to the police, security services and others by such legislation is limited to those required to deal with the threat of terrorism. Such powers should not act as an undue impediment to the freedoms traditionally enjoyed by Australians, including freedom of expression, freedom of association and freedom from arrest and detention without due cause.

The Council also notes that Senator Ludlam's *Anti-Terrorism Laws Reform Bill 2009*, currently before the Senate addresses directly many of the concerns the Council has with the over-reach of some aspects of current federal security legislation. In areas such as the repeal of sedition offences, amending the provisions applying to proscription of a terrorist organisation and ensuring that providing support for a terrorist organisation should amount to "material support", and not just an analysis of it, before it becomes an offence, the *Anti-Terrorism Laws Reform Bill 2009* does wind back some of the matters that the Council thinks need to be dealt with.

In this submission, the Council addresses some of the specific matters raised in the discussion paper and in the draft *National Security Legislation Amendment Bill 2009* and raises a couple of issues not addressed in the Discussion Paper relating to existing security legislation.

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/nat_sec_09.html

Tasmanian FoI

Also on September 30 the Council in a submission to the Tasmanian Department of Justice on the review of the *Freedom of Information Act 1991*, the Council congratulated the Tasmanian government for undertaking this review of its legislation relating to disclosure of government information and for adopting in the draft *Right to Information Bill 2009*, an approach that strengthens the position of the Tasmanian people in relation to the State. It noted that the Bill has a number of positive aspects that enhance the public right to information on matters of public interest and concern.

The submission, which can be found at http://www.presscouncil.org.au/pcsite/fop/fop_subs/foitas.html outlined the positive aspects of the reforms and made some detailed proposals on ways in which the already good Bill could be improved.

Court Information

In an October 21 submission to the NSW Attorney-General on the draft *Court Information Bill 2009*, the Press Council welcomed the Attorney's moves to codify access to information from the courts. The Council said that the Bill was a step in the right direction, but it needs some significant amendment.

Courts should generally be open. Material used in court proceedings should be available to the media for dissemination to the public. Given that the Bill seeks to consolidate in one piece of legislation how information from the courts should be accessed, the Council is concerned that the regime envisaged should ensure that material of public interest is made more available to the media for dissemination to the public, and certainly be no more restrictive than the current regime.

The Council had previously welcomed the *Report on Access to Court Information*, particularly the goal of creating a public (and media) right of access to court documents in both civil and criminal proceedings. In particular it welcomed the proposals for open access to transcripts of evidence in open court proceedings, statements and affidavits admitted into evidence, and police fact sheets. It noted that there would also be a category of restricted access including matters that had been struck out, medical and psychiatric reports, and information the subject of a non-publication or suppression order.

The full submission, which detailed a number of proposed amendments to the draft Bill, can be found at: http://www.presscouncil.org.au/pcsite/fop/fop/fop_subs/court_info_09.html

Suicide reporting

On November 20, made a brief submission to the Senate Community Affairs References Committee on its Inquiry into Suicide in Australia to draw it attention to the generally responsible way in which the Australian press has reported suicide and the necessity of ensuring that the press is not unduly restricted in its ability to report on matters of public interest and concern.

The full submission, which included reference to the Council's existing Guideline on reporting of suicide, can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/suicide_09.html

FoI, ACT

On November 26, the Council made a detailed submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety Inquiry into the *Freedom of Information Act 1989*. The Executive Summary made clear the Council's view that the purpose of the *Freedom of Information Act* should be to promote democratic, open, transparent and accountable government. The Act should also give effect to the rights that ACT citizens have under the *Human Rights Act 2004* to seek, receive and impart information as part of the right to freedom of expression (s16) and as part of the right to participate in public affairs (s17). Consistent with these purposes, the *FOI Act* should be amended

The full submission can be found at: http://www.presscouncil.org.au/pcsite/fop/fop_subs/act_foi.html

Future Bushfire Reportage

A letter from Judy Macalister-Passauer

I write in the spirit of proactivity, not complaint.

In the light of recent identification of areas of high risk in the upcoming fire season, of which my area is one, I noticed that some small towns or hamlets were not mentioned in reportage after the start of the February '09 fires. I realise that many of these forgotten towns were small but the residents felt it badly that they were lumped into districts rather than individual towns in their own right.

I live upon Mt Dandenong, in the far reaching district of the Dandenong Ranges, near the hamlet of Mt Dandenong not to be confused with the City of Dandenong far away and quite distinct from Mt Dandenong.

