

**MEDIA ACCOUNTABILITY
IN A LIBERAL DEMOCRACY**

AN EXAMINATION OF THE HARLOT'S PREROGATIVE

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To Catherine, my wife, with love.

ABSTRACT

This thesis is both a normative and empirical study of media accountability in a liberal democracy. While its focus is predominantly on Australia, it contains some international comparisons. Media ethics and media performance in relation to quality of media content are identified as the two main dimensions of media accountability. They may be conceived of as the means and the ends of media work.

The thesis represents the first combined survey of both external mechanisms of accountability in Australia – those existing outside the various media organisations – and the internal mechanisms existing within three of Australia's largest media organisations. These organisations span print and broadcasting, public and private ownership. The thesis is based on substantial qualitative research involving interviews with a wide range of experts in media ethics, law, management, and accountability. It is also based on two quantitative surveys, one among practitioners of journalism and the other among the public they serve. This combination of research is certainly new in Australia, and no comparable study has been found in other Western countries. In addition to the main qualitative and quantitative surveys, three case studies are presented. One deals with media performance in relation to quality of media content (the case of alleged bias brought against the Australian Broadcasting Corporation by the then Senator Richard Alston); one deals with media ethics (the “cash-for-comment” cases involving various commercial radio broadcasters), and one deals with accountability processes (the “Who Is Right?” experiment at *The Sydney Morning Herald*).

The thesis is grounded in established theories of the media, and these provide the norms on which the media's performance is judged in relation to quality of media content. Ethical norms are derived from a range of ethical codes and statements of principle developed by the media industry in Australia and in comparable jurisdictions abroad. The thesis points up shortcomings in existing normative media theory and in the codes. It proposes a new theory and institutional structures to make good these deficiencies.

STATEMENT OF ORIGINAL AUTHORSHIP

This is to certify that

- The thesis consists only of my original work towards the PhD.
- Due acknowledgement has been made in the text to all other material used.
- The thesis is less than 100,000 words in length, exclusive of tables, maps, bibliographies and appendices.

D. J. A. MULLER

ACKNOWLEDGEMENTS

For most of my life I have been getting into places through the back door. Having failed matriculation, I got into newspaper journalism through suburban give-aways. When I was 41 I got into university because a paper I had written on freedom-of-information law was accepted as the equivalent of a BA honours thesis. Many people have helped me along the way and their contributions have all added to this thesis.

In journalism I found exemplars and guides: men like Alan Dobbyn, David Bowman and Les Wheeler on *The Sydney Morning Herald*, Creighton Burns on *The Age*, and Leon Pilpel on *The Times*, London. I also found supportive colleagues like Michael Smith who, as editor of *The Age*, not only encouraged me to go to university but arranged for the newspaper to pay my fees.

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INTRODUCTION: AIMS AND METHODS

[The press exercises] power without responsibility – the prerogative of the harlot throughout the ages.

--Rudyard Kipling

How can the media most effectively be made accountable for meeting their obligations to society without violating the core democratic value of free speech? This is the central research question for this thesis.

The media's obligations to society have two dimensions – an ethical dimension, which concerns the way the media ought to behave, and a performance dimension, which concerns the quality of media content. The case for media accountability rests on three broad justifications. First, the media have been entrusted to discharge certain public-interest functions essential to a democratic society and, by conferring this trust, society is entitled to judge whether it is being honoured. Established press theory holds that in Western liberal democracies, the media enter into an implicit compact with the societies they serve. Under this compact, the media promise that in return for the freedom to publish, they will meet certain core functional obligations: be a watchdog over government and others in positions of power; provide information on which citizens can rely in making decisions as voters and as participants in the economy; provide a forum for the exchange of information, ideas and opinions; provide entertainment; be independent enough to resist pressure from rich and powerful interests, and generally promote the public interest over private or sectional interests. The terms of this compact are embodied in the Social Responsibility theory of the press. They may be thought of as ethical or “soft” obligations, not enforceable at law, as opposed to “hard” obligations, which are. The “soft” obligations require attention to be paid to issues that are central to recurring controversies about media performance: bias, invasion of privacy, dishonest or careless presentation of information, violations of standards of public taste, suppression of material which it is not in the publisher's interest to publish, and incapacity to penetrate public-relations “spin”.

The second broad justification for demanding media accountability concerns the nature of the media's work. The literature on professional ethics and accountability reveals that in addition to two overarching considerations – the social contract and the advancement of the public interest – it is the existence of three characteristics within a profession that creates the circumstances in which society demands accountability: power, privilege and potential for harm. It will be argued that the media possess all these characteristics and that therefore it is proper that the media should submit to public accountability.

The third broad justification is that the media should confront an uncomfortable truth:

Lots of people are in the accountability-holding business – either because their jobs give them this responsibility or because they have simply assumed it. Of course, journalists believe it is their constitutional mission to hold everyone accountable.¹

And who holds the journalists accountable? Where the “soft” obligations are concerned, the answer – in Australia -- is no one in particular, but a few fragmented and disconnected agencies whose effectiveness is exposed here as severely limited. No truly external and independent mechanism of non-legal accountability exists. Instead, accountability for behaviour and performance is largely in the hands of agencies that one way or another are bound into the media industry. It will be argued that this is against the public interest. By extreme contrast, the primary form of legal accountability, the defamation laws, are oppressive. This too is against the public interest.

It is conceded that there can be overlap between the two dimensions of media accountability: publication is a function, decision-making prior to publication is a behaviour, so deciding to publish something false and going through with that decision is a failure both of function and behaviour; of both ethics and performance. Even so, it is argued that there is sufficient separation to make the distinction useful. It is easy to think of circumstances in which publication of certain information is in the public interest but where the behaviour of the media in obtaining it is unconscionable or, at the very least, questionable.

The quest for media accountability is entirely consistent with contemporary democratic development. Increasingly in democratic societies, those who wield power are expected to

¹ Robert D. Behn, *Rethinking Democratic Accountability*, Washington DC, Brookings Institution Press, 2001, p.3.

account for the way they use it, and the political science literature is replete with works devoted to the subject. Public demand for accountability has been described as “an unquenchable thirst” that cuts across the political spectrum.² The research for this thesis shows clearly that accountability by the media to the public in Australia falls well short of slaking the “unquenchable thirst”. Media performance is poorly regarded, and on questions of ethics the media and the public are significantly out of step with each other. At the same time, the mechanisms of accountability are not only weak and fragmented, but virtually invisible to the public eye.

The challenge is to find ways of exerting accountability that more adequately meet the demands of a modern democratic state without trespassing on the principle of a free press. Freedom of the press has a long lineage. It was forged in controversies spanning three hundred years in England, and given eloquent expression in the Constitution of the United States. Its existence is regarded as a *sine qua non* of a democratic state, whether or not it is embodied in a written constitutional provision. In Australia it is recognised by the common law inherited from England, augmented from time to time by case law. Processes by which the media are brought to account should not violate this freedom. Yet that cannot be an excuse to do nothing.

Scope

The scope of the thesis is confined to the three main media for news and current affairs – that is, newspapers, radio and television. As the research for this thesis shows, these are the main providers of the information which fulfil the public-interest functions of the media. For all the attention being paid to online media at the time this research was carried out, only two per cent of voters surveyed for this thesis relied on online sources for the kind of information relevant to the media’s public-interest functions.

Issues concerning online media are dealt with as they arise from discussions of the three main news media and form part of the discussion in the final chapter, but online media are too immature to be capable of examination within the research model adopted here. That model assumes a substantial history, established legitimacy, a considerable body of ethical literature, and entrenched mechanisms of accountability. It is by the examination of these facets of media that the thesis arrives at its conclusions. Lessons that may be applicable to online media are

² Mark H. Moore and Margaret Jane Gates, *Inspectors-General: Junkyard Dogs or Man’s Best Friend?* Russell Sage Foundation, 1986, pp.2, 1.

dealt with in that light. The scope does not extend to books, periodicals, film, video, CD or other media beyond newspapers, radio and television.

The focus is firmly on accountability for ethics and performance, and not on media effects.

The new research conducted for this thesis was confined to Australia, and much of the discussion concerns media accountability in the Australian polity. However, there is considerable comparative analysis in the literature reviews that begin the chapters about legitimacy, performance and ethics. The comparative data come from the United States, the United Kingdom, Canada and New Zealand, all English-speaking countries which share similar media traditions with Australia. There are also some comparative data from Germany on journalists' attitudes to questions of ethics and performance.

Overview

The thesis is in five parts. Part I begins by examining the issue of media legitimacy. Chapter One describes how this legitimacy took root and for what reasons. It traces the development of the "free press" ideal from the earliest days of printing, and discusses this ideal in the context of contemporary Western political life. Chapter Two traces the rising demand for accountability, and attempts to distil a workable definition of what this slippery term means when applied to the media.

Part II is devoted to an examination of the two dimensions of media accountability. Chapter Three focuses on the ethical dimension. It describes the development and content of the ethical framework within which the media work in Australia and in some similar countries, and presents new data from Australia on media ethics from the perspectives of media professionals and the public. It also presents some comparative data from the US, Britain, Germany and a benchmark Australian survey on a number of ethical issues. Chapter Four focuses on the performance dimension. It reviews the performance of the media, particularly over the past half-century, in relation to what is expected of the media under relevant press theory, and presents new data from Australia on media performance from the perspectives of media professionals and the public.

Part III presents a detailed exposition of the various non-legal "external" media accountability mechanisms that exist in Australia, that is, the mechanisms that exist outside individual media organisations, to deal with the media's "soft" or ethical obligations. Even though they are called

“external” to distinguish them from the mechanisms that exist inside individual media organisations, none of them stands completely outside the media industry. They are the Australian Broadcasting Authority (a statutory co-regulator), the Australian Press Council (funded by the newspaper publishers), and the ethics panels of the Media, Entertainment and Arts Alliance (the journalists’ trade union). There is a chapter for each which outlines its history, describes its complaints process, and analyses the type of complaints received. Each chapter also records the outcomes of these complaints, and reveals patterns which show the media’s shortcomings as perceived by complainants. Those responsible for these mechanisms are interviewed about the way they function and about their effectiveness. New data from Australia show attitudes towards these mechanisms from the perspectives of media professionals and the public.

Part IV deals with the “internal” mechanisms -- those set up inside media organisations. The three dealt with here are those of the national broadcaster, the Australian Broadcasting Corporation, and of Australia’s two main newspaper companies, Fairfax and News Ltd. Chapters Eight and Nine describe the internal accountability mechanisms and, where data exist, present patterns of complaints and their outcomes.

The examination of the accountability mechanisms is augmented by three case studies. One – in Chapter Five -- examines the cash-for-comments cases involving various commercial radio broadcasters, and concerns the ethical dimension of accountability. The second – in Chapter Eight -- examines a case of bias, and concerns the performance dimension of accountability. The third – in Chapter Nine – describes a unique experiment in Australian media accountability, the “Who Is Right?” project at *The Sydney Morning Herald*.

Part IV also considers the primary legal mechanism for holding the media to account for their “hard” or legal obligations. Chapter Ten describes and analyses the defamation laws, including contemporary attempts at reform. It discusses the so-called “chilling effect”, and canvasses the opinion of legal experts, journalists and the general public on remedies for wrongful harm to reputation.

Part V consists of conclusions and recommendations. Chapter Eleven contains the conclusions from the research and proposes a new theory of the media, more responsive to today’s demands

for accountability while not trespassing on the freedom to publish. It also proposes new institutional structures to make media accountability more effective.

Methods

The detailed methodology for the entire research is set out in Appendix A. However, it is outlined here to explain the origins of the material presented in the main body of the thesis. There were four elements to the research methodology. These were desk research, qualitative research, an online quantitative survey of journalism professionals (practitioners and students), and a quantitative survey conducted by telephone of a random sample of voters in Victoria. No comparable research has been carried out in Australia or in any of the English-speaking jurisdictions with which Australia shares its media traditions.

The desk research consisted firstly of an examination of the functioning of the three “external” mechanisms of media accountability, and secondly of the internal accountability mechanisms at three major Australian media organizations.

The qualitative research consisted of 13 in-depth interviews with:

- ❑ people responsible for administering the various complaints mechanisms, external and internal;
- ❑ individuals who had been involved in relevant occurrences, such as the “Who Is Right?” experiment at *The Sydney Morning Herald*, or the 1990s review of media ethics;
- ❑ experts in media law, and
- ❑ editors and editorial managers at the three media organizations referred to above.

Those responsible for administering the various complaints mechanisms were asked to describe how those mechanisms worked in practice, as well as to describe the process and the rationale for it.

Media law experts were asked about the interaction of the various non-legal complaints systems, about the effects on the media of the existing defamation laws in Australia, and about contemporary efforts to develop a uniform defamation law.

Editors and editorial managers were asked their views about media performance, ethics and accountability generally. They were asked to assess their own organisation's performance in these areas, and about the various accountability mechanisms existing at present.

The quantitative survey of journalism professionals, being practising journalists and journalism students, consisted of a self-completion survey delivered online to practitioners and in hard copy to students, with the concurrence of the practitioners' employers and, in the case of the students, the RMIT University. Participation was voluntary and anonymous. A self-selecting sample of 168 respondents was achieved, with controls to detect and eliminate multiple responses.

The fourth element of the research was a quantitative survey among voters in Victoria. This was conducted in May and June 2004 and consisted of a telephone survey of a stratified random sample of 300 residents of Victoria who were eligible to vote.

These two surveys had a core of common questions dealing with media performance, ethics, and accountability. They also dealt with the credibility of the media as "truth-tellers".

The qualitative and quantitative instruments are given in Appendix B, and consolidated quantitative analyses of the two surveys are given in Appendices C and D. In addition, both qualitative and quantitative data relevant to the various chapters of the thesis – particularly Chapters Three to Ten -- are presented within those chapters. It is intended that this should give the chapters a degree of cohesiveness and completeness that would be lacking otherwise.

PART I: CONCEPTS AND GROUNDING

CHAPTER ONE

HISTORY AND LEGITIMACY; THEORIES AND FUNCTIONS OF THE PRESS

There was a time when there was no mass media, when the technologies of printing and broadcasting did not exist and therefore the news media did not exist. This chapter sets out the historical development of the media, from both a technological and socio-political perspective. The former shows how the mass media became a practical possibility; the latter shows how this practical possibility was endowed with social and political legitimacy. This legitimacy provides the foundation for the idea of a free media, but for this freedom there is an important rationale. The rationale is that the freedom is necessary to enable the media to perform certain important functions for the society within which it operates. These functions differ from one society to another. The relationships between the media and society have been distilled into four basic theories of the press. Against the backdrop of the two historical perspectives, this chapter describes and discusses these theories of the press. They provide the basic criteria against which media performance is judged. The functions of the press in a democracy, as defined by theorists and practitioners, are described, and the reliance placed on the media by today's citizen is demonstrated.

Technological progress has made the mass media possible, but what gives the mass media legitimacy? Historically, the answer to that question has varied from one society to another and from one epoch to another. Three factors appear to cause the variations: the type of government, the spirit of the age, and the national temper. Thus, societies governed by dictatorial regimes legitimise media for different reasons than do societies with democratic governments; periods of political and philosophical ferment have generated media which are different from those that prevailed during periods of political and philosophical stasis; societies whose members are insecure about the stability of their civil order require media that behave differently from societies more secure in their civil peace.

In an attempt to explain these differences and to account for media legitimacy, a body of press theory has been developed over the past half-century. “Press” theory took its name from the mass medium dominant at the time the foundations of this theory-building were being laid, the early 1950s. However, the theoretical content applies with equal force to the newspaper press, radio, television and, with some modifications, to the Internet – all the main forms of news media with which this thesis deals.

The founding fathers of press theory were three academics in the United States, Fred Siebert, Theodore Peterson and Wilbur Schramm.³ They identified four theories of the press as a pair of pairs: Authoritarian and Soviet Communist theories; Libertarian and Social Responsibility theories. To understand the differences, it was necessary to look at the social systems in which the press in different societies operated; in particular it was necessary to look at certain basic beliefs and assumptions which these different societies held. These basic beliefs and assumptions concerned the nature of humankind, the nature of society and the state, the relation of individuals to the state, and the nature of knowledge and truth.⁴

Authoritarian theory, the oldest and even today perhaps the most pervasive, reflected societies which held that all persons were not equal, that some were wiser than others and whose opinions should therefore be preferred; societies in which the state was embodied in the person of the monarch or ruler; societies in which fealty to the monarch or ruler was demanded of all, and where the people were told what their rulers thought they ought to know. Soviet Communist theory shared many of these characteristics, but contained one important additional dimension: the education of the people in the “correct” truth. Thus the press in Soviet Communist countries carried the responsibility for interpreting decisions and events to the people in terms of Communist Party doctrine, admitting of no deviation from this “truth”.

The development of the second pair of theories is, to a large extent, the story of attempts by elements in Western societies to break the shackles of Authoritarian theory. And as those theories developed, the legitimisation of the media developed within them.

The task of controlling what the people ought to know was comparatively easy when the technologies of communication were confined to the unaided human voice and to the hand-

³ Fred Siebert, Theodore Peterson and Wilbur Schramm, *Four Theories of the Press*, Chicago, University of Illinois Press, 1956.

