

Chapter 9 - Improving Accountability

Introduction

9.1 A number of witnesses proposed that before journalists are given a privilege to keep their sources secret they must gain the confidence of the public that such special treatment is deserved and will not be abused. The public needs to be convinced of the important role played by the media in our democratic society and have confidence that it is fulfilling that role in an accountable manner.¹ Some have suggested that accountability has to come first - that until that happens there should be no privilege.

9.2 For example, discussions of shield laws in the Ministerial Council of Attorneys-General (previously Standing Committee of Attorneys-General) have proceeded on the basis that reform of the law in this area should be linked with improvement in the ethical standards of journalists.² There were witnesses who said that shield laws might give unwarranted protection to some of the excesses of the media and accordingly before they are introduced the media must enhance its credibility. As one witness put it, in the present practice of journalism truth is often sacrificed for the sake of a good story.³

9.3 The MEAA has established a Committee, chaired by Father Frank Brennan, to review its Code of Ethics. That Committee published an

1 *Evidence (Mr Halliday), p. 324*

2 *Evidence (Mr Sumner), p. 313*

3 *Evidence (Mr Sumner), p. 314*

issues paper in December 1993 to facilitate that review. It has not yet published a report. The issues paper does not suggest accountability as a trade-off for privilege specifically but rather in the more general context of the power of the media:

Most importantly, any group which is seen to exercise power without accountability loses credibility. If journalists lose credibility among the public, they undercut their primary function of holding to account others who exercise power. A public without confidence in its journalists is less free.⁴

9.4 The Issues Paper dealt with accountability as follows:

If legal limits on speech shrink, media power grows. It is imperative that media accountability be, and be seen to be, effective and fair. Without that, otherwise sound arguments for law reform, from which many would benefit, may be resisted merely because of concern that the main beneficiaries of such reforms would be media people who are perceived already to have too much power and too little responsibility.⁵

9.5 The Committee agrees with this statement and considers that greater accountability in the practice of journalism has to be visibly achieved as soon as possible. However, it is unrealistic to expect the media to be perfect before any change in the law is made. What can be expected from the media before that is done is a demonstration that it is undertaking an extensive reform of itself. One demonstration of this would be the adopting of a new code of ethics.

4 *Ethics Review Committee, Issues Paper, December 1993, p. 2*

5 *Issues Paper, p. 3*

9.6 This Chapter briefly discusses a number of initiatives which have already been taken in Australia to monitor and improve the standard of ethics in journalism. Some general conclusions are drawn from a look at the regimes in place in a number of other jurisdictions.

Journalism and the Professions

9.7 In the present debate journalists' privilege has been compared with those of lawyers and doctors; but there are obvious contrasts in the nature of their respective practices. Lawyers and doctors are heavily regulated and it is quite difficult to qualify to enter their ranks. Years of tertiary education are required in order to do so. Substantial fees are paid annually for permission to practise and without that permission, it is illegal to engage in work. Supervisory bodies oversee the practice of these professions and have the power to apply quite severe penalties upon those who fail to meet the standards laid down by them, including disqualification from practice.

9.8 Another distinguishing feature of the legal system is that it incorporates elaborate mechanisms (including an appeal process) to protect people from unfairness. In the practice of journalism there are few effective sanctions to protect people from unfairness. There is no binding obligation to present both sides to an issue and there is no obligation to avoid bias, nor to advise readers of any such bias. By contrast, a judge operates within parameters which require him or her to ensure that justice is done and is seen to be done.

9.9 Any person can engage in journalism. No formal qualifications are required and no fees have to be paid. It is not necessary to be a member of the MEAA to be a journalist. In these circumstances it is difficult to conceive how accountability can be universally enforced. Despite the fact that members of the MEAA are required to ascribe to the Code of Ethics, when a number of journalists were interviewed by Iain Gillespie in the course of his program "Fear or Favour" broadcast on SBS-TV on 21 September 1993, many were not even aware of its existence, let alone its content. In the face of this kind of evidence, it is understandable that there is community distrust of journalists' commitment to improving standards of ethical behaviour, without the introduction of regulatory legislation.