The Dandenong ranges are composed of many small villages or hamlets, each with its own postcode. In the event of impact or extreme threat of bushfire it is vital that each village is identified by name and not reported under the umbrella title of Mt Dandenong or Dandenong Ranges.

In February this year fires initiated in the towns of Belgrave, Upwey and Ferntree Gully. There were, in fact, burn-outs to several other points of ignition but these were small and dealt with quickly.

Mercifully these towns mentioned above were not lost and were saved by dedicated crews and water bombing in time to prevent ingress to the main ridge that is Mt Dandenong. Had this action not been so effective I doubt I would be writing this letter now.

At this time I received many frantic calls from those who imagined I was directly under threat because the words "Mt Dandenong" were repeated many times.

My example of district, town, city, mountain all with the same name highlights difficulties for reporters not familiar with the area. With the possibilities of future bushfires in this region, perhaps the Press Council would consider the importance of ensuring individual recognition of all towns/hamlets by their own names.

I have spoken with the Dept of Sustainability and Environment who were interested to take up my comments for further discussion and consideration.

Judy Macalister-Passauer
Olinda, Vic

PRESS COUNCIL ADJUDICATIONS

Adjudication No. 1430 (July 2009)

The Australian Press Council has upheld a complaint brought by an advocacy group, A Just Australia, against The Australian about some of the language used in four articles and an editorial on boat arrivals published in April 2009.

The crux of the matter is that the complainant objected to the use of “illegal” or “illegals” in the reference to unauthorised arrivals and referred to the Australian Press Council Guideline No. 262:

The Australian Press Council has received complaints about the terminology that is applied, and ought to be applied, to those arriving in Australia who do not have normal immigrant credentials. Technically in Commonwealth immigration legislation they are referred to as “unlawful non-citizens”. However, they are often referred to as “illegal immigrants”, or even “illegals”.

The problem with the use of terms such as “illegal refugee” and “illegal asylum seeker” is that they are often inaccurate and may be derogatory. The Council cautions the press to be careful in the use of such unqualified terms in reports and headlines.

The complainant also referred to a 2004 Adjudication of the Council that upheld a complaint regarding the use of the term “illegal immigrants” (Adjudication No 1242).

While the complainant insisted that “unlawful” is very different to “illegal”, its representative agreed with the newspaper that for many people this amounted to “splitting hairs”. She went on to suggest that neither word should “be used at all when referring to asylum seekers”.

The complainant, while acknowledging that there should be some allowance for interpretation when the term “illegal” is used to refer to the method of arrival, pointed out that in at least one article the asylum seekers were referred to as “illegal immigrants”. The Council notes that the newspaper, apart from using the term “illegal immigrants” once in the article of April 7, had also used other unchallenged expressions such as “unauthorised passengers” and “unauthorised arrivals”. In an article of April 9 and one on April 21 the expression “illegal arrivals” was used in addition to “unauthorised arrivals”. In a second article on April 21, the newspaper referred to “refugees who arrived illegally”.

In an editorial of April 29, the newspaper argued trenchantly that its coverage had

been fair, despite its continued use of terms to which A Just Australia objected.

The complainant calls on the Council to issue stronger guidelines on the reporting of boat arrivals. The Council notes that its current Guideline is generally observed by the print media. However, it also notes that, while Ministers and government officials continue to use the disputed terms, it is difficult for the press to report the immigration debate using consistent terms.

The Council is of the view that the newspaper had not sought to report incidents of “unauthorised arrivals” in an inflammatory way as alleged by the complainant. The newspaper’s coverage of the boat arrivals in the cited articles was fair and balanced, but the use of the modifier “illegal” in the articles and the term “illegals” in a headline are, in this case, factually inaccurate.

Adjudication No. 1431 (July 2009)

The Australian Press Council has dismissed a complaint by Alistair Kerr against an article published in The Sydney Morning Herald’s gossip column PS and on its website, smh.com.au, on February 21, 2009.

The article made several assertions about the financial affairs of Mr Kerr and his partner, who now calls himself Lord Leitrim. Lord Leitrim has previously claimed to be Lord Andrew Battenberg, and is an undischarged bankrupt in Australia. He was originally known as Andrew Lee. The couple now live in a small Lincolnshire village.

