

SUPPLEMENTARY SUBMISSION

In January, the Council made a submission to the Senate Committee on Information Technologies. This submission was published in the February 1998 *News*. In April, it made a further submission, responding to matters raised in other submissions and in evidence.

1. INTRODUCTION.

1.1 This is a supplementary submission from the Australian Press Council to the Senate Committee on Information Technologies on its Inquiry into Self-Regulation in the Information and Communications Industries.

1.2 The Council has now had the opportunity to read the submissions to the Committee and the transcripts of hearings of the Committee. There are some matters of fact appearing in those documents that the Council wishes to correct. There are also some matters raised in the material on which the Council wishes to comment, lest the Committee be misled.

2. QUESTIONS OF PRIVACY - AUSTRALIA AND THE UK

2.1 The Council makes the following comments on comparisons that might be drawn between the position in Australia and the UK.

2.2 The impression could be gained from the discussions with Lord Wakeham that there are no problems with invasions of privacy by the press in the UK while it is a major concern in Australia. The reality is that the reverse is true.

2.3 If the Committee wishes to understand what is being talked about when press invasion of privacy is being considered, the Council suggests that the Committee examine a representative sample of current British tabloid newspapers. It will find that the British press presents an entirely different picture to that which exists in Australia. Suggestions that

the UK Press Complaints Commission's strengthening of its code in matters relating to personal privacy has overcome concerns have to be seen in the light of conditions that existed there prior to the changes in the code. And, even following the strengthening of the code, the British tabloids are very much more invasive of privacy than comparable Australian newspapers. Recent examples include the treatment of Foreign Secretary Robin Cook's personal life and the coverage of Bob Geldof and Paula Yates in the UK in the wake of the Michael Hutchence suicide (and indeed the coverage there of the suicide with its speculation of sexual self-asphyxiation). Indeed, the reason that Lord Wakeham was forced to act so comprehensively arose from the perception that the British press was not paying attention to any privacy rights, and was too frequently using stories bought from minor children.

2.4 The Council has previously advised the Committee of the small number of complaints that it receives involving privacy, particularly the invasion of the privacy of public figures. Most Press Council complaints in this category are from those who are concerned with alleged invasions of privacy which are, in fact, normal newspaper coverage of matters already on the public record, such as court appearances or reports of crime or tragedy. The most recently available statistics from the NSW Privacy Committee indicate that fewer than 4% of its written complaints relate to press invasions of privacy. FACTS said, in its submission, that concerns with privacy were not one of the major areas of complaint to it.

2.5 The Council believes this evidence reinforces its previously stated position that invasions of privacy by the print media are not a major cause of concern in Australia. There may be a perception of this being so, but this is based on a translation of overseas experience. The Council considers that the adoption of a stronger Privacy Code is not warranted on Australian experience.

3. THIRD PARTY COMPLAINTS

3.1 Perhaps the feature that most distinguishes the Australian and the UK position on complaint resolution is the ability of anyone in Australia to raise a matter of concern. This is particularly apparent in regard to privacy complaints. If only the party affected could raise the issue, as in the UK, the Council would have far fewer complaints about privacy issues and particularly privacy issues affecting public figures. Both the complaint about the photos of former Senator and Dr Woods and the one about the coverage of the Prime Minister's holidays were lodged by third parties. Lord Wakeham's Commission would not have considered them in the absence of complaints from the affected parties.

3.2 The Council is strongly of the view that it provides a much better service to the public, and actively deals with concerns about the invasion of the privacy of public figures, by permitting parties not affected by a newspaper report to lodge complaints where important issues of principle arise.

4. THE FOLLOWING UP OF ADJUDICATIONS

4.1 The Committee raised with the Council, Lord Wakeham and other parties the circumstance of the republication of a photograph that had been the subject of an adverse adjudication by the Council. Lord Wakeham asserted that this would not occur in the UK.

4.2 The circumstances surrounding a republication would always have to be examined to determine whether it offended the Council's original adjudication. The passage of time, for example, may make an article, photograph or adjudication of historical interest only. The Council thinks that Lord Wakeham would concede that republication would not, necessarily, offend Council or Commission principles.

4.3 The Council's Complaints Committee reviews the publication of adjudications at each meeting to ensure that they are published and published with appropriate prominence. At its meeting on 2 April 1998, the Council determined to increase its surveillance in the area of matters arising from adjudication. It resolved that the Council would take up of its own motion, and examine, questions arising from the republication of material that was the subject of an adverse adjudication by the Council.

5. COMPLAINTS COMMITTEE HEARINGS

5.1 The Council notes that the Chair of the Committee concluded, from her observations, that attendance before the Complaints Committee of the Council "was quite a daunting experience for a member of the community". The Council concedes that this may be the impression that an observer might form. Any attendance before a body with which a person is unfamiliar is likely to be so. Indeed, attendance before a Senate Committee falls into this category.

5.2 However, the Council reminds the Committee that attendance is not obligatory. It does give complainants the opportunity to present the case directly to the Council committee and, if they wish, confront the editor about whose conduct they are complaining. Editors tell the Council that they find the experience discomfiting and a reason to try to reach an accommodation with complainants.

5.3 Further, both American research and the Council's own survey of complainants indicate that complainants who have been given their "day in court" are more likely to be satisfied by the outcome of a Council adjudication than those who were not so privileged. Many complainants are comforted by the fact that the committee members are as tough on the newspaper (and sometimes tougher) than they are on the complainant.

5.4 The Council considers it a better procedure to provide complainants with the chance to appear than to permit them to make a written submission only, as in the UK.