9.10 Without a more professional approach from journalists support for any kind of privilege is weak. One witness addressed this problem directly:

I think that the answer is to make journalism more of a profession through education, through improved accountability mechanisms, and through lifting of ethical standards until we reach a stage where the community might reasonably expect that there is an ethos within journalism, there is a culture of quality within journalism such that abuses are less likely.⁶

9.11 If journalists become more accountable through effective disciplinary mechanisms to address concerns about ethics, through a higher educational requirement and through better professional standards, credibility in the eyes of the community will follow.

⁶ Evidence (Mr Turner), p. 512

Unethical behaviour

9.12 There is considerable risk that increasing competition amongst media outlets will put pressure on journalists to stretch the bounds of acceptable behaviour in their desire to get the big story first. Many times the Committee heard that, on the whole, journalists are ethical. But there have been some notorious instances where the pressure to get the scoop has caused matters to be taken too far, and journalists have become what is euphemistically described as "overzealous"⁷.

9.13 Perhaps the most striking example of this was the television coverage of the Cangai siege in northern New South Wales in March 1993. Police services who made submissions to the Committee condemned media coverage of the incident as gross interference which unnecessarily endangered the lives of victims, police and the journalists themselves.⁸ Such behaviour can result in the journalist becoming a part of the event, playing their own role in the news. The Code of Ethics does not specifically address issues surrounding such events, so it is quite likely that this sort of behaviour would not be regarded by many journalists as unethical.

9.14 In evidence before the Committee there was an amount of discussion about incidents involving Mr Chris Nicholls, a former ABC journalist from South Australia. He had shown a particular interest in the National Crime Authority (NCA) and his activities attracted the attention

⁷ Evidence (Mr Hadgkiss), p. 155

⁸ Submission 91 (Victoria Police), p. 740 - 741

of the Australian Federal Police.⁹ The AFP regarded him as prepared to resort to intrusive subterfuge in order to obtain personal information, including arriving uninvited at a dinner party¹⁰, meeting a daughter of an NCA officer at her school on the pretext of urgency, and then proceeding to question her about her father's job.¹¹

9.15 This kind of behaviour is said to be exceptional amongst journalists but it is an unfortunate fact of life that the exceptions such as these tarnish the reputation of the ethical majority. It needs to be kept in check by effective mechanisms for accountability if credibility is to be ensured.

Self-regulation:

Accountability through complaints mechanisms

9.16 There are a number of methods already in place for gaining accountability. None of them are based on statute and none involve coercive powers. The most important are examined below.

Australian Press Council

9.17 The Australian Press Council is a voluntary association of organisations involved in the print media. The first two of its stated objects

9 Evidence (Mr Hadgkiss), p. 154

10 Evidence (Mr Hadgkiss), p. 154

11 Evidence (Mr Hadgkiss), p. 154 - 155

are of relevance to this discussion:

- (i) To maintain the character of the Australian press in accordance with the highest journalistic standards and to preserve its established freedom.
- (ii) To consider, investigate and deal with complaints about the conduct of the press and the conduct of persons and organisations towards the press¹².

9.18 The powers of the Council are limited by a number of factors.

9.19 The Press Council deals only with the print media. It does not deal with the ethical behaviour of individual journalists, leaving this to the MEAA. The Council's Complaints Committee investigates complaints in the context of its own statement of principles which in many respects reflects the AJA Code of Ethics.

9.20 Criticisms of the Press Council have included its lack of disciplinary powers, its financial dependence on publishers, its requirement that complainants must waive the right to future legal action, that it takes several months to adjudicate a complaint and that its one sanction, a requirement to publish an adverse finding, is ineffective.¹³ Some newspapers required to publish have blatantly refused to do so and critics of the Council conclude, therefore, that reliance on an honour system is pointless.

¹² Submission 39, p. 375

¹³ Pearson, Mark, 'Press self-regulation in Australia', *Tolley's Journal of Media Law and Practice* (1992) 12:4 p.105 -132

9.21 The Press Council has no power to call or cross-examine witnesses or order production of documents. No privilege attaches to its proceedings. It has no resources to investigate disputed facts.