The article alleged Mr Kerr, a British civil servant, and his partner had left behind a trail of debts when they quit Scotland. Mr Kerr said he had left Scotland debt free and requested that the SMH delete from its website the inference that both men had left unsettled debts. The newspaper complied, making it clear the problems in Scotland were those of Lord Leitrim under a previous name.

Mr Kerr complained that references in the article to Lord Leitrim, aka Lord Battenberg, as “Battie”, represented homophobic vilification of his partner. He asserted “anyone familiar with Gangsta Rap (ie. anyone under 50, and many over that age) will know that ‘Battie’ is a pidgin term of abuse for a gay man who plays the passive sexual role”. The Council accepts that the newspaper used the abbreviation as a word play on the title Battenberg, without a sexual connotation.

His complaint that the publication compromised his safety and security as a civil servant by displaying a photo of his home is also rejected. The street name in the photo was partly obscured and unreadable. An article in the Daily Mail, London, a week earlier, covering many of the same issues had been published to a vastly wider local audience than the SMH commands in the UK.

The Press Council rejects his claims that the article invaded his privacy and was tantamount to stalking.

Adjudication No. 1432 (July 2009)

The Australian Press Council has dismissed a complaint by Witan Holdings Pty Ltd, which runs the Gingin Meatworks in Western Australia, over a series of articles, photographs and a letter to the editor in the Sun City News about the Gingin Shire Council and the operations of the meatworks. The articles and the letter were published between January 27 and May 19 this year.

The company said the series of articles contained inaccurate and damaging allegations and implied that Witan had repeatedly breached conditions of its licence and the local Gingin Shire had taken no action and that the articles were not fair and balanced.

The newspaper said it had offered to publish the company’s position on the issue but it had been declined and a meeting between the newspaper and the company broke down. The editor said he had tried several times to get comment from the company and the offer to interview the manager was still open. The company said that, apart from the one meeting, it had no knowledge of any other approaches.

The company’s lawyers wrote to the paper on May 13 outlining the series of complaints about the articles and the possible legal consequences. The letter also gave notice that it was raising these matters as required before lodging a complaint with the Press Council.

The Press Council believes the series of articles by the Sun City News does not breach its principles. The campaign appeared to focus on what the paper believed was the Council’s lack of action over maintaining the conditions for the operation of the abattoir, confusion over guidelines for a

buffer zone and the start of construction of a building on the site before Shire council approval had been given.

The Sun City News is a small, family-run fortnightly paper and it is clear the operation of the meatworks is the subject of controversy and public interest. Efforts to get balancing comments from the company appear to have fallen down after the one unsuccessful meeting and the parties differ on the reasons for the breakdown in contact.

Adjudication No. 1433 (July 2009)

The Australian Press Council has dismissed a complaint made by Deborah Pergolotti, curator and founder of the Cairns Frog Hospital, against The Cairns Post, following the publication of a letter to the editor and an article in March and April 2009, respectively.

The March 20 letter, from Paul Whitehorn of Cairns Wildlife Safari Reserve, contained a remark, which Ms Pergolotti says implied that the Cairns Frog Hospital misled the public as to the availability of alternative organisations capable of caring for diseased and injured frogs. Mr Whitehorn's letter responds to an Environment Page notice authored by the newspaper and published on February 19 without the consent or knowledge of the Cairns Frog Hospital.

The letter goes on to list a number of alternative organisations capable of treating diseased and injured frogs. It is not the role of the Press Council to determine technical matters such as the suitability or expertise of the organisations proposed. The Council seeks only to determine whether The Cairns Post acted in a fair manner consistent with its principles. Ms Pergolotti submitted a letter in response but it was not published. She claims that an offer was made by the newspaper to print an upcoming article, in lieu of publishing her letter of reply, and to provide additional space at that time to respond to Mr Whitehorn's letter. The newspaper could not find the records of this exchange and, in any event, the article was not published.

On April 4, The Cairns Post published a further article, which, in addition to Ms Pergolotti's comments, quoted expert comment from Samantha Young despite Ms Pergolotti's recommendation for an alternative scientific contact. Ms Pergolotti complained that Ms Young did not agree with her findings and that this resulted in an appearance of incompetence. The Cairns Post said it was at liberty to seek a range of expert opinions in reporting on scientific matters and Ms Young's credentials as a veterinary surgeon completing a PhD in

frog disease render her a legitimate source for comment in this field. The fact that Ms Young's comments were at variance with Ms Pergolotti's comments does not of itself breach any principle, rather, in this case, it had the effect of providing a balanced range of views.

