



Australian  
Press Council



**Submission to the**

# **Independent Inquiry into Media and Media Regulation**

**October 2011**

**Australian Press Council**

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# Contents

	Page
<b>Outline of Submission</b>	3
<b>Submission</b>	5
A. Introduction	5
B. Strengthening the clarity and scope of the Council's Standards of Practice, especially in relation to online material	7
C. Strengthening promulgation of the Council's Standards of Practice and monitoring of their impact within the industry	10
D. Strengthening the Council's processes for receiving, investigating, mediating and adjudicating upon complaints	12
E. Strengthening the Council's insistence on due prominence for publication of the Council's adjudications and related matters	16
F. Strengthening the effectiveness of sanctions imposed by the Council or by a process initiated by the Council	17
G. Strengthening the degree of independence which is provided for the Council by its structures and funding	19
H. Strengthening the incentives for publishers, including solely online publishers, to become and remain subject to the Council's jurisdiction	22

# Outline of Submission

The Australian Press Council commenced a sustained program of reform in early 2010 to strengthen its effectiveness in a number of key areas. This submission describes progress to date in each of these areas, as well as decisions about future action and other measures which are under active consideration.

## *Strengthening the Council's Standards of Practice by*

- establishing a major Standards Project and a new position of Director of Standards;
- focussing the Project on developing Standards which are more specific and draw on extensive consultation with both the media industry and the community;
- convening Round Table consultations on media standards with over 100 community leaders and media representatives;
- establishing a regular national meeting of online editors to discuss Standards of special relevance to their work;
- arranging for regular, informal meetings about media standards to occur between community leaders and editors of major newspapers.

## *Strengthening promulgation of Standards and monitoring their impact by*

- launching a new website, logo, brochure and electronic *APC Update* service;
- planning regular "impact monitoring" by independent experts to assess levels of industry compliance with particular Standards;
- inaugurating from 2012 an annual public conference on standards of practice in print and online media;
- requiring publications to include a prominent notice that they are bound by the Council's Standards.

## *Strengthening complaints-handling processes by*

- requiring publications to inform readers on a frequent basis, usually in every issue, how they can make complaints directly to the Council;
- investigating complaints more fully rather than relying solely on assertions by the complainant and publication;
- establishing a review of the requirement in certain circumstances that complainants waive their rights to take legal action;
- asking publications to acknowledge the Council's involvement when they publish an apology or retraction after mediation by the Council;
- finalising adjudications more quickly by scheduling more frequent meetings of the Complaints Committee and reducing the need for further consideration by the full Council, as well as establishing a fast-track process where appropriate;
- improving the rigour of adjudications, thereby increasing the proportion of adjudicated complaints which are upheld from below 45% to above 70%;
- establishing a new position of Director of Complaints;
- initiating a thorough review of the complaints-handling process by the new Vice-Chair (a former financial Services Ombudsman).

#### *Strengthening publication of adjudications by*

- requiring publications to use a specified format, including the Council's logo, when publishing adjudications;
- ensuring prominent publication of adjudications by requiring publications to obtain specific agreement to the proposed positioning of the adjudication.

#### *Strengthening sanctions by*

- resolving that, where appropriate, adjudications may include a censure or reprimand or an explicit call for an apology, retraction or other remedial action;
- agreeing to review initial experience of this approach to see whether the Council should be empowered to require remedial action, not merely call for it;
- establishing new systems for publicising adjudications much more widely than only in the publications to which they relate;
- considering referral of exceptionally grave or persistent breaches of its Standards to a special panel which is appointed by the Council, headed by a retired judge, and able to impose fines up to a specified level.

#### *Strengthening independence and funding by*

- reaffirming that only one-third of Council members can be publishers and less than one-half of the Complaints Committee can be from the industry;
- persuading publishers to reverse the 20% funding cut which they made in 2009;
- obtaining funding from publishers on a rolling biennial basis to reduce the Council's vulnerability to withdrawal by disaffected publishers;
- seeking further commitments from publishers to substantial improvements in the amount and security of funding so that the Council can fulfil its responsibilities;
- seeking funding from non-media sources (including governments) for up to two-thirds of the Standards Project and securing 15% from The Myer Foundation;
- raising the option of government funding to help expand membership amongst online publishers.

#### *Strengthening incentives for publishers to become, and remain, Council members*

- intensifying promotion of the APC logo as a hallmark of publishers which commit to good standards of practice, cooperate with an independent complaints-handling process and publish its adjudications;
- developing a low-fee schedule for small and online-only publishers;
- calling for clarification of the extent to which statutory rights and privileges for journalists and media organisations, such as under the Privacy Act, depend on being subject to an appropriate regulatory system.

### **Conclusion**

These and other Council measures will help to improve its effectiveness during the next twelve months and beyond. The degree of improvement will depend heavily, however, on the extent to which

- the Council obtains adequate long-term funding on terms which provide due independence from industry, government and other interests;
- print and online publishers are provided with strong incentives to become and remain subject to the Council's jurisdiction.

These goals will not be achievable without the active and sustained support of the media industry, governments and organisations in the broader community.

# Submission

## A. Introduction

A1. The Australian Press Council Inc is the principal body that issues and monitors standards of good practice for Australian newspapers, magazines and their associated websites. It is also the principal body that considers complaints about coverage of news or comment across this range of publications.

### *Membership and governance*

A2. The Australian Press Council Inc is an incorporated association. Its Constitution refers to it as “the Association” and provides that its affairs are to be managed by a Management Committee referred to as “the Council”. The objects of the Association are to promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards.

A3. The Association has two categories of member. The first category comprises publishers and other organisations in the media industry which have agreed to provide funding for the Association and are known as “constituent bodies”. At present, there are eleven members in this category, comprising seven publishers, three associations of publishers and the principal union representing workers in the industry\*. The other category comprises people who have been appointed members of the Council in an independent capacity basis (that is, they do not represent a constituent body). At present, there are thirteen members in this category.

A4. The Council has 22 members, comprising:

- the independent Chair and eight public members, who have no affiliations with a media organisation;
- nine nominees of the media organisations which are constituent bodies; and
- four independent journalist members, who are not employed by a media organisation.

Fifteen members are rostered to attend any particular meeting, of which in addition to the Chair, six are public members, five represent publishers, two are independent journalists and one represents the union.

A5. All the major publishers of newspapers and magazines are constituent bodies (or members of constituent bodies) of the Association<sup>†</sup>. Collectively they are responsible for about 98% of all print media sales in Australia. As mentioned earlier, their websites also fall within the ambit of the Association’s responsibilities. At present, there is one member which publishes only online<sup>‡</sup> but this number is likely to increase in the near future.

A6. The principal obligations of constituent bodies are to

- make annual financial contributions to the Council as set by the Constituent Funding Sub-Committee of the Council (which comprises the Chair, Vice-Chair and all constituent bodies);

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\* The Media, Entertainment and Arts Alliance.

† ACP Magazines; APN News and Media; Australian Associated Press; Australian Rural Publishers Association; Community Newspapers of Australia; Country Press Association; Fairfax Media; News Limited; Seven West Media.

