



Australian
Press Council



Submission to the Convergence Review

October 2011

Australian Press Council

Address: Suite 10.02, 117 York Street, Sydney 2000 **Phone:** (02) 9261 1930 or 1800 025 712 **Fax:** (02) 9267 6826
Email: info@presscouncil.org.au **Web:** <http://www.presscouncil.org.au>

Contents

	Page
A. Introduction	3
B. The Council's structure and areas of activity	3
C. Regulation of news and comment	5
D. Regulating print and online material	7
E. Developing a unified system	8
F. Conclusion	10

Submission

A. INTRODUCTION

A1. The Australian Press Council was established in 1976 and is the principal body that sets and monitors standards of good practice for the publication of news and comment in Australian newspapers, magazines and their associated websites. It is also the principal body that considers complaints about reporting of news and comment across this range of publications.

A2 The Council welcomes the opportunity to make this submission to the Convergence Review. As reporting of news and comment is the focus of the Council's responsibility, it is also the focus of this submission. The ambit of the submission falls principally within items 5(a) and (e) of the Terms of Reference and relates also to issues raised in the Committee's discussion paper on *Community Standards*.

B. THE COUNCIL'S STRUCTURE AND AREAS OF ACTIVITY

Membership and governance

B1. The Council is governed by a management committee which has fifteen voting members. 47% of the committee consists of public members (including the Chair) who have not been employed in the industry, 33% are publisher representatives, and the remaining 20% are people who are or have been journalists but are not currently employed by a publisher (eg, freelancers).

B2. All major publishers of newspapers and magazines have agreed to be bound by the Council's Standards of Practice and complaints handling system. Collectively, they publish about 98% of all newspaper and magazine sales in Australia. Their websites are also subject to the Council's jurisdiction and three of these are amongst the top five or so most-visited news and comment websites in Australia. In addition, some of the content on other prominent online news and comment sites is sourced from Press Council members, including AAP and leading magazine publishers.

B3. One online-only publisher has already agreed to be subject to the Council's jurisdiction and another agreed to do so in relation to a particular complaint. A number of others have recently expressed willingness to join or interest in doing so. A special low-fee schedule is currently being finalised by the Council in order to facilitate membership of online-only publishers, including bloggers.

Areas of activity

B4. The Council's three main areas of work involve

- **developing standards** that constitute good media practice and are applied by the Council when considering complaints;
- **responding to complaints** from the public about material in newspapers, magazines and associated digital outlets that relates to news or comment;
- **issuing policy statements** on matters within its areas of interest, principally concerning freedom of expression, freedom of information, privacy, defamation and related matters.

B5. *Standards:* The Council recently adopted a new tri-partite system of Standards of Practice. The system includes

- binding Statements of Principles (comprising a General Statement of Principles and the Statement of Privacy Principles);
- binding Specific Standards (including the recently released Standards relating to Suicide); and
- Advisory Guidelines on certain topics.

Each Standard is determined by the Council itself, drawing on the expertise and perspectives of both its industry and public members.

B6. Having commenced a major three-year Standards Project in July 2011, the Council is now determining priorities for systematic development of Standards of Practice across a wide range of issues. This process has been initiated by a preliminary series of Round Table consultations in four States, involving more than one hundred media representatives and leaders of community organisations.

B7. *Complaints:* The Council currently receives about 450 complaints each year (excluding those outside its jurisdiction). In 2010-11, mediation by the Council led to a correction, apology or some other remedial action by the publisher in 134 cases. Where mediation is unsuccessful or inappropriate, complaints may be referred for adjudication by the Complaints Sub-Committee, the majority of which must be Council members who have not been employed in the industry. There must also be at least one publisher representative and one independent journalist. In 2010-11, 85 complaints were referred for adjudication and 71% of these were upheld. Adjudications must be published promptly and with due prominence in the relevant publication.

B8. The average length of time taken to finalise complaints to the Council is about one month (including mediation) or about three months if they proceed to adjudication. The speed of finalisation is affected by the Council's practice of convening a meeting at which the complainant and the publication make presentations to its Complaints Sub-Committee and answer questions. This practice is not common amongst comparable bodies but it can greatly improve the quality of adjudications as well as the participants' level of satisfaction with the Council's processes.

B9. *Policy:* The Council issues policy statements on matters within its areas of interest, including submissions to parliamentary committees, commissions and other public bodies. It also undertakes research and convenes or participates in conferences and seminars on policy issues. Recent work has included research, submissions and advocacy on issues relating to freedom of expression, freedom of information, privacy and the protection of whistleblowers. Its role in policy matters is to express views from a public interest perspective on media standards and related matters, not to be an advocate for the industry as such or any other specific interest.