⁴ *ibid.* p.2.

written word. It was made much harder by the invention of movable and re-usable type, the first step in what we have come to know as printing. This invention, by Johannes Gutenberg in Mainz in the 1440s, consisted of casting individual letters of the alphabet in a durable and re-usable material such as bronze. These could be composed into any combination to form words, and could be re-used indefinitely. With printing, as William Ernest Hocking has pointed out, “a single private voice could be carried to a nation”.⁵

The authorities in Europe were quick to see the potentialities, and swift to act. The papacy issued a Bull against unlicensed printing, and in England the Tudor monarchs instituted a system of licensing that was to last 150 years. In the words of Dr Henry Hallam⁶:

In the reign of Henry VIII, when the political importance of the art of printing, especially in the great question of the Reformation, began to be apprehended, it was thought necessary to assume absolute control over it, partly by the king’s general prerogative and still more by virtue of his ecclesiastical supremacy The privilege of keeping presses was limited to the members of the Stationers’ Company, who were bound by regulations established in the reign of Mary by the Star Chamber, for the contravention of which they incurred the speedy chastisement of that vigilant tribunal.

The exact origins of the Court of Star Chamber are lost in the mists of time, but it is known to have existed throughout the reign of the Plantagenets, to have fallen into desuetude for a time, and to have been revived with a vengeance by the Tudors. Though its writ ranged wide, it took a particularly sharp interest in cases involving “scandalous reports of persons in power, and seditious news, as offences which they were accustomed to punish”:⁷

A tribunal so vigilant and severe as that of the Star Chamber, proceeding by modes of interrogatory unknown to the common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy.

The reign of Elizabeth I marked the high point of intensity in governmental control of printing, on the three criteria used by Siebert: number and variety of controls, stringency of enforcement,

⁵ W. E. Hocking, *Freedom of the Press: A Framework of Principle*, Illinois, University of Chicago Press, 1947, p.1.

⁶ Henry Hallam, *Hallam’s History of England*, Vol III, John Murray, London, 1884, pp.2-3

⁷ Henry Hallam, *History* Vol I, op cit. p.55.

and general compliance by printers with the regulations.⁸ The rationale was that the peace of the Realm demanded the suppression of all dissenting opinion at a time of great social transformation, when feudalism was beginning to yield to new economic and political forces, the reach of the Roman Catholic Church was contracting, and new nation states were rising up.⁹

To enforce its regulations over printing, the Crown in England captured the Stationers Company, conferring on its members certain privileges and monopolies in return for stringent policing of the censorship and suppressing unlawful printers – by definition those who were not members of the Company.¹⁰ It was a system of ingenious incentives, backed by the coercive powers of the Star Chamber.

The Stuarts inherited and persevered with this oppressive regime. When Charles I was dethroned and beheaded as a consequence of the English Civil War, the Star Chamber was abolished and licensing of the press was (briefly) abolished as well. However, a flood of polemical literature on religion and politics swiftly engulfed London, and the Commonwealth Parliament of Oliver Cromwell, under pressure from the Stationers' Company to protect its monopoly, reinstated the system. It was in this climate of political and religious ferment that John Milton addressed his apologia for a free press, *Areopagitica*, to the Commonwealth Parliament in 1644 .

Milton's address is the intellectual and moral foundation for the Libertarian theory of the press. At the dawn of the Age of Enlightenment, he argued characteristically on the basis of the nobility of mankind's reason as the crowning achievement of the Creator:

Who kills a man kills a reasonable creature, God's image; but he who destroys a good book kills reason itself, kills the image of God, as it were in the eye.¹¹

And in an argument later to be echoed by John Stuart Mill, he proposed the necessity of allowing people to become acquainted with vice as well as virtue, in order to heighten their powers of discrimination:

⁸ Fred Siebert, *Freedom of the Press in England, 1476-1776*, Urbana, University of Illinois Press, 1952, pp.2, 21.

⁹ *ibid.* pp.25-26.

¹⁰ *ibid.* p.64.

¹¹ John Milton, *Areopagitica*, Isabel Rivers ed., Cambridge, Deighton, Bell & Company, 1973, p.3.

Since therefore the knowledge and survey of vice is in this world so necessary to the constituting of human virtue, and the scanning of error to the confirmation of truth, how can we more safely and with less danger scout into the regions of sin and falsity, than by reading all manner of tractates, and hearing all manner of reason? And this is the benefit which may be had of books promiscuously read.¹²

And finally a rousing declaration:

Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.¹³

The Commonwealth Parliament was unmoved. Licensing of the press remained in force and survived the Restoration, although the Court of Star Chamber was gone for good and infractions of the licensing laws were dealt with by the conventional courts. By then, however, it was proving too late to re-establish the restrictions of the early seventeenth century. Thousands of pamphlets had been produced during the upheavals of the Civil War and Restoration. The licensing system came to be regarded as an irksome relic and it was allowed by Parliament to quietly expire in 1695.

Yet this engine of government oppression left an imprint on the memory of the body politic which was to be decisive in the formation of attitudes to the development of a free press in England, the United States and ultimately Australia over the following 300 years. In England the cause of liberty of the press was taken up and continued as part of the wider intellectual restiveness which sought to secularise and broaden a polity still riven by religious disputation and wrestling with a radical shift in power from the Crown to the Commons throughout the remainder of the seventeenth century.

The escalating tensions between James II and Parliament, culminating in the King's sudden abdication in 1688, the fall of the house of Stuart and the subsequent installation of William and Mary of Orange, quickened and enlivened constitutional change. The liberal principles espoused by the Whigs and enunciated in the writings of Locke became ascendant:

¹² *ibid.* p.12.

¹³ *ibid.* p.34.

It cut up by the roots all that theory of indefeasible right, of paramount prerogative, which had put the Crown in continual opposition to the people.¹⁴

The Act of Settlement of 1701, by which the rights of the Crown were made to emanate from the Parliament and the people, was accompanied by the adoption of a Bill of Rights. That Bill, in origin and content nothing like its later namesake in the United States, made no mention of the freedom of the press, but recognised the right of individuals to protection from arbitrary power.

The English Revolution and the installation of William and Mary in place of James II was a watershed in not just the history of England but in the history of political development. Not only did it result in the acknowledgment of the supremacy of parliament over the Crown, but it accelerated the development of a party-based system of politics and gave concrete expression to the Lockean theory of popular sovereignty, in which the power of the sovereign derives from the popular will. The ascendancy of this theory had profound and widespread effects. Other sources of old authority -- principally the Church -- became the objects of debate and dissent. Individuals were encouraged to develop their own beliefs and opinions based on rational argument rather than bow to religious dogma or ancient royal prerogative. A high value came to be placed on the sovereignty of the individual. In short, the nature of the relationship between the individual and state was altered. Now it was the individual who was supreme in his independence, and it was from the collective will of individual citizens that all civil authority sprang.

Locke argued that in return for allowing his independence to be subsumed by the collective will in the form of the state, the individual was entitled to a guarantee from the state that what Locke called his "natural rights" would be protected. These "natural rights" included the right to dissent and to express dissent.

The theories of Locke and the arguments for a free press as expressed by Milton contributed to a body of thought which came to be called libertarian philosophy. It was based on the concept of Man as a rational being who could be depended upon to use his rational powers to discern truth in the contention of ideas, and whose welfare would thereby be improved. By the end of the eighteenth century, as Siebert et al report, "libertarian principles were enshrined in the

¹⁴ Henry Hallam, *History* Vol III, op. cit. p.91.

fundamental law of the land in constitutional phrases protecting freedom of speech and of the press".¹⁵

Just how far those laws went, however, was in England subject to judicial interpretation. The state of the law in eighteenth century England was stated authoritatively by William Blackstone in the following terms:

The liberty of the press is indeed essential to the nature of a free state, but this consists in laying no previous restraints upon publication and not in freedom from censure when criminal matter is published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences.

Thus the principle was enunciated that prior censorship was impermissible, but publishers must bear the consequences of what they publish.

Incrementally, the institution of the press gained ground. In 1771 the House of Commons finally yielded and allowed reporters to sit in the chamber for the purpose of reporting its proceedings, although it retained the power to prosecute them for misrepresenting or for making libellous attacks on members. Reporters sat in the "Strangers" gallery and could be removed on the motion of a single member. It was to be another 32 years before their occupancy of the back row of the Strangers' gallery achieved official recognition.¹⁶

It was left to John Stuart Mill in the nineteenth century to reinvigorate the values first enunciated by Milton, bringing to them the perspective of the Utilitarian. For Mill, free expression was only one of the rights which an individual might enjoy, conditional only on his doing no harm to another. In his essay *On Liberty*, Mill set out the case for freedom of speech in words that have resounded down the ages and retain their grandeur to the present day:

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind . . . The peculiar evil of silencing an expression of opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent

¹⁵ Siebert et al, *Four Theories*, op. cit. p.44.

¹⁶ Fred Siebert, *Freedom of the Press in England*, op.cit. p.362.

from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.¹⁷

It is in that last phrase that an echo of Milton is detectable. Yet while Mill's was a powerful polemic for free expression, by making it conditional on the harm principle he also provided justification for placing boundaries on free speech. It follows from the adoption of this condition that free speech must yield to the harm principle. On this reading, the right to free speech is not absolute but may be constrained in circumstances where harm would ensue.

These, then, were the foundation stones of libertarian press theory as they were hewn out of revolution, contention and the development of the common law in England. On the other side of the Atlantic, contemporaneously with Blackstone's delineation of the boundaries of free expression, the spirit of another revolution was gathering strength. Among its leading figures was Thomas Jefferson, whose convictions were grounded securely in the values of the Enlightenment, augmented by a belief that governments existed for the purpose of providing security and opportunity for the individual. In this he added a positive dimension to the view of the state which had prevailed in England from the late seventeenth century onward: that in addition to guaranteeing the individual citizen that there would be no encroachment on his fundamental rights, the government would create circumstances in which the individual could prosper in the way he freely chose.

His attitude to the press was that it should be left free from control of the state to perform an educative function in society, and to provide citizens with essential information. Moreover, with other leading men in the American Revolution, he had seen first-hand the power of the press to mobilise opinion among the American colonists against the British administration. It was a power the founding fathers of the US Constitution were unwilling to entrust to government. More than this, they decided the press must be positively protected from government interference, hence the First Amendment in the Bill of Rights incorporated into the Constitution:

Congress shall make no law . . . abridging the freedom of speech or of the press.

¹⁷ John Stuart Mill, *On Liberty II: On the Liberty of Thought and Discussion*, John Gray, ed., Oxford, Oxford University Press, 1991, p.21.

It can be seen, then, that the media in England derive their liberal democratic tradition and legitimacy from the constitutional settlement in the last half of the seventeenth century with the assertion by Parliament, and acceptance by the Crown, of the sovereign power of the people. From this flowed developments in the common law, articulated by Blackstone among others, of the necessity of a free press to the functioning of a free state, so that the people may obtain the political and economic information, and enjoy the exchange of opinions, essential to their exercising sovereignty over their affairs.

In various jurisdictions, this legitimacy has been enshrined legally and constitutionally. In the United States it is contained in the First Amendment to the Constitution. In England, it has become embedded in the common law. In Australia it has become embedded in custom, practice and the common law, is recognised only implicitly by the Constitution, but has been given concrete expression by the High Court.

Before 1988, most people believed there was no mention in the Australian Constitution of freedom of expression. Indeed there is little in the Constitution by way of any guarantees of individual rights and freedoms against interference by governments. This means that for the most part, these rights and freedoms are protected only to the extent that law-makers consider they ought to be protected.¹⁸

Although Australia has a written Constitution as the founding instrument of Federation, as does the United States, specific individual rights and freedoms are not dealt with in the Constitution, as in the US, but are left as residuals of the common law, as in England. Although Australian parliaments have almost unlimited powers to make laws impinging on rights and freedoms under the common law, and although the courts are obliged to apply the laws as made by the parliaments, courts approach the interpretation of legislation on the basis that the legislature does not intend its legislation to have certain effects unless it clearly says so. It is presumed, for example, that the legislature does not intend to abridge personal freedoms.¹⁹

Australia is one of the few democratic nations in the world whose Constitution does not include comprehensive guarantees of individual rights and freedoms. An attempt was made by referendum in August 1944 to amend the Constitution to include a prohibition on the Commonwealth or the States making laws “abridging the freedom of speech or of the Press”, but

¹⁸ Final Report of the Constitutional Commission, 1988, Vol I, p.447.

¹⁹ *ibid.* p.447.

it was defeated. The total vote for was 45.99% and against 54.01%. Moreover, in only two States – South Australia and Western Australia – were there majorities in favour.²⁰

The referendum had its origins in the 1942 Constitutional Convention called to discuss how Australia might prepare for post-War reconstruction. The debates at the Convention centred on economic, manpower and infrastructure issues, and the resolution at the end confined the proposed referendum questions to those issues.²¹ By the time the referendum questions were finally framed in early 1944, however, the question concerning freedom of speech had been added. There is no record of this issue having been raised at the Convention, indicating that it was an add-on to the referendum, rather than its primary purpose.

Another attempt at altering the Constitution, begun in 1988, the year of the Australian Bicentenary, also failed. This was not even put to the people. It arose from a recommendation of the Constitutional Commission established by the Federal Government to advise on revisions to the Constitution. The Commission interpreted its terms of reference as including a specific direction to “ensure that democratic rights are guaranteed”.²² It recommended the insertion of a new chapter in the Constitution, entitled Rights and Freedoms. The effect would be to:

- guarantee specified rights and freedoms against acts done by Commonwealth, State or Territory governments, and
- confer these rights and freedoms on individual persons and to give them a right to apply to the courts for remedies in the event that they believed them to have been infringed.²³

These rights and freedoms would include “freedom of thought, belief and opinion; and of expression”.²⁴

In support of these recommendations, the Commission stated: “It seemed to us that, at the very least, the rights and freedoms to be constitutionally protected should extend to those which are commonly regarded as fundamental to the maintenance of a democratic system of government and which the Australian legal system already supports, for example, freedom of expression,

²⁰ Ibid. pp.452-456.

²¹ *Record of Proceedings of the Convention on Proposed Alterations to the Commonwealth Constitution*, 1942, Canberra, Australian Government Printer, pp 152-154.

²² Final Report of the Constitutional Commission, 1988, op cit. p.1.

²³ *ibid.* p.476.

²⁴ *ibid.* p.477.

association and peaceful assembly.”²⁵ It also stated: “Freedom of expression has long been recognised as vital to the maintenance of a democratic system of government and the exercise of democratic rights.”²⁶

The Constitution has not been amended to protect freedom of expression, or any other individual right or freedom. Instead, it has fallen to the High Court of Australia to interpret the Constitution as impliedly requiring freedom of expression in order to give effect to the system of government which the Constitution explicitly lays down. The Court’s definitive interpretation on this matter was enunciated by the Full Court in deciding an appeal arising from a defamation case brought by the former Prime Minister of New Zealand, David Russell Lange, against the Australian Broadcasting Corporation, over a program concerning his fitness to hold the office of Prime Minister.²⁷ Relevant excerpts from the unanimous reasons for judgment, given by the seven judges of the High Court, are set out below:

Representative and responsible government

Sections 7 and 24 of the Constitution, read in context, require the members of the Senate and the House of Representatives to be directly chosen at periodic elections by the people of the States and of the Commonwealth respectively. This requirement embraces all that is necessary to effectuate the free election of representatives at periodic elections. What is involved in the people directly choosing their representatives at periodic elections, however, can be understood only by reference to the system of representative and responsible government to which ss 7 and 24 and other sections of the Constitution give effect.

Freedom of communication

Freedom of communication on matters of government and politics is an indispensable incident of that system of representative government which the Constitution creates by directing that the members of the House of Representatives and the Senate shall be “directly chosen by the people” of the Commonwealth and the States, respectively.

Communications concerning political or government matters between the electors and the elected representatives, between the electors and candidates for election and between the electors themselves were central to the system of representative government, as it was understood at federation. While the system of representative government for which the Constitution provides does not expressly mention freedom of communication, it can hardly be doubted, given the history

²⁵ *ibid.* p.478.

²⁶ *ibid.* p.514.

²⁷ *Lange v ABC* (1997) 189 CLR 520; 145 ALR 96.

of representative government and the holding of elections under that system prior to federation, that the elections for which the Constitution provides were intended to be free elections Furthermore, because the choice given by ss 7 and 24 must be a true choice, with an “opportunity to gain an appreciation of the available alternatives” , as Dawson J pointed out in *Australian Capital Territory Television v The Commonwealth*, legislative power cannot support an absolute denial of access by the people to relevant information about the functioning of government in Australia and about the policies of political parties and candidates for election.

That being so, ss 7 and 24, and related sections of the Constitution necessarily protect that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors. Those sections do not confer personal rights on individuals. Rather they preclude the curtailment of the protected freedom by the exercise of legislative or executive power.

If the freedom is to effectively serve the purpose of ss 7 and 24 and related sections, it cannot be confined to the election period. Most of the matters necessary to enable “the people” to make an informed choice will occur during the period between the holding of one, and the calling of the next, election. If the freedom to receive and disseminate information were confined to election periods, the electors would be deprived of the greater part of the information necessary to make an effective choice at the election.

However, the freedom is not absolute. It is limited to what is necessary for the effective operation of that system of representative and responsible government provided for by the Constitution.

The Court then re-stated a dictum it had laid down in a previous case²⁸:

It is well settled that the interpretation of a constitution such as ours is necessarily influenced by the fact that its provisions are framed in the language of the English common law and are to be read in the light of the common law’s history.