‡ [propertyreview.com.au](http://propertyreview.com.au).

- comply with and promulgate the Council's binding Standards of Practice;
- publish with specified frequency a standard note about the Council's role;
- cooperate and comply with the Council's procedures for considering and adjudicating upon complaints; and
- publish with due prominence all adjudications relating to their publications.

These obligations stem from the Constitution and decisions by the Council. In July 2011 they were embodied in a Summary of Rights and Obligations of Constituent Bodies which was agreed by the constituent bodies and the Council. The legally binding nature of these obligations is to be emphasised by requiring all current and new members to sign a formal undertaking to comply with them.

A7. The Council's staff currently comprises an Executive Secretary (who is the chief executive officer), the recently established position of Director of Standards, a part-time Administrative Officer and a short-term research officer. The position of Case Manager was recently discontinued and two new positions will be filled in the next 2-3 months, namely Director of Complaints and Communications Officer.

A8. Further details of the membership and governance structure are in the Association's Constitution and the Designated Resolutions passed by the Association in accordance with the Constitution.

#### *Activities*

A9. The activities undertaken in accordance with the Constitution are usually described as those of "the Council" and that usage is followed in this submission. 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 Australian newspapers, magazines and associated digital outlets that relates to news or comment; and
- **issuing policy statements** on matters within its areas of interest, principally concerning freedom of expression, freedom of information, privacy, defamation and related matters.

A10. In its standards role, the Council develops and promulgates Standards of Practice after consultation with the media industry and members of the broader community. They are subject to ongoing review in the light of experience, research and consultation. The Council also convenes conferences and seminars on aspects of media standards. The Standards of Practice are applied by the Council when considering complaints and are used as the basis for statements by Council representatives about good media practice.

A11. The Council's mandate to consider complaints extends to all print publications and related digital outlets, such as websites, of its constituent bodies. The Council currently receives about 450 complaints each year (excluding those outside its jurisdiction). In 2010-11, the Council's involvement led to a correction, apology or some other form of remedial action by the publisher in 134 cases. If a complaint cannot be resolved by agreement, the complainant can ask for an adjudication by the Council. In 2010-11, 71% of adjudicated complaints were upheld.

A12. In its policy role, the Council issues statements on matters within its areas of interest, including through submissions to parliamentary committees, commissions and other public bodies. It also undertakes research and convenes or participates in conferences and seminars on policy issues. In recent years, the Council has focussed on issues such as freedom of expression, freedom of information, privacy and the protection of whistleblowers. The Council's role in policy matters is to express views on media

standards and related matters in the public interest, not as an industry advocate for the media or any other particular interest.

A13. A recent Communications Program undertaken by the Council has seen the development of a new logo and a new website which provides clear and accessible information on the Council and its activities, including all its Standards of Practice and its adjudications. The website, together with a new brochure and a series of fact sheets, was launched publicly in July 2011. A new electronic *APC Update* will be launched in November 2011 to provide rapid and succinct notice of key adjudications, new Standards of Practice and other Council activities.

#### *Structure and content of this submission*

A14. This submission focuses on the Inquiry's Term of Reference (c):

“Ways of substantially strengthening the independence and effectiveness of the Australian Press Council, including in relation to online publications, with particular reference to the handling of complaints”.

In doing so, it describes progress to date in implementing the program of measures to strengthen the Council which began in February 2010. Some of them came to fruition last year, some during the last six months or so and others are due to take effect in the next few months. The submission also describes a number of further options which are under active consideration for implementation by June 2012.

A15. The Council has made a submission to the Convergence Review proposing phased introduction of a unified system for all media in relation to the setting of standards and handling of complaints about published news and comment. The submission proposes an initial focus on strengthening the Council's involvement with online media, followed by development of a unified system based on an Independent Council with jurisdiction across all media.

### **B. Strengthening the clarity and scope of the Council's Standards of Practice, especially in relation to online material**

B1. The Council's principal responsibility is to improve the quality of coverage of news and comment in the print media and online. This requires it to enunciate what it regards as standards of practice with which that coverage should comply. Until recently, the Council relied on two binding Statements of Principles and a set of about twenty-five Advisory Guidelines to express its views and suggestions.

B2. The Statements of Principles comprised a general statement and also a statement relating especially to privacy which the Council compiled in 2001 in response to the exemption provided in the federal Privacy Act for media organisations which subscribe to a set of public standards relating to privacy. The Advisory Guidelines focused on a rather disparate array of issues, some being of very limited or short-term significance, rather than adopting a systemic coverage. Many were also somewhat discursive or vague rather than giving specific guidance.

#### *The new Standards of Practice*

B3. In August 2010, the Council decided to establish a major Standards Project to review and revise its existing statements of standards and to develop new ones where appropriate. As the Council's core budget was not sufficient for the purpose, it set out to obtain special project funding and was able to establish a new position of Director of Standards and commence the Project on schedule in July 2011. A key emphasis was placed on the importance of standards in relation to online publishing.

B4. The Council also decided that the Project should establish a tri-partite system of Standards of Practice comprising

- the binding Statements of Principles, revised as appropriate;

- a new set of binding Specific Standards, which apply the Statements of Principles in specific contexts; and
- the Advisory Guidelines, revised and reduced in number from the current set.

B5. The Specific Standards are the centrepiece. They aim to be succinct, clear and practically-orientated and are accompanied by notes which may include, for example, definitions of terms in the standards, examples of problems to which they relate, references to other sources of information and guidance, and “handy hints” about how to comply with the standards. This format was used in the first Specific Standards, relating to reporting of suicide, which were issued in early August 2011 and received a very favourable reception from the media as well as mental health experts and suicide prevention agencies. A second set of Specific Standards, relating to contact with patients in hospitals and analogous situations, is almost completed.

B6. Since 2010, the Council’s adjudications have focused increasingly on applying the actual words of its Standards of Practice. Amongst other benefits, this is helping to “flesh out” the meaning of the standards and identify possible areas for revision. The process needs further development and an important next step is for the adjudications, at least in their online format on the Council website, to be accompanied by specific footnotes and links to the relevant standards. Conversely, references and links to relevant adjudications will be included in the notes which accompany the Council’s Standards of Practice.

B7. The Council is especially keen to encourage convergence between its standards on particular matters and those which apply to other media, particularly radio and television. The need for this approach is emphasised in our submission to the Convergence Review. The Chair and staff have met on several occasions in the last year with representatives of the Australian Communications and Media Authority, the Media Entertainment and Arts Alliance and the Australian Broadcasting Corporation in order to promote better interaction and exchange of information on standards-setting. One goal is to develop a comparative compendium of standards concerning news and comment for different media.

#### *Initial consultations and research*

B8. The Standards Project is now assessing priorities for systematic development of further Specific Standards across a wide range of issues. It has been assisted by a preliminary series of Round Table consultations in four States with media representatives and leaders of community organisations, seeking advice on areas in which new or revised standards might be desirable. More than one hundred invitees have attended these consultations, including community leaders from business, union, welfare, environmental, disability, religious, rural, education, legal and other backgrounds. Consultations will be held in the other States and Territories early in 2012. The Council’s intention is to conduct general consultations of this kind on an annual basis.

