

CHAPTER 2

PRINT MEDIA

Introduction

2.1 This Chapter examines the process of self-regulation in the print media by the Australian Press Council (APC) and the Australian Journalists' Association (AJA). Particular attention is devoted to the effectiveness of these arrangements with respect to national, regional and metropolitan newspapers, as well as with specific regard to: (i) the manner by which complaints are dealt with; and (ii) the issue of privacy. The regulation of advertising content will be referred to briefly in Chapter 3.

2.2 Notwithstanding that the witnesses appearing before the Committee often had divergent views, they expressed a broad consensus with respect to the existing complaints-handling process and privacy. For example, the Media, Entertainment and Arts Alliance (MEAA), which represents journalists in both the print and electronic media, is aware of the general disquiet within the community, particularly about the existing complaints-handling processes. Mr Tom Burton, former Federal President of the MEAA, said that:

At the moment if you are Joe Blow and you feel offended, you can ring up someone. If you are very lucky you will find someone who even listens to you and then, if you are really lucky, they might even do something about it – but that is it. The public gets no sense that their problem has been dealt with in any sort of coherent, proper way.¹

2.3 While the electronic media is subject to Government regulation, the print media in Australia has always been largely self-regulating. Some newspapers have formulated and implemented internal codes of practice for some time,² and others have recently developed them.³ Industry-wide self-regulation occurs in three ways:

- through the APC, which was established and is funded by the print media publishers;
- through the AJA, which became a section of the MEAA on 18 May 1991; and

1 *Official Committee Hansard*, Canberra, 16 February 1998, p. 213.

2 For example, the Herald and Weekly Times newspaper group introduced a code of conduct for its staff in November 1993.

3 For example, *The Age* adopted a code in October 1998: see M Gawenda, 'Why *The Age* has adopted a code of conduct', *The Age*, 8 October 1998, p. 21. The News Limited Group has developed a code to come into effect early in 1999: letter to the Committee from Mr W Beeby, News Ltd, 22 December 1998.

- in relation to the advertising content, through an industry mechanism set up by the Australian Association of National Advertisers (AANA).⁴

The Australian Press Council

2.4 The APC was established on 22 July 1976 as a voluntary, non-profit, private association of organisations and persons.⁵ It is funded by the major metropolitan and regional newspaper publishers, magazine publishers and the Australian Associated Press (AAP). Its two main functions are:

- to receive and deal with complaints from the public about the editorial and article sections of newspapers and magazines published in Australia (advertising content is excluded); and
- to resist threats to the freedom of the press and promote reforms in the legal and statutory environment in which the press operates to facilitate that freedom.⁶

2.5 The APC consists of 21 councillors, with 13 drawn from the industry and eight from the wider community. As at November 1998, the industry component of the APC was made up of ten publishers' representatives, two journalists, and one editor. Councillors are appointed for a period of three years, with the option of reappointment. The Executive Secretary of the APC, Mr Jack Herman, explained to the Committee that:

Neither the public members nor the chairman can have previous associations with the press. So there is fairly strong community representation on the council. Similarly, the journalists and editor members of the council are either freelance or retired journalists or editors, so they do not owe allegiance to any particular publishers.⁷

Statement of Principles

2.6 The APC has developed a Statement of Principles, in effect a code of practice, which has been endorsed by all the major media organisations and which provides the basis for assessing the merits of complaints about material that is published. It contains nine principles that establish standards for the conduct of the print media industry. The subject matter of the principles is as follows:

1. falsehoods and accuracy;

4 See discussion in Chapter 3, paragraph 3.112, and Chapter 6, paragraph 6.4.

5 Australian Press Council, Submission 17, p. 604.

6 Australian Press Council, Submission 17, Attachment: *Aims, Principles and Complaints Procedure*, p. 611.

7 *Official Committee Hansard*, Sydney, 5 February 1998, p. 18.

2. making amends for publishing inaccuracies;
3. honest and fair presentation of news and comment, with respect for privacy;
4. news obtained by dishonest or unfair means and breaches of confidence;
5. fair publication of opinion and disclosure of conflicts of interest;
6. offensive material;
7. discrimination and vilification;
8. fairness and balance; and
9. prominent publication of adjudications.

Complaints-handling process

2.7 According to the APC, the procedure that it has in place for dealing with complaints is one that is ‘free, non-legalistic, accessible and informal’.⁸ The procedure deals only with complaints against publications and not against individual journalists.

2.8 If the APC considers that the complaint could also be the basis of legal action against the publisher, it will require the complainant to sign a document, waiving his or her legal rights before proceeding. The APC contends that this is partly to ensure that its adjudications do not deal with matters that may be *sub-judice* (before a judge, still being considered by a court of law; not yet decided; unsettled and not to be canvassed publicly because of the risk of being in contempt of court).⁹ A further rationale is that the parties may not provide all the relevant information in a candid manner, should they be merely using the forum of the APC as a litmus test to future possible litigation.¹⁰

2.9 The complaints-handling process itself involves a number of steps, which are geared to facilitating an informal resolution of complaints about the print media. If an informal resolution cannot be achieved, the APC may ultimately choose to adjudicate on the matter. The possible stages to the complaints handling process are summarised in Figure 2.1 on the following page.

8 Australian Press Council, Submission 17, Attachment: *Aims, Principles and Complaints Procedure*, p. 611.

9 *Butterworths Concise Australian Legal Dictionary*, PE Nygh and P Butt, Sydney: Butterworths, 1997 p. 379.

10 Australian Press Council Submission 17, Attachment: *Aims, Principles and Complaints Procedure*, p. 616.

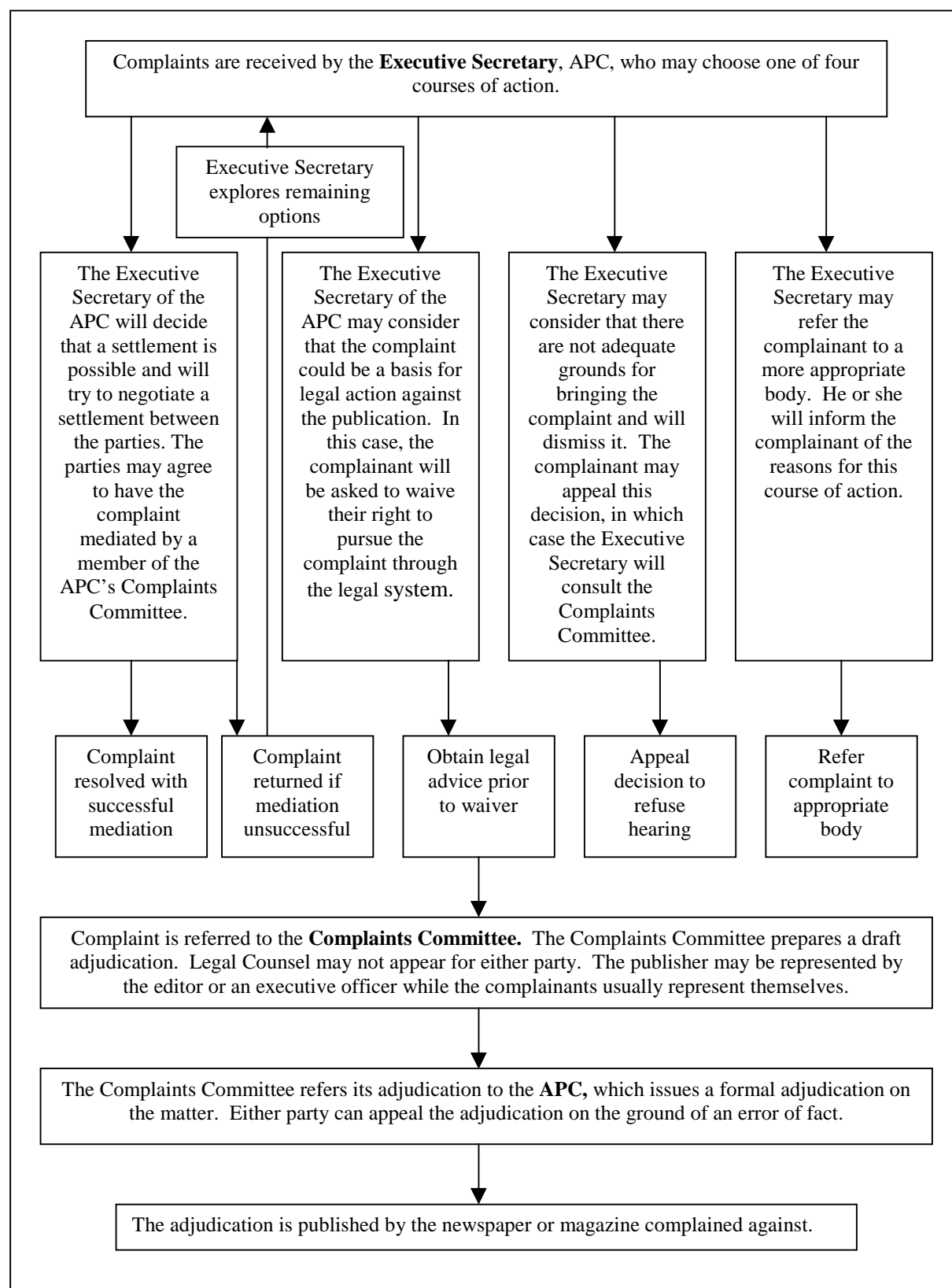
2.10 Within the APC, a Complaints Committee that has a majority of public members will consider complaints, conduct hearings, and draft appropriate recommendations. More formally, the APC will then consider these recommendations and issue written adjudications, which should be prominently printed in accordance with its ninth principle.¹¹ The APC also publishes the adjudication in its quarterly, the *Australian Press Council News*, and in its *Annual Report*.¹² Adjudications are also available in a searchable database on the Internet.¹³

11 Australian Press Council, Submission 17, Attachment: *Aims, Principles and Complaints Procedure*, pp. 616-17.

12 Australian Press Council, Submission 17, Attachment: *Aims, Principles and Complaints Procedure*, p. 612.

13 See <http://www.austlii.edu.au/au/other/apc/>, as at 17 January 2000.

Figure 2.1

Australian Press Council – Complaints-handling process

Record of complaints

2.11 In its Annual Reports, the APC provides comprehensive statistics about the complaints it receives about the print media. However, information about the number of complaints received by each print media outlet, where the APC does not become involved, is not readily available. Consequently, the Committee feels that the full extent of complaints about the print media is difficult to ascertain.