9.22 The Committee will be examining these issues in more detail in a later report and has not reached any conclusions as to whether the criticisms have been substantiated. The following issues are raised in the present context only to draw attention to the options so far identified for improving accountability. The Press Council should play a significant role in this but will be limited if its sanctions are basically ineffective. The ability to ensure publication of adverse findings would be a powerful penalty against organisations found to be in breach of the Council's principles. Unless it can do this, it is not going to be an effective instrument of self-regulation.

9.23 A number of improvements to the operations of the press council were proposed by the John Fairfax Group¹⁴ and by Mr Holding of the Bias is Bad News Committee Inc.¹⁵ These relate to publication of findings giving greater prominence to the role of the individual journalists in the matters complained of and granting appeal rights against decisions of the Council. The Committee will be looking more closely at such proposals later in this inquiry. It seems evident that there is a need for the Council to consider closely all the options available to support its role as an enforcer of ethical standards. Greater attention to the behaviour of journalists may be needed.

¹⁴ *Submission 114, p. 1251*

¹⁵ *Evidence (Mr Holding), p. 221 - 223*

Recommendation

9.24 The Committee notes that the AJA was, until 1987, a participating member of the Council. In that year it withdrew following a dispute about the response of the Council to the ownership changes in the Fairfax Group. The Committee urges that steps be taken to establish a closer relationship between the Press Council and the MEAA. Cooperation between these two bodies would surely provide greater opportunity to enhance accountability in the print media.

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AJA Judiciary Committees

9.25 The majority of working journalists are members of the AJA branch of the MEAA. As already stated, adherence to the Code of Ethics is a condition of membership.¹⁶ AJA Judiciary Committees, composed of five financial members elected biennially in each branch, are established to adjudicate alleged breaches of the code. These committees investigate and make decisions in respect of any complaint about violation of or refusal to observe the code. Anyone, including members, can complain. If a journalist

¹⁶ Some discussion of relevant provisions of the Code of Ethics appears in Chapter 2.

fails to attend a meeting the committee may impose a warning, reprimand, fine of up to \$1,000 or suspension from membership for up to a year. Both journalist and complainant have a right to appear and the rules of natural justice are to be observed. Procedures are set out in the MEAA rules. The complaint may be upheld or dismissed by the committee on a majority vote. Penalties which may be imposed include a warning, reprimand, fine of up to \$1,000, suspension from membership for up to a year and expulsion.¹⁷ Either party may appeal against the decision to the branch appeal committee and then to the national appeal committee.

9.26 The four most common criticisms of the AJA complaints system are published by Father Brennan's Committee as:

1. the existence of judiciary committees is not advertised to the public;
2. the complaints procedures are too slow;
3. the system is too secretive, since findings are not publicised, as a result of which members are not educated about how the code is applied, journalists escape the most relevant sanction of publication which would act as a potent deterrent and the public remains unaware of standards expected of journalists; and
4. the judiciary committees can only hear complaints against members of the AJA.¹⁸

¹⁷ Australian Journalists Association, *Constitution and Rules*, 1989, rule 30(b)

¹⁸ *Issues Paper*, p.9

9.27 The Issues Paper also refers to a number of administrative deficiencies in the system as it currently operates.¹⁹ An interesting dilemma to note in the context of confidential sources is that a judiciary committee would probably find itself in contempt of court if it were to penalise a journalist for revealing a source in breach of the code of ethics when he or she had been ordered to do so by a court.

9.28 Like the Press Council, these Committees are said to be ineffective for lack of power to enforce whatever sanctions they might impose. A journalist can go on working after expulsion from the union and can refuse to pay a fine levied.²⁰ Some have suggested that this ineffectiveness could be largely addressed if the Judiciary Committees were to regularly publish their findings. Ms Prue Innes, a member of an AJA Judiciary Committee, stated that one of the main reasons why these are not published is the fear those on the committees have of being sued for defamation if they did so.²¹ She said:

This is a serious problem and one which is having an inhibiting effect on the effectiveness of our disciplinary processes and findings we make about appropriate standards of professionalism for journalists. It is stopping us making detailed findings public and informing journalists of what are and what are not appropriate ethical standards.²²

19 Further detailed criticisms of the AJA Judiciary Committees was made by Mr Cratis Hippocrates of the Queensland University of Technology, Submission 109