B9. The range of issues raised at these preliminary Round Tables and other informal consultations has included the following aspects of media practice.

- Investigation: using dishonest methods to obtain information, whether directly or by paying other people to do so; recording telephone interviews without notice; unfairly using material from social media, especially when on private settings; paying informants (“chequebook journalism”); inappropriately contacting patients in hospital.
- Accuracy: failing to check facts adequately; publishing inaccurate or misleading headlines; digitally altering photographs; posting readers’ comments which are demonstrably false; failing to distinguish between statements of fact and opinion; failing to publish corrections or apologies with sufficient prominence.



- Fairness and balance: publishing claims about a person without contacting them; seeking comment at unreasonably short notice; making offensive comments about individuals or groups on the basis of race, religion, age or gender; failing to provide reasonable balance in a particular article or over time; failing to disclose conflicts of interest.
- Privacy: intruding on grief or the victims of crime; intruding into the private lives of public figures; taking photographs of people who are on private property; harassing people by excessive attempts to interview or photograph them; publishing identifiable photographs of accused people; breaching suppression orders.
- On-line issues: posting readers' comments on websites without checking their identity; posting abusive comments or false statements by readers; failing to remove inaccurate or unfair articles from website archives; correcting on-line articles without recording the nature of the changes.

B10. The special challenges and opportunities relating to online publishing is to be a very high priority of the Standards Project. This is partly to reduce the risk of poor standards in that sphere creating competitive pressures which adversely affect standards in the print media. The Council's substantial involvement in handling complaints about websites, including readers' comments, makes it well-placed to develop standards in this area. It has also commissioned an expert study of current practices, which will report early in 2012, and has convened a national Round Table discussion involving online editors from major newspapers.

#### *Some future initiatives*

B11. When developing Standards in a particular area, the Standards Project will usually convene Round Table consultations with media representatives and community members having special expertise or interest in the particular area. This has occurred already in the preparation of Standards about suicide and contacting patients. Close consideration will also be given to relevant standards in publishers' internal codes and in the codes of Press Councils and other bodies in Australia and overseas. On some topics, consultations with non-media sectors of the community will discuss not only the standards with which they think the media should comply but also their own standards for interaction with the media.

B12. The Standards Project will seek to influence as well as learn from the content of publishers' internal standards. This goal will be assisted by the recent offer from the editor of a metropolitan newspaper to meet on a regular basis with a small group of community leaders suggested by the Council, drawn especially from those people who have attended its Round Tables. Several other leading editors have also agreed to meet with similar groups of people identified by the Council.

B13. In order to help promote convergence between standards in different media, the Council has invited relevant regulators and other key people in those areas to participate in its Round Tables and will seek to substantially strengthen this interaction as the Standards Project develops. For example, one of the Council's Round Tables on suicide was attended by representatives from the Australian Communications and Media Authority, the ABC and Free TV.

B14. The Standards Project has had a very encouraging and constructive response from editors, journalists and community members who have been involved in it. There are excellent prospects for providing useful guidance and reducing the incidence of problems across a wide range of important aspects of media practice. The key concern is whether the Council will have sufficient resources to handle the extensive range of necessary tasks and to respond usefully to the requests for input to initiatives in specific areas that are being undertaken by other sources, both within the media and elsewhere.

## **C. Strengthening promulgation of the Council's Standards of Practice and monitoring of their impact within the industry**

### *General promulgation*

C1. As mentioned earlier, the Council's decision in August 2010 to establish the Standards Project emphasised the need not only to strengthen the range and relevance of its standards of practice but also to promulgate them more effectively. The re-designed website now gives clear and quick access to the new Standards of Practice system, including an advanced search function to find standards on particular issues. The new APC Update service will immediately advise all recipients when the Council has issued new Standards or an adjudication which interprets existing Standards.

C2. The Council's new printed brochure provides an introduction to the Standards of Practice. In order to enable rapid updating, and the tailoring of contents to the interests of particular readers, the main printed format for the Standards is the new series of Fact Sheets which can be inserted as appropriate between the covers provided by the brochure. Development and promulgation of the Fact Sheets is a priority task for the Council staff in the coming months.

C3. Promulgation of the Standards will also be greatly assisted by the Council's higher profile in public discussion about media standards. The Council's desire to strengthen its profile in these respects was a significant factor when it selected the current Chair in 2009. Requests for comment by the Council are now being received on a frequent basis and the new Director of Standards assists the Chair in responding to them.

C4. A key reason for the Council's decision in 2010 to develop Standards pro-actively rather than wait for specific complaints was to facilitate comment by the Council when particular instances of media practice are in the public spotlight. Early responses to media requests for comment on a particular case can be difficult, partly because the case may subsequently come to the Council as a complaint. The ability to contribute is increased, however, if a spokesperson can describe and discuss Standards which the Council has already developed on the issue in question.

### *Specific promulgation to the media*

C5. Promulgation of Standards of Practice to the media currently occurs to some extent through the publisher representatives on the Council and the managing editors or other editorial staff with whom the Council has frequent contact through their role in responding to complaints to it. This process is now being supplemented by the general and specific consultations with media representatives which have been mentioned above.

C6. A major newspaper recently improved staff access to the Council's Standards of Practice by putting them on its intranet service. It also agreed to liaise with the Director of Standards about ways in which presentation on the intranet of its own internal standards and the Council's Standards of Practice can be further integrated so that journalists can rapidly access both of them on any particular issue. Some other newspapers already have the Council's Standards on their internal information systems and public websites. The Council is confident that similar initiatives will be negotiated with a number of other newspapers in the near future.

C7. The Council's Standards are explained, and examples of their application are discussed, in the training sessions which Council staff and members conduct each year at about 10 schools of journalism. When resources permit, the Council will seek to visit newspaper and magazine offices to provide regular "update sessions" on its standards. A major newspaper recently asked whether some trainee journalists could undertake brief secondments or internships with the Council. The scope for such arrangements is

inevitably limited but the Council is keen to provide at least some opportunities through its work on the Standards Project.

### *Impact monitoring*

C8. When deciding to establish the Standards Project, the Council agreed that a special focus should be monitoring the practical impact of the new Standards of Practice. It recognised that reliance on specific complaints being brought is clearly inadequate to achieve this purpose. The Council's recent community consultations confirmed that even when people know of its existence, they may decide not to bring a complaint to it. This may be because they do not want to engage in any form of confrontation with the publication (sometimes for fear of adverse consequences for future coverage), do not believe that the Council has sufficient power to redress their complaint, or cannot spare the time which they believe will be required. The deterrent impacts may be greater where an allegedly major or systemic failing is involved.

C9. The problem of undue deterrence can be reduced to some extent by the Council's practice of allowing complaints to be made even if the complainant was not personally affected by the alleged breach of its Standards. This is conditional on obtaining the consent of any person who was directly affected and for whom the complaint may aggravate a breach of privacy. It is clearly not sufficient, however, to rely on "third party complaints" of this kind to achieve adequate monitoring processes.