Ms Pergolotti argues that, by publication of the Whitehorn letter and use of Ms Young's comments in the article, the newspaper has been unfair to her and the Frog Hospital and unbalanced in its coverage.

In reviewing the coverage, the Council believes that the newspaper has provided adequate balance to the complainant and the Frog Hospital, and therefore dismisses the complaint.

Adjudication No. 1434 (July 2009)

The Press Council has dismissed a complaint against The Advertiser, Adelaide, that it inappropriately published on June 3 the names of victims of an assault without regard for their sensitivities, and exacerbating both the trauma of the attack and risks to their personal safety.

The assault occurred on school grounds, where three juveniles allegedly punched and knocked to the ground a teacher and a groundsman, inflicting cuts, bruises and bite marks. The complainant, who is the son of the teacher who suffered the assault, said that the publication of his father's name exacerbated the shock and trauma of the attack, and compromised his personal security by potentially facilitating the retaliatory attacks that the assailants had promised. He said that the newspaper showed a callous disregard for the victims' emotional and physical injuries.

The newspaper said that, given that the offenders had been arrested and charged, it did not believe it should censor the victims' names when they will be publicly available once the court case is heard. The newspaper also said that the reports were fair, accurate and balanced accounts of a matter in the public interest.

Given that the article arose from a matter of public interest and that the names are a matter of public record, the Council can see no breach of its principles.

Adjudication No. 1435 (Sept 2009)

The Australian Press Council has dismissed a complaint by John Flanagan, an officer of the Non-Custodial Parents Party (Equal Parenting), about a July 8 article by Adele Horin in The Sydney Morning Herald.

The article headed *Divorced men better off but not happier* referred to a press release of an analysis by the Australian Institute of Family Studies into the long-lasting financial impacts of divorce for women.

Mr Flanagan complained that the journalist misinterpreted the analysis "in such a way to achieve an outcome that wrongly suits a feminist agenda."

In its response the newspaper rejected this complaint and said the article was a fair, accurate and balanced report.

The newspaper also supplied an email from the lead researcher on the project attesting to the article's fairness and balance.

In dismissing the complaint the Australian Press Council has reviewed the analysis in the press release and agrees with the lead researcher's assessment of the article.

Adjudication No. 1436 (Sept 2009)

The Australian Press Council has dismissed a complaint from Rob Perkovic against The Sunday Telegraph, Sydney, relation to an article titled Scientology's \$12m renovation rescue for Sydney HQ published on May 31, 2009.

The article reports on the upgrade of the Church of Scientology's Sydney headquarters. It reports on the cost of the upgrade, conditions of the development application, the number of supporters and objectors to the application, the number of members within Australia and notes some high-profile media personalities who are members. Comment was provided on the upgrade by a member of the Church.

Mr Perkovic has complained that the headline and article are misleading and unbalanced. He objected to the use of the word 'rescue' in the headline and to 'trawling' used to describe the Church's recruitment activities.

The Daily Telegraph stated that the use of 'renovation rescue' was the language of pop-culture vernacular and that the use of 'trawling' was descriptive, and was not meant to be offensive.

The Council finds that the article and headline are neither misleading nor unbalanced.

Adjudication No. 1437 (Sept 2009)

The Press Council has dismissed a complaint by Lulu Kenzig over the publication of what she said was a private letter, clearly not for publication, in the Sun City News on July 14, 2009.

The issue began with the publication of an earlier letter from Ms Kenzig complaining that inaction by the local council was endangering local wildlife. The editor, Terry Loftus, added a comment which Ms Kenzig certainly read as a criticism that she was not "prepared to go the extra mile" in seeking to have her valid concerns addressed. She then

wrote a second letter, which detailed a number of her community activities over the years. It was the publication of this letter that prompted the complaint.

Ms Kenzig complained that the publication of the letter had put intimate, private matters about her life into the public domain and damaged years of hard work in the district.

Mr Loftus replied that nowhere was this letter marked "private" or "not for publication." The last paragraph included the words "the purpose of this email is not to ask you to print all of this" and suggested that the following week's letters page should note her 15 years of involvement in community activities. Mr Loftus also said that he had run the letter in full so as not to be accused of selective editing.

The Press Council has some sympathy with Ms Kenzig, who thought her letter was clearly not intended for publication, at least not in full. But it does not read that way. The incident illustrates the danger of not explicitly stating that something is not for publication when dealing with a newspaper (or any media).