20 Chris Nicholls was fined by the MEAA in 1990 for what was found to be unethical behaviour. He was fined, but at the time of the Committee's hearing in Adelaide the fine remained unpaid. [See Evidence (Mr Sumner), p. 313]

21 Evidence (Ms Innes), p.180

22 Evidence (Ms Innes), p. 180 - 181

9.29 Ms Innes distinguishes the position of these committees from that of the Press Council because they are concerned with the behaviour of individual journalists while the Press Council examines the publication itself. She urged some statutory protection against defamation be provided to enable the AJA Judiciary Committees, after all rights of appeal have been exercised, to publish its findings without fear. This proposition was supported by the Law Council.²³ The Committee accepts that publication of such findings would have an important effect upon journalists both in instructing them as to what ethical behaviour is and in showing them what the consequences of unethical behaviour might be.

9.30 Mr Cratis Hippocrates put the need for a review of the AJA procedures in this way:²⁴

The AJA's judiciary procedures need to be revised especially as the association realigns its priorities post-amalgamation. It is time for the judiciary procedures of the AJA to make journalists more accountable for their actions. Journalists need to be able to explain their ethics to the public, sources and colleagues. The sooner the AJA realises that there is a problem with the way it administers its ethics, the sooner the procedures can be streamlined and the level of accountability increased.

²³ *Evidence (Mr Bartlett)*, p.213

²⁴ *Submission 109*, p. 1053

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The Committee recommends that statutory protection against defamation be provided to enable the AJA Judiciary Committees, after all rights of appeal have been exercised, to publish their findings without fear.

Australian Broadcasting Authority

9.31 The Australian Broadcasting Authority (the ABA) was established by the *Broadcasting Services Act 1992*. Part of its charter is to assist the broadcasting industry to develop codes of practice. These codes appear to be primarily directed at the content of programs without specifically addressing the methods used by journalists to put them together.²⁵ Codes have been registered by the Federation of Australian Radio Broadcasters and by the Commercial Television Industry. The ABC and SBS are subject to the jurisdiction of the ABA.

9.32 Primary responsibility for dealing with complaints from consumers of the electronic media rests with the broadcaster. The ABA investigates complaints only when the complainant receives no response from the broadcaster in 60 days or is not satisfied by the response. In relation to the ABC and SBS, the ABA can report failure to act on its recommendation to the Minister for Communications and the Arts. It does not appear that the ABA has any coercive power over commercial

²⁵ Submission 124 (Australian Broadcasting Authority)

broadcasters who do not act upon its recommendations made subsequent to an investigation into a complaint.

9.33 Complaints about unethical behaviour of journalists employed in the electronic media remain a matter for the AJA Judiciary Committees, assuming the journalist complained about is a member of the MEAA. The ABA has no role in the matter.

Editorial adherence

9.34 It was said that one of the major problems with relying upon the Code of Ethics of the journalists' union as a mechanism for accountability was that it does not apply as such to media owners or editors. Presumably the main reason for this is that owners and editors are frequently not members of the union. Those who are or have been members claim to ascribe to its principles.²⁶

9.35 Some individual media organisations have developed their own codes of practice and these are usually applicable to all staff. The electronic media are required to register these codes with the ABA by the *Broadcasting Services Act 1992*.

9.36 The ABC relies on its Editorial Policies to maintain standards of ethics. This document is very wide ranging, covering all aspects of public broadcasting going way beyond, but incorporating, ethics. It includes editorial responsibility, cultural diversity, program standards, to name but a

²⁶ Submission 88 (*Herald & Weekly Times*), p. 630

few. The ABC claims that its adherence to this document has made it more accountable than it ever was.²⁷

9.37 The Herald and Weekly Times Limited promulgated its own Professional Practice Policy in November 1993. The introductory paragraphs to the policy state clearly that it 'applies to all editorial staff, whether management or staff, union or non-union members, permanent and casual staff and contributors.' It is a comprehensive list of 'does and don'ts' for the conduct of journalism. It does not, however, on the face of it, address the consequences of failing to comply with its terms or who is responsible for enforcing it. Presumably these are matters for the employer.