The Court continued:

In 1901, when the Constitution of the Commonwealth took effect . . . the balance that was struck between freedom of communication about government and political matters and the protection of personal reputation was thought to be consistent with the freedom that was essential and incidental to the holding of the elections and referenda for which the Constitution provided. Since

²⁸ *Cheatle v The Queen* (1993) 177 CLR 541 at 552

1901, the common law – now the common law of Australia – has had to be developed in response to changing conditions. The expansion of the franchise, the increase in literacy, the growth of modern political structures operating at both federal and State levels, and the modern development in mass communications, especially the electronic media, now demand the striking of a different balance from that which was struck in 1901.

The common law doctrine [in respect of defamation] as expounded in Australia must now be seen as imposing an unreasonable restraint on that freedom of communication, especially communication concerning government and political matters, which “the common convenience and welfare of society”²⁹ now requires. [“The common convenience and welfare of society” is the criterion the law uses for invoking the common law protection of qualified privilege.] Equally, the system of government prescribed by the Constitution would be impaired if a wider freedom for members of the public to give and to receive information concerning government and political matters were not recognised.

Accordingly, this Court should now declare that each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia. The duty to disseminate such information is simply the correlative of the interest in receiving it. The interest that each member of the Australian community has in such a discussion extends the categories of qualified privilege. Consequently, those categories must now be recognised as protecting a communication made to the public on a government or political matter.

The Court then added a test of reasonableness to be applied when defamatory material was published to a wide audience, such as the audience of a media outlet.

The full implications of the High Court decision in *Lange v ABC* will only become apparent as the inferior courts develop a body of case law based on the Lange principles. For the purposes of this thesis, however, its importance lies in the explicit inclusion by the Court of certain functions of the mass media as one of the factors driving the re-balancing of the right to freedom of expression on the one hand, and the right to protection from wrongful harm to reputation on the other. By including the media in this way, the Court gave formal recognition to the media’s role in a modern democratic society, at least in respect of its functions to provide information and a forum for debate on matters of government and politics.

²⁹ *Toogood v Spyring* (1834) 1 CM & R 181 at 193 [149 ER 1044 at 1050].

In Australia, where there is no Constitutional recognition of the role of the media, this was an important step in reinforcing the institutional legitimacy of the media. It speaks of reciprocal duties and interests among the people in the exchange of information which the Court says is essential to the operation of the system of government prescribed by the Constitution. It is impossible, at very least, to construe the judgment as excluding the media from being parties to these duties and interests. Indeed in the context of the judgment, the Court recognises the media as the agency through which, in a modern democratic state, the discharging of these duties and realisation of these interests is made possible.

It may be further argued that the inclusion of a reasonableness test for publication to wide-ranging audiences reflects an anticipation by the Court that it is through the media that these exchanges of duties and interests are most likely to be disseminated. Moreover, the reference to the direct descent of the Australian common law from that of England – taken in conjunction with what we have previously seen about the development of the common law in England as it relates to the freedom of the press – provides further evidence of the light in which the Court viewed the role of the media in contemporary Australian life.

The libertarian tradition reached its fullest flowering in England and the United States in the nineteenth century. Libertarian principles, as they applied to the media, were captured in phrases such as “the marketplace of ideas” and the “self-righting process”. These dovetailed neatly with the prevailing classical theories of economics which held that market forces were the truest guide to welfare and that, in the long run, markets tended towards equilibrium. Could it be, then, that mankind might now depend upon the principles of the free market, as applied to the exchange of ideas as well as economics, to deliver to society its optimum economic, political and philosophical welfare by a “self-righting” process in which truth was ultimately distilled from free and open contention?

Alas no. Between the middle of the nineteenth and the middle of the twentieth centuries, the Libertarian theory of the press would be revealed as starkly deficient. If anything, these deficiencies would be magnified by the characteristics of the economics of the media industry. The most serious limitation of Libertarian theory was its incapacity to provide a response to the issues of monopoly, development of thick markets in which economic activity is concentrated

where that activity is already greatest³⁰, the sharp increase in threshold costs for media enterprises, the effects of competition for sales, and the broadening of functions demanded of the media by the diversity of markets which make up a modern economy. It turned out that in the “marketplace of ideas” there was inequality, abuse of power, intellectual squalor, avid interest in scandal, an insatiable appetite for entertainment, and other debasements and distortions undreamed of by Milton, Locke and Mill.

On the matter of inequality, while every person might theoretically be free to start a newspaper, such freedom was null in the absence of the means to do so. And the means needed were considerable. Technological innovation, particularly in the nineteenth century, had led to wholesale mechanisation of the printing process. The rotary press – driven first by steam, then by electricity – and mechanised typesetting allowed publishers by the turn of the twentieth century to produce huge numbers of newspapers at speeds unimaginable in the days of Mill, much less of Milton. For instance, in 1891 *The Sydney Morning Herald* was able to produce newspapers at the rate of 24,000 copies an hour – and that was four years before the introduction of mechanical typesetting brought about a corresponding increase in the speed of pre-press processes.³¹

For all its mechanical advancement, however, printing remained extraordinarily labour-intensive. Each letter of each word still had to be cast by the manual keystroke of a typesetter, even if the letters and words were now cast into a single solid line the full width of a newspaper column. Armies of compositors were needed to assemble these lines of type into pages. A smaller force of stereotypers cast the pages into semi-circular plates and sent them on to another body of men who operated the presses.

Any industry on this scale has serious entry costs which become a barrier to new entrants, and so it was with newspapers. Moreover, established publications are usually in a financially secure enough position to see off newcomers, as another excerpt from the history of the *Herald* illustrates. In 1868 it was faced by a challenge from Samuel Bennett, who had resigned as the *Herald's* chief printer and re-launched Henry Parkes's old *Empire*, with a cover price of one penny. On the day the four-page *Empire* appeared for a penny, the eight-page *Herald* dropped

³⁰ A good example is Hollywood as the place where film-making is concentrated, and a more apt example is the classified advertising of established newspapers such as *The Sydney Morning Herald* and *The Age*.

³¹ Gavin Souter, *Company of Heralds*, Melbourne, Melbourne University Press, 1981, p.80.

its price from threepence to twopence. It took sixteen years, but eventually the *Empire* was folded into the *Evening News* and once again the Herald had the morning market to itself.³²

This nicely illustrates the point that newspaper markets – like all markets – tend to monopoly. Libertarian theorists assumed that out of a multiplicity of voices of the press, some information reaching the public would be false and some opinions unsound. Ultimately, the public could be trusted to digest the whole, discard that which was not in the public interest and accept that which served the needs of the individual and of society.³³ As media markets tend to monopoly, however, far from the multiplicity of voices on which any “self-righting process” depends, there are fewer and fewer outlets for expressing ideas. While theoretically this may not limit the range of ideas, in practice newspapers – especially in the late nineteenth and early twentieth centuries – tended to promote one set of politics views or ideals at the expense of others.

The Sydney Herald (later *The Sydney Morning Herald*) provided a good example. It declared on its masthead, “Sworn to no Master, of no Sect am I”, and (from Pope) “In moderation placing all my glory, When Tories call me Whig – and Whigs a Tory”. Yet the Herald within a few years of its founding had become relentlessly conservative. “It was against emancipists, penal reformers, Catholics and blacks,” wrote Gavin Souter in the newspaper’s official history. “Not since its early days had the *Sydney Herald* come anywhere near justifying its mottoes”.³⁴

A further consequence of the development of the media market that Libertarian theory failed to anticipate was that commercial competition is about numbers – in this case circulation and its relationship to advertising revenue. While in later years the market has become more socio-economically segmented, it remains as true now as it was a hundred years ago that circulation volume influences a newspaper’s ability to sell advertising. The result editorially is pressure to publish what sells, even if what sells bears no relationship to what Milton or Mill might have thought was elevating to people’s minds. The consequence was that in many newspaper markets much editorial content was derived from the police courts, the divorce courts and other sources of scandal.

³² *ibid.* p.66.

³³ Siebert et al, *Four Theories*, p.51.

³⁴ Gavin Souter, *Company of Heralds*, op cit. p.17.

As early as 1826, the *Monitor*, an early Sydney newspaper, specialised in what today would be called horror, sadism and human interest.³⁵ It did this by giving very detailed and gruesome accounts of the convict system, with special concentration on the floggings. “Hence it is only to be expected that we should find, as early as 1842, a complaint about the appeal of ‘sensationalism’, this time through a condemnation of the scurrility which was the outstanding characteristic of most of the early papers.”³⁶

Taken together, these developments in the way the newspaper market operated gave rise to widespread public dissatisfaction, not just in Australia but in the United States and England. They are explored in more detail in Chapter 4.

Siebert et al identified seven general themes of criticism that had been levelled at the press during the first half of the twentieth century³⁷:

1. That press owners propagated their own opinions at the expense of opposing views.
2. That subservience to big business meant advertisers controlled editorial policy and content.
3. That the press resisted social change.
4. That the press paid more attention to sensational than substantive matters.
5. That the press endangered public morals.
6. That the press invaded people’s privacy without just cause.
7. That the press was controlled by the business elites who made it hard for new entrants to get into the market.

By the 1920s it was becoming clear that the *laissez faire* principles on which the press had been founded, and which drew their intellectual strength from Libertarian theory, were discredited in the estimation of the public generally and elite opinion in particular. More than this, the world’s knowledge about itself, and about human nature, had changed in ways that thoroughly undermined the view of the world that had prevailed centuries before. Jensen³⁸ summarised it this way:

The static and timeless World-Machine of Newton had been wrecked by the idea of evolution and the dynamic concepts of modern physics. Locke’s doctrine of natural rights has been subverted

³⁵ Henry Mayer, *The Press in Australia*, Melbourne, Lansdowne Press, 1964.

³⁶ *Ibid.* p.21.

³⁷ Siebert et al, *Four Theories*, p.78.

³⁸ J. W. Jensen, “Toward a Solution to the Problem of the Freedom of the Press”, *Journalism Quarterly* Vol 27 Autumn 1950 pp.399-408.

not only by Romantic philosophy but by present-day social science. Classical *laissez-faire* economics has been repudiated by most contemporary economists (this was 30 years before their re-emergence in the 1980s). Moreover, the Miltonian doctrine of the “self-righting process” has lately become suspect.

In short, the intellectual foundations for Libertarian theory had crumbled under the combined weight of scientific progress, technological advancement, the development of consumerism, new notions about the inter-relationships of citizens and institutions, and new ideas about the role of government. A sense that change was inevitable and desirable began to be felt on both sides of the Atlantic.

In the United States in 1943 and Britain in 1947 commissions of inquiry into the press were established. Britain’s inquiry was placed in the hands of a Royal Commission. By definition, this was a Government-sponsored and Government-funded inquiry. It concentrated on examining the press as an industry, even though that was not how many of the politicians pressing for the inquiry had seen the problem.³⁹ They had been more concerned with issues such as variety of opinion, editorial freedom and partisan bias. In its findings, the commission expressed broad confidence in the way the British press worked. Its lasting contribution was to recommend the establishment of a Press Council to improve journalistic training, develop and maintain professional standards, and provide a forum for complaints about the press to be heard. The performance of this Press Council will be examined later.

By contrast, the Commission on the Freedom of the Press established in the United States was sponsored and financed by the media industry itself. The initiative came from Henry R. Luce, of Time Inc, who approached Robert M. Hutchins, Chancellor of the University of Chicago, to select a panel to conduct an inquiry into the present state and future prospects of the freedom of the press.⁴⁰ It was financed by grants of \$200,000 from Time Inc. and \$15,000 from Encyclopaedia Britannica.

The panel consisted of distinguished academics, the chairman of the Federal Reserve, a former general manager of Canada’s wartime information board, and a former Chinese ambassador to the United States. From this eclectic group emerged a report which changed the way important

³⁹ Colin Seymour-Ure, *The British Press and Broadcasting Since 1945*, 2nd ed., Oxford, Blackwell, 1996.

⁴⁰ Robert M. Hutchins, *The Commission on the Freedom of the Press: A Free and Responsible Press*, Chicago, University of Chicago Press, 1947.

elements of the Western press looked at itself, and the way Western societies looked at the press. It capitalised on the ideals some of the more enlightened and far-sighted of the American publishers such as Joseph Pulitzer who, since the turn of the century, had been arguing for a better educated and more public-service-oriented press. In doing so, it helped to create new expectations – among journalists and the public – about the role of the press and, in doing so, it led directly to the formulation of an entirely new press theory.

The most enduring and influential report of its deliberations was written by one of its members, William Ernest Hocking, who at the time was Professor of Philosophy, Emeritus, at Harvard University.⁴¹ He sowed the seed of the commission's main argument in these words:

The functions of the press, typified by the news function, are "clothed with a public interest". Whenever an institutional activity affects a general need, there is a public concern that the effect be favourable rather than detrimental. One begins to speak of the "right" of the public to have its news; this language has no necessary legal implications – a moral right lifts its head to announce an answering responsibility on the part of the institution. The support of the alleged right will depend on the depth of public concern. In the case of the press, the concern goes deep.⁴²

A reader of news as a citizen cannot be a passive reader. He must be making up his mind, as if he were responding to the voice of the press in a two-way activity. In an authoritarian society where the news and its meaning are dispensed together, this return action is not called for: the citizen echoes the interpretation of the news source. In a free community the citizen is given the wherewithal to differ; he responds with his own reflections built on his own data . . . it is an entire community of varying minds which the press must serve with its raw material for thought. The fullness and unbent integrity of the news thus becomes a profound social concern . . . we may therefore speak of the moral right of the people to be well served by its press.

The phrase "freedom of the press" must now cover two sets of rights and not one only. With the rights of editors and publishers to express themselves there must be associated a right of the public to be served with a substantial and honest basis of fact for its judgments of public affairs.

Hocking then identified three elements of ideal press freedom, but cautioned that these were incompatible. The first was freedom *from* compulsions from whatever source; the second was freedom *for* the "achievement of those goals of press service which its own instinct of

⁴¹ William Ernest Hocking, *Freedom of the Press: A Framework of Principle*, Chicago, University of Chicago Press, 1947.

⁴² *ibid.* p.167-169.

workmanship and the requirements of the community combine to establish”; the third was the freedom *to* all who have something worth saying to the public. He went on to note the compulsions that come from within an industry which has grown to maturity, is large in scale and locked into the system of finance and industry: “It will not without effort escape the natural bias of what it is”. Similarly, “as a nation-wide press grows, providing an outlet for every voice becomes more difficult”. Thirdly: “The ancient antithesis between freedom and accountability remains a practical problem. Accountability, like subjection to law, is not necessarily a net subtraction from liberty . . . but the liberty to be carefree is gone.” He quotes a characterisation of an early idea of press freedom: “Freedom of the press means the right to be just or unjust, partisan or non-partisan, true or false, in editorial or news column”. And then he states:

Today, this former legal privilege wears the aspect of social irresponsibility.

There – stated in the negative – is the foundational reference for the development of the Social Responsibility theory of the press.⁴³ Later he expanded on this precept:

The press must know that its faults and errors have ceased to be private vagaries and have become public dangers. Its inadequacies menace the balance of public opinion. It has lost the common and ancient human liberty to be deficient in its function or to offer half-truth for the whole.

The situation approaches a dilemma. The press must remain private and free, *ergo* human and fallible; but the press dare no longer indulge in fallibility – it must supply the public need.

And he ended with a warning:

There is a point beyond which failure to realise the moral right will entail encroachment by the state upon the existing legal right.⁴⁴

The commission listed five measures of press performance which contemporary society could use:

1. Provision of “a truthful, comprehensive and intelligent account of the day’s events in a context which gives them meaning”.
2. Provision of “a forum for the exchange of comment and criticism”.

⁴³ *ibid.* pp.195-197.

⁴⁴ *ibid.* p.230.

3. Projection of “a representative picture of the constituent groups in society”.
4. The taking of responsibility for “the presentation and clarification of the goals and values of society”.
5. Provision of “full access to the day’s intelligence”.

Ringed endorsements by media proprietors of these strictures are not commonplace, but in 1984 John Fairfax & Sons Ltd drew up a set of principles to guide its conduct as a company. These included:

- Belief that newspapers, no matter who owns or controls them, exist as a service to the public. A newspaper should therefore inform the public as accurately and impartially as possible.
- The service a newspaper offers is not only to record the facts but to provide a commentary on them. Since this commentary is intended to influence the actions of those who read or hear of it, it should have no other aim but the welfare of the community.⁴⁵

CONTEMPORARY AUSTRALIAN VIEWS

For this thesis, four senior editorial executives across the three main news media of newspapers, television and radio, were asked to define what they saw as the main functions of the media in contemporary Australia, and to assess how the media performed those functions. The functions they identified very substantially echoed those enumerated by the US Commission on the Freedom of the Press more than 50 years earlier: to represent the public interest, to provide essential information about what was going on in society, to hold powerful people and institutions to account, to provide entertainment. One editor also stated that an important function was to provide a voice for those who otherwise would not be heard. Another editor said it was also essential to crusade for the righting of social wrongs.

Question

In your opinion, what are the two or three key functions of the news media in contemporary Australia?