C10. The Council has a mechanism to enable its own members to initiate an investigation on a systemic breach, but it has rarely been used. The Council is currently considering whether this process should be adopted more frequently but, amongst other considerations, care needs to be taken to avoid the appearance of pre-judging a particular complaint. In many instances, a more appropriate process may be to establish or clarify relevant Specific Standards to clearly indicate whether the kind of conduct at issue is inappropriate. This may then lead, of course, to complaints being lodged by members of the public who believe the new or clarified Standards are not being complied with.

C11. The Council has adopted impact monitoring on occasions in the past; for example, it has commissioned research on the first five pages of selected newspapers over a set period, as well as research on the coverage of specific events, such as state elections and the Mohammed Haneef case. The reports have been prepared by academics and published in the Council's former annual publication, "State of the News Print Media in Australia".

C12. The Council will conduct further impact monitoring in future, provided that adequate resources are available. Reports will usually cover a number of publications and focus on whether, for example, the Council needs to revise a particular Standard, promulgate it better or be clearer in Council adjudications. They will usually be publicised more widely than the earlier reports.

C13. The Council will encourage other organisations to share the results of any monitoring they undertake in relation to particular aspects of media standards. It will also be willing to advise on the proposed methodology of analyses of this kind in order to increase their potential usefulness to the Council and to public discussion.

C14. The Council will inaugurate in 2012 its annual conference on standards of practice in the publication of news and comment. Amongst other benefits, this will provide a forum for discussion of impact monitoring which has been proposed or undertaken by the Council and other sources in the academic, business and community sectors. The conference will help the Council to develop and refine its own processes for impact monitoring, which is one of the highest priorities for the Standards Project. The conference will incorporate an Annual Address on Standards of Journalism by an eminent speaker from Australia or overseas.

#### **D. Strengthening the Council's processes for receiving, investigating, mediating and adjudicating upon complaints**

##### *Receipt*

D1. Although the number of complaints received by the Council has increased somewhat in recent years, there is undoubtedly a low level of knowledge of its existence and the assistance which it can provide for people who feel aggrieved by published material.

D2. In order to help improve public awareness, the Council decided in July 2011 that all publisher members of the Association must publish a standard-form note on a regular basis (for example, every day in a daily newspaper) advising readers that complaints about material in the publication can be made to the Council by specified means. This requirement is now being implemented widely.

D3. The note mentions that complaints can be brought directly to the Council rather than having to go first to the publication in question. Some complainants may then be asked to contact the publication directly, although it is more common for the Council staff to do so on their behalf. In any event, the Council's involvement from the outset reduces the risk of complainants being unduly deterred by a dismissive or dilatory response from a publisher. This is a special strength of the Council's complaints process.

D4. The Council's new website conveys clearer information than previously about the grounds and processes for making complaints, as do the new Council brochure and the Fact Sheet on the complaints-handling process. The Council's higher profile may also help to spread awareness of this role, although recent criticism may deter some people from bringing complaints to it. There can be no doubt of the need to build on the recent initiatives to improve public knowledge and confidence to the maximum extent achievable within the Council's resources.

D5. A recent review of processes for receipt of complaints identified the need to improve the form for submitting complaints and also the initial staff responses to them. Changes have been made in templates for the staff responses to ensure that the key elements of a complaint are confirmed and that the language is simple and as empathetic as is compatible with appropriate neutrality. It also identified the need to bring record-keeping processes in line with modern methods. These and related improvements will be early priorities for the new Director of Complaints.

D6. It is relevant to note in this context that the new Director will also be asked to identify examples of good practice in publishers' internal complaints-handling systems with a view to encouraging their broader adoption. In time, this could lead to the development of Council benchmarks for internal systems, recognising that they are and will remain the recipient of most complaints from readers. Some newspapers have recently sought the Council's advice on ways of improving their systems and the interaction with the Council's processes.

D7. It is also relevant to note the Council's response to News Limited's announcement in July 2011 of an internal review of editorial payments to third parties. The Council clearly lacked the powers and resources to conduct any such review itself but it suggested there should be an independent element and agreed to nominate independent assessors to report publicly on the conduct of the review. The Council emphasised the review was the responsibility of News Limited, which provided the assessors' remuneration and resourcing, not of the Council. It also said the review could not be expected to find every possible breach but the assessors' role should boost public confidence in its thoroughness.

D8. The Executive Secretary of the Council has a broad discretion to take no action in response to a complaint if he or she considers that there has clearly been no breach of the Council's Standards of Practice or that the publisher has made prompt and

appropriate redress by, for example, publishing a prominent apology. If further action is taken, it may involve

- clarification or investigation of relevant assertions;
- mediation between the complainant and publisher; and/or
- adjudication on the merits of the complaint.

#### *Clarification or investigation*

D9. When considering complaints, the Council traditionally relied on assertions and material provided to it by complainants or publishers rather than actively ensuring that it had access to adequate information and explanation. This approach reduced the strain on Council resources and the risk of delay and expense for participants. But it also increased the risk of error in adjudications and of inability to arrive at decisions due to uncertainty about key issues of fact.

D10. Changes being phased in from early 2011 should reduce these risks to some extent. They involve emphasising to complainants and publishers that they should not rely solely on making assertions without providing reasonable corroboration wherever reasonably possible. Council staff are also being encouraged to indicate more specifically and firmly what further material needs to be provided and, in some circumstances, to make their own inquiries to clarify relevant matters. The Council's new process for finalising adjudications, described later in this submission, also provides greater opportunities to identify and clarify remaining areas of uncertainty.

D11. There are major limitations, however, on how far the Council can or should go in these directions. They include the shortage of staff resources for work of this kind and the lack of binding powers of investigation. In any event, the Council is determined that its processes should not become so lengthy and adversarial that members of the public are deterred by considerations of cost, delay or confrontation from initiating or pursuing complaints to it. Excessively formal and compulsory processes might also reduce the promptness of responses from some publishers.

D12. A further consideration in this context is the Council's current practice that publishers may request that complainants be required to sign a waiver promising not to take legal action on the articles cited in the complaint. The Council usually agrees to this request unless it considers there is no reasonable risk of such action being taken. However, it is currently considering whether to abolish the use of waivers or require them only when the publisher has offered remedial action. This is partly because the legal effect of the waiver is unclear. It also reflects concern about asking complainants to waive possible legal remedies when the Council cannot compel provision of any remedy, even a correction or apology let alone a financial remedy.

D13. The Council's highest priority for strengthening its exploration and clarification of issues involved in complaints has been to boost its staff resources at a level which is sufficiently senior to make and implement some of the difficult and even controversial decisions which may be involved in these roles. This will be a key responsibility of the new Director of Complaints.

#### *Mediation*

D14. In most complaints, the Council staff seek to facilitate an agreed resolution between the complainant and publisher. This may involve the staff asking complainants to contact publishers to propose some form of remedial action or making such suggestions themselves. As a result, many complaints lead to agreement by publishers to provide remedial action. In 2010-11, for example, 16 led to apologies, 26 to retractions, 28 to corrections, 28 to similar action and 36 to the publication of a response by the complainant. In other cases, the complainant comes to the view that no such action is necessary. Undoubtedly, however, a significant number of complainants do not pursue a complaint although still dissatisfied.