A better way to have handled this would have been for the editor to discuss with Ms Kenzig an edited, less personal, version of the letter for publication.

Adjudication No. 1438 (Sept 2009)

The Australian Press Council has dismissed a complaint relating to an article in the Frankston/Hastings Independent (March 31, 2009) entitled *Caribou flies into storm of controversy*.

The complainants, David and Katrina Chalke, objected to a specific statement in the article and complained that it lacked balance and neglected facts.

The article related to the visit by two RAAF Caribou aircraft to Tyabb airfield on the Mornington Peninsula. The article stated that complaints to various authorities had been made following the visit, alleging that the weight of the aircraft exceeded the maximum limits allowed under the planning permit for the airfield. The article went on to state that no airstrip damage had been found after the visit but an investigation was being conducted by the Mornington Shire Council (the permit authority). The article observed that CASA was the recipient of regular complaints about movements at the airfield from members of the ratepayers association.

The Chalkes sought a correction from the Independent contradicting a statement attributed to the president of the Peninsula Aero Club (PAC) that a Fly Neighbourly Agreement had been in place for a year at the airfield. The complainants also asked

the editor why the views of Tyabb residents or members of the ratepayers' group had not been sought for the piece. They described the article as "lazy and partisan" journalism.

The newspaper rejected the Chalkes' complaints. The Independent asserted that the article was fair, balanced and factual, and had outlined the concerns held by some residents.

The paper acknowledged, however, that a formal Fly Neighbourly Agreement signed by PAC did not exist at the airfield but added that pilots using the facility were asked to follow Fly Neighbourly advice.

The paper subsequently acknowledged that the editor had been remiss in not responding to the Chalkes' letter.

The Tyabb airfield is a significant regional facility, the scene of on-going economic and social activities. The PAC has an apparent high level of community involvement which generates hard news and human interest stories for the local paper. Noise, "extreme low flying" and safety issues are, however, of concern to some people, including members of the ratepayers' association, the Tyabb and District Ratepayers Business and Environment Group.

In cases of long-standing community disputes assertions of bias, conflict of interest, hidden agendas and other allegations can become commonplace and sometimes personal in nature. In such situations a newspaper can be perceived by some to favour one side of the debate. Local newspapers are very much part of the community they serve.

Newspapers are free to adopt a stance on particular issues but care should be taken to offer balance and to allow a reasonable reader to distinguish fact from opinion.

For its part the Independent could have been more responsive to the complainants' letter in the first instance and sought further elaboration of the quotation attributed to the president of the aero club to clarify for readers the status of the Fly Neighbourly program.

Members of Council who represent publications complained against are excluded from any discussion of, or vote on, complaints against their publications.

Adjudication No. 1439 (Sept 2009)

The Australian Press Council has dismissed a complaint from Gatty Burnett over an article published in the Tasmanian daily, *The Advocate*, on August 13, 2009.

The article reported that police internal investigations are looking into a complaint by Shannon Blake into his detention, and treatment once detained, by police in the early hours of August 9, 2009. The complainant is an acquaintance of Mr Blake and was with him when the police action occurred in a Devonport street.

In the article the newspaper claimed that Blake had been "arrested". The complainant claims that Blake was never arrested. She claims that he was never told he was under arrest and that for the newspaper to claim that he was arrested was "slandrous propaganda".

The complainant states that Blake was forcibly taken into police custody and that he was held for a number of hours. It is claimed, for example, that capsicum spray was used on him. The complainant asserts Blake was repeatedly assaulted while in custody. He was released without charge.

In dismissing the complaint, the Council takes the view that the newspaper cannot be criticised for the use of the word "arrested", as that appears to be what happened to Blake. An arrest can be understood as the detention of an individual by the police.

The Council cannot comment on the complainant's suggestion that Blake was never told he was being arrested. That may, or may not, be relevant in the police internal investigation. Whether the police acted properly in the act of detaining him, and while holding him in custody, are also matters for others to decide. Irrespective of that, the newspaper's use of the term "arrested" in the article does not breach any of the Council's principles.

Adjudication No. 1440 (October 2009)

The Australian Press Council has dismissed a complaint by Dr Antony Nocera against *The Daily Liberal*, *Dubbo*, and *Weekend Liberal* over several articles concerning events at the Dubbo Base Hospital published between July 31 and August 7, 2009.