The media is a sort of go-between, represents the public’s interest, and is responsible for getting to them information that they should have. The community can’t go and find

⁴⁵ Gavin Souter, *Heralds and Angels*, Melbourne, Melbourne University Press, 1991, p.89.

out the information for itself. 1.5 million people can't turn up at Parliament House to find out for themselves what's in [the Government's] latest announcement.

We do provide some level of entertainment for the public as well. Comics and crosswords and things like that are the add-ons that keep people interested, but we are primarily a vehicle of information.

-- Newspaper editorial manager

One is to hold accountable and scrutinise the powerful – politicians, business leaders, community leaders – people in positions to affect the lives of individuals and shape the direction the community takes on a whole range of issues.

The second is to inform people about the society in which they live. The “hold-up-the-mirror” thing – to give our readers a sense of what's happening in their society on issues that matter to them.

The third is, good media gives a voice to the powerless. I don't think we do enough of that – not just [us] but the media in general doesn't do enough of that. The media did more of that 25 years ago.

-- Newspaper editor

To inform – having a heavy investment in news and information.

To entertain. And the distinction between those two functions is becoming significantly blurred.

And there is a real sense that out of those two functions – and especially the first one – the media is an avenue of accountability for those in public office, and those who operate commercially who rely on public support for the success of their commercial operations.

-- Television and radio editorial manager

To bring people the news they want and need to know about in a fair and accurate manner, and to be in touch with community standards on matters of taste and relevance.

To be sometimes entertaining. It not just chasing down crooks and reporting courts. An editor's responsibility is to produce something every day that people want to pick up and read. People want that bit of light and shade.

We have a huge responsibility to keep a lot of the bastards honest. If we don't do that, no one else will. You've only got to look at the situation in Victoria now with police corruption.

You need a number of your journalists to be crusading journalists who will look for things that are wrong, and papers have a huge responsibility to aggressively campaign to correct what are clearly injustices. Things like the proliferation of poker machines. If we didn't say anything about it, no one else would.

-- Newspaper editor

Empirical evidence of this central role played by the press in the political life of the nation can be found in data from the Australian Electoral Studies carried out by Clive Bean, David Gow and Ian McAllister, and sourced from the Social Science Data Archive at The Australian National University. These cross-sectional surveys are based on stratified random samples of voters drawn from the Australian electoral roll. In studying the 1998 federal election, it distributed 3,502 self-completion questionnaires in the week following the election, and collated 1,897 cases. Section A of the questionnaire asked voters about their level of attention to the campaign in newspapers, radio and TV.

The AES data demonstrated the extent to which voters relied on the main news media of television, newspapers and radio for election information. In respect of television election coverage:

- 32.3% of voters paid “a good deal of attention”;
- 44.1% paid “some attention”, and
- 23.6% paid “little or no” attention to the campaign through television.

In respect of newspapers:

- 21.2% of voters paid “a good deal of attention”;
- 41.6% paid “some attention”, and
- 37.3% paid “little or no attention” to the campaign through newspapers

In respect of radio:

- 17.5% paid “a good deal of attention”,
- 32.6% paid “some attention”, and
- 50.0% paid “little or no attention” to the campaign through radio.

These data clearly show that the public’s reliance on media for information about elections is a concrete reality and not a speculative abstraction. They demonstrate – if such were needed – the reality of the role of the media in a modern democratic state, the necessity for the media to discharge their obligations and responsibilities to society in this respect, and the right of the community to demand an accounting for how well they do so. In other words, it gives concrete meaning to the concept of the Social Responsibility theory of the press, and provides a powerful basis for requiring a coherent and comprehensive system of media accountability.

The extent of the Australian citizen’s reliance on the media as their main source of news more generally was demonstrated by the findings of a survey conducted by the author among voters in

the State of Victoria for this thesis in 2004. They were asked: *Where do you **mainly** get your news?* As Table 1.1 shows, 99 per cent of voters in Victoria said they relied on the media as their main source of news. Only one per cent said they did not use the media as their main source of news. More people turned to television as their main source of news than to any other medium, followed by newspapers and radio. A very small proportion – two per cent – used the Internet as their main source of news.

Table 1.1: MAIN SOURCE OF NEWS

Source	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Television	46	46	45	46	45	100	--	--
Newspaper	30	36	24	26	40	--	--	100
Radio	22	15	28	24	14	--	100	--
The Internet	2	3	2	3	--	--	--	--
Don't use news media	1	--	1	1	1	--	--	--

CONCLUSIONS

The legitimacy of the media as part of the institutional framework of a modern democracy is beyond question. It has been recognised in constitutional instruments and in the development of the common law over three centuries. The media are an important part of the means by which the sovereignty of the people is given effect to. In Australia this has been recognised formally by the High Court. The media provide the means through which the right of free expression is exercised, a right recognised by Locke as a “natural” right of man, and whose existence is essential in any society which can truly be called democratic.

The original Libertarian theory of the press has collapsed under the pressures of technological, social, economic and political change. In its place has grown up a Social Responsibility theory which posits that the media is given freedom to publish in exchange for performing at least a minimum of public-interest functions. These were set out by the US Commission on the Freedom of the Press, and broadly speaking were endorsed by contemporary editors and editorial managers in the Australian news media. Hence they provide a credible set of criteria against which to judge contemporary media performance.

CHAPTER TWO

ACCOUNTABILITY AS A CONCEPT

In modern democracies, the concept of accountability is linked to the possession of power. Those who wield power are expected to answer for how they use it. However, the term “accountability” has multiple meanings. In this chapter, the ideal of accountability is discussed, as are the many meanings given to the term. Interpretations relevant to media power are identified and discussed. Findings from the qualitative and quantitative research conducted for this thesis are presented, demonstrating contemporary thought about how the concept of accountability applies to the media, and showing the attitudes of practising journalists and editors to the concept. This chapter provides a basis for understanding what is meant by the term “media accountability”, a necessary pre-condition for analysing the means by which the media are made accountable. These analyses are carried out in subsequent chapters.

Thomas Babington Macaulay, the nineteenth-century British parliamentarian, polemicist, poet and historian, in his commentary *On Hallam's Constitutional History*, wrote:

The gallery in which the reporters sit has become a fourth estate of the realm.

The gallery to which he referred was the press gallery in the British Houses of Parliament. The estates of the realm which he was now metaphorically expanding were the seats of governmental power in nineteenth-century England: the Lords Spiritual, the Lords Temporal and the Commons. Thus Macaulay was equating the power informally acquired by the press with the power formally residing in the centre of government. It was a characteristically bold assertion that went uncontradicted in his own day and remains uncontradicted in ours. Indeed it has become a synonym for the media, seized upon by the media themselves and absorbed into the political lexicon of the English-speaking democracies.

The Fourth Estate ideal, always contested, is now under serious challenge, and the challengers pose a central question: can an institution that has become an industry credibly fulfil its political functions and its commercial ambitions at the same time? Shultz expresses it thus:

The ideal of the news media successfully fulfilling a political role that transcends its commercial obligations has been seriously battered. Its power, commercial ambitions and ethical weakness have undermined its institutional standing. There is now a widespread, and reasonable, doubt that the contemporary news media can any longer adequately fulfil the historic role the press created for itself several hundred years ago.¹

And Garnham similarly points to what he sees as an insoluble conflict:

The site of the problem is the fundamental contradiction between the economic and the political at the level of their value systems and of the social relations which those value systems require and support.²

While these are serious challenges to the concept of the Fourth Estate, they do not assert a loss of power on the part of the media, rather a perversion of the original motives for exercising that power. The power itself remains. As Tiffen put it:

(The news media) are the central forum of political communication in modern liberal democracies.³

Increasingly in democratic societies, those who wield power are expected to account for the way they use it. Moore and Gates, for example, write of “the public’s demand for accountability”, of “an unquenchable thirst for accountability that cuts across the political spectrum”.⁴ Scholars and practitioners freely use the term to refer to answerability for one’s actions or behaviour.⁵

At the root of this movement towards greater accountability is a loss of faith in institutions, giving rise to public suspicions that power is abused and the public interest is ignored:

¹ Julianne Schultz, *Reviving the Fourth Estate*, Cambridge, Cambridge University Press, 1998, p.1.

² Nicholas Garnham, “The Media and the Public Sphere”, *Intermedia* 14 (1) pp.28-33.

³ Rodney Tiffen, *News & Power*, Sydney, Allen & Unwin, 1989, p.178.

⁴ Mark H. Moore and Margaret Jane Gates, *Inspectors-General: Junkyard Dogs or Man’s Best Friend?* Russell Sage Foundation, 1986, pp.2, 1.

⁵ Barbara S. Romzek and Melvin J. Dubnick, “Accountability in the Public Sector: Lessons from the Challenger Tragedy”, *Public Administration Review*, vol. 47, no. 3, 1987, p.228

The mounting demand for accountability is a symptom of a growing public anger at individuals and institutions that are supposed to pursue the public's interest but refuse to answer the public's questions or accept their directions.⁶

The term “accountability” is a slippery one, however, and has defied precise definition. It has been described as “that will 'o the wisp”.⁷ Mosher has written of “the obligation to be called to account”.⁸ It has come to stand as a general term for any mechanism that makes powerful institutions responsive to their particular publics.⁹ In the United States, the General Accounting Office produced a definition of which Humpty Dumpty might have been proud:

Accountability is an important yet elusive concept whose meaning and characteristics differ depending upon the context.¹⁰

However it is defined, accountability seems to have a number of identifiable ingredients. When we talk about holding people accountable, we usually mean making them take responsibility for finances, fairness, or performance.¹¹ The latter two are especially apt for media accountability. It can also mean punishment¹² and it usually connotes some form of redress or making amends.

Accountability is incomplete without effective rectification . . . There must be some means of imposing remedies, by penalizing offenders and compensating the victims.¹³

Mulgan has proposed two broad justifications to provide the rationale for accountability:

One involves the rights of prior authority or ownership, as in the central defining case of delegated power. Accountability is thus closely linked with the principles of democracy. A second justification for accountability involves the principle that those whose rights or interests are adversely affected by the actions of someone else have a right to hold that person to account for the manner in which they have been treated.¹⁴

⁶ Richard Mulgan, *Holding Power to Account: Accountability in Modern Democracies*, Basingstoke, Palgrave Macmillan, 2003, p.1.

⁷ Frederick C. Mosher, “The Changing Responsibilities and Tactics of the Federal Government”, *Public Administration Review*, vol. 40, no. 6, 1980, p.546.

⁸ *ibid.* p.1.

⁹ Richard Mulgan, *Holding Power to Account*, *op. cit.* p.8.

¹⁰ General Accounting Office, *Block Grants: Issues in Designing Accountability Provisions*, GAO/AIMD-95-226, September 1995, p.4.

¹¹ Robert D. Behn, *Rethinking Democratic Accountability*, Washington DC, Brookings Institution Press, 2001, p.6.

¹² *ibid.* p.3.

¹³ Richard Mulgan, *Holding Power to Account*, *op. cit.* p.9.

¹⁴ *ibid.* pp. 12, 13.

The means for sheeting home these responsibilities generally take the form of laws, regulations, rules or codes. But as Behn points out, it could also take the form of an agreement that focuses on mutual obligations.¹⁵

To create accountability to citizens, we need a new concept of democratic accountability: a compact of mutual, collective responsibility.

A compact is not a legal document but an ethical commitment. Responsibility involves obligations willingly accepted, not punishment imposed. Mutual entails a personal sense of duty to others, not a detached debt to some abstract rule.¹⁶

This is closer to the forms adopted for the purposes of media accountability. There is also a commercial imperative that exerts its own form of accountability, although limited:

In a competitive market, the main mechanism of responsiveness is consumer choice. Certainly a customer may hold a commercial company accountable in the case of a faulty individual purchase or contract, but he or she has no general right to demand that the private company offer services that meet his or her perceived needs. It is the power of the customer to go elsewhere (“to exit”, in the social science jargon) that has the greatest impact. Accountability, on the other hand, is a “voice” rather than an “exit” option, in which principals not only have the right to leave but also to voice complaints and seek redress.¹⁷

It is this form of consumer-based accountability that media organisations most readily refer to when asked about the ways in which they are accountable to the public. This is illustrated by the statements of some of the editorial executives interviewed for this thesis and reported below.

Mulgan has constructed a useful model for thinking about accountability, which he considers to have four dimensions: (i) who are accountable? (ii) to whom are they accountable? (iii) for what are they accountable? (iv) how are they accountable?¹⁸ The research for this thesis is directed at answering numbers (ii), (iii) and (iv), the answer to (i) being the media and the journalists who work for it. The research addresses two further questions: How effective are the existing mechanisms of media accountability, and how might they be improved?

¹⁵ Robert D. Behn, *Rethinking Democratic Accountability*, op.cit. pp.122-123.

¹⁶ *ibid.* p.125.

¹⁷ Richard Mulgan, *Holding Power to Account*, op. cit. p.21.

¹⁸ *ibid.* p.22.

Some of these questions were put to Paul Chadwick, journalist-turned-lawyer, Privacy Commissioner for Victoria, and a member of the committee that revised the MEAA code of ethics in 1993-95.¹⁹ Given his extensive background in the development of media ethics, and his role as an informal mentor to journalists on questions of ethics, it was considered that his views about media accountability would provide a reliable indicator of contemporary professional thinking in this area.

Q: To whom do [journalists] owe accountability?

There are four groups: readers, the subjects (the people about whom articles are published), colleagues, and the employer.

Q: What should journalists be held accountable for?

Fidelity to truth – recognizing, of course, what a contested notion that is, truth. But it seems better than fidelity to accuracy or something like that.

Respect for persons. It comes up in all sorts of ways in the various codes of ethics. That's a way to collect up those parts of codes that deal with things like privacy or respect for someone in grief or whatever it might be.

And the third one is their own unacknowledged hypocrisies, by which I mean the clauses one finds in codes of ethics arguing against conflict of interest etcetera. There is a fundamental hypocrisy because journalism is purporting to extract disclosures about conflict, or make them against the holder of a public office or whatever it is. In Melbourne at the moment we have legal proceedings looking into the details of a newspaper's relationship with one of its main advertising groups. [This was a reference to a case in which The Age's relationship with the real estate industry was scrutinized as a by-product of a wage-discrimination case brought by one of its female journalists.]

I've got no problem with human frailty. There will be hypocrisy. It's about unacknowledged hypocrisy. You're accountable for that.

Chadwick offered these four characteristics which he considered essential to an effective accountability mechanism:

An openness to complaint. Either the media institution is open to people complaining, or they're not.

Some process for the journalist to give an explanation, to give an account. It's one thing to be open to complaints; it's another thing if they disappear into the ether. There must be some mechanism for an accounting to be given – to the complainant or to the readers more generally.

Where necessary, appropriate redress. Sometimes fronting up in public for the error is enough. With the correction comes the explanation for how it happened.

And transparency.

¹⁹ Interview with the author, 27 August 2004.

To enlarge on this point, he referred to the text of a paper he gave at the Privacy Issues Forum 2003, hosted by the Office of the Privacy Commissioner of New Zealand in Wellington on 28 March 2003. The relevant extracts from that paper are:

Standard privacy principles include requirements for collection notices, openness about information practices, and access rights. But in journalism, the close connection between this aspect of privacy protection – transparency – and of journalism itself, if noticed, tends to be unremarked and undervalued.

The paper then referred to the need for the exposition of the purposes and permitted uses of data.

Have I not described, in broad terms at least, much of the nuts and bolts of transparency as accountability? Is this not precisely what journalists ought to do in their service of civil society and of the electorate in any democracy?

The uses of transparency are legion. Journalism must apply it to other sources of power. But what about journalism itself? Media so often seem to be immune from the transparency, and therefore the accountability, that they can so effectively require of others.

He then continued in the interview:

Journalists wield power but they are not, on the whole, transparent about their activities.

The law I administer at the moment works on the idea of transparency in holding executive government to account for how much it surveils its citizenry.

One of the classic principles in these sorts of laws is that you should tell people why you're collecting their information and what you're going to use it for. There is a fundamental compatibility between data protection and journalism in an information age. I've tried to express that as "transparency as accountability".

One of the mechanisms by which journalists will be accountable -- and must be -- is some kind of openness about what they do in their methods: different from giving an explanation in a particular case; different from giving redress to the particular wronged party.

That kind of transparency builds up a store of credit, builds up legitimacy.

The four news executives interviewed gave answers that resembled Chadwick's in some respects but differed greatly in others. They also differed somewhat, one from another. In the view of news executives, media accountability was exacted through market mechanisms, in-house

management, the law, and external agencies such as the Australian Press Council and the Australian Broadcasting Authority. Some acknowledged that the media found the concept awkward to apply to themselves, although they had no trouble applying it to others.

First, we're accountable to our readers. If our readers don't like what we're doing they'll stop buying us. We watch little fluctuations in circulation pretty closely.

We have our own internal accountability in terms of our journalists. As employees they're accountable to the company as well as their profession. This is a relatively new concept, I guess: newspapers developing their own codes of ethics, codes of conduct. We've had ours since 1997. It's a condition of employment and forms part of our enterprise bargaining agreement. So we've taken responsibility for the conduct of our journalists.

As a company, as a publisher, we're accountable to the law and industry regulators such as the Press Council. We're accountable to corporate law, and a high level of corporate governance is expected these days and out of that flows our own internal accountability processes such as our code of conduct.

So accountability is all over the place.

Journalists primarily are accountable to their editor.