2.12 The statistics published in APC Annual Reports include a breakdown of the people who make the complaints and what the complaints are about. Table 2.1 on the next page shows that over the last 10 years the majority of complaints have been brought by individuals, rather than by associations and groups.

2.13 The subject matter of the complaints vary greatly. Complaints are most commonly brought on the grounds of inaccuracy and misrepresentation, unfair treatment, imbalance and inadequate cover, and offensive coverage. Other common grounds for complaint include the breach of ethical standards, false reporting, racism and religious disparagement, censorship and invasion of privacy (see Table 2.2 on the following page).

2.14 In its submission, the APC attributed the increase in the number of complaints since 1990 to a concerted effort it made to publicise its existence.¹⁴ The proportion of complaints that it adjudicated (20 per cent) and upheld in whole or in part (42 per cent) have remained consistent over the years. The remainder are mediated and/or settled without formal adjudication.¹⁵

2.15 In 1997-98, 7.5 per cent of the complaints dealt with were withdrawn for lack of a waiver, up from 3.7 per cent the previous year. The APC attributed the increase to its newly-adopted policy of formally advising the publication of its right to seek a waiver from the complainant.¹⁶

14 Australian Press Council, Submission 17, p. 606.

15 Australian Press Council, Submission 17, p. 606.

16 Australian Press Council, *Annual Report No. 22*, 30 June 1998, p. 107. According to Professor Flint: 'the Council has moved to ensure that waivers are sought in all relevant cases. The Council has become wary of the possibility of it being used as a "trail balloon" before the commencement of litigation', in D Flint, *Australian Press Council 1987-97 – A Ten Year Report*, 1998. The report is available on-line at <http://www.presscouncil.org.au/pcsite/public/tenyear.pdf>, as of 12 February 2000.

Table 2.1

Number of complaints to the APC

Complaint Made By	1998-99 (%)	1997-98 (%)	1988-98 (%)
Individuals	267 (65.1)	246 (64.3)	1876 (56.0)
Associations/Organisations	28 (6.8)	30 (7.9)	324 (9.7)
Professionals	25 (6.1)	26 (6.8)	254 (7.6)
Election candidates/Politicians	16 (3.4)	12 (3.1)	123 (3.7)
Local councils/members	12 (3.0)	8 (2.1)	121 (3.6)
Companies/Businesses	11 (2.7)	12 (3.1)	116 (3.5)
Solicitors (for clients)*	8 (2.0)	4 (1.0)	105 (3.2)
Government departments/Agencies	11 (2.7)	10 (2.6)	102 (3.1)
Ethnic community groups	5 (1.2)	6 (1.6)	54 (1.6)
Religious groups	8 (2.0)	6 (1.6)	54 (1.6)
Institutions/Public Bodies	3 (0.7)	8 (2.1)	50 (1.5)
Political parties	3 (0.7)	5 (1.3)	46 (1.4)
Aboriginal support groups/legal services	5 (1.2)	1 (0.3)	44 (1.3)
Unions	5 (1.2)	4 (1.1)	41 (1.2)
Publications	1 (0.2)	1 (0.3)	14 (0.4)
Anonymous	2 (0.5)	3 (0.8)	18 (0.4)
Total	410 (100)	382 (100)	3344 (100)

**Under new guidelines adopted by the APC in 1996, most complaints made by solicitors for clients are now dealt with as if they had been submitted by the client.*

Source: Australian Press Council, Annual Report No. 23, 30 June 1999, p. 54.

Table 2.2

Subject matter of complaints to the APC

Complaint Made About	1998-99 (%)	1997-98 (%)	1988-98 (%)
Abuse of press freedom	6 (1.3)	6 (1.4)	36 (1.0)
Advertising	12 (2.6)	15 (3.5)	141 (3.8)
Bad taste	4 (1.9)	2 (0.5)	55 (1.5)
Bias	42 (9.0)	25 (5.8)	167 (4.5)
Censorship; suppression of facts	24 (5.1)	14 (3.2)	134 (3.6)
Distortion	12 (2.6)	16 (3.7)	151 (4.1)
Ethical standards breached	28 (6.0)	29 (6.7)	237 (6.4)
False reporting	19 (4.1)	18 (4.1)	211 (5.7)
Freedom of the press threatened	2 (0.4)	2 (0.5)	21 (0.6)
Headline, false or misleading	17 (3.6)	47* (10.9)	140 (3.7)
Imbalance; inadequate cover (inc no reply)	33 (7.1)	25 (5.8)	293 (7.9)
Inaccuracy; misrepresentation	68 (14.5)	54 (12.4)	449 (12.1)
Invasion of privacy	14 (3.0)	29 (6.7)	199 (5.4)
Irresponsibility	15 (3.2)	13 (3.0)	158 (4.3)
Letters: non-publication or editing	24 (5.1)	23 (5.3)	178 (4.8)
Offensive cartoons	16 (3.4)	2 (0.5)	56 (1.5)
Offensive coverage	43 (9.2)	29 (6.7)	266 (7.2)
Racism; religious disparagement	24 (5.1)	22 (5.1)	216 (5.8)
Sensationalism	9 (1.9)	10 (2.3)	64 (1.7)
Sexism	2 (0.4)	3 (0.8)	84 (2.3)
Unfair treatment	45 (9.6)	41 (9.4)	391 (10.5)
Other (unclassifiable)	9 (1.9)	9 (2.1)	61 (1.6)
Total	468 (100)	434 (100)	3701 (100)

* This includes 37 separate complaints about the same headline in 'The Australian'.

Source: Australian Press Council, Annual Report No. 23, 30 June 1999, p. 55.

2.16 Table 2.3 below shows the number of complaints relating to the invasion of privacy as a proportion of the total number of complaints received by the APC. In 1996-97, nine complaints involving 'invasion of privacy' proceeded to the stage of

formal adjudication, and five of these were upheld in whole or in part.¹⁷ In 1997-98 there were three complaints, one of which was upheld.¹⁸

Table 2.3

Proportion of complaints relating to the invasion of privacy

Year	Total complaints	Privacy complaints	Privacy as % of total
1989-90	233	5	2.1
1990-91	345	12	3.5
1991-92	421	17	4.0
1992-93	429	23	5.4
1993-94	406	16	3.9
1994-95	416	29	7.0
1995-96	413	23	5.6
1996-97	399	36	9.0
1997-98	434	29	6.7
1998-99	468	14	3.0

Source: Australian Press Council, Annual Report No. 23, 30 June 1999

The Effectiveness of the Australian Press Council

2.17 The Committee heard evidence that called into question a number of aspects of the APC, particularly with regard to its effectiveness in four areas:

- lack of pro-active role and enforcement powers;
- time taken to deal with complaints;
- extent of awareness of the complaints process; and
- privacy.

¹⁷ Australian Press Council, *Annual Report No. 21*, 30 June 1997.

¹⁸ Australian Press Council, *Annual Report No. 22*, 30 June 1998. A few complaints categorised in the Report under other headings also had minor aspects relating to privacy.

Lack of pro-active role and enforcement powers

2.18 The President of the Federal Parliamentary Press Gallery Committee, Mr Paul Bongiorno, summed up the weight of this evidence, when he said that ‘I am inclined to think that it [the APC] is a bit of a toothless tiger, quite frankly’.¹⁹

2.19 At the 1992 the House of Representatives Select Committee on Print Media inquiry, media owner, Mr Kerry Packer, claimed that he had been attacked in newspapers for the past 20 years, and could gain no satisfaction from the APC. Expressing his frustration, Mr Packer said ‘I think it is a complete and absolute piece of window dressing’.²⁰

2.20 Mr Graeme Grundy, the former Head of the Department of Journalism at the University of Queensland, also stated in his evidence before the House of Representatives Select Committee on the Print Media that he could not:

... see evidence that too many member organisations quiver at the prospect of running an adverse Australian Press Council judgement.²¹

2.21 The APC’s lack of pro-activity is reflected in its own evidence to the Committee, which revealed that in its 22-year history, there had been only one instance when it had acted on its own initiative to prevent publication. Mr Herman, Executive Secretary of the APC, explained that this occurred in the early 1980s when the APC’s then Chairman, Sir Frank Kitto:

... warned newspapers that any publication of a tape allegedly of a conversation between Prince Charles and the then Diana Spencer when he was in Australia and she was in England would be regarded badly by the council. When two newspapers published the transcript, Sir Frank brought them up before the council and castigated them. ... Since that time, and particularly after the objections raised by newspapers to the way in which the then chairman acted in the early 1980s, the council has been very wary about itself being the prosecutor in a matter such as that. The council prefers to rely on members of the public bringing matters up.²²

2.22 The Committee also heard that the APC was not able to ensure an adequate remedy in cases where it found a breach of its own Statement of Principles. The only remedy flowing from a successful complaint to the APC may be found in its ninth principle, which provides that ‘where the Council issues an adjudication, the

19 *Official Committee Hansard*, Canberra, 15 April 1990, p. 290.