B10. Further details of the operation of the Council can be found in its submission to the Independent Media Inquiry. Its Standards of Practice, adjudications and publications are available on the Council's website (www.presscouncil.org.au).

Online issues

B11. The Council's jurisdiction over its members' websites commenced in 2000. Since that time, its work in handling complaints and developing Standards of Practice has increasingly involved online issues. They include

- should online material comply with the same Standards as print (eg, must every posted version be as rigorously accurate and balanced as if in print);
- to what extent should the publisher of a website be held responsible for readers' comments on it and for material to which it provides links;
- should all comments be moderated before they are posted and to what extent, if any, should commenters have to establish their identity;

- should publishers be required to identify on each version of an article any changes which have been made from earlier versions;
- should publishers have to keep permanent online or offline records of all versions of any material which has appeared on their websites;
- when should publishers agree to people's requests that material relating to them be removed from online archives (eg, mentions of "spent convictions");
- in what circumstances should a publisher request aggregators such as Google to change or remove an article which is on their website.

B12. Most complaints to the Council now have an online or digital component, even if they were made about a print article. For example, the complainant may be concerned about the ongoing life of a print article which is now stored in the newspaper's online archives or is available through an aggregator such as Google. Where an apology or Council adjudication about a print article is to be published, it may need to appear on the publisher's website as well as in print if the original material appeared in both forms. The Council now requires that adjudications must appear on the home page of the publisher's website for 24 hours and a link to them must be added to online archive copies of the material to which they relate.

B13. The Council is currently developing a set of Standards of Practice relating specifically to online issues. It recently convened a meeting of online editors from major newspapers in several States at which it was agreed that the Council should convene further meetings on a regular basis to facilitate exchange of information, concerns and examples of best practice between online editors, as well as to assist the Council to develop appropriate Standards.

B14. The Council has also commissioned research on online issues from the Department of Media and Communications at the University of Sydney, the report of which is due early in 2012. The Council closely monitors regulatory issues and practices in other countries concerning online publishing of news and comment. Its close connections with Press Councils and similar bodies in other countries enable it to obtain some information and advice on these matters that is not publicly available.

B15. Issues relating to social media are also becoming of increasing significance for the Council. Its views have been sought by journalists as well as complainants about when it is acceptable to publish material obtained from Facebook and when publishers are responsible for material disseminated by their employees through social media.

C. REGULATION OF NEWS AND COMMENT

C1. The current arrangements for regulation of news and comment are based principally on the traditional distinction between print and broadcast media, with the Australian Press Council being responsible for the former and the Australian Communications and Media Authority for the latter. The Council, and in very limited circumstances the ACMA, also has some jurisdiction over online publishing.

C2. The traditional distinction creates an inherent risk that similar words or images relating to similar events or issues will be subject to different regulatory standards or different interpretations of similar standards. This can apply, for example, when a print journalist and a radio journalist describe a particular person in similar terms, or similar images of the same event are published in a newspaper and broadcast on television. But it can also apply, of course, when different words or images raise similar questions about appropriate standards of practice.

C3. The degree of risk has grown considerably because of huge growth in the overall amount of material being published in print, broadcast and online media and in the opportunities for publication of the same or similar material through different media or platforms. Some obvious examples of the latter phenomenon include television news coverage being shown as videos on newspaper websites, and audio or video material on

newspaper websites being broadcast on radio or television. Other examples include material from print or broadcast media being published with little or no change onto other platforms including smartphones and tablets, through online sources such as bloggers, or via social media such as Facebook or Twitter.

C4. The rapidly growing risks of manifestly inconsistent standards being applied between the two regulatory systems and of confusion and uncertainty about their respective areas of responsibility can cause considerable unfairness for complainants, would-be complainants, publishers and broadcasters. They can also weaken the efficiency, effectiveness and credibility of regulators.

C5. A major and growing problem is the lack of any regulatory system applying to online publishers who do not subject themselves to the jurisdiction of the Press Council. Most major news and comment websites are published by newspapers and thus subject to the Council. This does not apply to aggregators or to broadcasters' websites such as ninemsn and Yahoo!7, although content on these sites which has been supplied by Press Council members (such as AAP, the West Australian, Pacific Magazines and Australian Consolidated Press) will be subject to Press Council consideration in its original, published form. Other content on these sites as well as content on abc.net.au and content offered by bloggers is not subject to any external standards or complaints system.

C6. An example of this problem concerns reporting of election campaigns. Currently, print publishers and their websites are subject to the Press Council standards on matters such as fairness, accuracy and balance and to its procedures for resolving complaints. No such system applies, however, to the very large number of other online publishers, including bloggers, who may have a considerable impact on public awareness and discussion of issues. This regulatory void is undesirable in itself and also increases competitive pressures to print or post material before facts have been adequately checked or responses to allegations have been included.