Journalists these days feel they are far more accountable than they ever were. It's not just any code by itself, or all the codes. The worry is, of course, that journalists might feel I'm bound by three things here: the Press Council, our code, and the union code.

But it is a worry that all those codes put added pressure on journalists and might be discouraging aggressive journalism.

One of the big fears is not just the codes but the way the law is evolving. We've now got to develop a code to get us an exemption from the Commonwealth privacy legislation.

We're under pressure all the time from various interest groups like the suicide prevention people. They want us to develop guidelines for reporting suicide. Other groups want us to have guidelines for reporting mental illness. Other groups want us to have guidelines for reporting Aboriginal affairs.

All these things are well-meaning, and probably quite valid, but coupled with defamation and contempt law and all the things we've traditionally dealt with, I really do think that [they are] putting journalists under too many perceived restrictions.

So I think the journalists know that whatever they do, they can be held accountable somewhere. And it could be serious. But I don't know that the public appreciates that. The public gets a wrong perception of journalists. They see foot-in-the-door stuff on television. They hear cash-for-comment allegations against people who shouldn't be calling themselves journalists. So the perception of the journalist is not too good to start with.

The public would probably think that they were more accountable if journalists were held to account by a more public process, but that leads to the licensing of journalists, and government interference in who can actually be a journalist. The public's best interests are served by journalists who can break down the barriers and get to the government and hold them accountable.

-- Newspaper editorial manager

[Accountability] is very difficult to define. To me it means that journalists are aware of the very special privileges they get; that they understand the impact they have on people's lives; that they therefore understand how important it is to be accurate and fair – whatever fair means. There should be discussions about what “fairness” means on newspapers. And it also means we have to be much more open than we are to criticism and feedback from the community.

It's changed slightly, but we are incredibly defensive. We're constantly asking other people to be accountable, to explain and justify what they've done, but we're very very loath to have other people ask us to justify what it is that we do and why we've done it. We're very reluctant to give people a chance to reply to things that we write. We correct mistakes, and I think there's a growing awareness that we need to do that and that it's a form of accountability that we have to embrace, rather than just grudgingly accept. But in the main, most journalists would prefer to hide away corrections.

I think it's basically because most journalists believe they're in a kind of adversarial relationship with the people they cover, and therefore they don't want to give them an inch. But you can be tough and prepared to scrutinise, and understand that my interest as a journalist is to uncover as much of the truth as I can, not to serve your interests if you're in a position of power, and at the same time be open to scrutiny, be able to say, “If I get something wrong, I'm going to correct it.” Or “I'm going to give you a right of reply.” “I'm going to give the community – which includes the people we scrutinise – a sense that we're open to criticism.”

I think that's one of the major problems that we have. One of the reasons we are held in low regard – and we know we are held in low regard – is that people see us as arrogant, closed, not open to criticism, sure that we know everything. We actually aren't those things, but we all do it. When you get a complaint, our first instinct is, how do we minimise this, rather than, what's the substance of this, and how do we deal with it. Now, I think there's less of that than perhaps five or six years ago, but it's still a huge cultural issue.

There are times when we have to publish three or four corrections on a day. I get people saying, “Let's not do them all at once. Let's have one today and one tomorrow, and do we really have to put them in the same spot all the time? How about we put them at the bottom of this article where no one's going to read it?”

I think we improve our credibility if we're open and forthright about acknowledging mistakes.

-- Newspaper editor

There's an accountability to the audience. If people aren't doing a reasonable job, no one will watch or listen or read. So there's accountability at that pragmatic level.

But because of the importance of the task – it's not just like opening a chain of fast-food stores – there is a public good that has to be addressed as well, whether you're a public or a commercial operator. And the way in which that public good is reviewed varies according to the different sectors.

-- Editorial manager, broadcasting

There's a lot more scrutiny of the media these days. The old days when people used to go out and steal photographs . . . the media ethically used to get away with a lot of things that I don't think you'd get away with these days because of the scrutiny and because of community standards. We monitor that very closely internally as well. We all know where the line is. We have in writing a professional code of practice and people have been dismissed for breaches. We had a

case a few years ago where somebody knowingly distorted something, and the person was dismissed.

There could be nothing worse in a newspaper than to know that an editor would allow people to do something dishonest or to breach what is commonsense-ethically right. It would create a culture which to most journalists would be unacceptable.

-- Newspaper editor

Practising journalists and students of journalism also wrestle with the concept of accountability as it applies to their work. Les Carlyon, a distinguished former editor of *The Age*, member of the Australian Press Council, and winner of the Golden Walkley Award for excellence in journalism in 2005, sees many avenues of accountability, many of them reflected in the statements above by contemporary editors:

The press is sometimes said to be not accountable. It accounts most of all to those people the media theorists so often forget: the readers . . . No one ever continued to produce garbage unless someone else was prepared to pay for it. And the press is also accountable in exactly the same way as the ordinary citizen: to the courts, to parliament, to its professional bodies.²⁰

Establishing an effective and credible accountability mechanism for the media as a uniquely difficult exercise, as Newton et al recognised:

Journalists must find their own way, without formal professional or government regulation or licensing.²¹

In the quantitative survey of journalists and journalism students, respondents were asked this open-ended question: *What does the term "media accountability" mean to you?*

Nearly every one of the 168 respondents provided substantial answers to this question, and they are analysed here using Mulgan's model: to whom do the media owe accountability, and for what? Many respondents gave multiple answers. Table 2.1 shows the number of mentions for each entity or interest to whom journalists said the media owed accountability. It should be emphasised that this does not imply a ranking of importance: that was not asked for. It shows the incidence of mentions for each entity or interest. This tells us something about the breadth of

²⁰ Les Carlyon, *Paper Chase: The Press Under Examination*, The Herald & Weekly Times Ltd, Melbourne, 1982, p.6.

²¹ Lisa Newton, Louis Hodges and Susan Keith, *Journal of Mass Media Ethics* Vol 19 (3-4) P.166.

acceptance among journalism professionals that they owe accountability to these various entities or interests.

Table 2.1 JOURNALISM PROFESSIONALS' STATEMENTS IDENTIFYING THOSE TO WHOM THE MEDIA OWE ACCOUNTABILITY

Entity or interest to whom accountability is owed	Number of mentions
Unspecified but implies "the public"	55
The public	44
The reader/audience	18
The craft/industry/codes	12
The people reported about	11
The editor/employer/shareholder	8
The law	3
Regulators	2
Sales	1

It can be seen that by far the broadest consensus among journalism professionals is that the media owe accountability to the public in a general sense, followed by a subset of the public, being the reader or audience. Clearly some interpreted the term "media accountability" to mean "journalists' accountability", because they differentiated between the media and "the editor/employers/shareholders". These entities and interests are not widely seen as those to whom the media owe accountability; neither is "the law", indicating that respondents saw accountability as a concept based largely on ethical rather than legal considerations. This is borne out by the next step in the analysis, which shows the values, behaviours and effects for which journalism professionals said the media should be held accountable. There is absolutely no mention of the law anywhere. It is clear from this that the concept of media accountability, as perceived by media professionals, is grounded in ethical duties.

Table 2.2 JOURNALISM PROFESSIONALS' STATEMENTS IDENTIFYING THE VALUES, BEHAVIOURS AND EFFECTS FOR WHICH THE MEDIA SHOULD BE HELD ACCOUNTABLE

Value, behaviour or effect	Number of mentions
Taking responsibility for what is published and for behaving ethically	55
Being fair/balanced/impartial	51
Factual accuracy/completeness	39
Being truthful	32
Transparency of behaviour/explaining actions	21
Correcting errors/making amends	20
Generally discharging a public interest function	13
Being independent of improper or irrelevant influences	13
Protecting sources	3

Again, Table 2.2 does not purport to rank the values, behaviours or effect for importance, but to show the breadth of recognition within the profession for these as matters for which the media should be held to account.

Clearly the most widely recognised value was responsibility – being prepared to answer for what is published and for behaviour associated with publication, followed by acting fairly and without conscious bias. Values associated with truth-telling – being factually accurate and conscientious about truthfulness -- were also widely recognised as matters for which the media should be held to account. This implies that the media should be held to account for inaccuracies, distortion, exaggeration, and suppression.

CONCLUSION

The media wield power equivalent almost to that of an arm of the state, although in a democracy they stand apart from the state. The notion of the media as a “fourth estate” is contested, but continues to be asserted by the media and journalists themselves as conceptually descriptive of their place in a democratic polity. Increasingly in democracies, the people are demanding accountability from those who wield power. While the term “accountability” is difficult to define, it is generally accepted to mean being answerable for one’s actions or behaviours. In the context of current democratic trends, this means being answerable to the public. These demands for increased accountability are justified on two grounds: one, because all state power in a democracy ultimately comes from the people; two, because those whose rights and interests are adversely affected by an agency of power have a right to hold that agency to account.

In a capitalist democracy, power is also derived from the sovereignty of private property. Most media outlets in Australia and similar countries are owned as private property. This rightly confers power on the owners, but it ought not make them immune from accountability for the way they exercise that power. In reality, however, it creates tension between a media organisation’s business functions and Fourth Estate functions as described earlier. This has led to the strong contesting of the Fourth Estate concept on the grounds that media organisations cannot and do not place their Fourth Estate obligations ahead of their commercial ambitions, and that indeed it usually works the other way round. Schultz has detected attempts by journalists and media organisations in Australia to reinvigorate their Fourth Estate function during the 1980s, demonstrated by a new commitment to investigative journalism of the kind exemplified by *The Age* newspaper, and the *Four Corners* and *60 Minutes* television current

affairs programs.²² However, one-third of the business journalists surveyed by her said they would not pursue a story that was potentially damaging to their employer's interests as actively as a story about an unrelated company,²³ and while most of the journalists she surveyed revealed a cherished commitment to the Fourth Estate ideal, most also recognised that their capacity to live up to this ideal was constrained by commercial realities.²⁴

The means for sheeting home accountability goes beyond the law to a compact of mutual obligations based on an ethical commitment. This accords closely with the idea of a "social contract" between the media and society which is the cornerstone of the prevailing theory underpinning media freedom. That contract imposes obligations on the media as well as conferring rights.

Mulgan's model defines the components of accountability: Who owes accountability? To whom? For what? How? The first question is answered automatically in this context: it is the media and journalists as the people who comprise the news element of the media. The second question has many answers. The editors interviewed tended to give a narrower set of answers to this than did journalists. The editors focused on readers or audiences, the law, and the regulators. The public was implied but seldom stated. The editors' primary focus was on accountability for content – for the carrying out of media functions. They saw journalists as primarily accountable to their editors and their professional codes. Implicit in this is a view that journalists are accountable to their editors for content and to their professional code of ethics for behaviour. However, some media companies have introduced codes of ethics for their own journalistic staff, and made them a condition of employment. In this way the companies have made their journalists accountable to their editors for both content and behaviour. There was a trace of siege mentality in one of the answers betrayed by the phrase "accountability is all over the place", and the equating of public accountability with the risk that this might lead to the licensing of journalists.

Nowhere did the editors mention accountability on their part to proprietors or shareholders. The commercial side of this line of accountability is generally delivered in the form of circulation or ratings. The ideological side is delivered through publishing material which is not likely to offend the proprietor and through publishing editorial opinion (though not necessarily news)

²² Julianne Schultz, *Reviving the Fourth Estate*, op. cit. pp.195-229.

²³ *ibid.* p.104.

²⁴ *ibid.* p.233.

which conforms to the proprietor's editorial policies. This line of accountability is so embedded in the psyche of editors that it can be difficult to see that it is even there. Sales and ratings are delivered by ensuring the publication of material consumers are thought to be interested in, and by not publishing material that is likely to bore or offend them. The happiest conjunction for an editor occurs when a story of genuine public interest is also one that is engaging and entertaining. British Royal weddings come to mind, the public interest element being that the royal personage may have some claim upon the position of Australian head of state. This is not to say a story of genuine public interest is jettisoned automatically if it is not engaging or entertaining, but ways have to be found to make it more so. It is in the "sexing-up" process that much journalistic mischief is done.

The journalists gave broader answers than the editors. They saw accountability as primarily to the public, followed by readers and audiences. Accountability to editors or employers was much less often stated.

Altogether, then, those to whom the media and journalists owe accountability might be summarised as: the general public; subsets of the public, being readers or audiences; the law; regulating agencies; shareholders and employers, and the journalist's own profession.

The third question was answered by journalists quite clearly. The media were accountable for taking responsibility for what was published and for behaviours associated with publication; for being fair, and for being truthful. Behaviours associated with publication raise ethical questions such as taking reasonable steps to establish the facts, believing what is published to be true, avoiding unjustified intrusions on privacy, and being honest in obtaining access and information.

Journalists demonstrated that they recognised the essential values and behaviours identified by Chadwick as matters for which the media should be held accountable: being prepared to take responsibility, to be open to scrutiny, to admit mistakes and to have transparency of process. However, it is one thing for the profession to state in-principle recognition of these values, and quite another to have effective mechanisms for bringing the profession to account for failures in practice. Accountability is incomplete without effective means of rectification, including penalties and compensation. The effectiveness or otherwise of the present mechanisms is discussed in Chapters Five to Nine.

PART II: THE DIMENSIONS OF MEDIA

ACCOUNTABILITY

CHAPTER THREE

MEDIA ETHICS

This chapter sets out the grounds upon which the public may demand accountability by the media, and why an ethics-based approach is necessary. It recounts the history of the development of media ethics in Australia, examines codes of ethics and practice in a number of countries which provide the basis for existing systems of accountability, and discusses their content and limitations. The attitudes of Australian journalists and members of the public on a range of ethical issues are reported, as are those of four editors and editorial managers in major Australian publishing and broadcasting organisations. This research reveals considerable differences in attitudes between media professionals and the public, suggesting an explanation for the low esteem in which the profession is held.

As an instrument of accountability, the law is never enough. Its rigidities (conceptual and procedural), its expense, slowness, complexity, and propensity to deliver unpredictable and coarse-grained outcomes make it a last resort for most ordinary people seeking redress. Above all it is limited in scope. What might be reckless, unfair, unreasonable or invasive may not be illegal or actionable but may be morally reprehensible. It follows that where accountability is required, the means for achieving it must extend beyond the law. As Griffith noted:

A properly functioning profession conforms to a sort of mini social contract. Under its terms, considerable autonomous control over entry into, and standards of work in, the profession is left to the group collectively. But this is taken to reflect the presumption the associated professionals will see to it that the group's professional expertise will be made available to, and be used in the best

interests of, those who need it, and not merely in the personal interests of the professionals themselves.¹

A survey of the literature on professional ethics and accountability reveals that in addition to these two overarching considerations – the “social contract” and the advancement of the public interest – it is the existence of three characteristics within a profession that creates the circumstances in which society demands accountability:

1. Power.
2. Privilege.
3. Potential for harm.

Thus, where a profession exercises power, is given or acquires certain privileges in order to operate, and where the work of the profession contains the potential for harm, society will require that the profession be publicly accountable for its performance and behaviour at an ethical as well as legal level.

Looking in turn at the two overarching considerations and at these three characteristics, it can be seen that the profession of journalism clearly exhibits all the qualifications necessary to be subject to public demands for accountability.

First, it has been established at least since the report of the United States Commission on the Freedom of the Press in 1947², and is acknowledged by editors and journalists today, that a social contract does exist between the community and the media. The terms of this contract are different from those proposed by Griffith (above), but no less powerful. The media are given the right to publish. To protect this right they are shielded from certain restraints, such as prior censorship. In particular their freedom to publish is commonly protected either constitutionally or by common law, subject to this being balanced against other rights and interests: for example, the interest of individuals in not having their reputations wrongly besmirched, and the interest of society in having the administration of justice proceed without improper influence. In return, the media will perform certain duties, including providing citizens with information on which to base judgments about the conduct of society and with which to participate in the economy;

¹ William B. Griffith, “*Ethics and the Academic Professionals: Some Open Problems and a New Approach*”, *Business and Professional Ethics Journal* No 1, Spring 1982, pp.75-95.

² Robert M. Hutchins, *The Commission on the Freedom of the Press*, op.cit.

keeping watch on what those in power do; providing a forum for the exchange of ideas and opinions, and providing a source of entertainment.

Second, it is also widely recognised that the media and the journalists who work for them, carry an obligation to work in the public interest. Tiffen captures the essence of the public-interest nature of the media:

The mass media are the central political arena of contemporary liberal democracies, the link between the governors and the governed.³

The public-interest function was also famously articulated by C. P. Scott, who was both proprietor and editor of *The Manchester Guardian* (now *The Guardian*, London) in the first half of the twentieth century:

A newspaper has two sides to it. It is a business, like any other, and has to pay in the material sense, in order to live. But it is much more than a business; it is an institution; it reflects and it influences the life of a whole community; it may affect even wider destinies. It is, in its way, an instrument of government. . . It has, therefore, a moral as well as a material existence.⁴

The fact that the media also play a far less noble function of mass entertainment characterised by junk journalism and a chase for sales and ratings in no way derogates from the existence of this public-interest function. The two functions co-exist, giving effect to Scott's dictum that the media have a material as well as a moral existence. The existence of the less noble function ought not to provide an excuse to abandon recognition of the public-interest function: to do so allows the media to escape one important reason for submitting to public accountability.