9.38 The Committee heard directly from only one newspaper proprietor, the John Fairfax Group. Its submission said that the main papers in the group were bound by 'charters of editorial independence, which commit the owners, management, editors and journalists to an ethical framework'²⁸. There is, however, no direct mechanism for dealing with breaches of the charter, as staff committees preferred to rely upon publicity and other similarly indirect means as the methods for ensuring compliance with the charter.

9.39 In order for general satisfaction with the ethical standards of the media to be achieved it will be necessary to address who is to have jurisdiction over the decision makers in newsrooms. Clearly the AJA judiciary committees are powerless in this area. The ABA's role appears to

²⁷ Evidence (Ms Walker), p.84

²⁸ Submission 114, p. 1250

be quite remote from the day to day activity of broadcasting.

Sanctions for ethical breaches

9.40 If self regulation is to be more acceptable to the public, it will be necessary for any body charged with the maintenance of ethical standards to be empowered to impose effective sanctions. The discussion above illustrates that presently no such power appears to exist for either the Australian Press Council, the AJA Judiciary Committees or the Australian Broadcasting Authority. It is difficult to conceive how this can be achieved without legislative backup. Internal rules already allow the MEAA to impose fines, suspensions or expulsion. It appears that none of these is fully effective. The Press Council has the power to require a member who has offended its principles to publish the Council's findings, but the newspaper can ignore such a ruling and the Council is unable to do anything about it.

9.41 In the end, unless serious consequences for both the journalist and the publisher are seen to flow from unethical behaviour, self regulation lacks credibility. Sanctions should be enforceable against the editor and the media owner who publish information which has been obtained unethically. The Press Council ought be able to impose substantial fines upon its members and to take steps to publicise the breaches which have been committed.

9.42 In the end, unless the unethical behaviour of all those involved in the media, including the journalist and publisher, is visited with enforceable sanctions then self regulation lacks credibility.

9.43 A less complex option would be to persuade the industry to adopt a code of conduct to which publishers could subscribe. This might be done by expanding the Press Council's principles, referred to above.

9.44 Logically, the enforcement of such a code should be administered by the Press Council. Administration should include the ability to impose penalties for breaches of the code and regular periodic review of the level of compliance.

9.45 The Committee will examine this issue more closely in its next report on journalistic ethics and disciplinary processes. At this stage the Committee concludes that self-regulation should be the appropriate means whereby ethical standards are maintained. However, this will only be a credible means if effective sanctions are attached to breaches of ethical standards. Such sanctions should apply to all those involved in the media including both journalist and publisher.

Recommendation 7

The Committee recommends that, in addition to the adherence of practising journalists to the AJA Code of Ethics, all other key participants in the media, especially editorial staff and proprietors, should adopt a code of ethics, or a code of practice, which embodies a set of ethical principles in broad conformity with the provisions of the AJA Code of Ethics.

Proposals for Regulation of the media

9.46 Some have proposed the external regulation of the media as the ultimate answer to its flawed credibility in light of the perceived failure of self-regulation. Such proposals include licensing and a legislated code of ethics with a statutory body to enforce it.

Licensing

9.47 Some witnesses, notably the South Australian Police, proposed that proper regulation of the media would ensure a measure of accountability. This could be achieved by enacting legislation which would license journalists, define ethical standards and set up a disciplinary tribunal to deal with complaints.²⁹

9.48 A related proposal was put by the then Attorney-General for South Australia which involved negative licensing.³⁰ This would allow anyone to practise journalism, as happens now, but if found to be acting contrary to the established code of ethics, a court could forbid them from continuing to do so. Alternatively, such a decision could be made by a panel consisting of the peers of the journalist concerned.

9.49 Journalists are understandably opposed to this suggestion on the basis that it has the potential to be a fetter on the freedom of speech.

²⁹ It was suggested that such a mechanism could also be used to provide an *in camera* process for establishing veracity of confidential sources. *Evidence (Mr Clyne)*, p.283

³⁰ *Evidence (Mr Sumner)*, p. 333

There is a very strong view amongst journalists that any form of licensing is anathema to the way we operate, to the basic rights of the freedom of anyone to fire up a newsletter, to start up a paper, to comment as they wish in Australia. Related closely to freedom of speech is freedom of the press.³¹

9.50 The proposal raises questions of who does the licensing and how.

9.51 Another suggestion involved voluntary application for accreditation which would bring with it a privilege given by shield laws to be enacted.