20 ‘*News and Fair Facts – The Australian Print Media Industry*’, Report of the House of Representatives Select Committee on the Print Media, Canberra, March 1992 (Lee, Chair), p. 283.

21 ‘*News and Fair Facts – The Australian Print Media Industry*’, Report of the House of Representatives Select Committee on the Print Media, Canberra, March 1992 (Lee, Chair), p. 283.

22 *Official Committee Hansard*, Sydney, 5 February 1998, pp. 20-21.

publication concerned should prominently print the adjudication'. Paradoxically, this sanction itself is quite problematic given that the APC's own guidelines do not require full publication of the adjudication. That is, the guidelines state that:

The Council has no requirement that the adjudication be printed *verbatim* but requires that, where edited, the conclusion and spirit of the adjudication remain clear and unchanged. It does not restrict publications from making editorial comments on the adjudication as a part of printing them.²³

2.23 It is therefore not surprising that Mr Stuart Littlemore, QC, stated in his 1997 B'Nai B'Rith Oration that the APC is:

... a body with coercive powers and a stated unwillingness to assume any such powers, a body which cannot even secure the participation of the journalists in its deliberations, a body with a pitiful record of dealing with public complaints ... a lapdog which has solemnly decreed that journalists certainly do not need facts (a belief will be good enough) to justify the destruction of reputations.²⁴

2.24 The case studies below describe two instances where the APC's powers and remedies proved to be inadequate in addressing the particular grievances resulting from news items in the print media.

Case Study 2.1 – Dr Jane Woods

In 1992 the APC upheld a complaint about the publication in the *Daily Telegraph* of what it described as 'sneak photographs of Senator Bob Woods and his wife Jane in private discussion in the backyard of their home'. The APC said the publication was 'a blatant example of the unjustified breach of privacy'.²⁵ The newspaper printed the adjudication but took issue with it in an editorial on the same day.²⁶ The editorial stated that Senator Woods' wife became a public figure when her husband introduced her through his statement regarding allegations that he had misused his parliamentary entitlements, and when her activities were investigated by the Australian Federal Police.

Some nine months later and after Senator Woods had left the Senate the newspaper republished one of the photographs when the photographer won a merit award in the Nikon-Kodak press photographer awards for a portfolio which included the offending photo.²⁷ When the Committee questioned Mr Herman about the re-publication, he replied that:

23 <http://www.presscouncil.org.au/pcsites/complain.html>, as at 19 January 2000.

24 <http://www.wei.com.au/adc/Oration%OS.Littlemore.html>.

25 Australian Press Council, Adjudication No. 916, April 1997 (see Australian Press Council, *Annual Report No. 21*, 30 June 1997, p. 114).

26 'Press Council rules' and editorial 'Wronging the right to know', *The Daily Telegraph*, 16 April 1997, p. 22 and p. 10.

27 'Photographers snap up awards', *The Daily Telegraph*, 28 November 1997, p. 21.

...the Press Council is not aware of that, if I can say so, because we have not received a complaint about it. The Press Council does not operate as judge, jury and prosecutor. The Press Council operates ... on complaints received from the public, from organisations and individuals. Until we receive such a complaint, we do not act.²⁸

The photograph in the *Daily Telegraph* that was the subject of the successful complaint also appeared on the same day in the *Herald Sun*, the *Courier-Mail*, the *Advertiser* and possibly other newspapers. Yet the APC's adjudication did not deal with these publications, presumably because the complaint related only to the *Daily Telegraph*. Once again the other publications thereby escaped censure as a result of the narrow, reactive approach taken by the APC.

Case Study 2.2 – Harmful images

On 21 March 1998, the *Townsville Bulletin* published a photograph of a circus act that showed a woman performer's face contorting as air was sucked from a plastic bag she was wearing. The APC received a complaint alleging that the photograph might have encouraged children to perform a similar act, with possible fatal consequences, and should not have been published.

The APC upheld the complaint, saying that the publication was 'irresponsible'.²⁹ The newspaper then republished the photograph alongside the APC's adjudication and its editor's response setting out why the newspaper disagreed with the APC's finding.³⁰ In August 1998, the APC issued a press release condemning as 'entirely unacceptable' the republication of material found to infringe the Press Council's principles.³¹

Time taken to deal with complaints

2.25 Complaints are resolved in two ways by the APC. That is, by adjudication or by informal approaches such as mediation. One in five complaints goes to adjudication. These types of complaints take the longest time to be finalised. In contrast, most 'complaints are dealt with very quickly through informal approaches or mediation'.³²

2.26 The Committee received evidence that was critical of the time taken by the APC to deal with complaints brought before it. Professor Mark Pearson, Head of Communication and Media Studies, Bond University, has noted that a common criticism of the system is that complaints can take several months to be adjudicated.³³

28 *Official Committee Hansard*, Sydney, 5 February 1998, p. 12.

29 Australian Press Council, Adjudication No. 968, May 1998.

30 Photograph 'irresponsible', *Townsville Bulletin*, 11 July 1998, p. 15.

31 Australian Press Council, 'Republication of photo condemned', *General Press Release No. 222*, August 1998.

32 Australian Press Council, Submission 4/39, p. 1461.

33 M Pearson, Submission 24, Attachment: 'Press self-regulation in Australia', *Tolley's Journal Media Law and Practice*, January 1992, p. 820.

Mr John Tebbutt, a lecturer in journalism at Monash University, also said that having an issue addressed by the APC can take from a few weeks up to several months.³⁴

2.27 In response, the APC indicated that it was made aware of concerns with the speed of its complaints process by its survey of complainants in 1994. As a result, it changed its procedures so that complaints now reach the APC much more quickly than they formerly did. It said that complaints that 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 APC for adjudication within 6 to 10 weeks of receipt.³⁵

2.28 The APC provided further details in its July 1999 submission about the time taken to deal with complaints:

In 1998-99 there were 58 cases that went to adjudication by the Council. From receipt of the first letter to the Council from a complainant to the date of the adjudication the longest period that elapsed was 32 weeks and the shortest five weeks. The average was 13 weeks.³⁶

2.29 The Committee believes strongly that an average time lapse of three months for the APC to deal with complaints is unacceptable.

Extent of awareness of the complaints process

2.30 The Committee does not know of any survey or other empirical data on the extent to which the public is aware of the APC's Statement of Principles and the complaints-handling mechanism attached to it.

2.31 A complaints-handling mechanism can only be effective if the public is aware that it exists. The Australian Competition and Consumer Commission has had considerable experience in assessing criteria for codes of conduct and effective self-regulatory schemes. Its Acting Chairman, Mr Allan Asher, advised the Committee that without effective publicity that draws to people's attention the operation of such schemes they will inevitably fail.³⁷

Privacy

2.32 Privacy protection is addressed in Principle 3 of the APC's Statement of Principles, which states that:

34 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 94.

35 Australian Press Council, Submission 17b, p. 1027.

36 Australian Press Council, Submission 4/39, p. 1461.

37 *Official Committee Hansard*, Canberra, 16 February 1998, p. 184.

Readers of publications are entitled to have news and comment presented to them honestly and fairly, and with respect for the privacy and sensibilities of individuals. However, the right to privacy should not prevent publication of matters of public record or obvious or significant public interest. Rumour and unconfirmed reports, if published at all, should be identified as such.

2.33 Evidence provided to the Committee suggests that media organisations believe privacy is not a major issue in their industry. However, the photographs of former Senator Bob Woods provides a compelling example of the media's intrusion into people's privacy and the ineffectiveness of the APC's response. While the APC upheld the complaint as 'a blatant example of the unjustified breach of privacy', *The Daily Telegraph* argued in its editorial that the APC had 'damaged the principle of freedom of the press and infringed upon the public's right to know with its adjudication'. The newspaper published the adjudication on 16 April 1997, on page 22.