C7. The confusion and inconsistency in this area can be seen by considering three well-known sources of online news and comment. While *The Punch* is subject to the Council because it is provided by a print publisher which is a member of the Council, *Crikey* and *Online Opinion* are not subject to it because neither is a print publisher nor broadcaster.

C8. A more specific problem relates to a possible regulatory overlap. It arises where broadcast material (which is therefore subject to the ACMA) is published in identical form in a newspaper website (which is therefore subject to the Press Council). The Council and the ACMA may be able to develop interim protocols to help demarcate areas of responsibility on issues of this kind. But some uncertainties and inconsistencies would remain unavoidable. For example, questions might arise about regulatory responsibility where broadcast material is posted in an edited, rather than identical, form on a website or is accompanied by textual material which affects its impact.

C9. Over the longer term, it seems inescapable that convergence of media should be matched by convergence of regulation. A pathway towards a unified system for regulation of news and comment is outlined in the remaining two sections of this submission. It focuses on

- further development of the Press Council's role in relation to news and comment in print and online;
- eventual transition to a unified system in which the principal responsibilities across all media are vested in an Independent Council.

D. REGULATING PRINT AND ONLINE MATERIAL

D1. The Council began a sustained reform program early in 2010 to strengthen its effectiveness in relation to print publishing and to expand its involvement with online publishing. In particular, the program aims to strengthen

- the clarity and scope of the Council's Standards of Practice, especially in relation to online material;
- promulgation of the Council's Standards of Practice and monitoring of compliance with them;
- the Council's processes for receiving, investigating, mediating and adjudicating upon complaints;
- the Council's insistence on due prominence for publication of the Council's adjudications and of apologies, corrections or other remedial action provided by publishers in response to complaints;
- the range and effectiveness of sanctions imposed by the Council or by processes initiated by the Council;
- the degree of independence which is provided for the Council by its governance structures and funding;
- the incentives for publishers, including solely online publishers, to become and remain subject to the Council's jurisdiction.

D2. The Council's submission to the Independent Media Inquiry (which is also provided as an Appendix to this submission) summarises progress to date in the reform program and the further initiatives which are being implemented or closely considered. Key elements include

- developing Standards of Practice about online issues such as moderation of comment, storage in online archives and use of social media;
- introducing a new low-fee schedule for online-only publishers (including bloggers);
- improving the regularity and prominence of notices in publications advising readers about the Council's roles and contact details;
- promoting the "APC" logo as a hallmark of print and online publishers who are bound by the Council's Standards and its complaints-handling process;
- establishing a referrals panel, chaired by a retired judge, which can fine publishers for grave or persistent breaches of the Council's Standards;
- clarifying the extent to which online-only publishers who join the Council are eligible for the same statutory rights and privileges as print publishers;
- obtaining better and more secure funding for the Council, including through some public funding to boost its effectiveness in relation to online publishing.

D3. These and other initiatives aim to consolidate the Council's distinctive strengths, which include

- developing its own Standards of Practice across a wide and growing range of issues, with a special focus on online issues;
- having active publishers and journalists, as well as prominent people in the community, on the bodies setting its Standards and making adjudications;
- providing a no-cost complaints scheme that does not require legal representation or an adversarial process;
- receiving and handling complaints from the outset, rather than only after the complainant has approached the publisher unsuccessfully and a considerable period may have elapsed;
- facilitating mediated outcomes, such as an apology or retraction or the publication of a balancing article;

- avoiding the constraints and delays of bureaucracy, so that most complaints are finalised within a month (including any time involved in mediation);
- advocating from a public interest perspective on issues such as freedom of expression, freedom of information and privacy.

D4. The aim of the Council's program of reform is to provide a system that operates effectively across print and online coverage of news and comment. Close liaison with the ACMA will be important to help promote as much consistency as is appropriate and feasible between standards of practice and complaints-handling processes in the print, online and broadcast regimes. The goal would be greatly assisted, of course, if key authorities or participants decided that broadcasters' online publications and aggregators' websites should be subject to the Council's jurisdiction.

E. DEVELOPING A UNIFIED SYSTEM

Basic principles

E1. The Council has been guided by two basic principles when considering the longer-term future of regulatory arrangements for news and comment in print, online, broadcast and other media. They are:

- over time, one body should become principally responsible for setting and monitoring standards of practice for news and comment across all media, and for handling complaints about breaches of those standards;
- this body should be an Independent Council which has due independence from the media industry, governments and any other particular interest, and has adequate standards, powers and resources.

E2. *A unified system:* The first of these principles, calling for a unified system, is similar to the Committee's concept of regulatory parity. It aims to avoid inappropriate inconsistency, unfairness and confusion arising from similar material being subject to different standards and processes merely because of the media or platform in which it is published. In doing so, the unified system would assist both consumers and providers of news and comment, as well as the broader community.