The articles dealt with allegations of racism, discrimination, faulty diagnosis and failure of communication at the hospital in western NSW during two separate medical emergencies. The Greater Western Area Health Service issued apologies to the patients and their families in both instances after investigating the circumstances.

The first case involved an Aboriginal man with known drug and mental health problems who, on consecutive days, was rushed to the hospital by ambulance suffering severe pain and difficulty walking, and was twice examined by a doctor and sent home without treatment. According to the man's sister the doctor said: "There is nothing wrong, you are only at the hospital to get drugs." The patient presented to hospital again by ambulance on the third day, and this time was diagnosed with abscesses pressing on his spine and groin and rushed to Royal North Shore Hospital, Sydney, where he

remained in intensive care for more than a week. An initial review by the Health Service found the Dubbo care “clinically appropriate”.

The man’s sister alleged he was “treated like a dog” because of his Aboriginality and known history of schizophrenia and drug abuse.

The second case involved a 14-year-old girl who tore off her thumb while tying up a horse at a gymkhana. When she presented at the hospital, a doctor said, according to a family member: “There’s not much we can do with this.” A call was put through to Royal North Shore hospital and a team of micro surgeons assembled but, due to transport delays, she was not operated on until twelve hours after the accident. As a result, the thumb was not successfully reattached.

Dr Nocera complained to the Council that the Dubbo Liberal’s articles were unfair, that they did not respect the privacy of individuals and that gratuitous emphasis was placed on the first man’s Aboriginality. He said the treatment the man received was appropriate based on his past medical history, his presenting complaint and clinical findings on examination. “There was no racial bias,” he said.

He also attacked the newspaper for naming the patients and, in the case of the Aboriginal man, their medical histories.

In view of the fact that close relatives of the patients (a sister and a father) released the details, the Council dismisses the privacy aspect of the complaint. It also dismisses Dr Nocera’s complaint that the comments attributed to the doctors were put in direct quotes without the doctors being interviewed and finds that the newspaper was entitled to report the allegation of racial discrimination.

Adjudication No. 1441 (October 2009)

The Press Council has dismissed the main thrust of a complaint brought by Rodney Adler against The Sunday Telegraph in relation to two articles which reported on the role played by him in a company called Almighty Fodder, but has upheld a complaint about one of the headlines used.

The first article was published on June 21, 2009 (*Adler faces ASIC query*) and the second article was published on July 5, 2009 (*Asset stripping claim over grain firm: Why Adler faces more jail time*).

The articles reported the lodging of a complaint with ASIC by shareholders in Almighty Fodder claiming that Adler “has orchestrated the stripping of assets from Almighty Fodder to a new company,

Dynamic Fodder, without giving them due shares in the new company”. The articles referred to the contents of various emails that emanated from Adler.

The articles referred to the 2005 jailing of Adler for “his role in the largest corporate collapse in Australia’s history” and his 2007 release on parole till October 2009. The June 21 article pointed out that under the restrictions imposed on Adler, he was “prohibited from managing a corporation, or from participating in the making of decisions that affect a business’ operations”.

The complainant claims that the article defamed him and that they contained various “inflammatory and derogatory imputations” about him: that he has committed offences in relation to his involvement with Almighty Fodder; that he breached the conditions of his parole of such seriousness as to justify his return to prison; that he has defrauded shareholders of Almighty Fodder by causing its assets to be stripped and transferred to another entity controlled by him; that he ‘dishonestly’ held himself out as a consultant of Almighty Fodder; that he is likely to ‘recidivate’. The complainant also claims that the headline of the July 5 article was “grossly disproportionate to the content of the article”. Furthermore, he claims that the articles relied entirely on “imputation and innuendos” to make “a further and continuing character assassination on [his] already shattered integrity”.

In the view of the Press Council, the newspaper carefully distinguished between the reporting of facts and allegations in the two impugned articles.

While the complainant may not appreciate being cast back in the spotlight, the newspaper was justified in its invocation of ‘significant public interest’ in the activities of the complainant, especially in relation to his current activities. The newspaper rejected the claim by the complainant that the newspaper’s reporter had worked with the shareholders in making their complaint to ASIC. Furthermore, the newspaper pointed out that it had made a number of unsuccessful attempts to contact the complainant and finally, when contacted, he had declined to provide his comments.

Overall, the articles reasonably covered a matter of public interest. However, the Press Council finds that the heading in the 5 July article (*Why Adler faces more jail time*) is unfair to the complainant, implying something that article does not support. To that extent only, the complaint is upheld.