2.34 More generally, Mr Herman said that the APC considers from its own research and that of the New South Wales Privacy Committee that, by and large, the concern that the community has with privacy is not invasions of privacy by the media. He said that fewer than five per cent of the complaints received by the Privacy Committee relate to invasions of privacy by the media, while the overwhelming majority relates to private databanks and to the exchange of information amongst databanks.³⁸

2.35 Mr Tom Burton told the Committee that he disagreed with the APC's view. He thought media invasion of privacy was 'a huge concern amongst the public' and 'a big public issue'.³⁹ As an example, he referred to the public antagonism towards the media's intrusive actions in the hours immediately after the Thredbo landslide disaster in 1997. However, the APC advised the Committee that it had received no complaints about invasion of privacy by the print media at Thredbo, apart from one alleging impersonation of a police officer by a member of the press seeking information. This was resolved by mediation.⁴⁰

2.36 The APC in a supplementary submission affirmed that it would be opposed to laws that restricted legitimate newsgathering activities in public places. It stated that in principle there did not seem to be any objection to the use in public places of unusual skills (eg. lip reading), or manufactured devices (telescopes, binoculars, cameras, video recorders, zoom lenses etc) to assist in reporting for the public

38 *Official Committee Hansard*, Sydney, 5 February 1998, p. 11.

39 *Official Committee Hansard*, Canberra, 16 February 1998, p. 208.

40 Australian Press Council, Submission 17b, p. 1028.

interest.⁴¹ However, the APC did also tell the Committee that it recognised that there was some entitlement to privacy even in public places.⁴²

2.37 On the issue of privacy legislation that would apply to the media, the APC stated that they had:

... expressed in the past and continued to express its concern about the introduction of any law or tort of privacy in Australia in the absence of a constitutional guarantee of freedom of speech.⁴³

2.38 At an international conference in September 1998, the Chair of the APC, Professor Dennis Pearce, referred to what he saw as an increasing public acceptance or at least acquiescence in privacy invasion:

It is most important to the credibility of Press Councils that they do not raise the expectations of members of the public beyond that which the Council is capable of delivering or indeed should deliver. It is of little value both for complainants and a Council if it asserts that it will uphold complaints on privacy grounds where the reality is that public acceptance of such an invasion has changed and newspapers have recognised the change. If privacy is to lose its significance, Press Councils must not hold themselves out as maintaining a standard that does not accord with general public expectation or newspaper practice.⁴⁴

2.39 In contrast to the APC's general position on privacy, the Australian Privacy Charter Council said in its submission that while there was an important balance to be struck between individuals' right to privacy and the public interest in a free press, 'it seems clear to many that the current regulatory framework fails to strike the right balance'.⁴⁵

2.40 It is likely that other shortcomings of the APC, such as its lack of proactivity and enforcement powers, further compound the general concerns about privacy and the print media. Although the APC has set a standard that purports to protect the public's privacy, its lack of impact on the print media and its failure to actively police the standard suggest that further reforms are required.

2.41 On 15 December 1998, the Attorney-General, Hon Daryl Williams, QC, and the Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, announced that the Government will legislate to support and

41 Australian Press Council, Submission 17a, pp. 629-30.

42 *Official Committee Hansard*, Sydney, 5 February 1998, p. 25.

43 *Official Committee Hansard*, Sydney, 5 February 1998, p. 11.

44 Prof D Pearce, 'Is Privacy Dying', *Australian Press Council News*, November 1998, p. 7.

45 Australian Privacy Charter Council, Submission 21, p. 763.

strengthen self-regulatory privacy protection in the private sector. The Government's proposed scheme will be based on industry codes and apply a legislative framework only where industry codes are not adopted.

2.42 The Attorney-General's Department has issued a draft version of the Privacy Amendment (Private Sector) Amendment Bill 1999. The closing date for comments was 17 January 2000. Under the proposed Bill, acts or practices undertaken by an organisation in the course of journalistic endeavour will be exempted from these provisions of the legislation. 'Journalism' is defined broadly to mean:

... reporting, photographing, editing, recording or preparing material having the character of news, current affairs, information or a documentary or commentary or opinion on, or analysis of, that material for the purpose of making the material available to the public.⁴⁶

Lessons from Overseas – United Kingdom Press Complaints Commission (PCC)

2.43 In view of the concerns that were expressed about the effectiveness of the APC, the Committee decided to examine how self-regulatory regimes operate elsewhere in the world.

2.44 The Committee looked at the regulatory regime for the print media in the United Kingdom, given the long and rich history of England's aspiration to ensure that the 'bright light of publicity'⁴⁷ not be fettered by the State.

Origins of the Press Complaints Commission

2.45 In the United Kingdom a voluntary Press Council was established by the industry in 1953, with the aim of maintaining high ethical standards in journalism and promoting the freedom of the press. However, as a result of widespread community disquiet in the 1980s over the failure of a number of publications to observe even the most basic ethics of journalism, growing numbers of British Parliamentarians began to concede that the Press Council was no longer effective.

2.46 In April 1989, the Government set up an Inquiry into Privacy and Related Matters, which was chaired by Sir (then Mr) David Calcutt, QC. The Privacy Committee's Terms of Reference were as follows:

In the light of the recent public concern about intrusions into the private lives of individuals by sections of the press, to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press, and improve recourse

46 <http://law.gov.au/privacy/media.html>, as at 19 January 2000.

47 FS Siebert, *Freedom of the Press in England, 1476-1776* (Urbana: University of Illinois Press, 1952), p. 363.

against the press for the individual citizen, taking account of existing remedies, including the law of defamation and breach of confidence; and to make recommendations.⁴⁸

2.47 Published in 1990, the *Report of the Committee on Privacy and Related Matters* acknowledged that freedom of expression was fundamental in a democratic society. However, the Privacy Committee also found that this ‘freedom’ could not be at the expense of other important rights, including an individual’s right to privacy. It therefore recommended the setting up of a new Press Complaints Commission (PCC). The Committee also recommended that if within a period of 18 months, the new non-statutory and self-regulating PCC proved to be ineffective, the Government should establish a statutory system for handling complaints.

2.48 In 1991, the PCC was established and currently consists of 16 members drawn from three distinct categories:

- (i) the Chair, who is appointed by the newspaper and magazine publishing industry (currently, Lord Wakeham);
- (ii) seven Press Members, who must be experienced at a senior editorial level in the press; and
- (iii) eight Public Members who are appointed by an independent Appointments Commission, which is chaired by the Chair of the PCC.

2.49 One member of the PCC also functions as a Privacy Commissioner. The PCC’s Privacy Commissioner’s special mandate is to investigate complaints about invasions of privacy.

Purpose of the Press Complaints Commission

2.50 Essentially, the principal objectives of the PCC are:

- to consider, adjudicate, conciliate, and resolve complaints of unfair treatment by the press; and
- to ensure that the press maintains the highest professional standards, with respect for generally recognised freedoms, including freedom of expression, the public’s right to know; and the right of the press to operate free from improper pressure.

2.51 In realisation of its charter, the PCC judges newspaper and magazine conduct by a Code of Practice that has been drafted by editors, agreed to by the industry, and ratified by the PCC. The PCC actively promotes its existence by highlighting five key characteristics of its self-regulatory regime, being that it is:

48 Department of National Heritage, *Review of Press Self-Regulation*, Cm2135 (Sir David Calcutt, QC Chair London: HMSO, 1993), p. 4.

- **Quick and Free:** the procedural steps to be taken by complainants are said to be unencumbered by legal complexities and costs. Moreover, being self-funded, taxpayers are not burdened, as they would in a State regulated system.
- **Accessible to All:** the PCC operates a help line; it publishes its literature in a variety of languages; it has a web site on the Internet; and it operates a Textphone to assist the deaf or partially deaf.
- **A Committed Industry:** the reasoning here is that given that the PCC is enforcing a Code that has been drafted through an industry-wide process of consensus, both its spirit and letter are more likely to be honoured than breached.
- **Protects the Vulnerable:** the PCC Code of Practice is said to give special protection to children; innocent relatives and friends of those convicted of crime, victims of sexual assault; patients being treated in hospitals or suffering from mental illness; individuals at risk of racial, religious; sexual or other forms of discrimination; as well as lottery winners who wish to remain anonymous.
- **Maintains a Free and Responsible Press:** the argument here is that statutory controls, including privacy laws, will undermine the freedom of the press and be abused by the rich, powerful and corrupt who will invoke the coercive power of the courts to stop newspapers from reporting in the public interest.

2.52 The Right Honourable Lord John Wakeham, who is the current Chairperson of the PCC, gave evidence to the Committee *via* a video conference link-up on 28 February 1998. Having provided the preliminary details of the PCC's constitution and processes to the Committee, Lord Wakeman argued that the effectiveness of the PCC was reflected in the doubling of the number of complaints that it had received over the last three or four years. This, he said, was testimony to the public's recognition of, and faith in, the work of the PCC.⁴⁹

Operations of the Press Complaints Commission

2.53 In advocating the continuation of an informal system where neither pecuniary penalties nor statutory regulation play a role, Lord Wakeham said that:

We could change to a system where there were financial penalties if we could get agreement. I do think we could get agreement. I do not think that a statutory system would work. ... We look at the substance of the complaint and we put it to the newspaper: is this conduct commensurate with the code or not? We help complainants because we approach this ... as a practical commonsense non-legalistic way of resolving disputes. We reckon that 90 per cent of all the people who complain to us, even if they do

49 Press Complaints Commission, Submission 15, Attachment: *About Self-Regulation*, p. 481.

not get a satisfactory answer, feel that they have had their complaint dealt with in a satisfactory manner.⁵⁰

2.54 In terms of how the PCC enforces its findings, the Committee was informed that the principal sanction available to the PCC is the requirement for offending newspapers to publish the PCC's adjudication in full and with due prominence. According to Lord Wakeham, no newspaper had thus far failed to comply with this particular requirement. Moreover, he pointed out that by the end of 1996, a commitment to observe the PCC's Code had been written into the employment contracts of the great bulk of senior editors in the United Kingdom.⁵¹

2.55 When the Committee put to Lord Wakeham the case of an Australian paper that had republished a photograph, following an adverse finding by the APC that the initial photograph was published in breach of the local Code, he replied:

No newspaper in the United Kingdom has ever done that in my experience. The authority of the Press Complaints Commission is such that they would not do it. They would not expect me to stay for five minutes longer as chairman of the Press Complaints Commission, nor would the members of the Press Complaints Commission stay, if we did not get the support of the newspaper industry which finances us.