9.52 At this stage, the Committee is not persuaded that any form of licensing is called for.

External regulation

9.53 If improved self-regulation is the preferred approach, then clearly the media must be responsible for the processes needed to maintain ethical standards. Several submitters have suggested that some independent, presumably statutorily created, body should be appointed. One proposed a media commission, appointed by an all party parliamentary committee³².

9.54 The Commonwealth Attorney-General's Department suggested that self-regulation has failed and that serious consideration should therefore be given to a statutory body involving journalists and lay persons,

³¹ Evidence (Mr Halliday), p. 334

³² Submission 25 and Evidence (Mr Turner), p. 512

designed to enable individuals aggrieved by media reports to complain and have their complaints investigated and adjudicated upon.³³

9.55 There are a number of difficult issues raised by these proposals which will be examined more fully in the next report. They include the dangers of political interference, the question of who appoints the members, the sort of powers such a body would have and the effect it might have on freedom of the press and investigative reporting.

9.56 At this stage the Committee considers that there is scope for improvement in self-regulation which should be fully explored before a more intrusive option is taken. The fullest exertion of peer pressure should be exercised to raise the standards of ethical behaviour amongst those in the media in order to gain the confidence and support of the public.

Training and qualifications

9.57 Much has been made of the fact that to be a journalist people are presently not required to obtain any special qualifications or to have any particular training. They can develop their ability on their own or, if employed by a media organisation, learn their skills on the job. However, in recent years there has been a remarkable growth in the number of tertiary courses available to those who want to be journalists. If journalistic ethics is given prominence in these courses there will over time be a diminution in the current ignorance about them and ultimately this will encourage public confidence in the media.

³³ Evidence (Mrs Jackson), p. 213

9.58 One academic in journalism put the matter before the Committee as follows:

[J]ournalists' sense of ethical responsibility needs to be developed further as part of a general trend towards greater professionalism, and this process will best come from educators at arms length from the industry, both in initial training and in-service or refresher courses for practitioners.³⁴

9.59 The benefits of continuing education have been recognised by a number of professions as an essential ingredient in maintaining standards. As presently practised journalism involves skimming the surface of most issues and moving on to the next, with little time to consider the impact of what is published.

[P]artly because journalists spend so much time writing, they are loath to go and do a different mode of considered analysis of their practices. ... Unlike lawyers, there is no body of work or guided reading that we have all walked through so that we are all at one about what is our position and what is accepted practice and what is not accepted practice.³⁵

9.60 Large media organisations ought have sufficient resources to provide on-going training for practising journalists. They should also be encouraged to allow their practising journalists the time to take up external training. At present there appears to be very little opportunity for this.³⁶

³⁴ *Submission 25 (Mr Geoffrey Turner), p. 171*

³⁵ *Evidence (Ms Cornwall), p. 80*

³⁶ *Evidence (Ms Cornwall), p. 89*

9.61 The Committee has noted an increase in the availability of courses in journalism. Media organisations should be encouraged to engage journalists who have obtained qualifications through specialised tertiary education along with those with merit through experience. This will enhance the public credibility of journalists.

Cultural development

9.62 The MEAA could do more, as the professional body common to most journalists, to inculcate a culture of professionalism. The ability to achieve this beyond the membership of the union would be limited to example as it has no power at all over non-members. Its ability to affect the standard of journalism generally is probably limited to setting a standard which is followed by those in the media because of peer pressure and the threat of unfavourable publicity. The first step along this path is now being taken by the review of the Code, previously mentioned.

What happens in other jurisdictions?

9.63 The Committee undertook some minor research into a small number of other western democratic jurisdictions to ascertain whether it could be said there is a relationship between the standard of ethical behaviour in the media, the status of the principle of freedom of the press and the degree of external regulation applied.

United Kingdom

9.64 In the United Kingdom there are many similarities with Australia. The UK has no written constitution or charter enshrining freedom of the press. The Press Council was established in 1953 under threat of legislation. It was a voluntary body staffed by media representatives. It was criticised for lack of independence. It was disbanded in 1990. After the Calcutt Report into privacy in 1990 a revised Press Complaints Commission was established to protect public interest and to oversee the Code of Practice. The Calcutt Report has recommended regulation of standards by a publicly funded statutory tribunal with power to take evidence on oath, order public corrections and apologies and award compensation. These have not been adopted as yet. In the mean time the Press Complaints Commission appears to suffer the same kind of criticisms as the Australian Press Council.