D15. These processes are often referred to as mediation although they do not always fall within the strict definition of that term. Almost all of them are conducted by Council staff but some are conducted by public or independent journalist members of the Council. The Council is currently considering whether the mediation role needs to be broadened and strengthened to the extent that resources permit. The new position of Director of Complaints will greatly assist in planning and implementing any such changes.

D16. The Council's opportunity to influence the nature of any remedial action by the publisher varies considerably. There is usually no opportunity where the action is taken by the publisher as soon as the Council asks for its response to the complaint. Where the publisher makes an offer of remedial action, the Council staff may become involved in details such as the wording of an apology or correction but usually only after it is agreed between the parties that an apology is to be published.

D17. The development through the Standards Project of a wider range of Specific Standards for particular contexts will assist Council staff to give clearer guidance to complainants and publishers about whether any remedial action may be appropriate and, if so, of what kind. This improvement, together with stronger staff resources, are the principal ways in which the Council is seeking to strengthen its mediation role.

D18. A related problem is that where mediation by the Council facilitates provision of remedial action, its contribution is usually known only to the complainant and publisher. Published apologies or corrections rarely, if ever, refer to any role which the Council may have played in facilitating them. This, in turn, can leave many potential complainants ignorant of the Council's existence or of the assistance which it may be able to provide for them. Early in 2011, the Council decided to ask publishers to provide an agreed form of acknowledgement of the Council's role in these circumstances. Some initial responses have been positive but further action will be taken by the Council to ensure that the acknowledgement becomes standard practice.

### *Adjudication*

D19. Complainants can insist on an adjudication instead of, or after, an attempted mediation, unless the Executive Secretary decides to take no further action because there has clearly been no breach of the Standards of Practice or the publisher has provided sufficient redress. Some years ago the Council urged the Executive Secretary to finalise as many matters as possible by explicitly suggesting, where appropriate, that a settlement was better than proceeding to adjudication. This approach is now under review to determine whether adjustments should be made, especially in light of the appointment of a Director of Complaints.

D20. Where a matter is referred for adjudication it is considered by the Complaints Sub-Committee, on which the Chair of the Council and public members must comprise a majority and there must also be at least one publisher representative and one independent journalist. The members attend in accordance with a roster and usually there are six or seven at any particular meeting. Its draft adjudication is then referred for final consideration by the Council at its next meeting.

D21. The average length of time taken to finalise complaints is about one month unless they proceed to adjudication in which case it is about three months. Much of this time is due to delayed responses from complainants or publishers. Early in 2011, the Council adopted a firmer approach towards these delays but further progress remains necessary. The Council has also agreed to establish a special process for conducting urgent adjudications where appropriate.

D22. The speed of finalisation is affected by the Sub-Committee's practice of convening a meeting at which the complainant and representatives of the publication make presentations and answer questions from it. This practice is not common amongst comparable bodies, but the Council considers that it can greatly improve the quality of

adjudications as well as the participants' level of satisfaction with the Council's processes. The risk of undue delay will be reduced by the Council's recent decision to schedule more Sub-Committee meetings each year and to finalise most adjudications without referral to a Council meeting.

D23. Prior to 2010, great emphasis was placed on fully upholding or dismissing a complaint rather than deciding separately in relation to its different elements. Adjudications were drafted by individual Council members, leading to considerable differences in style and in the extent to which facts and reasons were described. The predominant view was that adjudications should be very brief and in the style of news stories, rather than being structured analyses of the issues raised by complainants and publishers which provide clear reasons for the Council's conclusions on the basis of particular Standards of Practice.

D24. In June 2010, however, the procedures for drafting adjudications were changed to achieve greater clarity, consistency and rigour, especially concerning the reasons for decisions. The changes involved all drafts being prepared centrally by the Executive Secretary and Chair, separate conclusions being expressed on each substantial element of a complaint, and closer linkages between the conclusions and the relevant Standards of Practice. The drafts continued, of course, to be subject to revision at the direction of the Complaints Sub-Committee and Council.

D25. These changes were facilitated by holding Complaints Sub-Committee meetings about two weeks before the Council meeting to which draft adjudications would be submitted. Previously, the Sub-Committee met on the day immediately preceding the Council meeting, leaving very little time for fine-tuning of the draft adjudications. The change has enabled initial drafts to be revised carefully after Sub-Committee meetings, resulting in a major reduction in the amount of discussion and revision which the Council itself considers necessary when the draft is submitted to it.

D26. Some further fine-tuning of the new system remains necessary but a number of observers have noticed and welcomed the improvement. Some fears had been expressed that the adjudications would become so lengthy that publishers would be reluctant to print them in full. In practice, however, the increase in average length of adjudications has been very modest. The Council has begun preparing brief summaries of adjudications which will be posted on the website and APC Update and, where necessary, might be approved for printing by publishers in lieu of the full adjudication. These summaries will increase the accessibility and clarity of the key elements of the adjudication which are of significance beyond the interests of the particular complainant and publisher.

D27. The increased focus on rigour in adjudications may be the principal reason for the percentage of upheld complaints having increased from 43% in 2009-10 (and a 10-year average of 46%) to 71% in 2010-11. This partly reflects greater willingness to make separate findings on different elements of the complainants' concerns, rather than a generalised decision across disparate elements. The Council will not, of course, adopt a specific target for the percentage of upheld complaints - each complaint must continue to be dealt with on its merits.

D28. More work needs to be done to improve the quality of adjudications and, especially, the dissemination of brief summaries. The appointment of the Director of Complaints is expected to facilitate further improvement in these and other respects.

#### *Special review of processes*

D29. When Colin Neave AM was appointed in May 2011 as Vice-Chair designate of the Council, he was asked by the Chair to commence a review of the Council's complaints-handling process as soon as he took office on 1 October this year. Mr Neave has now commenced the review, to which he will bring his lengthy experience as Financial Services Ombudsman and, in recent years, as President of the Commonwealth

Administrative Review Council. The review will be concerned with all aspects of complaints-handling.

**E. Strengthening 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**

*Adjudications*

E1. The Council's traditional requirement for publication of adjudications was that they, or a reasonable summary thereof, must be published with "due prominence". This term was defined as requiring that the adjudication is "likely to be seen by those who saw the material on which the complaint was based".

E2. With a very small number of exceptions (the last being in 1990), the Council's adjudications have always been published, albeit occasionally in a summary form which had not been specifically approved by the Council. The manner of publication, however, has often not complied adequately with the Council's requirement of due prominence because of the page on which the adjudication appeared, the position on that page, or a failure to identify it appropriately as a Council adjudication. Problems have also arisen with the addition of headlines that do not appropriately reflect the tenor of the adjudication.

E3. In July 2011, the Council finalised new rules and processes to clarify and apply its requirements more rigorously. The publication now must be

- published in full (unless the Council agrees otherwise);
- headed "Press Council Adjudication [or Ruling]";
- accompanied by the Council's logo; and
- clearly differentiated from other material on the page.