We are there to run a code that they ask us to. If they are not going to obey it, the system would break down and the government would have to act, and the newspaper industry does not want that to happen. I can tell you this: every editor and every newspaper in the country would come down like an almighty tonne of bricks on the editor who transgressed in the way you say and he would not have survived in this country as an editor for more than a week.⁵²

2.56 One aspect of Lord Wakeham's evidence that the Committee was particularly impressed by was the fact that as Chair of the PCC, he has adopted a pro-active stance *vis-à-vis* the UK press.

2.57 Thus, in the wake of the Dunblane school killings in March 1996, and the impending visit by the Queen, Lord Wakeham had personally telephoned key editors to voice his concerns about the intrusiveness of the press. As a result, the press in fact retreated and allowed the town to grieve in relative privacy.⁵³

50 *Official Committee Hansard*, Canberra, 26 February 1998, pp. 223-25.

51 Press Complaints Commission, *Annual Report 1996*, p. 8.

52 *Official Committee Hansard*, Canberra, 26 February 1998, p. 226.

53 *Official Committee Hansard*, Canberra, 26 February 1998, p. 238.

2.58 Lord Wakeham also recounted other situations when the PCC had informally warned editors that if a newspaper went ahead and used material that it considered offensive, and a complaint was subsequently upheld, its criticism of the newspaper would be considerably more severe.⁵⁴

2.59 The Committee has also noted, with broad approval, that the PCC operates a help-line telephone service. Over and above providing general advice about making complaints, the service is also available for those potential complainants who believe that they may be adversely involved and that, consequently, they would have a basis for lodging a complaint with the PCC.⁵⁵

Reviews and reforms of the Press Complaints Commission

2.60 Sir David Calcutt, QC, reviewed the progress of the PCC in his report entitled *Review of Press Self-Regulation*, which was published on 14 January 1993.⁵⁶ Summing up the evidence, he asserted that:

On an overall assessment, the Press Complaints Commission is not, in my view, an effective regulator of the press. The Commission has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. The Commission is not the truly independent body which it should be. The Commission, as constituted, is, in essence a body set up by industry, financed by the industry, dominated by the industry and which is over-favourable to the industry.⁵⁷

2.61 Sir David therefore recommended the establishment of statutory press complaints tribunal, which would have the following powers and functions:

- to draw up and keep under review a code of practice;
- to restrain publication if material in breach of the code of practice;
- to receive complaints (including third party complaints) of alleged breaches of the code of practice;
- to inquire into those complaints;
- to initiate its own investigations without a complaint;

54 *Privacy and Media Intrusion: The Government's Response to the House of Commons National Heritage Select Committee*, Cm 2918, (HMSO: London, July 1995), p. 32.

55 Press Complaints Commission, *Annual Report 1996*, p. 9.

56 Department of National Heritage, *Review of Press Self-Regulation*, Cm2135 (Sir David Calcutt, QC, Chair, HMSO: London, 1993).

57 Department of National Heritage, *Review of Press Self-Regulation*, Cm2135 (Sir David Calcutt, QC, Chair, HMSO: London, 1993), p. 41.

- to require a response to its inquiries;
- to attempt reconciliation;
- to hold hearings;
- to rule on alleged breaches of the code of practice;
- to give guidance;
- to warn;
- to require the printing of apologies, corrections and replies;
- to enforce publication of its adjudications;
- to award compensation;
- to impose fines;
- to award costs;
- to review its own procedures;
- to publish reports; and
- to require the press to carry, at reasonable intervals, an advertisement to be specified by the tribunal, indicating to its readers how complaints to the tribunal could be made.⁵⁸

2.62 Paralleling the Calcutt Review, the House of Commons' National Heritage Select Committee had also been investigating the matter of press regulation and privacy in the UK, and, on 24 March 1993, published its findings in *Privacy and Media Intrusion: Fourth Report of the National Heritage Select Committee*.⁵⁹

2.63 Unlike the Calcutt Review's call for outright statutory regulation, the Select Committee's key recommendation was for the establishment of a co-regulatory regime. This would be constituted by a voluntary Press Commission and other self-regulatory improvements, together with:

- a statutory Ombudsman, who would act as a longstop in cases where complainants were dissatisfied with the way that the Press Commission had dealt with their cases; and
- the Government introducing a Protection and Privacy Bill, with both criminal as well as civil elements and sanctions.⁶⁰

58 Department of National Heritage, *Review of Press Self-Regulation*, Cm2135 (Sir David Calcutt, QC, Chair, HMSO: London, 1993), pp. 46-47.

59 *Privacy and Media Intrusion: Fourth Report of the National Heritage Select Committee*, Ref 294-I (HMSO: London, March 1993).

60 *Privacy and Media Intrusion: Fourth Report of the National Heritage Select Committee*, Ref 294-I (HMSO: London, March 1993), p. 4.

2.64 Finally, in July 1995, the Government presented its own response to the reports of the Calcutt Review and the National Heritage Select Committee, which is entitled *Privacy and Media Intrusion*.⁶¹ In that report, the Government paid due regard to Article 19 of the *International Covenant of Civil and Political Rights* and to Article 10 of the *European Convention on Human Rights*, both of which enshrine the ideal of ‘freedom of expression’.⁶²

2.65 Whilst the Government noted that Article 8 (1) of the *European Convention on Human Rights* creates the right of respect for private and family life, home and correspondence, it nevertheless maintained that the imposition of statutory controls on newspapers could open the way for regulating content, thereby laying the Government open to charges of press censorship.⁶³

2.66 In rejecting the recommendations for either a fully regulated or co-regulatory scheme, the Government also relied on the fact that since January 1995, Lord Wakeham had been appointed as Chair of the PCC, and that he had been at pains to stress the importance of an independent PCC - both from the industry and from the coercive powers of the State.

2.67 Moreover, the Government did not believe that there was a sufficient public consensus upon which to base the establishment of a statutory body with legally enforceable powers. Neither did it believe that the type of legislation being recommended, would be capable of striking a proper balance between responsible, investigative journalism, and the right of the individual to personal privacy. However, the Government did sound a warning bell for the press, in that it expected that:

... the industry, through its proprietors, editors and journalists, ... the Appointments Commission, the PCC and the Code Committee, will take all necessary steps to see that any outstanding recommendations which have been accepted by the industry are fully implemented at the earliest opportunity. The Government, and no doubt Parliament, will be keeping a close watch on the steps which the industry takes to make further improvements to self-regulation.⁶⁴

2.68 Arguably, two recent events - the so-called ‘Blair Scoop’ by the *Mail on Sunday* and the ‘Gary Glitter’ case involving *News of the World* - may well see

61 *Privacy and Media Intrusion: The Government’s Response to the House of Commons National Heritage Select Committee*, Cm 2918 (HMSO: London, July 1995) p. 15.

62 For the House of Commons debate on this issue see <http://www.parliament.the-stationery-office.co.uk/pa/cm1999495/cmhansard/1995-07-17/Debate-2-html>

63 *Privacy and Media Intrusion: The Government’s Response to the House of Commons National Heritage Select Committee*, Cm 2918 (HMSO: London, July 1995).

64 *Privacy and Media Intrusion: The Government’s Response to the House of Commons National Heritage Select Committee*, Cm 2918 (HMSO: London, July 1995), p. 17.

renewed and even more strident demands for some form of statutory oversight of the UK Press.

2.69 British Prime Minister Tony Blair has now set a precedent for being the very first Prime Minister of that country to file an official protest over the recent ‘scoop’ about his 10 year old daughter, Kathryn. The *Mail on Sunday* ran a front-page story, on 24 January 2000, which lambasted Kathryn Blair’s alleged preferential treatment by a Catholic girls school.

2.70 The Blairs maintained that the *exposé* about their daughter having allegedly leap-frogged the school’s waiting list was inaccurate, unacceptably intrusive, and in breach of the PCC’s Code of Practice. In particular, the ‘scoop’ flouted paragraph (v) of Clause 6, which prohibits newspapers from publishing such stories merely on the basis of the ‘fame, notoriety or position’ of children.⁶⁵

2.71 In the box below a case study of the ‘Gary Glitter’ incident is provided. It is one of the most worrying examples of ‘cheque book’ journalism, in the wake of the Rosemary West trial in 1995, when 19 witnesses had entered into financial deals with the media (ranging from £3,000 to £100,000 each).⁶⁶

65 For a fuller account, see <http://www.freedomforum.org/international/1999/1/26blair.asp>, as at 21 February 2000.

66 *The Times*, Wednesday 20 November 1996.