As has been noted, in addition to these two overarching considerations of the social contract and its public-interest function, there are three other characteristics of the media that provide the basis for legitimate public demands that the media be accountable. The first of these is power. What is the nature of this power? C. P. Scott provided part of the answer when he wrote of the capacity of a newspaper to influence to the life of a whole community and even of "larger destinies". He likened it to an instrument of government.⁵ Of greatest significance, however, is

³ Rodney Tiffen, *The Media and Democracy: Reclaiming an Intellectual Agenda*, in *Not Just Another Business*, Julianne Shultz ed., Sydney, Pluto Press, 1994, p.57.

⁴ Frederick Muller, *The Making of the Manchester Guardian*, London, 1946.

⁵ Op.cit.

the media's power to choose who or what shall be presented to the world, and how the person or the event is portrayed. As Richards put it:

In a real sense, journalists have the power to make or break an individual in terms of public perceptions of that individual.⁶

In this way, as the source relied on by nearly everyone for news and information⁷, it has the power to create the reality within which its audiences make judgments about people or events reported upon. Equally, it has the power to deny people news and information about people and events it chooses not to report on. It can therefore close out people and events from the reality it creates. Since nearly everyone relies on the media for information about what is going on in the world at large, the reality created by the media is a comprehensive one.

So the greatest powers of the media may be summed up as having three main elements: to influence the course of events; to decide what shall and shall not be conveyed to the population, and to determine how a person or an event is presented to the world.

There are many nuances, however, in the way these levers of power are used, as Tiffen recognised:

News organisations are often both vulnerable and constrained in their interactions with the environment from which they gather their news. Precisely because the media are the central forum for political communication they have become a key arena for political conflict. Access to news coverage is a crucial weapon in winning public support and the appearance of public support. Disclosure of information and "image" considerations have become a more central part of the political process and one which is played more calculatingly and intensely.⁸

The implications of this for the media are that they are more likely to be the tools, witting or unwitting, of those whom they report, and that getting at the facts is harder than ever.

Between the mass media and their audiences there is also a great asymmetry of power. The concentration of media ownership into a few very large corporate conglomerates has made this

⁶ Ian Richards, *Quagmires and Quandaries: Exploring Journalism Ethics*, UNSW Press, Sydney, 2005, p.27.

⁷ For a measure of this reliance see data in Appendix D.

⁸ Rodney Tiffen, *News & Power*, op. cit. pp.4-5.

assymetry even greater than before. In Australia, for example, Rupert Murdoch's News Ltd controls 67.8 per cent of the Monday-to-Friday capital city daily newspaper circulation, and Fairfax controls another 21.6 per cent.⁹ The effect is that it is extremely difficult for an individual or even for a group of individuals to hold media organisations to account in a one-on-one situation. High threshold costs for entry into the media market buttress this concentration of power by making it difficult for new competitors to enter the field. This has not been materially altered by the emergence of online media so far. Only two per cent of Australians rely on the Internet as their main source of news¹⁰, and even here the existing major media corporations have a significant presence.¹¹ Where such an assymetry of power exists, society as a whole has a stronger collective entitlement to hold the profession concerned to account.

The second characteristic of a profession which provides the basis for the community's demanding accountability is privilege. There are few formal privileges enjoyed by the media in Australia, but nonetheless there are some. Primarily the privilege they enjoy is that of access, granted as representatives of the people. Thus special provision is made to accommodate the media in the major institutions of Parliament, the courts and other tribunals. In reporting the proceedings of these institutions, the media are generally protected from actions for defamation by what is called qualified privilege (protected report). This means that they cannot be successfully sued over a fair and accurate report of these proceedings. In Australia they are also protected by qualified privilege (freedom of political communication), a comparatively recent development in Australian jurisprudence dealt with in more detail elsewhere in this thesis.¹² Their impregnable market strength, as described above, has also conferred on them a further privilege of exclusivity, and diluted the commercial dimension of accountability.

The third characteristic which provides the basis for the community's demand for accountability is the potential of the media to cause harm. The most obvious and common harm is harm to reputation, for which the media are accountable at law. The media are also accountable at law for harm done to the administration of justice through contempt of court by publishing prejudicial material about a case in progress. But there are other potential harms the prevention of which tend to rest upon ethical, rather than legal, constraints. One is harm done by invasion of privacy. Another is harm to public safety by, for instance, getting in the way of emergency

⁹ Communications Law Centre, *Communications Update* No 168, Sydney, University of New South Wales, June 2005, p.41.

¹⁰ Survey of voters in Victoria carried out for this thesis. Full data in Appendix 2.

¹¹ See for example Ninemsn (Consolidated Press Holdings) and Fairfax Online (Fairfax).

¹² See *Lange v ABC* in Chapters 1 and 10.

services at scenes of disasters, or communicating with hostage-takers during an armed siege. Another is harm to public order by creating panic in the population, for example by broadcasting a hoax calamity. Another is by playing into the hands of extortioners by publicising their demands. These potential harms are real and, with the exception of the panic-inducing hoax, occasions for all them have occurred in Australia. In some cases the media have done harm and in others they have restrained themselves and not done harm. Goodwin and Smith make the point:

This potential for harm is part and parcel of journalism. In covering the news and exposing the problems of the community, journalists will never be able to eliminate entirely intrusions into privacy. They can hold themselves to the standard that these intrusions serve some good other than giving readers a good tale to go with their morning coffee.¹³

Because journalism as a profession meets all these criteria, it follows that the community is entitled to demand accountability from its practitioners. In the absence of a comprehensive set of media-specific laws to do so, however, ethical codes are required to extend the field of accountability beyond the illegal or the actionable to a much wider range of potential wrongs; or, to put it positively, to create a set of behavioural norms conformity with which will mean that the media fully keeps its side of the social contract.

In Australia the print media are entirely self-regulating, and the electronic media are “co-regulated” in a system supervised by a statutory agency, the Australian Broadcasting Authority. These systems both rest on a set of codes, variously called a code of ethics, codes of practice, or principles. They deal mainly with standards of conduct and behaviour. The codes for broadcasting also deal to some extent with issues of program content. As Emerson pointed out:

It is not enough merely to formulate broad principles or simply to incorporate them in general rules of law. It is necessary to develop a framework of doctrines, practices and institutions which will take into account the actual forces at work, and make possible the realistic achievement of the objectives sought.¹⁴

And Meyer put the case for codes in these terms, pointing up the necessity for codes to apply to management as well as staff:

¹³ Jene Goodwin and Ron F. Smith, *Groping for Ethics in Journalism*, 3rd ed, Ames, Iowa, Iowa State University Press, 1983, p.280.

¹⁴ Thomas I. Emerson, *The System of Freedom of Expression*, New York, Random House, 1970, p.4.

Communities with explicit functions cannot be maintained unless they attach specific rebukes to failure to meet obligations. People cannot legitimately be called to account without a visible process that applies agreed-on principles to determine innocence or guilt. Written codes force corporate leaders to declare and explain themselves and allow fair negotiation of claims. Surprises are less frequent and quixotic, enforcement more foreseeable if codes are taken from the inscrutable reserves of managers' psyches, and placed parsimoniously into a document that all can read and criticise.¹⁵

The point was reinforced by Goodwin and Smith:

Abe Rosenthal of *The New York Times* noted that codes applied only to journalists and not media managers, whose decisions often shape a news organisation's ability to cover the news. If journalism is going to have a code of ethics, they should be thorough and apply to all people involved in news processing, including managers and owners, Rosenthal argued.¹⁶

The desirability of codes instead of more heavy-handed instruments was argued by Professor Claude-Jean Bertrand, of the Institute Francais de Presse, University of Paris, in a foreword to the work of Christians et al:

As I see it, there are three avenues for inciting media professionals to be ethical. The oldest is external physical pressure by laws police and courts. These agents of pressure should be used as little as possible, but are indispensable to maintaining freedom for all.

The second avenue is internal moral pressure from the individual's conscience. It should be used as much as possible, but it is a weak weapon in these days of big media.

The third avenue is I believe the most reliable and acceptable: external moral pressure, coming from the public, preferably in institutionalised form, such as media ombudsmen, press councils, critical reviews and a score of other accountability systems.

There are fewer than 100 ombudsmen in the world for tens of thousands of media. A major reason for this under-development is the ideology that often under-girds traditional media ethics:

¹⁵ Philip Meyer, *Ethical Journalism*, New York, Longman, 1987, p.136.

¹⁶ *ibid.* p.37

the ideal of rampant individualism and of an unregulated market. This ideology prevents media and media people from being truly ethical.¹⁷

Formulating and enforcing an ethics system for the media has not been easy. The rushed and multifarious nature of the media's work, the way in which the idea of a free press developed, and particularly the culture of the media from its earliest days have all added to the complexity of the task. Christians *et al* capture the essence of the cultural influence:

Individual autonomy's most pointed expression in the press is unconditional freedom for individual practitioners. Sociologically speaking, a fierce independence, freedom from external controls, insistence on rights, and cries of censorship at any hint of regulation are conventions carved into the culture of media professionals.

Self-imposed regulations, internal constraints through morally enlightened practitioners, these voluntary curbs most news people will accept.

A few government regulations may be tolerated reluctantly, but the free press doctrine is considered the very lifeblood of an effective news system.

Individual autonomy, we have argued, has been the primary feature of the Western social environment since the Enlightenment, and the animating force in the culture of the news profession as well. The history of formal journalism ethics, developed as it was within this professional and social context, also imbibed the individualistic spirit.¹⁸

Keeble recognised the effect of the way journalists' work is organised as militating against a more ethical approach:

Ethics implies freedom to choose, but journalists are constrained by so many factors – proprietors, fear, the law, time and space to name but a few. There is much talk about the freedom of the press but the freedom of the individual journalist, particularly the young trainee, in any media operation is restricted by vested interest, routinised working practices, and bureaucratic, hierarchical structures.¹⁹

¹⁷ Clifford G. Christians, John P. Ferre, P. Mark Fackler, *Good news: Social Ethics and the Press*, Oxford, Oxford University Press, 1993.

¹⁸ *ibid.* pp.30-32.

¹⁹ Richard Keeble, *Ethics for Journalists*, London, Routledge, 2001, p.2.

Corporate culture also plays a part:

At any given moment in most major corporations one can find a vast array of vocabularies of motive and accounts to explain or excuse or justify expedient action. This is also the case in journalism, where the much-acclaimed “public right to know” is only the best-known public justification: there are many others, ranging from the pressure of meeting deadlines to the “need” to get a story and publish it ahead of any competitors.²⁰

The inherent tensions between the public-interest and commercial functions of the media are also an important factor, as recognised by Sampford and Lui in their study of Australian journalistic practice.²¹ And it was the focus of a sharp critique by Schaeffer²², who accused the media of failing to provide adequate coverage of three major issues – sexual abuse by Catholic priests, the collapse of the US corporation Enron, and the threat to national security posed by the growth of radical Islam. The reason, in her words:

Papers, hungry for profits and readers, refrain from giving the public the information it needs.

The struggle to implement and enforce a system of media ethics has a long history in Australia. The *Victorian Review* in the 1860s advocated the establishment of a university Chair in Journalism “to train up a race of journalists impressed with the responsibility of the profession they embraced”²³ In his history written to mark the 75th anniversary of the Australian Journalists’ Association, Clem Lloyd described the broad condition of the Australian newspaper industry – already almost 90 years old – in the 1890s: “Irregular entry, lack of formal training, absence of professional standards, existence of strong craft unions, paternalistic proprietors and editors”. Yet there were “primal stirrings” among journalists, “the first tentative steps towards professional organisation”.

In the early years after Federation, isolated and uncoordinated attempts were made in different States to create reporters’ associations, journalists’ institutes and press clubs. This provoked extreme responses from some newspapers proprietors who were exceedingly hostile and saw in any collective action a threat to their absolute power over journalists. A journalist on *The Age*

²⁰ Ian Richards, *Quagmires and Quandaries*, op. cit. p.78.

²¹ Charles Sampford and Robyn Lui “Australian Media Ethics Regime and Ethical Risk Management”, *Journal of Mass Media Ethics* Vol 19 (2) p.86.

²² Pamela Schaeffer, “A Compromised Press Delivers Not-So-Hot News”, *Theology Today*, Vol 59 (3) p.384.

²³ Clem Lloyd, *Profession: Journalist*, Sydney, Hale & Iremonger, 1985, p.15.

who brought together his colleagues from *The Argus*, *Herald* and *Telegraph*, as well as *The Age*, to form an association was peremptorily dismissed on his return to the office.²⁴ In these actions we see the seigneurial attitude of the sovereign proprietor that was to become a recurring impediment to the development of media accountability mechanisms in Australia over most of the twentieth century.

In New South Wales an Institute of Journalism was formed in about 1890 with the objective of seeking to “elevate and dignify the profession by methods which are not inimical to the interests of newspaper proprietors”. It explicitly disavowed any characteristic of a trade union. Even so, the proprietor of an evening paper warned that any of its journalists who joined the institute would be dismissed.

The first bridge between journalists and proprietors was built by the formation of the Australian Institute of Journalists in Melbourne in 1892. Its members included David Syme, proprietor of *The Age*, and his son Herbert. It also attracted associates of high distinction such as George Higinbotham and Alfred Deakin, who had both trained as journalists before entering political life. The main objective of the institute was “to promote whatever may tend to the elevation of the status and the improvement of all members of the journalistic profession”.

It soon became obvious, however, that the real power within the newspaper industry continued to reside with individual proprietors. This was nowhere more clearly illustrated than by the negotiation of amendments to the laws of defamation in the 1890s. While the Attorney-General Isaac Isaacs made every effort to keep the institute in the loop, ultimately it was the influence of the proprietors that proved decisive. The institute busied itself instead with “social functions and nebulous activities such as the commissioning of papers on the ‘role of the press’.”²⁵ As might be expected of an organisation which included proprietors as well as staff, it at no stage contemplated an industrial role for itself. It faded away after four or five years.

The question of industrial representation was to bedevil attempts to create a professional association of journalists in Australia. Journalists were not, on the whole, militant: on the contrary, they were described as “a spineless, downtrodden crew” by the man who was to found the journalists’ trade union, Bertie Stuart Baxter Cook.²⁶ Their craven attitude to the proprietors

²⁴ *ibid.* p.31.

²⁵ *ibid.* p.39.

²⁶ *ibid.* p.13.

undermined early attempts by the Institute of Journalists to create a register from which proprietors would be encouraged to employ staff. They thought it impertinent that their institute should presume to “foist” the credentials of colleagues on the proprietors. At the same time, the lack of a substantive purpose – whether industrial or professional -- left a vacuum at the core of the various organisations that formed and faded during the first decade of the twentieth century.

There also appeared to be difficulties in deciding who in the newspaper industry should be eligible for membership. When an attempt was made to form an institute in New South Wales, it was generally agreed that proprietors, board members and managers should be excluded, but the question then arose: what about editors? Despite some opposition, they were included.²⁷

These three issues – the power of the sovereign proprietor, the lack of an agreed central purpose, and confusion about membership – militated against the successful establishment of a professional association of journalists. In Sydney in 1908 the NSW Institute made a bold attempt at tackling the issue of professional status once and for all. It established a committee to explore, among other initiatives, the establishment of a Chair of Journalism at the University of Sydney. The effort collapsed as a consequence of the committee’s own decision to oppose any mechanism for examining candidates for the purposes of statutory accreditation, saying this would infringe the right of free speech. Instead it said that the profession of journalism could best be elevated by people undertaking voluntary education through the Institute.²⁸ The report on professional status was never implemented.

In 1904 these desultory, confused and abortive efforts at establishing professional status for journalists were swept aside by the new ascendancy of industrial relations in Australian political and economic life. The momentum for this ascendancy came from the enactment of the Commonwealth Conciliation and Arbitration Act. It redressed the power imbalance between employer and employee and dramatically strengthened the collective power of trade unions. Earlier attempts at forming trade unions for journalists had foundered on fears of proprietorial reprisals but in 1909 such reprisals were outlawed. It was in this climate that Australia’s most enduring representative body for journalists was formed. The Australian Journalists’ Association was founded in 1910 with the express purpose of obtaining registration under the

²⁷ *ibid.* p.45.

²⁸ *ibid.* p.48.

Conciliation and Arbitration Act. Finally the vacuum at the centre of all previous attempts to form an association of journalists had been filled – by an industrial function.

Thereafter this was to become the AJA's *raison d'être*, its role as a professional organisation becoming increasingly attenuated. Professional standards “were monitored in an unstructured way by district committees lacking acceptable guidelines”.²⁹

A code of ethics that enshrined the fundamental precepts of professional behaviour was mooted during the 1920s and 1930s but did not materialise until after World War II. Lacking such a code, and with the failure of an AJA-sponsored system of professional education, the professional status of journalists was indeterminate, a matter of dissatisfaction to journalists and their union. According to one journalist, L. J. McBride, there was only one other profession besides journalism that allowed entry without qualification or challenge: ‘that profession is leniently described as the most ancient of all’.³⁰

The argument for a Code of Ethics was taken up in 1930 by the war historian C. E. W. Bean. He argued two main propositions: that the adoption of a code would enhance the status of journalists, and that it would buttress their resistance to outside control if they were seen to have strong internal systems for the enforcement of recognised standards of professional honour and decency.³¹ It was to be another 14 years before a uniform code for journalists in all parts of Australia was adopted by the AJA.

