



Chair
Professor Julian Disney AO
Executive Secretary
Jack R Herman

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Ray Finkelstein QC
Chair
Independent Inquiry into Media and Media Regulation
C/o Independent Media Inquiry Secretariat
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Dear Mr Finkelstein,

Thank you for your letter of 7 October. I have delayed responding until the Council had finalised its submission, which occurred yesterday. The submission is being forwarded to you separately and provides full or partial answers to most of the questions in your letter, as well as important background to those answers.

This response seeks to address each of your questions in a relatively brief form, while also referring to sections of the submission in which more detail is provided. I will be glad to elaborate further when I attend your hearings and by other means if you would like me to do so.

1. Standards of Practice

The Standards

The Council's binding Standards of Practice comprise the Statements of Principles (one of which relates to general issues and the other of which concerns privacy) and the new series of Specific Standards (the first of which, relating to suicide, was issued in July this year).

The Council also has non-binding Advisory Guidelines, each of which will be re-considered during the next year as part of its major Standards Project that commenced in July. The options for action will include possible amendment, conversion into binding Specific Standards or deletion.

Further details of the Standards of Practice and the Standards Project are in section B and paragraphs C1-7 of the submission.

The status of the Standards

The binding status of the Statements of Principle and Specific Standards is currently stated in clause 7 of the Summary and Rights of Obligations of Constituent Bodies which was endorsed by the Council in July this year and is attached to this letter. The constituent bodies are the publishers who have agreed to be subject to the Council's jurisdiction (and also the media union, MEAA). Consideration is being given to whether this obligation (together, perhaps, with some of the obligations relating to other matters) should be included in the Constitution.

Enforcement of the standards

The principal method of enforcement of the Standards of Practice is through the Council's complaints process which enables readers to bring possible breaches to its attention. Where possible, Council staff then seek to mediate a settlement between the complainant and the publisher in the course of which they emphasise the relevant Council Standards, if any, with

which the publisher must comply and the kinds of remedies, such as apologies or retractions, which might be appropriate.

If a settlement cannot be reached and the matter is referred for adjudication by the Council, the Standards are applied to the issues in question and the adjudication must then be published in the publication to which it relates. The obligation to publish has been complied with in every instance during the last twenty years but the Council adopted new procedures last July to tighten enforcement of the obligation to publish with due prominence. The current obligations are stated in the Summary of Rights and Obligations.

There is currently no provision for a punitive sanction such as a fine for breach of the Standards. However, the frequency with which editors vigorously contest complaints and protest about adverse adjudications suggests that the Council is not as toothless as is sometimes asserted. The Council is concerned that if it had the power to impose heavy sanctions its processes might have to become so formal, adversarial, slow and expensive that most people will not be able or willing to complain to it.

Nevertheless, the Council recognises the need to strengthen the impact of its adjudications and has recently taken a number of measures for that purpose. Where appropriate, its adjudications will now include censures, reprimands or explicit calls for apologies or other remedial action. It is currently considering a process for referral of exceptionally grave or persistent breaches to a special panel, headed by a retired judge, which would have power to fine up to a specified level. Further details of these and other initiatives are in paragraphs F8-15 of the submission, together with a reference to the powers of suspension and expulsion in the Model Rules of the associations legislation under which the Council is incorporated.

This strengthening of sanctions might not be effective, however, if publishers are readily able to avoid or defy them by not becoming subject to the Council's jurisdiction or by withdrawing from it. There is no compulsion to become subject to it and some publishers might consider that there are no compelling disadvantages in deciding not to do so. Possible responses to this problem are canvassed in section H of the submission, including making some statutory rights and privileges of journalists or media organisations conditional on being subject to the Council's jurisdiction.

A key element of the new Standards Project is to strengthen the impact monitoring processes by which the Council seeks to assess the general level of compliance with its Standards. This approach recognises the inadequacy of relying solely on complaints being made to the Council. The impact monitoring will usually be conducted by independent experts and focus principally on levels of compliance with one or more of the Council's Standards across a range of publications. It is not envisaged that the process will result in the Council investigating and adjudicating upon an individual case, save perhaps in exceptional circumstances.

These issues are discussed in further detail in paragraphs C8-14 and D14-28 and sections F and H of the submission.

2. Handling of complaints

Timeliness

The average time taken to complete consideration of a complaint is one month, unless it proceeds to adjudication by the Council in which case the average is three months. The great majority of complaints (excluding those which are outside the Council's jurisdiction) do not proceed to adjudication because a resolution is mediated by the Council staff or the complainant decides not to continue. Basic statistics relating to outcomes from mediation and adjudication are provided in paragraphs A11 and D14 of the submission.