The positioning in the publication must have been approved in advance by the Executive Secretary as complying with the requirement of due prominence unless the Executive Secretary has exercised his or her discretion to relax that and the other requirements on specified grounds.

E4. The new system is still in its infancy. Compliance with the requirements in relation to content and format has improved considerably but further progress is necessary, especially in relation to positioning within the publication. The Council has considered more specific rules requiring adjudications to be published on the same page as, or earlier than, the original article (with "pointers" to a later page being acceptable in some cases where the original article was at or near the front page). This approach, which is similar to the system adopted by the Press Council of Ireland, is currently being used to guide the Executive Secretary's discretion but may need to be formally embodied in the rules.

E5. In relation to the online publication of adjudications, the new rules require publication for at least twenty-four hours on the website's home page (unless the Executive Secretary approves publication of an agreed summary which provides a direct link to the full adjudication). They also require that a note in terms approved by the Executive Secretary must be added to the copy in the website's online archives of the material to which it relates. The note must provide a direct link to a copy of the full adjudication.

E6. The new online rules are still in the early stages of enforcement and will need to be backed by rigorous insistence on the part of the Council. The link between the adjudication and the archived copy partially addresses a great concern of many complainants, which is that the article being complained about remains available online and can be readily accessed through Google and other aggregators even if the Council has found it to be false or in some other way in breach of its Standards.



### *Apologies and other remedial action*

E7. Complaints to the Council often lead to apologies, retractions, corrections or other remedial action such as the publication of a letter or article by the complainant. As mentioned earlier, this occurred in 134 cases in 2010-11. But the Council's opportunity to influence the prominence given to any remedial action varies considerably. If the complainant asks for information and advice about prominence, the staff will often suggest a proposal which could be put to the publisher. Sometimes they may express a view directly to the publisher about appropriate positioning.

E8. Council staff have recently been directed to draw the attention of complainants and publishers to the existing requirement that apologies, retractions and other such material should be published in such a manner as to have "the effect, as far as possible, of neutralising any damage arising from the original publication". The new position of Director of Complaints will greatly assist in implementing this decision and improving compliance with it.

E9. In some cases, the publisher may respond to a complaint by altering or removing the copy of the material in question which is held in its electronic archives. This is often desirable in principle but it is also important that a permanent record is maintained in some offline location, especially where a dispute may arise at a later stage about exactly what was published originally.

### *Review of Council processes*

E10. The Council's approach to the prominence of adjudications, and of apologies and other remedial actions, will be re-assessed in the review of complaints-handling which, as mentioned earlier, is now being undertaken by the Vice-Chair.

## **F. Strengthening the effectiveness of sanctions imposed by the Council or by a process initiated by the Council**

F1. Concerns are often expressed within the general community, and sometimes within the industry itself, about the level of compliance with appropriate standards of practice in the print media. The concerns are not limited to people of a particular political persuasion or other specific sector of the community, although there can be some confusion or conflation between criticisms of the print media and other media.

F2. Some level of failure to comply with appropriate standards is inevitable, but the current level needs to be reduced substantially. The recent and ongoing improvements in the content and promulgation of the Council's Standards of Practice can reasonably be expected to bring benefits in this respect, as can the increase in the rigour and prominence of adjudications which has been mentioned earlier.

F3. Nevertheless, early in 2011 the Council began considering ways of strengthening the impact of adjudications in which it finds that the Standards have been breached. This applies to the impact on the particular people involved in the breaches, the publications and publishers for which they work, and the broader print media industry.

### *Strengthening adjudications*

F4. The Council's current practice is that adjudications may state that particular Standards of Practice have been breached because, for example, some published material has been "inaccurate" or "unfair" and therefore the complaint is "upheld". On occasion, but not frequently, some stronger words of criticism may be used such as that the breach of standards was "thoroughly unacceptable".

F5. The Council recently decided that it will consider carefully in future adjudications whether stronger criticism is justified than has been common in the past. For example, it will consider whether to issue a reprimand or censure. The Council also decided that in appropriate cases it will call explicitly for apologies, retractions, corrections or other

specified remedial action to be taken by the publisher. It will also consider in appropriate cases whether to suggest or call for specific measures to prevent recurrence of the type of breach in question.

F6. The Council has been reluctant to “alter history” by calling for articles to be removed from electronic archives. This practice may need to be re-considered, however, at least where an article includes a highly damaging breach of Council standards. It will often not be possible, however, for the publisher or the Council to ensure that the articles are removed from all places where they have become available on the internet.

F7. The deterrent impact of adverse adjudications will also be enhanced by the steps now under way to publish them more prominently and increase the general profile of the Council on matters of media standards. Nevertheless, it is clearly necessary to consider whether it should also be able to impose stronger sanctions in order to improve compliance, as discussed below.

#### *Stronger sanctions*

F8. The Senate Standing Committee on Legal and Constitutional Affairs recommended in 1994 that “the Press Council be given powers to impose and enforce sanctions on the print media. This should be done by legislation if necessary.” In more recent times, similar calls have been made in Australia, the United Kingdom and elsewhere from some sources within the media and outside it. Sometimes it has been suggested that the powers could have a contractual rather than statutory basis.

F9. It has been argued, for example, that Press Councils should have the power to require publication of apologies, corrections or other remedial material, not merely to call for their publication. The Council’s current preference is to trial the changes described above in relation to strengthening adjudications, and to become more closely involved in negotiation of remedial action between complainants and publishers, before deciding whether to seek any power to order remedial action. Any power to order publication would not be fully effective, of course, unless backed by stronger sanctions in the event of non-compliance.

F10. It has also been suggested from a number of sources that the Council should have contractual or statutory power to impose fines. This could apply, for example, where the breach of standards is exceptionally grave or, together with earlier breaches, constitutes persistent non-compliance with Council adjudications. The maximum permissible fine could be set in the vicinity of, say, \$30,000 (which is broadly commensurate with limits applying to some industry ombudsmen or small claims tribunals).

F11. While recognising the need to strengthen compliance with its standards and adjudications, the Council is concerned that if it had the power to impose large fines or other heavy sanctions its processes could become so adversarial, legalistic and time-consuming that many potential complainants would be unduly deterred. It might, for example, become difficult to maintain the current informality of its interactions with complainants and publishers, including the strong discouragement of legal representation.

F12. One option is for the Council to establish a separate panel to which it can refer matters which it considers may merit imposition of a fine. This would help to “quarantine” the Council’s own processes from the risks of excessive formality and legalism. The panel could comprise a retired judge as chair, a member with high-level experience in the media industry and an eminent member of the community who has not been employed in the industry.

F13. The panel’s roles could be to determine the relevant facts and whether the gravity or persistence is such that a fine should be imposed. In order to avoid the risks of excessive formality which have been mentioned earlier and of confusion in the

development of standards of practice, resort to the panel should not become the usual way of adjudicating complaints and it should not apply standards of media practice which differ from those of the Council. Accordingly, it would be essential that the panel:

- is established by the Council itself;
- is accessible only by referral from the Council at its discretion;
- is required to apply the Council's Standards of Practice; and
- includes at least one member who is a former member of the Council.