When the code was finally promulgated in 1944 it was ill-received by the proprietors, whose seigniorial instincts had been sapped by neither the passage of time nor the march of democracy. In an assertion of attitude rather than a declaration of policy, *The Sydney Morning Herald*, in the person of its general manager R. A. G. Henderson, stated that the introduction of such a code presupposed its necessity, which the proprietors denied:

The maintenance of ethical standards is a matter between newspapers and their readers and it cannot be considered a function of an organisation such as yours (the AJA). The responsibilities of your members do not entitle them to act as censors or to lay down standards of conduct for employers.³²

²⁹ Ibid. p.170.

³⁰ Ibid. p.171

³¹ Ibid. p.227

³² Ibid. p.229

It is instructive to note that once again the ideal of free speech is invoked – this time by the proprietors – in opposition to the establishment of professional standards, just as it had been half a century early by the journalists themselves when eschewing a formal system of professional education and accreditation. Henderson also adopted an old tactic of blurring the distinction between media performance and journalistic behaviour by speaking in one breath about “censorship” and “standards of conduct”. This response raises the question of whether the media industry and its practitioners are capable of discerning that society might require the striking of a balance between the value of free speech and the value of professional accountability – much less how that balance might be struck.

Despite the unyielding opposition of the proprietors, the code was established, even though the AJA had some difficulty in having it disseminated in newspaper offices or placed on noticeboards. In some places the union had to buy advertising space to publicise the code's existence to its members as well as the public. Ethics committees were formed to give effect to the code, but their proceedings were treated with contempt by some senior journalists, notably Brian Penton and David R. McNicoll, two of Sir Frank Packer's most trusted lieutenants at Australian Consolidated Press. Penton was editor of the *Daily Telegraph* in Sydney, and McNicoll was later to be editor-in-chief. McNicoll went so far as to mount a legal challenge to the code on the grounds that its terms were “tyrannical and oppressive”. His case was dismissed by the Full Bench of the Arbitration Court.

The division between proprietors and senior editorial managers like Penton and McNicoll on the one hand, and rank-and-file journalists on the other, over so fundamental a matter as the code of ethics illustrates another of the historical barriers to the establishment of a professional organisation for journalists in Australia: the industrial barrier. We have seen that early attempts to found a professional association of journalists evaporated for want of a core function. The failure of the Institute of Journalists in Victoria in the 1890s, when some of the proprietors joined with the journalists in membership, is in retrospect the most tragic lost opportunity of all, for it might have meant the bridging of the industrial divide at least on the issue of professional conduct. This was never going to be possible when the journalists' trade union – by definition on the opposite side of the industrial divide from the proprietors – also attempted to assert a role as setter of standards of professional conduct.

More than this, having established itself as a trade union, with the object of protecting its members' livelihoods, it is difficult to see how the AJA could be an effective upholder of professional standards when this might involve making findings against members that could set back or destroy their careers. This basic conflict of interest remains unresolved to the present day. The way the AJA has fudged it was described in droll terms by Lloyd:

Journalists have been loath to publicise action taken under the code of ethics and judicial rules. The annual reports of the district usually refer cryptically to the activities of their judiciary committees, as in this instance:

The committee dealt with two complaints this year. In the first case the member was warned to comply in future with clauses 1 and 8 of the code of ethics and was found not guilty of breaching clauses 2 and 4. The second case is not completed.

Similarly bald and uninformative reports appear from time to time in *The Journalist*.³³

The industrial priorities of the AJA were spelt out – if such was needed – by B. S. B. Cook in the 1950s: “The purpose of the AJA is to improve the salaries and conditions of members.” Lloyd commented:

If one thing can be said to dominate the historical evolution of the AJA it is the ambivalence of the union's conception of itself. Industrial and professional roles have co-existed uneasily in a persona which has never been adequately defined or even rationalised. This was neatly captured in an injunction from one district secretary to a new member:

You are now a member of the Australian Journalists' Association, a professional organisation whose main object is to protect and if possible improve the industrial well-being of its members.³⁴

The original AJA code was to survive unaltered for 40 years. It was binding upon each member of the AJA and required journalists to:

Be honest in reporting and interpreting the news;

Avoid suppression or distortion;

Respect confidences;

Avoid conflicts of interest and reject bribes;

³³ *ibid.* p237

³⁴ *ibid.* p 287

Use only fair and honest means to obtain material;
Always reveal his or her journalistic function before obtaining material, and
Do everything possible to maintain confidence in the “calling” of journalism.

Members were also enjoined not to take unfair or improper advantage of one another.³⁵

In 1984 the code was revised. By then it had been in existence for 40 years and was showing its age. It had been long criticised as too print-oriented and lacking in relevance to radio and television broadcasting. The new code emphasised its application to journalists working in electronic media and made it clear that women journalists were on the same footing as men.³⁶

The points about maintaining confidence in the calling, and not taking unfair advantage of fellow members were dropped, and four new ones added:

Avoid unnecessary emphasis on gender, race, sexual preference, religious belief, marital status or disability;
Not allow advertising or commercial considerations to influence their work;
Respect private grief and personal privacy, and
Do their utmost to correct harmful inaccuracies.³⁷

Between 1993 and 1995 another review was carried out. Behind this review lay a number of new pressures, enumerated in the report that followed.³⁸ The 1992 House of Representatives inquiry into the print media³⁹ had raised once more the spectre, although not the concrete prospect, of statutory regulation. The union also had come to see that there was inherent hypocrisy in journalists claiming to hold others to account while being insufficiently accountable themselves. It also recognised that media self-regulation had to improve if the ideal of editorial independence, and ambitions for law reform – especially in defamation – were to be advanced.

The number of points in the code was doubled to 20, and some new elements were introduced to expand upon existing ones. The substance of the new rules were:

Give people the “right of reply” where a report might be damaging to them;

³⁵ *Ethics in Journalism: Report of the Ethics Review Committee, Media, Entertainment and Arts Alliance, Australian Journalists' Association Section*, Melbourne, Melbourne University Press, 1997, Appendix 1.

³⁶ Clem Lloyd, *Profession: Journalist*, op.cit. p.236.

³⁷ *ibid.* Appendix 2.

³⁸ *Ethics in Journalism*, op.cit. p. xi.

³⁹ *Op.cit.*

Avoid use of concealed equipment;
Avoid manipulating images or soundtracks;
Avoid plagiarism;
Only quote directly what is actually said or written;
Disclose any payments made for material (“chequebook journalism”);
Do not use the journalistic position for personal gain;
Never knowingly endanger the life or safety of a person;
Exercise care when reporting about children;
Respect an accused person’s right to a fair trial, and
Take care when using anonymous material.⁴⁰

The list of 20 was condensed to 12 points covering broadly the same ground, and implemented in its condensed form. The judiciary committees of the union in its various State branches continued to be the forums in which complaints alleging breaches of the Code were heard. Their functions and record are dealt with in detail in Chapter 7.

It can be seen that certain values underpin the various versions of this code:

Honesty in obtaining and presenting material;
Fidelity to the ideal of publishing without fear or favour;
Integrity;
Respect for confidences, privacy and grief;
Transparency in dealing with people and in disclosing the origins of material, and
Concern for public safety and the welfare of the vulnerable.

In these respects, the Code of Ethics is not dissimilar to the journalistic codes developed elsewhere in the Western democracies over the latter half of the twentieth century. As Keeble has noted:

Some values are evident in codes throughout the world and they are: Fairness, separation of fact and opinion, the need for accuracy linked with the responsibility to correct errors; the deliberate distortion and suppression of information are condemned; maintaining confidentiality of sources, upholding journalists’ responsibility to guard the citizen’s freedom of expression, recognising the duty to defend the dignity and independence of the profession, protecting people’s right to privacy, respecting and seeking out the truth, struggling against censorship, avoiding discrimination on grounds of race, sexual orientation, gender, language, religion or political opinions; avoiding

⁴⁰ Ibid. Appendix 3.

conflicts of interest, particularly with respect to political and financial journalists holding shares in companies they report on.⁴¹

Nelson A. Crawford wrote a book⁴² composed largely of the text of US press associations' codes of ethics. According to one critic:

He came up with a very mixed bag indeed. All the codes of principle and conduct cited by Crawford in the 1920s seem to be couched in general terms, leaving the specific application of these broad strokes to the individual judgment of the men and women who have to make the decisions and call the shots out on the streets or at the newsroom desks.

By way of illustration, the Statement of Principles of the American Society of Newspaper Editors and the Code of Conduct of the British National Union of Journalists are provided in Appendix E. It can be seen, firstly, that the ASNE's Statement of Principles contains a preamble acknowledging the social contract discussed earlier:

The First Amendment, protecting freedom of expression from abridgment by any law, guarantees to the people through their press a constitutional right, and thereby places on newspaper people a particular responsibility. Thus journalism demands of its practitioners not only industry and knowledge but also the pursuit of a standard of integrity proportionate to the journalist's singular obligation. To this end the American Society of Newspaper Editors sets forth this Statement of Principles as a standard encouraging the highest ethical and professional performance.

The principles then espoused are headed Responsibility, Freedom of the Press, Independence, Truth and Accuracy, Impartiality, and Fair Play. Under these headings the conduct and behaviour expected of journalists are set out, and echo many of the values embodied in the AJA Code of Ethics.

The Code of Conduct of the National Union of Journalists consists of 13 points, and very closely resembles the AJA code.

For all that they express unexceptionable ethical principles, these codes are so abstract as to be disconnected from some of the real ethical dilemmas faced every day by journalists. Four large ethical issues come to mind in this regard. First, and perhaps the most surprising, is that

⁴¹ Richard Keeble, *Ethics for Journalists*, London, Routledge, 2001, p14.

⁴² Nelson A. Crawford, *The Ethics of Journalism*, New York, Alfred A Knopf, 1924.

nowhere is there any guidance about what constitutes reasonableness in relation to the act of publication. The High Court of Australia, borrowing from the New South Wales defamation laws, introduced a test of reasonableness which the media had to meet in order to successfully avail itself of the defence of qualified privilege (freedom of political communication). In essence, the components of the test were:

Was the publication reckless or did the publisher make an honest endeavour to be accurate?

Were there reasonable grounds for believing that the imputations (that is, the meanings conveyed by the information) were true?

Did the publisher take reasonable steps to verify the accuracy of the material?

Was there an absence of belief that the imputations were untrue?

Was the person defamed given an opportunity to reply?⁴³

Since these requirements are no more than good journalistic practice and in most instances should be standard procedure, they could be usefully included in a code of ethics or code of practice for the profession. Even as this was being written (May 2005) *Newsweek* magazine was exposed as having been disgracefully reckless in publishing on flimsy evidence the truth of an allegation that the Koran had been desecrated by United States officials interrogating Muslims interned in the US prison at Guantanamo Bay. The *Newsweek* publication was blamed directly for riots and protests across the Muslim world that left at least 15 people dead.

A second point of disconnection between the codes and daily practice is the absence of guidance as to what standard of proof a journalist should apply to the veracity of information in order to decide whether publication is justified. Should it be an equivalent of the standard required for a criminal conviction if criminal conduct is being alleged? Should it be an equivalent of the standard required for a civil suit to succeed if a civil wrong is alleged? Are these standards unreasonably high, given that journalists have no privileges or powers that enable them to investigate matters the way the police or a commission of inquiry can? A strong argument could be made that the standard of proof sufficient to justify publication should be the standard used by magistrates in deciding whether to send a person for trial: that is, do the facts suggest a *prima facie* case of wrongdoing? If the answer is yes, publication would be justified. Such guidance in a

⁴³ See *Lange v ABC* op.cit.

code of ethics would be of great benefit to journalists, since some of the most difficult ethical dilemmas arise in just these circumstances.

A third point of disconnection concerns the handling of information illegally obtained. This is a fairly frequent occurrence in journalism and is popularly talked about as information that has “fallen off the back of a truck”. That is, it has been supplied to a journalist by someone with access to the information, usually in breach of the law, or government regulations, or the person’s terms of employment. An ethical dilemma may not arise in the second and third cases: if a person wishes to breach government regulations or their terms of employment, a journalist is entitled to think that they have weighed the consequences beforehand. However, in the first case a breach of the law has occurred. What might be the circumstances, if any, in which a journalist is justified in publishing information that has been illegally obtained, thus committing a crime himself by receiving illegally obtained material? The codes are silent on this.

Finally, a fourth point of disconnection is a failure to define the concept of the “public interest”. It is commonly referred to, but no attempts are made in the Australian codes to say what it means. Again, the judiciary have provided some useful pointers. In the Supreme Court of the Australian Capital Territory, for example, Higgins J stated:

[I]t seems to me that the public benefit criterion is satisfied if the publication discusses, or raises for public discussion or information matters which are properly of public concern. In other words, public benefit will result from the publication of matters of public interest.⁴⁴

It follows from this definition that a matter of public interest is more than merely something that interests the public or arouses curiosity. Implicit in these words is a substantive concern the public might legitimately have in the subject matter. Such a concern might be the public conduct of a holder of public office, but not necessarily the private conduct of the same person, unless it could be shown that the private conduct affected the public office in some way. This is in fact a staple criterion of journalistic decision-making, and its absence from the codes is puzzling.

There are other large gaps as well:

- in what circumstances is it acceptable to pay for information (so-called cheque-book journalism) and what should be disclosed about this to the audience?

⁴⁴ *Allworth v John Fairfax Group Pty Ltd* (1993) 113 FLR 254 at 263.

- In what circumstances might a journalist suppress information, and what disclosures, if any, should be made to the public when the information is eventually published?

It may be argued that these are matters of practice rather than principle, but it is difficult to find in the codes an adequate expression of underlying principles that are closely enough related to these issues to provide guidance. Yet they are real ethical dilemmas.

How effective the existing codes are in influencing journalistic behaviour is open to question. The literature on this topic is characterised by profound scepticism among researchers about whether ethics play any significant part in journalists' decision-making.

As one explorer in the field of journalistic ethics has pointed out, not many professional journalists have attempted to write about the subject except in formulaic generalised codes. John C. Merrill, author of *The Imperative of Freedom*, observed that perhaps one reason for this is that most editors, news directors, publishers and other journalists simply write the whole subject of ethics off as "relative" – giving little or no importance to absolute or universal journalistic principles.

A newspaper friend put it succinctly recently when he said he looked on ethics "as just the individual journalist's way of doing things". Such a relativistic approach relegates ethics to a kind of nothingness limbo where anything any journalist does can be considered ethical.⁴⁵

And Pritchard, reflecting on the routine deception practised by television journalists revealed by an observational study in the Mid-West of the United States, was unforgiving:

Left to their own devices . . . journalists seem fairly insensitive to ethical concerns and fairly superficial in their thinking about them. That journalists pay scant attention to ethics codes may be related to the fact that such codes often are intended more as tools of public relations as attempts to persuade the public that the media are ethical, than as meaningful guides to media conduct.⁴⁶

There are doubtless good grounds for this scepticism, and many of the operational, attitudinal and cultural inhibitors at work in other countries are present also in Australia. Paul Chadwick, a

⁴⁵ John L. Hulteng, *The Messenger's Motives: Ethical Problems of the News Media*, New Jersey, Prentice-Hall, 1985, p.8.

⁴⁶ David Pritchard, ed. *Holding the Media Accountable: Citizens, Ethics and the Law*, Bloomington, Indiana University Press, 2000, p.188.

member of Media Ethics Review Committee that reviewed MEAA Code of Ethics between 1993 and 1995, has also identified the corporatisation of the media as another factor:

On the committee [that reviewed the AJA code] we looked at the way professional ethics in what you might call more traditional professions, or more longstanding professions, were being affected by a kind of corporate model. A really good example is doctors working in a hospital as distinct from private practice, or corporate counsel, in-house counsel, compared to the classic way we think of ethics in law as between the practitioner and his or her client. What kind of distortions can arise? Journalism is full of that too.⁴⁷

And later:

The people who are running these corporates are a bit deaf to the classic media ethics discussion. They see that as a kind of AJA creature or something associated with a unionized workforce.

The interposing of the corporation, with its own values and priorities, between the professional practitioner and the community clearly does introduce distortions if those corporate values and priorities conflict with what is required of the practitioner by a professional code of ethics. It is a further reason to think that Abe Rosenthal was correct when, as quoted above, he argued that any code of ethics for journalists must apply equally to their editors and managers. As matters stand in Australia, the MEAA Code of Ethics applies only to unionized journalists, and not to non-unionized journalists, who include the editorial management executives of media organisations.

The resultant distortions were candidly described by a senior political correspondent for *The Age*, Crayton Burns (father of a distinguished editor of *The Age*, Creighton Burns), when he said:

Employers rarely instruct a journalist specifically to do something unethical; they merely expect results and take no excuses. There are some who are not very squeamish about how the reporter, photographer or commentator gets the results. The men who get the results also get the rewards.⁴⁸

Burns was speaking in the 1940s when the original AJA Code of Ethics was being formulated. He was talking about possible conflict between employers and journalists over observance of the code.

⁴⁷ Interview with the author 27 August 2004.

⁴⁸ Quoted in Lloyd, op.cit. p230.