Case Study 2.3 - Garry Glitter trial

Gary Glitter, *née* Paul Francis Gadd (aged 55), was arrested in November 1997 at a PC World shop in Bristol when he tried to retrieve a computer that he had handed in to be repaired. A staff member of PC World found indecent pictures of children on Glitter's hard drive, and reported the matter to the police.

When the story eventually broke in the local media and became 'hot news', Allison Brown (aged 34 and a mother of three) then approached *News of the World*. She recounted how for more than 2 years during her early adolescence, she had been sexually abused by Glitter and forced to call him 'Daddy'. Brown also revealed that Glitter was in fact bald, and one of her 'duties' was to glue his wig on his head. Brown was paid £10,000 for her account, which was subsequently published on 23 November 1997 under the headline of "I became Gary Glitter's Lover at 14". The more lucrative part of the deal was that she would be given a further £25,000 for her fuller and more detailed story, upon Glitter's conviction for possessing child pornography or any charges relating to sex with under-age girls.

At Glitter's trial in November 1999, his defense counsel, Trevor Burke, attacked Brown's credibility as the prosecution's principal witness, insisting in his closing speech that:

This is a woman giving a performance for which she will be paid £25,000 ... Conscientious witnesses do not expect to seek or solicit payment for giving evidence to the jury ... Honest witnesses do not approach agents to negotiate a price to co-operate or contact the police ... Honest witnesses do not wait 20 years to complain about a crime.⁶⁷

In summing up to the jury, the presiding judge at Bristol Crown Court, Justice Butterfield, described the £35,000 deal as 'highly reprehensible . . . greatly to be deprecated', and said among other things that:

Here is a witness who first made public her allegations for payment of £10,000, and stands to make a further £25,000 if he (Glitter) is convicted . . . If you think there is any reasonable possibility that she, either for the motives suggested to her or for any other motive, invented her account and came into this court and told a pack of lies, you will disregard her evidence and find the defendant not guilty.⁶⁸

Following Glitter's acquittal, Lord Irvine of Craig, the Lord Chancellor, examined the case as part of an urgent review of the UK's Contempt of Court Act 1981. Lord Carlisle, the Liberal Democrat peer, called for restrictions on access to witnesses by the press. Members of Parliament on the House of Commons' Culture and Media Select Committee urged the Government to outlaw this type of cheque book journalism. The Government undertook to legislate for restrictions on pre-trial publicity and ban newspapers from offering witnesses money for stories.

In dealing with the ensuing complaints, the PCC affirmed in a 5 page adjudication that the system of witness payments was not unethical as such, but simply that *News of the World* should not have written a contract with Allison Brown that suggested her reward would be contingent upon the outcome of the trial. In its favour, the PCC found that *News of the World* had a substantial public interest defence, given that the stories about people like Allison Brown have led to the detection and exposure of crime. In reaffirming the need for a 'free press', Lord Wakeham took out half of a page in *News of the World* on Sunday 5 December 1999, and publicly urged Lord Irvine not to outlaw witness payments. According to Lord Wakeman:

67 *The Independent*, Thursday 11 November 1999, p. 5.

68 *The Independent*, Friday 12 November 1999, p. 10.

Banning payments to witnesses before and during a trial might make them more likely to exaggerate - not less so. Unless there is a total ban on all payments for witnesses' stories (extended to books and TV interviews as well) and it is without time limit - which would be almost impossible to implement - witnesses could be even more prone to embellish their stories to get a better price after the trial ends.⁶⁹

2.72 Having weighed up the arguments for and against statutory regulation in England, as well as having considered a series of events that have occurred since the UK Government's 1995 response to the recommendations of the Calcutt Review (1993) and those of the National Heritage Select Committee (1993), the Committee has formed the view that robust, investigative journalism and the existence of a statutory framework for regulating the print media are not mutually exclusive.

The Australian Journalists' Association

2.73 The regulation of the conduct of individual journalists is limited. The principal form of accountability imposed on journalists applies only to those journalists who are members of AJA's section of the MEAA. The MEAA is the union that covers everyone in the media, entertainment, sports and arts industries.

2.74 Many but by no means all journalists in the print media are members of the MEAA.⁷⁰ In 1998, the AJA had some 6 800 financial members.⁷¹ One of the consequences of membership is that journalist members must comply with the MEAA Code of Ethics. The Code is recognised as the central document establishing journalistic standards in Australia.

The AJA Code of Ethics

2.75 A Code of Ethics has been in place since 1944. In August 1995, the AJA Ethics Review Committee, made up of equal numbers of journalists and non-journalists, released a draft of a revised Code of Ethics. The revisions expanded the existing 10 point code to 20 points to take into account changing attitudes and to clarify points that were only implicit in the existing code.

2.76 When the revised Code was sent to members, many expressed the view that it was too long. Concern was also expressed about a clause dealing with protection of sources. A working party subsequently produced a revised 12-point code. The new Code of Ethics imposes the following obligations on journalists:

69 *Evening Standard*, Wednesday 8 December 1999, p. 59, where an analysis is provided by Professor Ian Hargreaves, Professor of Journalism at Cardiff University.

70 Membership is reported to be particularly high throughout metropolitan newspapers and public broadcasters: M Pearson, *The Journalists' Guide to Media Law* (Sydney: Allen & Unwin, 1997), p. 238.

71 'New 12-point code of ethics endorsed by members', *Alliance Media Magazine*, Winter 1998, p. 5.

1. Report and interpret honestly, striving for accuracy, fairness, and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.
2. Do not place unnecessary emphasis on personal characteristics including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief or physical or intellectual disability.
3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.
4. Do not allow personal interest, or any belief, commitment, payment, gift or benefit to undermine your accuracy, fairness or independence.
5. Disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain.
6. Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.
7. Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.
8. Use fair, responsible and honest means to obtain material. Identify your self and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.
9. Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.
10. Do not plagiarise.
11. Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.
12. Do your utmost to achieve fair correction of errors.

2.77 The revised 12-point Code of Ethics was voted on by AJA members in April-May 1998. It was endorsed 110 in favour to 63 against.⁷² The MEAA's

72 'New 12-point code of ethics endorsed by members', *Alliance Media Magazine*, Winter 1998, p. 5.

Federal Council made the necessary rule changes to adopt the new code in January 1999 and the Code was implemented in February 1999.

AJA complaints-handling process

2.78 In contrast to the APC model for handling complaints, the AJA model has a stronger emphasis on adjudication as opposed to mediation. The AJA complaints-handling model is described at Figure 2.2.

2.79 Under the AJA rules associated with the current code, complaints about breaches must be in writing and identify the complainant. They can be initiated by both a member of the public, or by a member of the State Judiciary Committee even if no complaint has been received. Each State branch of the AJA has a Judiciary Committee of five members, elected every two years by AJA branch members from among their number.⁷³ A Judiciary Committee is empowered to investigate violations of the code or refusals to observe it. The Judiciary Committee has the right to refuse to investigate complaints it considers vexatious, frivolous or trivial.

2.80 When a complaint is received, the Judiciary Committee must convene a hearing within eight days. Both parties can call and cross-examine witnesses. The rules of natural justice are to be observed and the formalities of legal procedures are followed where necessary, although neither party has the right to legal representation. The Judiciary Committee can also summon members to attend a meeting and require them to provide it with written information.⁷⁴

2.81 The decision about whether to uphold or reject a complaint is made on a majority vote. If a complaint is upheld the committee can impose a range of penalties including warning, reprimand, fine of up to \$1 000, suspension from membership for up to one year and expulsion. Either party can appeal a decision to a State appeal committee and then to a national appeal committee.⁷⁵ Subject to legal advice, all decisions of the judiciary committees are published and distributed to other journalists.⁷⁶

2.82 The AJA does not receive a large number of complaints that require adjudication. For example, in Melbourne, four to six complaints a year are adjudicated. Ms Prue Innes, the Chair of the Ethics Committee in Victoria, said she thought that Sydney is a busier jurisdiction due to more media outlets and