E3. While emphasising the importance of this principle, however, the Council acknowledges that there may be some circumstances in which other public policy objectives outweigh the arguments for unification and parity. Accordingly, it recognises that there may be a case for some limited exclusions from the system.

E4. *An Independent Council:* The second principle reflects the Press Council's firm belief that the principal regulatory body must be independent in practical operation from government, the industry and any other particular interest. This approach is necessary to strike appropriate balances between different elements of the overall public interest, and of sectoral or individual interests, without which the credibility of the media and the regulatory system are put at risk.

E5. The principle also reflects the Council's belief that, so far as possible, regulatory standards and adjudications of complaints should be determined by a body which includes both industry representatives and independent public members. The body should also be able to focus exclusively on issues of news and comment rather than other onerous regulatory functions, thereby increasing its ability to apply processes which are appropriately accessible, flexible and expeditious.

An Independent Council

E6. Some key elements of the proposed Independent Council are outlined below. The Press Council already has a number of the proposed characteristics of the Independent Council and its current reform program aims to approach the model even more closely. But the Independent Council would need to be developed by creating an entirely new body or by substantially transforming the Press Council's composition and

resources to reflect the interests and needs arising from expansion beyond print and online publishing.

Main roles and responsibilities

E7. The core of the unified system should be an Independent Council which is responsible for

- setting and promulgating Standards of Practice for the publication of news and comment across all media;
- assessing levels of compliance with those Standards and handling complaints about possible breaches of them;
- promoting freedom of expression and access to information wherever it considers the public interest so requires.

Membership and funding

E8 The membership of the Council should provide a sufficiently broad and authoritative range of experience and perspectives to make well-informed, independent and credible decisions.

E9. The majority of the Council (including the Chair and Vice-Chair) should be people who have not worked in the media industry. At least one-third of the Council should be people with substantial experience in the media who have been nominated by providers*. The other members could be people who are or have been in the industry but are not nominees of a provider. No member should be appointed by a government or be a member of parliament.

E10. The Council should be funded sufficiently to carry out its responsibilities and the funding commitments should be sufficiently long-term to ensure adequate independence. The majority of the Council's funding should be contributed by providers in accordance with agreed criteria. At least one-third of the funding should be contributed by government or other non-media sources.

Handling complaints

E11. Providers should be required to set and publicise their own internal standards of good practice which are consistent with the Council's Standards. They should also be required to comply with principles specified by it in relation to the design and operation of their internal processes for handling complaints.

E12. The Council should be required to investigate and consider complaints as informally and expeditiously as is compatible with due care and fairness. Providers should be required to cooperate in the Council's investigation of complaints relating to them. The Council should actively seek to mediate satisfactory resolutions of complaints wherever possible and appropriate.

E13. The Council's adjudications should be the responsibility of a committee of which independent public members comprise the majority and the remainder have extensive experience in the media industry. It should have power to require appropriately prominent publication of adjudications, to issue reprimands or censures, and to call for the publication of retractions, apologies or other material which may remedy breaches of its Standards.

E14. The Council should be able to refer a complaint for adjudication by a special panel if it considers an alleged breach of its Standards may be exceptionally grave or, together with earlier breaches, may constitute persistent non-compliance with its adjudications. The panel should be established by the Council and chaired by a retired

* 'Provider' is used here to include print publishers, online publishers and organisations or people who publish material through broadcast or other media.

judge. It should be able to fine providers up to a specified maximum amount and perhaps impose other sanctions.

E15. The powers of the panel should be expressed in the contractual terms on which providers become subject to the Council's jurisdiction. If the panel is given a statutory rather than contractual basis, access to it should still be solely through referral by the Council and it should have to apply the Council's Standards.

F. CONCLUSION

F1. This submission has sought to look beyond current regulatory arrangements and to propose key elements of a unified system which would serve the overall public interest over the longer term. In doing so, it seeks to recognise the opportunities and challenges of a rapidly changing media environment, especially those relating to convergence, technological developments and an increasingly internationalised market.

F2. The Council is actively strengthening its effectiveness in relation to print and online publishing. A key priority for that purpose is to expand the range of online publications which are subject to its jurisdiction. It is already the principal regulator of online news and comment by virtue of its role in relation to newspapers and magazines. But inappropriate gaps, inconsistency and confusion will remain while key websites of broadcasters, aggregators and bloggers remain outside its jurisdiction.

F3. Through its own initiatives and the proposals made in this submission, the Council aims to play its part in facilitating development over time of an appropriately unified regulatory system for news and comment across all media. It would be glad to provide further information and explanation to the Committee if requested to do so.