It is important to note in this context that, unlike many other complaints-handling bodies, the Council does not require complainants to go to the publisher in the first instance. Many complainants come directly to the Council and its staff immediately seek to clarify the complaint and possible resolutions of it before, where appropriate, seeking a response from

the publisher. This option of direct approach to the Council has not always been made sufficiently clear, however, in its information materials.

Where matters do not proceed to adjudication, any delay is usually due to slow responses by the complainant and/or publisher. Many matters, however, are resolved within a day or two. This applies especially where it seems clear to the Council staff whether or not some remedial action is appropriate and they then express that view to the complainant and publisher.

Where matters do proceed to adjudication by the Council, a period of up to six weeks or so can elapse before the next scheduled Council meeting. During that period, the Council's Complaints Sub-Committee will convene a meeting with the parties at which the complainant and publisher summarise their views and then respond to questions from the Sub-Committee before it prepares a draft adjudication. This type of meeting is not common amongst comparable complaints-handling bodies but is often of great value in understanding the issues and arriving at reliable conclusions. Recent streamlining of the system, however, is noted below.

The Council agreed last year to a fast-track process, involving the Chair and two Council members, for handling urgent cases where appropriate. The process has not yet been invoked, due partly to lack of appropriate staff resources. In many instances, the most feasible rapid response will be to make a public statement, whether in a press release or in response to media inquiries, about which of the Council's Standards would apply if the facts of the case are as alleged. The facts may not be ascertainable rapidly, even by expert investigators, and it is essential not to pre-empt the eventual outcome of a Council adjudication. The desire to be able to make prompt public statements or responses of this kind was a key factor in the Council's decision last year to begin making its Standards more specific and to take the initiative in identifying areas where Standards should be developed.

Further detail on these issues is in section D of the submission.

Efficiency

During the last year, a number of improvements in the complaints-handling have begun to be implemented and others are scheduled for action in coming months. A key step in this strategy was recruitment of a new Director of Complaints, for which funds have now become available and applications been invited. The appointee will work with the new Vice-Chair, who has extensive experience leading a major complaints-handling organisation, to strengthen implementation of the reforms which have been decided upon already and to identify other needs for change.

The areas in which improvements are being pursued include: explanation of the processes to complainants and publishers; identification of key issues in dispute and preclusion of exchanges on other matters; pro-active clarification of ambiguous or disputed assertions; insistence on deadlines for responses by the parties; balance in communications between empathy and impartiality; and focus on applying the precise terms of the Council's Standards. Adequate progress in these respects will require further strengthening of the Council's sparse staff resources.

Significant improvements have been made in recent years in the speed of processing complaints, which now appears to rank well amongst comparable bodies. In addition to the improvements mentioned above, however, the Council decided earlier this year to make further progress by substantially increasing the number of Complaints Sub-Committee meetings and reducing the need for the Sub-Committee's draft adjudications to be referred for endorsement by the Council.

Further details about these and other aspects of the complaints-handling system are in section D of the submission.

Implementation of adjudications

The issues which you raised in this respect have been addressed above to some extent in relation to the status and enforcement of the Council's Standards of Practice. Some additional aspects are mentioned in this section.

The remedies available to complainants (and the number of occasions on which they were obtained through the Council in 2010-11) include apologies (16), retractions (26), corrections (28), similar action (28) and publication of responses by complainants (36). The Council's role in achieving these outcomes is rarely known beyond the complainant and publisher in question, thus leaving the community largely unaware of the potential benefit of complaining to the Council. The publishers have agreed to disclose the involvement in future but this may need to be followed up vigorously to achieve adequate implementation.

Another remedy is provided, of course, when the Council upholds a complaint and the adjudication is published by the publication in question. In 2010-11, 71% of the complaints referred to adjudication were upheld and all adjudications were published. This outcome is commonly regarded by complainants as a sufficient remedy but others believe the adjudication was not sufficiently prominent, the deterrent impact is not sufficient or the harm caused by the breach of Standards cannot be fully undone.

As noted earlier, the Council has recently decided that whenever a complaint is upheld in future it will consider whether a censure or reprimand is appropriate and whether to call explicitly for an apology, retraction or other remedial action. Experience with this approach may indicate whether the Council needs to have power to direct such action to be taken rather than merely to call for it. The option of establishing a special panel with power to impose fines for exceptionally grave and persistent breaches has been mentioned earlier.

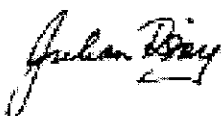
The Council's belief is that if any compulsory powers and punitive are required, they could be based on a contractual relationship with its constituent bodies. As noted earlier, this approach would need to be accompanied by effective incentives for publishers to become and remain subject to the Council's jurisdiction rather than avoid the risk of sanctions by declining to do so.

Further details about these issues are provided in sections D, E and H of the submission.