6. INFORMAL DISCUSSIONS WITH EDITORS

6.1 The Chairman of the Council has been meeting with the editors of the major Australian newspapers in order to establish a relationship that will enable him to make personal approaches to editors. The Council secretariat resolves around 20 percent of complaints by an informal approach to the newspaper concerned and an almost equal number are settled after the receipt by the complainant of the newspaper's response to the complaint.

7. MARTIN BRYANT PHOTOS

7.1 The question of the "retouching" of photos was raised in connection with the publication in several newspapers of the photo of Martin Bryant. The Committee was also concerned as to whether any complaint had been made to the Council on this subject. The submission by Melbourne journalism lecturer John Tebbutt and his evidence

seem to indicate that the "retouched" photo was used in "most" News Limited newspapers. In fact, the "retouched" photo appeared only in *The Australian* and readers were able to see the changes by a comparison with the untouched photo on the front pages of other News Limited newspapers the same day. The Press Council has before it two complaints about the "retouching" (which the newspaper explained on its front page the next day). The complaints are being held in abeyance pending the clarification of [certain legal matters].

7.2 The Committee will be aware that the Council is unwilling to issue adjudications on matters which may be the subject of legal action, lest it place itself in contempt of court.

7.3 The Chairman has referred to the Complaints Committee the ethical questions related to the manipulation of pictures by newspapers. The committee will make a recommendation to the Council on this question, probably in May. That recommendation may include the issuing of some general principles to guide the print media in this area.

7.4 Once the [legal issues have been clarified], the Council will take up the ethical issue of the retouching of the particular photo in the Martin Bryant case.

8. TIME TAKEN FOR COMPLAINTS

8.1 This leads to another issue arising from evidence from Mr Tebbutt and in the submission from Prof Mark Pearson. Both expressed some concern with the time taken for complaints to be dealt with by the Council. The Council makes four points.

- Most complaints are dealt with expeditiously. Those which are mediated or otherwise settled to the satisfaction of the complainant are usually disposed of within 2-3 weeks of receipt. Those that are

adjudicated are usually referred to the Council for adjudication within 6 to 10 weeks of receipt. The Senate Committee Chair was present at a Complaints Committee hearing in late February which dealt with a complaint against the Newcastle Herald arising from an article published in January. This is fairly typical.

- The Council was made aware of concerns with the speed of its complaints process by its survey of complainants in 1994. One of the decisions it took arising from its consideration of those concerns was to review the procedures to ensure that those complaints which were to be adjudicated reached the Council sooner. It did this by attempting to limit the correspondence to the letter of complaint and the newspaper's response to it. As a result of the changed procedures, complaints now reach the Council much more quickly than they formerly did.
- The Council has recently determined that it will review after two years matters still on its books without resolution - all such matters are ones that have been delayed by concomitant legal action - and remove those complaints which do not raise significant questions of principle.
- The Council notes that Mr Tebbutt's opinion is partly based on a lack of knowledge of the current composition and processes of the Council. (For example, he believes that the AJA is a constituent body even though it withdrew from the Council in 1987). Prof Pearson's reference on this is in a paper written in 1991, quoting a Keith Windshuttle text from 1988, well before the Council itself took steps to rectify any perceived concern with the speed with which it resolves complaints.

9. THE MEDIA AT TRAGEDIES

9.1 Evidence from Tom Burton, national president of the MEAA, had opened up the question of media behaviour at Thredbo and Port Arthur. The Senate Committee noted that the police submission about Port Arthur had expressed praise for the press. The Council received only one complaint, following that tragedy, about an invasion of the privacy of the family of two victims. The matter was resolved by mediation between the parties and settled amicably.

9.2 The Council received complaints from the Deputy Prime Minister and from the local MLA which expressed concerns with the media's behaviour at Thredbo. Those complaints appeared to be more about rude behaviour, than invasions of privacy. Further, they seemed to be directed primarily at the actions of the electronic media. The office sought clarifications from both complainants but neither supplied particular cases where the print media's behaviour was in breach of the principles and so the Council was unable to take the matter further. The Council received one specific allegation of impersonation of a police officer by a member of the press seeking information. This matter was resolved by mediation to the satisfaction of both parties, when the newspaper revealed that the source for its story was not material supplied by the complainant to the police. The Council received no other complaint about the invasion of privacy by the print media at Thredbo.

9.3 The Council notes the comments made by Mr Burton that the Press Council, MEAA, and representatives of the (self-)regulatory bodies of the electronic media might get together to determine a set of guidelines to govern media behaviour in the coverage of tragedies in isolated communities like Thredbo and Port Arthur. It would be willing to participate in such discussions.

10. PROMINENCE OF ADJUDICATIONS

10.1 The Council is aware that one concern expressed about its "powers" is that many of its adjudications are not sufficiently stressed. At its February meeting the Council determined that, in future, in appropriate cases, it would stress the importance of the prominence to be given to particular adjudications. The adjudication concerning the Newcastle Herald's coverage of the Prime Minister's Hawks Nest holiday was the first such adjudication. Following the Council's note to it, the newspaper published it with some prominence on page three of the newspaper.

GRADUATE DIPLOMA.

The Law School at the University of Melbourne offers a Graduate Diploma in Media, Communications and Information Technology Law. The Graduate Diploma may be undertaken full-time over one year or part-time over two years. During second semester, 1998, three subjects are being offered, each of which raises issues of concern to journalists:

- The Media and the State
- Privacy, Publicity and the Law
- Information Technology Law

The Graduate Diploma is open to graduates and to candidates with no previous degree. A number of journalists who have no previous legal training have successfully completed various subjects of the Graduate Diploma

Further information regarding the Graduate Diploma, or individual subjects may be obtained from the Law School's Office for Research and Graduate Studies on (03) 9344 6190; fax (03) 9347 9129.