9.65 The UK National Union of Journalists, like the AJA, has a code of conduct to which its members are in theory bound. The union's ultimate sanction appears to be expulsion but up to 1990, no journalist had ever been expelled.³⁷ The UK also has statutory bodies established under the Broadcasting Act, the Broadcasting Complaints Commission and the Broadcasting Standards Council. Despite these mechanisms the British press on the whole is probably regarded as the most questionable when it comes to ethical standards.

³⁷ G Robertson and A Nicol, *Media Law The Rights of Journalists and Broadcasters*, Longman 1990, p. 440

United States of America

9.66 In the United States the First Amendment to the Constitution enshrines freedom of the press as a right. The existence of press councils is voluntary and the enforcement of ethical standards and rules is rare. On a national level the only significant press council is the National News Council, established in 1973.³⁸ Internal monitoring by newspapers is a growing trend using mechanisms like newspaper ombudsmen, more open publication of retractions and corrections, together with a number of publications dedicated to the review of news coverage.

France

9.67 In France the freedom of the press is enshrined in a number of constitutional provisions. There are no mechanisms for self-regulation by the press to prevent abuse of that freedom. Ethical standards contained in documents such as the Charter of the Professional Duties of Journalists have no legal force and do not appear to have been referred to by the courts. The conduct of journalism appears to be unregulated but affected indirectly by laws such as those of defamation, privacy and anti-discrimination. For example, there are restrictions on reporting of in camera proceedings and the protection of the presumption of innocence. The duty of professional secrecy, a breach of which is covered by the Penal Code, does not apply to journalists. Refusal to reveal a source is traditionally punishable by gaol, but it is very rarely demanded.

³⁸ Soifer and Lahav, eds., *Press Law in Modern Democracies*, Longman 1985, p. 115

9.68 It is believed that improvement in the standard of press reporting in France is due to increased competition amongst daily newspapers, higher expectations of the public, and the better training of journalists. The willingness of the courts to defend the rights of the individual against invasion of privacy and libel, together with the relative ease of access to courts, are seen as reasons why the French public has not demanded greater press regulation.³⁹

Sweden

9.69 Freedom of the press in Sweden is protected by a variety of constitutional provisions including Chapter 1, Article 1 of the Freedom of the Press Act.⁴⁰ Press self-regulation has a long tradition in Sweden and in both form and substance is not dissimilar to that which exists in Australia. A Press Council established by three dominant press organisations in the 1960s strives to ensure adherence to a Code of Ethics which has as its primary goal the protection of the privacy of individuals. The Council consists of an equal number of lay and professional members, operates on a voluntary basis and is financed entirely by the press industry and the Union of Journalists.

9.70 Complaints go to a Press Ombudsman before they reach the Council. If a serious breach of the Code is found the Ombudsman files a complaint with the Council which adjudicates the matter. The Council can

³⁹ Errera, Roger, 'Press Law in France', in Article 19, *Press Law and Practice: a comparative study of press freedom in European and other democracies*, 1993

⁴⁰ Axberger, Hans-Gunnar, 'Freedom of the Press in Sweden', in *Press Law and Practice*, p.150

order a paper to publish its findings and to pay a fine if imposed in the event that a breach of the code is found to have occurred. The majority of newspapers respect the system whether or not they belong to the Publishers Association. The Code of Ethics is said to be treated by Sweden's press with respect and decisions of the Ombudsman or Council are complied with. Laws applying to the press are therefore rarely used.

What conclusions can be drawn from other jurisdictions?

9.71 It is hard to ascertain which system in practice gives rise to the most effective yet equitable regulation of ethical standards in the media. A study of the means of regulation yields little on their practical success. Indeed, it may be that there is no correlation between the existence of regulations, be they legal or otherwise, and the ethical standards to which journalists adhere.