In conclusion, your letter referred to the fact that submissions to the Inquiry will not be confidential unless requested otherwise. This letter, like the Council's submission, has been prepared on the basis that it will be public.

I hope that this response is of assistance to you. Please let me know if you would like further information or explanation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Julian Disney', with a horizontal line underneath the name.

Julian Disney
Chair



Summary of Rights and Obligations of Constituent Bodies

Introduction

1. The Australian Press Council Inc is an incorporated association and is referred to here as “the association”. It is managed by a committee which is known as the Australian Press Council and is referred to here as “the Council”.
2. Publishers, organisations of publishers and organisations of journalists are eligible to apply to become “constituent bodies” of the association. The rights and obligations of a constituent body are summarised below. The ultimate authority, of course, on the rights and obligations is the Constitution of the association.

Rights to representation

3. Each constituent body is entitled to
 - nominate a representative to attend and vote at the Annual General Meeting of the association;
 - nominate a representative to attend and vote at the Constituent Funding Sub-Committee of the Council;
 - seek to be one of the constituent bodies which the association determines may nominate a member of the Council.
4. At present, nine of the twenty-two members of the Council are nominated by constituent bodies. Six of them are entitled to attend and vote at any one Council meeting, in accordance with a roster determined by the Council.

Financial obligations

5. Each constituent body is obliged to make an annual contribution to the association at the level determined by the Constituent Funding Sub-Committee. After considering a recommendation from the Council, the Sub-Committee determines the level of funding which it considers to be sufficient for the association’s ongoing expenses for the conduct of its responsibilities. It also determines the shares of that funding to be contributed by the respective constituent bodies.
6. Contributions are payable in advance, either quarterly or annually as agreed with the Council by each constituent body. They are set by the Sub-Committee exclusive of GST, which is then added on to any tax invoice. If a constituent body fails to comply with a funding obligation determined by the Sub-Committee, its status as a constituent body ceases immediately.

Standards of media practice

7. Each constituent body is obliged to
 - comply with the Council’s binding Standards (the Statements of Principles and Specific Standards);
 - promulgate these standards to their staff;
 - ensure that their publications deal with complaints in accordance with the Council’s procedures (including the requirements relating to publication of Council adjudications – see Attachment).
8. Each constituent body is obliged to provide the Council with up-to-date lists of the names of all newspapers, magazines and associated websites for which it is responsible. It is also obliged to provide the Council with up-to-date lists of the name of the relevant contact person for dealing with complaints to the Council relating to its respective publications. (including a person who acts in that role during the absence of the usual contact person).

Publicity for the Council’s role

9. Each constituent body is obliged to publish at least once per month in each of its publications a notice which provides information to the public about the Council’s role, especially in relation to complaints, and how it may be contacted. The date of each publication of the notice is to be notified to the Executive Secretary.

10. The content and format of the notice will be as determined from time to time by the Council with the agreement of the Constituent Funding Sub-Committee. It is to be published in a prominent position on the same page as letters to the editor, or in such other position as is agreed with the Executive Secretary of the Council.

ATTACHMENT

Publication of Council adjudications

1. Each constituent body is obliged to publish in each of its publications any Council adjudication on a complaint relating to that publication.

General requirements

2. The adjudication must be published in full and headed "Press Council Adjudication" or "Press Council Ruling" together with the Council's logo. It must be differentiated from surrounding copy by a distinctive font or a text box and must not be accompanied by editorial comment.
3. In the case of daily publications, the adjudication must be published within seven days of the final adjudication being notified to them. In the case of other publications, it must be published no later than the first issue after the seven-day period.
4. The adjudication must be published on the same page and in a similar position as the original material.

On-line material

5. Where the adjudication relates to on-line material, it must be published for at least 24 hours on the home page of the website. Alternatively, a brief summary note approved by the Executive Secretary must be published for at least 24 hours on the home page to provide a link to the full adjudication.
6. An annotation in terms approved by the Executive Secretary must also be added to the publisher's archived versions of the on-line material, together with a link to the full adjudication.

Relaxation of requirements

7. A publisher or complainant may request the Executive Secretary to relax the above requirements in relation to a particular adjudication. Both the publisher and the complainant should usually be consulted before any substantial relaxation is approved.
8. The request may be granted if the Executive Secretary considers that the requested relaxation
 - will enhance, or at least not reduce, the likelihood of the adjudication being seen by people who saw the original material; or
 - is necessary to avoid an unreasonable burden on the publisher (especially where the complaint was wholly or partially dismissed by the Council); or
 - is in the interests of the complainant.
9. At the request of the publisher or complainant, a decision by the Executive Secretary under paragraph 8 is subject to review by the Chair of the Council on the ground that it is clearly unreasonable. If the Chair so wishes, the request for review may be referred to the Council for decision.