73 AJA leaflet 'Ethics: how to complain'
(located at <http://www.alliance.aust.com/news/3-3/html#complain%20ethics>).

74 M Pearson, Submission 24, Attachment: *The Journalist's Guide to Media Law*, p. 831.

75 M Pearson, Submission 24, Attachment: *The Journalist's Guide to Media Law*, p. 831.

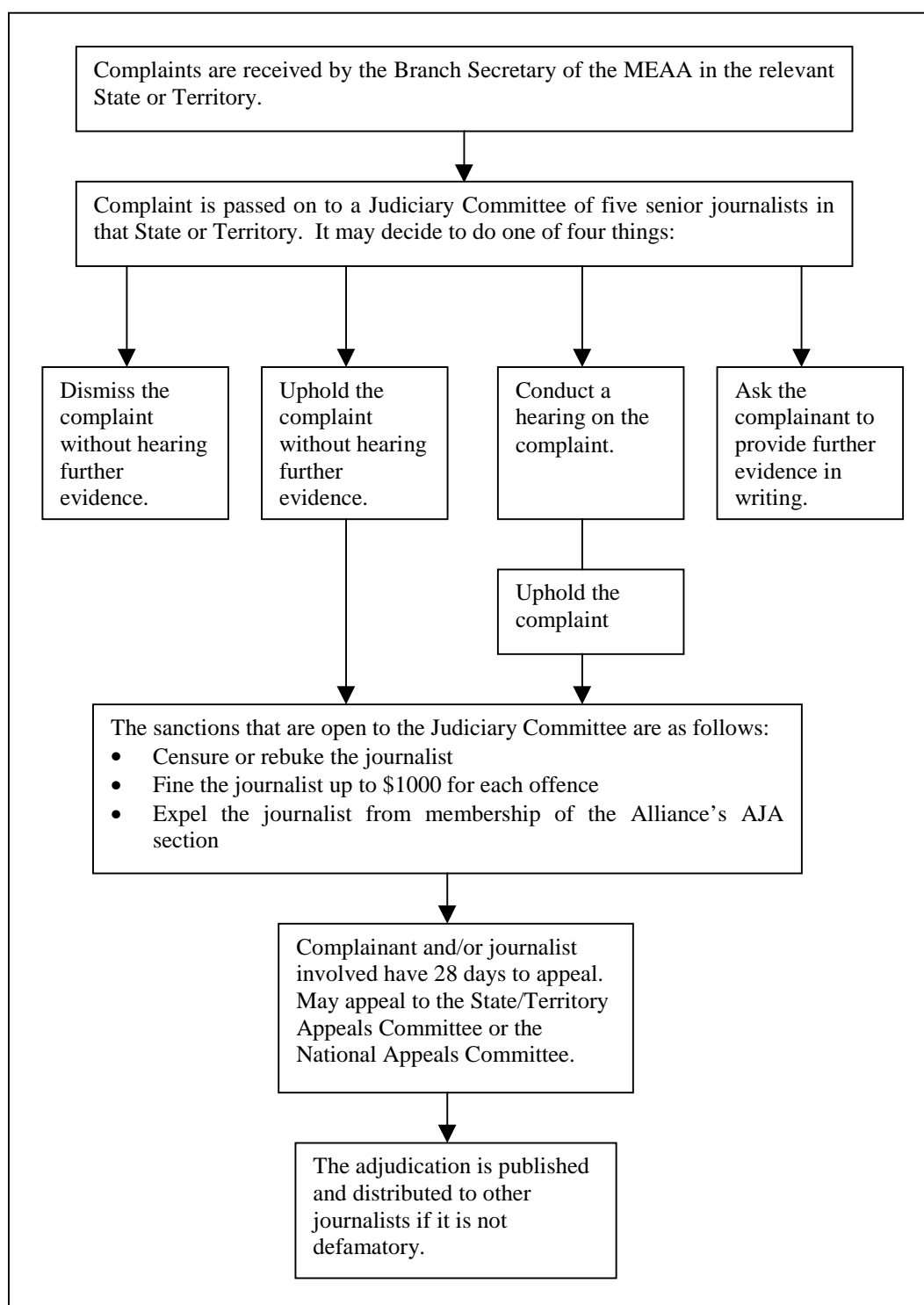
76 AJA leaflet 'Ethics: how to complain'
(located at <http://www.alliance.aust.com/news/3-3/html#complain%20ethics>).

consequently would get more inquiries.⁷⁷ In 1995-96 the NSW Branch received 37 formal complaints, 14 of which proceeded to a hearing by the Judiciary Committee and 11 of which were found to be outside the AJA's jurisdiction.⁷⁸

77 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 94.

78 *Alliance Media Magazine*, Autumn 1997, pp. 22-23. The 37 complaints included five matters relating to failure to respect private grief and personal privacy.

Figure 2.2

AJA complaints handling process*General views on self-regulation by the AJA*

2.83 Mr Stuart Littlemore, QC, argued in his B’Nai B’rith Oration on 26 October 1997 that:

... the journalists' own ethical tribunal is another entity of little credibility. It boasts the doubtful achievement of having one of its members plead guilty to criminal offences concerned with forgery of bail documents in order to secure an exclusive interview with a murderer. ... there is far too much cheating and dishonesty in Australian journalism, too many subtle and not-so-subtle conflicts of interest, there is racism and there is deliberate exclusion of contrary points of view – yet nothing happens to those who are guilty of it.⁷⁹

2.84 Writing on Australian media law, Dr Des Butler, from the Faculty of Law, Queensland University of Technology, and Ms Sharon Roderick, from the Faculty of Law at Monash University, concluded that the central problems with the AJA's Code of Ethics are that they:

... do not and cannot bind the persons who are most vital to their effectiveness, namely, media proprietors, editors and producers. These persons exercise real and final power over what methods are used in journalism, how the results are published or broadcast, and how initial complaints are handled. Individual journalists lack control over many of the issues canvassed in the [AJA Code of Ethics], as most journalists are employees who are subject to direction and veto by their employers. A further limitation is that the [AJA Code of Ethics] can only bind members of the MEAA. Journalists who opt not to join the union are outside of its reach.⁸⁰

2.85 The Committee heard evidence on various aspects of the AJA Code of Ethics that was similarly critical of its effectiveness in regulating the behaviour of journalists. In summary, much of the evidence concerned the issues of:

- public awareness of the AJA and its complaints-handling function;
- access to AJA adjudications;
- limited powers of the AJA; and
- protection of privacy.

Public awareness of the AJA and its complaints-handling function

2.86 Professor Pearson has written that one problem with the AJA disciplinary procedures is that few members of the public know about them. He reports that until 1989 a sub-rule prohibited publication of proceedings and findings and a secrecy clause prevented discussion of the cases. As a result:

79 <http://www.wei.com.au/adc/Oration%OS.Littlemore.html>

80 D Butler and S Roderick, *Australian Media Law*, para 13.795 (Sydney: LBC Information Services, 1999).

... journalists had little reason to fear the attentions of judiciary committees because frequency of complaints had reduced to a trickle. The public was unaware of the availability of this self-regulatory complaint mechanism.⁸¹

2.87 The Committee was not advised of any evidence of the extent to which the public is aware of the AJA Code of Ethics and the AJA complaints-handling function. The AJA does not appear to have in place any programs to ensure a high level of public awareness.

2.88 Equally, there does not appear to be any information indicating what level of confidence the public place in the complaints-handling mechanism as an effective means of regulating inappropriate behaviour by journalists. The APC has a minority of public members. The AJA complaints mechanism has no public members. If the concerns about the lack of independence of the APC system are any guide, the public might be expected to have even greater doubts about the AJA mechanism. The Committee notes that the AJA Ethics Review Committee recommended that there be a non-journalist presence on AJA panels hearing complaints, although it did not recommend that the non-journalists must be in the majority.⁸²

Access to AJA adjudications

2.89 The APC's adjudications are published and accessible to the public. Those of the AJA are not readily accessible by the public. This can only lessen the public confidence in the AJA complaints-handling mechanism. In addition, publicity can operate as a sanction against a journalist found in breach of the code, and the absence of publicity reduces the impact of adverse findings on journalists. The AJA Ethics Review Committee argued that as journalists apply the sanction of disclosure to all others in the community, it is vital that they apply it to themselves: to do otherwise 'is hypocrisy that corrodes the credibility that journalists need to strengthen'.⁸³

2.90 Ms Prue Innes told the Committee that she would welcome more opportunity for the Judiciary Committee decisions to be published. However, she said that at present the AJA felt constrained by the laws of defamation. If it could be sure that the defence of qualified privilege attached to reports of its adjudications, she thought that there would be far more willingness to publicise them.⁸⁴

81 M Pearson, Submission 24, Attachment: *The Journalist's Guide to Media Law*, p. 831.

82 *Ethics in Journalism: Report of the Ethics Review Committee*, Media, Entertainment and Arts Alliance, Australian Journalists' Association Section (Melbourne: MUP, 1997), p. 86.

83 *Ethics in Journalism: Report of the Ethics Review Committee*, Media, Entertainment and Arts Alliance, Australian Journalists' Association Section (Melbourne: MUP, 1997), p. 91.

84 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 96.

2.91 The AJA Judiciary Committee will take legal advice before it publishes one of its adjudications. The reason for this is that its adjudications have the potential to defame a journalist. The AJA Ethics Review Committee commented on the concern about defamation:

The existing law may well provide sufficient protection, but it is not unreasonable for the Media, Entertainment and Arts Alliance and subsequent publishers of its decisions to want greater certainty.⁸⁵

2.92 The Committee notes that there does not seem to be any equivalent concern regarding the publication of APC adjudications.

Limited powers of the AJA

2.93 The AJA Code of Ethics binds only AJA members, and not all journalists belong to the AJA. The Committee was told by Ms Prue Innes that the membership did not include many of the journalists in radio and television, where they increasingly work under contracts and are not members.⁸⁶ Ms Moira Scollay, the Commonwealth Privacy Commissioner, saw the fact that many journalists are not members of the AJA as a weakness in the system of self-regulation.⁸⁷ Academic commentators have made the same point:

The trouble with the application of the MEAA journalists' code of ethics is that it covers only the conduct of its members, and excludes proprietors, publishers and senior editorial executives who shape the product and sometimes exert strong pressures on their staff to behave unethically.⁸⁸

2.94 During its public hearings the Committee asked the MEAA about how the AJA Code of Ethics could be imposed on non-members. In response, Mr Tom Burton, its Federal President, said:

Last year we changed the Walkley Award process. It used to be that you had to be a member of the media alliance to get a Walkley Award but, in the vogue of competitive unionism, we opened it up. One of the preconditions to getting a Walkley is that you have to agree that you have complied with the code of ethics in getting the story and that you will continue to comply over the next period, because we do not want a process

85 *Ethics in Journalism: Report of the Ethics Review Committee, Media, Entertainment and Arts Alliance, Australian Journalists' Association Section* (Melbourne: MUP, 1997), p. 91.