F14. The powers of the panel could perhaps be established by amending the obligations which apply to publisher members of the Association by virtue of its Constitution and decisions made by the Council in accordance with the Constitution. Another option is to include the amended obligations in a contract which all publishers must sign as a condition of membership of the Association. Neither of these options would involve statutory intervention.

F.15 These options raise the question of whether the incentives to join the Association are sufficiently great to persuade publishers to belong to it if by so doing they become subject to possible fines. This issue is considered in section H. The criteria and processes governing suspension or expulsion of membership of the Association are also relevant in this context and are considered below.

#### *Suspension or expulsion*

F16. The Constitution of the Association makes no provision for suspension or expulsion from membership except in relation to failure to comply with obligations to contribute to the Council's finances. However, the legislation under which the Association is incorporated empowers the Council (subject to an appeal to the Association) to expel a member which has failed to comply with the Constitution or has "wilfully acted in a manner prejudicial to the interests of the Association".

F17. The Council has never suspended or expelled any member of the Association. Presumably it could do so if, for example, it considered that a publisher's grave or persistent breach of its Standards of Practice was wilful and prejudicial to the interests of the Association. The power could also be relevant if a member failed to comply with an obligation to pay a fine, publish an apology or comply with some other decision of the Council or referral panel. The procedures for considering possible suspension or expulsion would need to be substantially more formal than the Council's usual processes for complaints. One option could be to involve the referral panel which has been canvassed earlier.

F18. The practical significance of these powers depends heavily, of course, on whether a publisher is likely to incur substantial disadvantages from ceasing to be a member of the Association. If there are no such disadvantages, fear of the sanction has little or no deterrent effect. In addition, the Council itself might be very reluctant to expel or suspend because of the resultant loss of membership fees. In current circumstances, suspension or expulsion of a major publisher would gravely threaten the Council's financial viability. Accordingly, it is relevant to consider whether the Council's sources of finance, and the incentives to become and remain subject to its jurisdiction, ought to be strengthened (see G. and H. below).

### **G. Strengthening the degree of independence which is provided for the Council by its structures and funding**

#### *Structures of governance*

G1. As mentioned earlier, the Association currently comprises ten publisher members (including three associations of publishers) and one media union as well as the four independent journalists and nine members of the public who are on the Council. This composition can be changed by admitting new publisher members to the Association or

by altering the number of independent journalist or public members on the Council. Any such change requires support by a three-quarter majority vote of the Association.

G2. It is important to ensure that the Constitution allows appropriately for a substantial increase in the number of publisher members of the Association, especially online-only publishers or bloggers. This will need to be achieved without changing the voting balance between the publisher and other members of the Association to such an extent that the Association lacks sufficient independence from the industry. It will also need to strike an appropriate balance between the voting rights of publishers of differing sizes.

G3. These issues are currently being considered as part of an internal governance review assisted by an external consultant. One option is to provide different voting rights for different categories of members. It is relevant to note in this context that many small publishers currently have collective membership of the Association, with one collective vote, through their membership of the Australian Rural Publishers Association, Community Newspapers of Australia or Country Press Australia.

G4. The Council, which is the Association's management committee, currently comprises twenty-two members of which fifteen are rostered to attend and vote at any particular meeting. The required composition of the rostered members means that 53% of votes are exercisable by people who are, or have been, active in the media industry. This could be criticised as providing insufficient independence from the interests and perspectives of the industry. Many industry ombudsman schemes, for example, have a governing body on which non-industry members (including the Chair) have a total of one more vote than the industry representatives. On the other hand, the Council's inclusion of a union representative and two independent journalists means that publishers' representatives have only one third of the votes.

G5. When assessing the degree of independence provided by the Council's structures, account must also be taken of the fact that the majority at any meeting of the Complaints Sub-Committee members is required by the Constitution to comprise Council members who have not worked in the media industry. As mentioned earlier, the Sub-Committee's draft adjudications are subject to amendment by the Council. In recent years the outcome was substantially changed in about 10% of cases but, following procedural changes in late 2010, this percentage has fallen to about 5%. A further reduction is likely to result from more recent changes by the Council.

G6. Two other measures to strengthen the independence and efficiency of the complaints system have been adopted recently by the Council. The first is to trial a system by which Sub-Committee adjudications will not require consideration by the Council unless three Council members so request in a particular case or the Chair decides that there are exceptional circumstances. The second is a rule that no Council member may be involved in responding to or adjudicating upon a complaint against a publication owned by their employer. This applies even if the publisher produces a large number of publications and the Council member is not based in the same city as the particular publication and has no involvement with it.

G7. It could be argued that further steps are necessary to strengthen the independence of the adjudication process. For example, the Complaints Sub-Committee could be the final arbiter in all cases and could consist solely of people who are not employed or nominated by publishers (although may be independent or retired journalists). However, retention of some resort to the Council is a valuable safeguard against real or perceived error, including inadequate understanding of some operational aspects of print or internet publishing. This concern is also addressed by involvement in each adjudication of at least one person who has been nominated by a publisher and at least one of the independent journalist members.

## *Funding*

G8. The Council's core funding has always been provided solely by the publisher and union members of the Association. They comprise the Council's Constituent Funding Sub-Committee by which the total amount of funding and their respective contributions are decided. Until 2010, these decisions were made a month or so before the financial year to which they applied. In order to provide greater security of income, however, they are now made on a "rolling biennial" basis so that the decision each year relates to the year after the impending financial year.

G9. The contributions of the three major publishers' are determined by a formula based on their sales and online readership, while the other contributions are based loosely on similar criteria and, to some extent, on ability to pay. Prior to 2010, changes in patterns of media ownership led to more than 50% of the total funding being provided by News Limited. As it was undesirable for any one publisher to be providing more than 50% of the Council's core funding, the formula was changed in 2010 to take account of online readership in the knowledge that this measure would reduce the News Limited contribution below 50%.

G10. The overwhelming majority of core funding is now provided by News Limited (about 45%), Fairfax Media (about 24%) and Seven West Media (12%). Full or substantial withdrawal of funding by any one of these publishers could have a profound, and even devastating, impact on the Council's level of staffing and activity. It is relevant to note in this context that the publishers cut the Council's funding by about 20% in 2009, News Limited withdrew from the Council between 1980 and 1987 after several adverse adjudications, and John Fairfax Ltd declined to become a member in the Council's early years. The media union withdrew for nineteen years before re-joining in 2005.

G11. Since 2009 the publishers have gradually increased their funding so that by 2012-13 it will have been fully restored. The two major publishers have also agreed to provide some project funding for the Standards Project. Nevertheless, the possibility of reduced funding remains a significant concern, fuelled on occasion by the comments of publishers who dislike adverse adjudications or other Council decisions.

G12. In order to increase the coverage of print and online publishers, the Council has decided to introduce a special low-fee structure for small publishers, including those which are solely online (including bloggers). The rate schedule is currently being finalised but is likely to include a nominal base rate and a somewhat higher rate for publishers having wider, fee-paying readership. It will not be practicable, however, to set fees high enough to substantially increase the Council's core funding, even if a considerable number of publishers joined on this basis.