Adjudication No. 1442 (October 2009)

The Australian Press Council has upheld a complaint from former footballer Greg Smith that a July 20, 2009 article in The Daily Telegraph, Sydney, was unfair, in repeating inaccuracies about his football career that had been corrected ten years earlier.

In the wake of the Karmichael Hunt decision to switch to AFL, the newspaper ran a story about other footballers who had switched codes, concentrating on Mr Smith, who had played one first grade game for the Newcastle Knights in 1999. The newspaper’s sister paper, The Sunday Telegraph, had previously covered Mr Smith’s career in an article in March 1999, when it had contacted US sports journalists and the Philadelphia Eagles NFL club to confirm the footballer’s *bona fides*.

Following an approach from Mr Smith, The Sunday Telegraph had published a follow-up story a week later that clarified that Mr Smith had played several trial games for the Eagles as an unsigned free agent, but had not been contracted by the club for the regular season.

When The Daily Telegraph revisited the story in 2009, it asserted, among other things, that “no one at the Eagles [had] ever heard of him”. Mr Smith complained that the 2009 article revisited matters that had been corrected in 1999 and that the newspaper refused to correct the record on this occasion. He also complained that various references to him in the article were demeaning.

The newspaper defended its report, relying on the 1999 conversation that Mr Smith had had with its reporter. In an attempt to settle the matter at mediation, the newspaper offered merely to correct its electronic archive so that the assertions made by Mr Smith about his NFL career would be included, but not to publish a correction or clarification. Mr Smith insisted on a published correction.

The Council considers that the newspaper was entitled to revisit Mr Smith’s story but had an obligation to get it right, taking into account material that had led to the 1999 follow-up story. There was no basis for the assertion, as the newspaper’s own archive demonstrated. When it was brought to its attention, the newspaper should have corrected this inaccuracy in print and with due prominence.

The Council finds that the newspaper has been grossly unfair in reviving an inaccurate story about Mr Smith in such derogatory language.

Adjudication No. 1443 (October 2009)

The Australian Press Council has dismissed a complaint by Rob Perkovic against The Daily Telegraph for articles dated July 13, 17, 18 and 22, 2009, which reported on swine flu deaths.

Mr Perkovic complained that the articles exaggerated the severity of swine flu and amounted to “fear-mongering”, “propaganda tactics” and promotion of the drug company responsible for vaccinations.

The Council can find no evidence of a breach of its principles. The articles, part of a series, were not sensationalised, did not exaggerate the possible impact of the virus and references to the drug company appeared only in passing in one of the cited articles.

Adjudication No. 1444 (October 2009)

The Australian Press Council has upheld a complaint made by Amelia Willmer against the Gold Coast Sun relating to publication of a letter on August 27, 2009.

The subject letter was published in response to a previous letter on the issue of conscription, lamenting the reception of servicemen on their return from service as “baby killers”. The second letter, which is the subject of the complaint, effectively compared Viet Cong women to animals and supported the controlled genocide of their children.

Ms Willmer complained that the letter was racist, vicious and misogynistic.

The newspaper stated that it does not necessarily condone the views of its contributors, and accepts that its readers have differing views. According to the newspaper, all letters received in relation to this issue were published.

Ms Willmer chose not to submit a letter to the newspaper, stating that she did not wish to keep the sentiments alive in the public domain nor afford the letter-writer a further right to vent.

Newspapers have wide discretion when publishing reader views, but in this instance the newspaper has clearly crossed the line, by publishing a letter that is grossly offensive.

Adjudication No. 1445 (October 2009)

The Press Council has dismissed a complaint from Cailen Cambeul, of the self-styled Church of Creativity, South Australia, that the News Limited website, The Punch, misrepresented adherents of the church as uneducated, illiterate and prone to committing violence.

Mr Cambeul, who runs the church, complained that The Punch columnist, Tory Shepherd, insinuated that he had a criminal history, and had nullified his church’s right to be accepted as a legitimate religious body.

Ms Shepherd’s column, which appeared on July 30, 2009, was written after she explored an array of unusual religious and political websites, including the Church of Creativity. She wrote that Cambeul had “a bit of a chequered history” and that the church’s members were just “a few loners looking for something to do with all their hate”.

In a brief reply to Mr Cambeul’s complaint, The Punch said that Mr Cambeul was a self-confessed racist and that the Church of Creativity was a white supremacist organisation, not a recognised religion.