86 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 92.

87 *Official Committee Hansard*, Sydney, 5 February 1998, p. 46.

88 J Hurst and S Walker, *Ethics and the Australian News Media* (South Melbourne: Macmillan Education Australia, 1994), p. 254. See also G Turner, 'Journalistic ethics in Australia: Raising the standards', *Australian Journalism Review*, vol. 16(1), 1994, pp. 4, 5; C Hippocrates, 'The problems with monitoring journalism ethics in Australia: A review of the judiciary procedures of the Media, Entertainment and Arts Alliance', *Australian Journalism Review*, vol. 18(1), 1996, pp. 69, 74.

whereby someone gets a Walkley and then two months later they are busily plagiarising.⁸⁹

2.95 Mr Paul Bongiorno, responded to Committee concerns by saying that any gap in coverage caused by some journalists not being AJA members was covered by the codes which the news outlets subscribed to. He referred to the code that applies to commercial television stations, the Federation of Australian Commercial Television Stations (FACTS) Code of Practice. Under this Code, if a news editor assigned freelance, non-AJA people to cover a story, it would be assumed that they would apply the standards required by the FACTS Code of Practice to their job. He continued:

Indeed, Australia's three commercial television networks, as subscribers to that code, would, if there were a transgression in the first instance, demand of their own employees an explanation as to why they allowed that transgression to occur or to go to air. I assume that other areas of the media like [the Federation of Australian Radio Broadcasters] and the print media have their own industry codes. I would imagine that that would give a coverall to answer your concerns.⁹⁰

2.96 However, the Committee notes that the television and radio industry codes deal primarily with the content of what goes to air or is published, rather than the conduct of the journalist in gathering the material. For example, the APC does not deal with complaints about the conduct of individual journalists as such.⁹¹

2.97 Ms Prue Innes told the Committee that she thought there was some value in the AJA widening its complaints process to include journalists who were not AJA members, and she and her colleagues were exploring this possibility.⁹² She argued that if people wish to act as journalists and be employed as journalists, they should be expected to observe the ethical standards of people who are members of the union and the AJA should be able to hear complaints against them. She recognised that the AJA would not be able to impose any direct sanctions on the non-members. But she thought that the publicity given to the adjudication would operate as a type of sanction and the process would be valuable.⁹³

89 *Official Committee Hansard*, Canberra, 16 February 1998, p. 212.

90 *Official Committee Hansard*, Canberra, 15 April 1998, p. 292.

91 Some newspapers have, or are developing, in-house codes to cover all their staff, as noted in the previous paragraph.

92 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 99.

93 *Official Committee Hansard*, Melbourne, 6 February 1998, p. 99.

Privacy

2.98 The AJA Code of Ethics provides that AJA members ‘shall respect private grief and personal privacy’. However, a considerable weakness in the protection provided by this clause is the over-riding statement at the beginning of the Code. It says that: ‘Respect for truth and the public’s right to information are fundamental principles of journalism’.

2.99 The Committee heard in evidence of several incidents in which journalists had invaded the privacy of individuals. The Australian Egg Industry Association provided an example that involved an unauthorised entry by stealth, of a journalist onto private property in pursuit of a story.⁹⁴

2.100 The Case Study below refers to a number of incidents in which Mrs Dawn Colston alleges that the privacy of her family had been deliberately and repeatedly breached by the actions of journalists.

Case study 2.4 – Mrs Dawn Colston

Mrs Dawn Colston, wife of former Senator Mal Colston, provided the Committee with details of media attention which, she asserts, are indicative of journalists’ disposition to invading people’s privacy. In her submission to the Committee, Mrs Colston alluded to a range of incidents in which the privacy of her family had been breached:

- ‘We could not move freely around our garden without the prospect of being photographed. At one stage a southern newspaper resorted to the use of a crane in order to take a photograph. When the crane proved inadequate, a cherry picker was used’.⁹⁵
- ‘When our grandchildren came to visit, we had to restrict them to the house so they would not be photographed. Whenever they entered or left our home by car, we had to throw a sheet over them so that they would not be photographed. Our attempts to protect these children were to no avail, however, as in August, Mal was taking the two children around to the post box to post a letter when he and the children were stalked and secretly photographed. That photograph was subsequently published in a southern newspaper’.⁹⁶
- [Upon former Senator Colston’s resignation from the Senate Deputy Presidency], ‘... as we left our Brisbane residence, television crews followed us to the airport. ... As the vehicle neared the airport, security concerns were raised to such an extent that an alternative boarding point for the flight was arranged. Despite those arrangements, however, a television crew was at the alternative boarding point to film our arrival. We allowed a previously agreed photograph to be taken before the flight began, but were harassed throughout the flight by a crew from another media organisation. The journalist and photographer in question assaulted us in addition to verbal harassment, despite requests to cease by the Ansett crew. Not only were the crew on this flight astounded by the actions of the media, but so too were our fellow passengers’.⁹⁷

94 Australian Egg Industry Association, Submission 48, pp. 1394-95.

95 Mrs D Colston, Submission 18, p. 645.

96 Mrs D Colston, Submission 18, p. 645.

97 Mrs D Colston, Submission 18, p. 649.

2.101 An element of privacy that was raised in the inquiry was the degree of protection given to the privacy of the spouses and other close family members of public figures. If it is accepted that a person will be subject to more intrusive media attention by becoming a public figure, it is less clear to what extent the media also regard the spouse as legitimately subject to some higher level of intrusiveness than an ordinary person.

2.102 When asked whether it was the case that a person's right to privacy is diminished because of whom they are married to or whom they may be related to, Mr Peter Harvey, a senior journalist at the National Nine Network, said:

No; unless, of course, the person related to the person in the public eye becomes involved in some way in a matter of public concern.⁹⁸

2.103 Mr John Rudd, the Network Director of News at the Seven Network, referred to the difficulties that arise when the media stake out the house of a public figure in the expectation that he or she will soon arrive. The spouse may be in the house or entering or leaving, and may be distressed by the media presence. Mr Rudd said:

We would never seek to cause that distress. We acknowledge that it may sometimes happen. We try to deal with it as comfortably as we are able'.⁹⁹

2.104 The spouses of two former senators, Mrs Colston and Dr Jane Woods, have suffered intrusive activities from mainly television in the former case and from print media in the latter. Mr George Negus, a senior television journalist, said:

In the case of Mrs Colston and Dr Woods, I suspect that they have an incredibly valid point because – to my knowledge, anyway – neither were women who sought any public notoriety or public position.¹⁰⁰

However, he noted that other spouses have chosen to become part of the political partnership and were thereby inviting more intrusive attention from the media.

2.105 Mr Peter Manning, Head of Current Affairs at the Seven Network, acknowledged that it was an issue requiring attention:

I have some sympathy for what I think is the MEAA view, which is that we need to develop ways of avoiding invading the privacy of the partner who is the potential collateral damage person – male or female – and to possibly think about us in a self-regulatory way talking about how we might ensure

98 *Official Committee Hansard*, Sydney, 22 April 1998, p. 391.

99 *Official Committee Hansard*, Sydney, 22 April 1998, p. 344.

100 *Official Committee Hansard*, Sydney, 5 February 1998, p. 80.

that that does not happen. I suspect it probably is going to be a continuing issue, and I think we need to think about that.¹⁰¹

2.106 Neither the former nor current AJA Code give much guidance on what respect for personal privacy involves, and they have been criticised for this.¹⁰² In this respect they are similar to the other codes considered in this report.¹⁰³ The Australian Privacy Charter Council said that the broadcasting and telecommunications codes were inadequate in this respect.¹⁰⁴

2.107 Mr Peter Manning, Head of Current Affairs, Seven Network Limited, and formerly Head of ABC Radio National, referred to a perception among the journalist community of a big public debate about privacy and the paparazzi. He said that sensitivity within the profession meant that journalists tread more carefully in situations where privacy may be an issue. Mr Tom Burton told the Committee:

I think community opinion on privacy has changed over the last decade, so we are trying to pull together those strands to have a look at it and try to keep it up to date.¹⁰⁵

101 *Official Committee Hansard*, Sydney, 22 April 1998, p. 343.

102 See for example the views referred to in K Elgar, 'Code of Ethics under Review', *Alliance Media Magazine*, Autumn 1997, p. 15. See also J Mullaly, 'Privacy: Are the Media a Special Case?', *Communications Law Bulletin*, vol. 16(1), 1997, p. 12: often the privacy clauses in codes 'are too brief to provide guidance'.

103 But note that the ABC's *Editorial Policies*, which supplements its code, does contain more detail on one aspect of privacy – intrusion into grief: see para. 3.125 below.

104 Australian Privacy Charter Council, Submission 21, p. 763.

105 *Official Committee Hansard*, Canberra, 16 February 1998, p. 206.