G13. As noted earlier, the Council decided in August 2010 to establish the Standards Project as a major new initiative and to seek specific project funding for it of about \$200,000 per year for an initial three-year period commencing in July 2011. It resolved that, in addition to voluntary contributions by publishers, up to one-third of the funding could come from governmental sources and up to another one-third from other non-media sources. The Myer Foundation has agreed to contribute about 15% of the project budget for the first two years and the Federal Government has expressed interest in providing some funding but as yet has not finalised any offer.

G14. The approaches to non-media sources for project funding were motivated by the need to maximise the prospects of obtaining sufficient funding and also to begin moving away from the Council's total dependency on funding by publishers. It was agreed, however, that any non-media funding must be from sources, and on terms, which did not compromise the Council's independence from the new funders. This constraint inevitably limits the availability of funds, as does the Council's lack of the charitable status for tax purposes which many potential donors require.

G15. The Council's almost total reliance on funding from publishers, and especially from a few major publishers, is widely criticised as a crucial detraction from its real and apparent independence. The situation is exacerbated by the inadequacy of the overall level of Council funding, with the result being that a reduction of, say, 10% or more in core funding would threaten its basic viability. Both these considerations contributed to the Council's decision to seek non-media funding for the Standards Project. It will not be easy, however, to obtain substantial funding from such sources, especially on a reliable long-term basis rather than for short-term projects.

G16. The significance of these issues is increased by the fact that publishers can withdraw from the Council at any time without necessarily incurring any adverse consequences. For example, they do not need to remain members in order to retain statutory privileges such as exemption from the Federal Privacy Act. Membership is also not a pre-condition of the non-statutory privileges which media organisations enjoy in relation to access to certain types of information or premises and in other respects. This issue is considered further in the next section.

G17. The Council's financial vulnerability in the event of withdrawal by a major publisher is a substantial detraction from its apparent independence and can also be of considerable practical significance. The new rolling biennial system has reduced this problem to some extent but discussions are now under way with publishers about the possibility of extending the rolling commitment for a longer period.

G18. A minimum annual budget for the Council to meet its responsibilities is in the vicinity of \$2 million, which would enable employment of about eight staff. The current core budget is approaching \$1 million which is sufficient to employ about four staff. The current short-term project funding enables the employment of a further two staff members for the duration of that project. In the current and foreseeable environment, there is very little prospect of the publisher and union funding achieving more than two-thirds of the necessary budget and even then much of the funding base might not be highly secure. Accordingly, it is very difficult to see any alternative to obtaining substantial and sustained funding from other sources up to, say, one-third of the total budget.

G19. One option is to seek public funding for the specific purpose of strengthening the Council's role in relation to online publishing, especially by extending its membership in that area and providing timely and effective responses to the special challenges which arise. This funding would recognise the complexity of that task and the impossibility of expecting the new types of member to pay substantial fees. Another option is to seek public funding to strengthen the Council's capacity to reduce workloads on the judicial system by informally resolving disputes involving claims of defamation or invasion of privacy and strengthening its development and promotion of relevant standards of practice.

G20. As mentioned earlier, the Council regards it as essential that any funding from governments or other external sources is not accompanied by conditions which compromise the Council's independence (such as appointment of members to the Council) and does not comprise more than one-third of total Council funds.

#### **H. Strengthening the incentives for publishers, including solely online publishers, to become and remain subject to the Council's jurisdiction**

H1. Motivations for being a member of the Association and thus subject to the Council's jurisdiction are likely to vary between publishers and over time. A major consideration may be to support the Council as a preferable alternative to regulation by a statutory agency or some other entity with a Board appointed by government. The Council's role in advocating for freedom of information and freedom of speech may also be a factor, as may its work in developing and promoting good standards of media practice.

H2. On the other hand, as mentioned earlier, withdrawal by major publishers is always a risk. Failure to be a member may have been the subject of criticism within the industry at times but it appears not to have been regarded as having a significantly adverse impact on popularity with readers.

H3. Although the Council's membership fees are low by comparison with its responsibilities, they may act as a disincentive, especially as pressures from the internet and the global financial crisis have put some publishers in a precarious financial position. As mentioned earlier, a special low-fee scale is being introduced to reduce the disincentives for online-only publishers, including bloggers. But these fees may often fall well short of the cost which the Council incurs in having a particular publisher member, especially in handling complaints against it.

H4. Earlier this year the Council decided to strengthen promotion of membership as being a sign of commitment to good standards and independent consideration of complaints. This led to a specific requirement on all publisher members to publish regularly (usually in every issue) a note which shows the Council's logo, states that the publication is bound by the Council's Standards of Practice and provides its contact details. Many publications have started complying with this requirement in their print and online versions although further progress needs to be made in this respect.

H5. For some publishers, of course, these measures will not provide sufficient incentives to become and remain subject to the Council's jurisdiction. This applies especially to publishers who are not already subject to it, almost all of whom are online-only publishers, including bloggers. The advent of these numerous and diverse publishers raises difficult but very important questions about the extent to which they have the same rights and obligations as those who have traditionally been regarded as journalists or media organisations.

H6. The Federal Privacy Act provides an example of these issues. Its main restrictions on use of material do not apply to "media organisations" (defined to include individuals) which have committed themselves to a publicly-available set of standards about protection of privacy. Most print publishers satisfy this requirement by virtue of their membership of the Association and resultant obligation to comply with the Council's Statement of Privacy Principles and its complaints-handling processes. A number of other publishers satisfy it by notifying the Council that they are committed to these principles, even though they have not joined the Association and thus have no obligation to comply with its privacy principles or cooperate with its complaints-handling.

H7. It can be argued that some rights and privileges should be conditional on the person being subject to an appropriate system for setting, monitoring and applying good standards of media practice. If adopted, this approach could improve the prospects of governments or other organisations being willing to grant the rights and privileges because they know that the recipients will be subject to such a system. It could reduce the risk of inappropriate discrimination based on whether the grantor of a right or privilege regards a particular applicant as likely to comply with its interests. Grantors would remain free to use alternative or additional criteria if they wished.

H8. This approach could be especially beneficial to bloggers who might otherwise not be certain of being regarded as within traditional definitions of journalists or media organisations. It would also provide due recognition and incentive for people who do not fall within those definitions but want to assure their readers that they are bound by standards of practice which are set and applied by an appropriate and independent organisation. Any fees involved should not be set at a level which unreasonably restricts engagement. Other bloggers and online publishers would be free, of course, to decide not to be bound because, for example, they do not see the rights and privileges as of sufficient significance to their particular areas of interest.

H9. One option could be to apply this approach to the Privacy Act exemption and designate the Press Council as the organisation to which print and internet publishers

would be required to subscribe and to comply with its rules. In order to meet the types of requirements proposed by the Australian Law Reform Commission in relation to reform of the exemption, this would require the Council to ensure and demonstrate that its privacy standards are adequate and effectively enforced. Designation of the Council for this purpose could help to overcome some problems described in section F concerning publishers' ability to escape independent adjudication or sanction merely by keeping outside the Council's jurisdiction.