9.72 If there is a duty upon journalists to adhere to certain ethical standards, those standards exist despite the existence of codes of ethics. Thus the refusal to disclose the identity of a source does not find justification solely in the existence of Clause 3 of the AJA Code. *Sydney Morning Herald* journalist Deborah Cornwall, for example, was said by the Court to have relied on a "subjective personal ethical consideration unrecognised by the Code itself"⁴¹, when she refused to disclose to the Court the source of her information. The codes serve as reminders of the ethical principles to which journalists should adhere.

⁴¹ *ICAC v Cornwall* unreported, Supreme Court of New South Wales, Abadee J, 6 July 1993, 11043/93 in Bennett *ibid* at 2

9.73 It is perhaps not surprising that it is in those countries in which there is a perception of a want of ethical standards (for example in the United Kingdom), that the codes are not only live issues, but are considered as one of the most important means of regulating the behaviour of the media. This might in itself suggest that the codes are ineffective.

9.74 Yet, on the basis of the Swedish example self regulation is a sufficient means of maintaining acceptable standards. On the other hand, it does appear that in France, whose society is possibly the most heavily regulated of the states examined, press standards cause minimal concern.

9.75 An examination of other countries shows that journalists' unions in those places where freedom of speech is enshrined in written constitutions are less inclined than elsewhere to assert in their codes of ethics that freedom of the press is an overriding principle to which all others are subject. The consequences of such conclusions will be examined more closely later in the Committee's inquiry.

Conclusions

9.76 While there is no proper accountability for journalists there remains the danger of according them a status which might be abused. In a society where investigative journalism is seen as an important part of the freedom to communicate, a media which is prepared to go after what is important risks exceeding the bounds of the acceptable. In order to protect that freedom and to engender a vibrant media which will pursue its role as watchdog with dedication it is likely that the occasional unethical journalist

will come to notice. If the media gets out of hand, as some would say has happened in the United Kingdom, then the need for an independent and powerful review body based on statute increases. But there is a danger in developing too many constraints in order to address the lowest common denominator. It can stifle freedom of speech and of communication. At this stage the Committee does not favour an interventionist approach such as licensing to the maintenance of ethical standards in Australian journalism. It has been widely agreed by witnesses and submitters that the majority of journalists are ethical and the Committee does not consider that the agenda should be run by an over reaction to a few exceptions.

9.77 It is up to the media to establish credibility in the eyes of the community through effective self-regulation. It needs to satisfy the public at large that this can be done without external supervision or a legislatively imposed set of rules. As accountability is important across the whole range of journalistic activity, not just to the question of protection of confidential sources, it is not likely to be helpful to delay reform affecting confidential sources until full accountability is obtained. Once the media has adopted a new Code of Ethics, and an effective disciplinary mechanism for enforcing it, it would be appropriate to enact the legislative reform of the kind recommended by the Committee. The Committee is satisfied that the MEAA has accountability high on its agenda and awaits the outcome of the current review of its Code of Ethics with high expectations.

9.78 The Committee considers that journalists should strive to be more responsible and better qualified. Qualifications can come from the increasingly available tertiary courses, as well as experience. Media

organisations should be encouraged to engage journalists of merit which has been gained through both tertiary qualifications and through practical experience.

Recommendation 8

The Committee recommends:

- That clause 3 of the Code of Ethics be amended by the MEAA to remove the absolute character of the obligation it imposes on journalists to maintain confidentiality so that they can, with a clear conscience, comply with a court order made in the appropriate case to identify a source.
- That the MEAA establish a committee to improve the self regulation of journalists.
- That the Press Council be given power to impose and enforce sanctions on the print media. This should be done by legislation if necessary.
- That the MEAA and the Press Council establish closer links in an endeavour to improve the practice of journalism.
- That statutory protection against libel be provided to enable publication of the decisions of the AJA disciplinary committees;
 - a. as a means of providing a more effective sanction against recalcitrant journalists,
 - b. to better inform the public about the means by which journalists regulate themselves, and
 - c. to improve community trust in journalists and justify in its eyes provision for the qualified privilege recommended in Chapter 7.
- That the MEAA act to increase the professionalism of journalists generally:
 - (a) by setting standards for journalism;
 - (b) by seeing to it that proper training is provided for them; and
 - (c) by having effective disciplinary procedures in place.

Signed for the Committee:

Senator Barney Cooney

Chair