Mr Cambeul, who describes himself on his website as, “The racist formerly known as Colin Campbell”, argued that he is a white separatist, not a supremacist. However his advice to The Punch that “We do accept that White people are intellectually superior to the other races” fits most definitions of a supremacist belief.

The Council finds that the majority of The Punch’s column to which Mr Cambeul objected in fact referred to organisations other than his own. It is difficult to see how the column could void his church’s claim to religious legitimacy, nor does the description of Mr Cambeul’s career as “chequered” necessarily imply criminality.

The Council accepts that bylined columnists are free to express controversial opinions provided – as in this instance – the opinions are derived from fact.

[NEWS continued from page 9]

Conciliated complaints

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

- A metropolitan newspaper published an article on a near plane crash that the complainant believed to be unbalanced. The paper advised the Council that there were some new developments relating to the incident. It subsequently published a follow-up article, meeting Principle no. 2.
- A regional daily published a letter from the complainant, then realised that it shouldn’t have as the letter was defamatory. It then advised the complainant that in future it will not accept letters from her. After lodging a complaint with the Council, two of the complainant’s letters were subsequently published – on the one day. The complainant thanked everyone involved for handling the matter “with integrity”.
- A metropolitan newspaper published a report about a murder enquiry that invaded the privacy of the complainant’s partner. The paper advised that it was unlikely that any further references to the complainant’s partner would be made in subsequent articles.
- A suburban newspaper published an article and headline about the local council that were both inaccurate and misleading. The paper requested, and was provided, a legal waiver. The complaint was then mediated by a Press Council member, resulting in the publication of a clarification.
- A complainant was concerned that a metropolitan newspaper had misrepresented him by the selective use of parts of his correspondence. The complainant took up the editor’s offer of a letter for publication that clarified matters in the original article.
- A Sunday metropolitan newspaper referred to ‘Macedonia’ instead of ‘the Former Yugoslav Republic of Macedonia’. A letter from the CEO of the complainant was published in a prominent position.

- A suburban newspaper published a letter marked "do not print as letter to the editor". The complainant requested an apology. The paper published an apology in the next week's edition. The editor also apologised privately.
- A metropolitan newspaper published a photograph of a complainant's child. The parent alleged that the child had been misrepresented by the paper. The parties held direct talks that led to an agreement by the paper that it had acted poorly in the matter, and discussed the matter with staff.
- Another metropolitan newspaper used the term "illegal immigrant" in report on asylum seekers. The paper undertook to endeavour to avoid the use of the term "illegal immigrants" in all news stories and opinion articles. The staff were emailed to ask them to uphold that position. The complainant congratulated the paper for "its work in debunking the myth of thousands of refugees by boat".
- A private school complained that the privacy of one of its pupils had been invaded by an article in a metropolitan newspaper. There was a lengthy exchange of correspondence between the office, the complainant and paper about legal waivers, undertaking re any follow-up article, etc. The parties held direct talks, which were unsuccessful in settling the complaint. Another "without-prejudice" conference, conducted by Deb Kirkman, resulted in a "statement of process". The complainant subsequently provided legal waivers and the paper supplied material that satisfied the school and the pupil.
- A reader of a country newspaper submitted a media release to the paper. The paper used the media release to formulate a letter to the editor under the reader's name. The complainant believed that as he had submitted the material as a media release, it should have been run in that way. After consultation with the Press Council, the paper published a clarification of the letter's provenance.

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.

As of November 2009, the Council consists of 15 members. Apart from the chairman (who must have no association with the press), there are 5 publishers' nominees, eight public members (6 attend each meeting), an independent journalist, a journalist representing the MEAA and a retired editor. The publishers' representatives are nominated by metropolitan, suburban, and country newspapers and by magazines and 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.

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/>

MAILING LIST AND MAILING LABEL

If you change address and would like to continue to receive the Press Council's publications, or if there is an inaccuracy on the label, please advise the office of any such change.

Press Council publications will be sent by email to those who ask for delivery in that form. If you want the *News* sent direct to you, 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.

As the *News* and all adjudications are now published direct to the Internet, if you would prefer to access it that way and therefore want your name removed from the mailing list for the printed version, please so advise the Council's office. The Council's URL is <http://www.presscouncil.org.au/>

Managing Editor: Ken McKinnon; Editor: Jack R Herman; Associate Editor: Deborah Kirkman

Lay-out by Jack R Herman; Printing: Print Mail © Australian Press Council, 2009