The code does not enjoy a high profile in the newsrooms of Australia. A curled and faded copy can sometimes be found buried under more recent pronouncements on the noticeboards of Australia's media organisations, and in 27 years in journalism the author never once referred to it for guidance, partly out of ignorance and partly out of inaction. This is evidently not unusual. Graeme Carroll, of the Federation of Australian Radio Broadcasters, made the following submission to the MEAA review committee in 1993:

Unfortunately, most reporters have only a passing knowledge of the journalists' code of ethics . . . In many cases the code is probably overlooked because it places the reporter in conflict with the news policies of his/her employer.⁴⁹

Further evidence comes from the quantitative survey of Australian journalists conducted for this thesis. When asked to assess the MEAA's ethics panel as an instrument of media accountability, 51 per cent said they did not know enough about it to venture an opinion. And this is the panel that enforces the Code of Ethics. It is a sorry picture.

In Chadwick's view, however, it does not necessarily mean that journalists are completely uncaring of the ethical dimension to their work. Asked whether in his experience journalists are receptive to being restrained by professional ethics, he replied:

Working in it and practising in the self-regulatory side of it and even being the subject of journalistic interview and treatment, which I have been in recent years, my experience is, yes. I have got on many occasions calls from journalists about to make decisions involving ethics, and they will try to do the right thing and ring someone they think can talk it through with them. I won't do it while I'm in this role (Privacy Commissioner), but it was very common for me at the Communications Law Centre (affiliated with Victoria University, Melbourne, and the University of New South Wales, Sydney). People would ring up and say, "I've got this in front of me. I haven't got much time. What do you make of it?" And that's terrific, because it's exactly what doing ethics is about in any profession: collegial discussion. None of us is Solomon on those things. And journalists do that -- in a rather haphazard way most of the time, but they do it.

This is a qualification on my answer. There's an element of bravado, a kind of cinematic sense that the journalist is the outsider, even from his or her own culture: the massively independent, idiosyncratic type. That works against a receptivity to any kind of ethical code. You do see it sometimes, particularly among the very young but not exclusively -- a sense that they've watched enough movies or read enough books or heard enough stories in the bar -- that somehow to be a real journalist you've got to be some kind of one-out deliberate outsider. And that can militate against the idea of a common set of values.

The development of journalism courses in universities and the generally improved formal education of young journalists has led to a substantial growth over the past 20 years or so in the

⁴⁹ Quoted in *Ethics in Journalism*, op.cit. p xii.

literature on journalism ethics.⁵⁰ There has also been considerable debate over specific ethical issues, including the privacy of public figures,⁵¹ presentation of disturbing images arising from the terrorist attacks of September 11, 2001,⁵² and the use of unnamed sources.⁵³ Digital technology has also brought its own ethical dilemmas, especially in regard to the manipulation of images. This has opened a new field of debate.⁵⁴

Editors and editorial managers on ethics

Q: On the whole, do you think the professional ethics of journalism carry sufficient weight among working journalists in Australia? Why do you say that?

No I don't think so, because we don't spend enough time talking about these issues. In the rush to get papers out, I don't think there is the head-space or the time to be able to sit down and say, "What were the problems with this story? Why did we do it this way? Let's look at our code again and see if there are holes in it." I see this happen all the time in the rush to do a story, to get a story. For instance, we're not meant to speak to or photograph children under the age of 15 without permission from a guardian or a parent. It's amazing how many times we do it, though! It's in the rush to get the story. "The kids are there. I'm not going to go and look for a parent now." And sometimes these things have got in the paper, and the next day I have to say, "This really is unethical. It breaks the MEAA ethics, and the paper's." I understand why it happens, but how come we forget this all the time? And I think it has got to do with the crush and rush. And the competitive nature of journalism: if we don't do it, somebody else will.

I think ethics are all about understanding the impact we have on people's lives and consequences of getting things wrong and of exposing someone who ought not to be exposed to media scrutiny. No one knows what's it's like -- what the consequences are for a 15-year-old -- when their photograph's in the paper and it's on some contentious issue. I don't think many of us think about it. Often it's enormous. That's why we have that rule, because children can't decide that for themselves.

I'm not saying . . . I mean, there are lots of journalists on [this newspaper] who do think about ethics and we do bang on about it on the paper a lot, and we do think even in news conferences that we can't do this or that, but overall I think there is not enough consideration of the ethics of what we do. Why do those ethical standards exist? Do they work? Are there other things we should be doing? How would a journalist on [this newspaper] deal with it if they knew there was a journalist [here] fabricating stories? What's their ethical responsibility? I'm not sure there's any discussion of this at all. But there ought to be.

Q: Is there sufficient education?

I think there isn't. And it isn't a matter for the beginning of their training. There needs to be something at the beginning of their training but I think regularly those things need to be in some

⁵⁰ See for example Hirst, Martin and Patching, Roger, *Journalism Ethics: Arguments and Cases*, Tanner, Stephen, Gail Phillips, Chris Smyth and Suellen Tapsell, *Journalism Ethics at Work*, Pearson Longman, Sydney 2005.

⁵¹ See for example Splichel and Garrison, *Newspaper Research Journal* Vol 24 (4) pp.77-88; John Seigenthaler, "The Privacy Genie's Out of the Bottle", *Media Studies Journal*, Vol 14 (3) p.58.

⁵² See for example Kratzer and Kratzer, *Newspaper Research Journal* Vol 24 (1).

⁵³ See for example Swain and Robertson, *Newspaper Research Journal* Vol 16 (1) p.2.

⁵⁴ Bruce Henderson, *Journalism and Mass Communication Educator* Vol 59 (4) P 421.

sort of formal way discussed in a real-world context, relating to what they've actually done. I don't know that all journalists understand what a conflict of interest is. And yet we're constantly writing about conflicts of interest. I don't blame anyone for that, but I do think that there needs to be a way regularly to talk in a structured way about these things.

*After Jayson Blair I asked, "Are people talking about this? About what it means for journalism?" The reply was, "Not much." I think the feeling was, "Oh, there are no Jayson Blairs on this paper." [Jayson Blair was a journalist on *The New York Times* who was found to have fabricated stories.]*

-- Newspaper editor

Q: On the whole, do you think the professional ethics of journalism carry sufficient weight among working journalists in Australia?

It's not uniform. There are some practices that some outlets would engage in that others wouldn't. There's pressure of a more tabloid style of journalism in television current affairs compared with the more investigative programs and there are different ways people operate in those contexts.

There are issues in terms of public confidence.

-- Broadcasting editorial manager

Q: As you probably know, journalists rank low in public esteem as measured by the annual Roy Morgan survey of public respect for various professions. Why do you think that is?

Some people have brought it on themselves. There have been so many incidents. The media generally are seen as being nosy. They see a popular person being hounded down the street with cameras in their face is something people in the community don't appreciate. There have been isolated cases, like the Kangai siege, where Mike Willesee interviewed a girl being held hostage. People are just horrified by those things.

People just tend to remember the negative things rather than the positive things. It's a very hard thing to put your finger on. I happen to believe the media is far more honest than people out there think. They've just got this impression that people can distort the truth and get away with it. I think it started a long time ago and the media haven't been very good at turning it around.

The Wayne Carey story⁵⁵ was talked about by everybody, everybody. I gave it about six or seven pages on the first day. Our circulation went up about 40,000 – one of the single biggest increases I've ever seen. But I still copped criticism, people saying the paper went overboard with that story. I asked, did you read it? And of course they'd read it. It was a titillating story. It had everything. Sex, footy, big name, it had everything. But with those sort of things, people read every word and then they go, "Oh that's disgusting. How bad is that!"

I've had many many calls from people asking me not to run with material. And there have been many cases where I haven't published the material because they had a compelling case. There was a prominent businessman who was subjected to serious threats to his family. We had a story that this person had a small private army protecting him because the threats were so serious. A reporter wrote the story and the businessman rang me and asked me not to run it because he had children. I will always put that ahead of a story.

I'm not a big fan of chequebook journalism, people putting money in front of people to write their story. I don't like that. TV and magazines are very good at it. We generally don't do it because if

⁵⁵ Wayne Carey was the captain of an Australian Rules football team who was discovered having an affair with his vice-captain's wife.

we start a trend you just don't know when you're paying someone . . . you start getting people taking money to tell a story. You can't tell me there aren't people out there who'd say, 'Give me \$20,000'. Ok, but is it true or are they doing it for the money?

-- Newspaper editor

Quantitative research

To discover the attitudes of Australian journalists to certain questions concerning ethics, a quantitative survey of journalists at two large newspaper companies and one large television and radio broadcasting organisation was undertaken during 2004. To discover the extent to which the attitudes of journalists matched those of ordinary members of the community, the same questions were asked in a survey of voters. The full methodological details of the two surveys are given in Appendix A, and the consolidated findings are reported in Appendices C and D.

THE SURVEY OF JOURNALISTS

Question

*And now a few questions about what it might be all right or not all right for journalists to do. Would you say it was **always** all right, **never** all right, or all right **in some cases**:*

Table 3.1: JOURNALISTS' ATTITUDES TO CERTAIN ETHICAL ISSUES

Rightness	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
To take a picture of someone in their backyard from outside the property without their knowledge and consent									
Always all right	2	2	1	--	3	2	--	1	7
Never all right	38	34	41	33	42	33	37	35	48
All right in some cases	60	64	55	66	53	61	63	62	44
Don't know	1	--	3	*	3	4	--	1	--
For a journalist to interview a person for a story without saying they were a journalist									
Always all right	1	1	--	*	--	--	1	*	--
Never all right	74	70	78	72	87	74	77	76	63
All right in some cases	26	28	23	27	13	26	22	23	37
Don't know	--	--	--	--	--	--	--	--	--
To obtain access to a place or person by pretending to be someone other than a journalist									
Always all right	1	2	--	1	3	--	2	1	--
Never all right	38	35	40	35	39	33	38	36	44
All right in some cases	61	63	59	63	58	67	59	62	56
Don't know	1	--	1	1	--	--	1	*	--

Table 3.1 continued: JOURNALISTS' ATTITUDES TO CERTAIN ETHICAL ISSUES

Rightness	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do									
Always all right	1	1	1	2	--	2	1	1	--
Never all right	43	32	55	41	45	48	39	42	48
All right in some cases	55	67	43	57	55	50	60	57	48
Don't know	1	--	1	--	--	--	--	--	4
To pretend to be sympathetic to a person's situation in order to obtain an interview									
Always all right	11	14	8	12	3	11	8	9	19
Never all right	28	30	26	27	37	28	31	30	19
All right in some cases	57	52	63	56	55	52	58	56	63
Don't know	4	5	4	5	5	9	3	5	--

Four of the five ethical issues for this question were chosen because they represented the main ethical dilemmas for journalists as demonstrated by the MEAA's Code of Ethics, the Principles of the Australian Press Council and the various codes of practice published by the peak bodies of the television and radio industries under the aegis of the Australian Broadcasting Authority.

These four issues covered here, in order, are:

1. Invasion of privacy.
2. Declaration of journalistic function.
3. Obtaining access by deception.
4. Covert or undeclared recording.

The fifth is the dilemma of betrayal which is the subject of a celebrated paper by a journalist on *New Yorker*, Janet Malcolm.⁵⁶

The first two of these issues were canvassed, using a somewhat different approach, by Johnstone et al,⁵⁷ and later by Weaver and Wilhoit⁵⁸ in a trend study of attitudes among US journalists and later among journalists in Britain and Germany. Some of these issues were also canvassed in

⁵⁶ Janet Malcolm, *The Murderer and the Journalist*, New York, Knopf, 1990.

⁵⁷ John W. C. Johnstone, Edward J. Slawski, and William W. Bowman, *The News People: A Sociological Portrait of American Journalists and Their Work*, Urbana, University of Illinois Press, 1976.

⁵⁸ David H. Weaver and G. Cleveland Wilhoit, *The American Journalist: A Portrait of US News People and Their Work*, Bloomington, Indiana University Press, 1986.

Australia by Henningham,⁵⁹ using the Weaver and Wilhoit approach as a model. Comparisons between the present findings and those of Weaver and Wilhoit and Henningham are discussed later.

There is considerable ambivalence and disagreement among journalists on four of these five ethical questions. The only ethical question on which there is a clear consensus that it should “never” be breached is number two – declaring journalistic function. Approximately three-quarters of journalists said it was “never all right” to interview a person for a story without saying they were a journalist.

For the most part, between half and two-thirds of journalists said it was “all right in some cases” to invade privacy, obtain access by deception, engage in covert or undeclared recording, and pretend to be sympathetic in order to obtain an interview.

However, there is a considerable difference between male and female journalists on most of these questions. Female journalists are noticeably more likely than male journalists to say it is “never all right” to invade privacy, obtain access by deception, or engage in covert or undeclared recording. On the last issue, however – pretending to be sympathetic – the results are reversed, with female journalists less likely than males to say this is “never all right”.

There are also some differences between print and electronic journalists on these issues. Electronic journalists – who it should be remembered came largely from the publicly owned Australian Broadcasting Corporation – were noticeably more likely than print journalists to say it was “never all right” to invade privacy, fail to declare journalistic function, or pretend sympathy.

There was little difference between those who had less than 10 years’ experience in journalism and those who had more than 10 years’ experience, except on the issue of covert recording, which the less experienced journalists were more likely to say was “never all right”.

There were some differences between practising journalists and student journalists, and here the differences went both ways. Practitioners were more likely to say it was never all right to fail to

⁵⁹ John Henningham, “Australian Journalists’ Professional and Ethical Values”, *Journalism and Mass Communication Quarterly* Vol 73 (1) 1996 pp.208-218.

declare journalistic function, and pretend sympathy; students were more likely to say it was “never all right” to invade privacy or obtain access by deception.

Question (for those who said “all right in some cases”)

Can you briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

Respondents to the journalists’ survey clearly took considerable trouble to justify their view that certain of these behaviours were “all right in some cases” – that is, ethical in certain circumstances. One hundred and twenty open-ended responses were received in answer to this question. The selection in Table 3.2 is representative. In addition to these, there were many others which made similar points in different words, and some respondents confined themselves to broad statements: for example, that the action was necessary to expose crime or to provide information in the public interest. Many such responses made a specific distinction between the “public interest” in a substantive sense and public curiosity or entertainment.

“The public interest” was cited by 46 per cent of the respondents who answered this question as justification for behaving in one or more of these ways. “Investigation of crime” was cited by 12 per cent, and others gave such responses as “pursuit of truth” or “protecting the safety of the journalist”. Three of the more general responses illustrate the extremity of some journalists’ opinions on these ethical questions:

To those who do not respect our most basic rights, one must take them by stealth.

I have never (in 20-odd years) pretended to be anyone other than a journalist when I speak to people on the phone. I think journalists should go under cover sometimes -- to get inside terrorist cells, the Mafia and bikie gangs. In the case of a notorious public figure I would have no hesitation in breaking normal rules. For example a reporter and a photographer (not me) effectively broke into the home of the Port Arthur assassin and obtained a photograph of the country’s worst mass murderer. If I had NOT done that I would have regretted it.

In instances where the public interest needs to be served, the ends can sometimes justify the means.

Captured here is an outlook which, while not expressed in so many words, is present implicitly in some of the illustrative quotations given in Table 3.2: a tendency to see the work of the journalist as so vitally important that ethical and even legal constraints may be overthrown in certain circumstances. The question is, do the journalists who hold these views see the contradiction in what they espouse, and do they have a reasonable sense of proportion about the importance of their work? The answers are almost certainly no and no.

However, as the quotations in Table 3.2 also reveal, many journalists have a highly nuanced view about how these issues ought to play out in practice.

What comes though clearly in the wide range of responses is the want of fixed positions and points of reference to guide decision-making. The two major justifications – promotion of the public interest, and revelation of criminal wrong-doing – are headlines with little by way of exploratory or explanatory text. It is assumed that the journalist will know the “public interest” when he or she sees it.

Table 3.2: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED (JOURNALISTS)

To take a picture of someone in their backyard from outside the property without their knowledge and consent
<p>A politician or businessman accused of fraud or some other serious crime sunning themselves in the backyard is fair game for photographers. It's fair to bypass overzealous publicists, secretaries and other minders by giving them selective information about who you are to get access to the person you want to speak to.</p>
<p>If a powerful member of society who has done something wrong has refused to face the public then it would be appropriate to take photos from outside their house.</p>
<p>It would be OK to take a photo of someone in their back yard if they were committing a crime there (beating their wife for example).</p>
<p>Where it's clearly in the public interest to expose something, e.g. a meeting that is being denied</p>
<p>There are always exceptions to rules. Overall, it is not all right to photograph someone without their permission while they are on their own property, but it may be all right if it is for a story in the public interest - ie exposing crime, corruption, fraud.</p>
<p>There are occasions where photographs can be taken of people where it is in the public interest. I do not believe the public's interest lies in entertainment, but in information that would be necessary or useful for people to make informed choices - about people they would vote for, products they would buy, initiatives they would support, etc. I do not believe it is right to photograph someone without their consent if the sole value of the photograph lies in the subject being a celebrity or person in public office caught in a compromising or salacious situation. I also believe that having once obtained a photograph or interview under covert means, it is fair to alert the subject to its existence and imminent publication, and to offer them the opportunity to comment.</p>
<p>All right if they are celebrities i.e. people who court publicity.</p>

Table 3.2continued: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED
(JOURNALISTS)

<p align="center">For a journalist to interview a person for a story without saying they were a journalist</p>
<p>In some circumstances people respond very differently if they know you are a reporter. If they know you are a reporter they often tailor their answers.</p> <p>Where investigative reporting of a situation requires that the journalist fits in with his/her surroundings ie investigating homelessness.</p> <p>Where an investigative journalist might be infiltrating an extremist group, for example.</p> <p>Where it's in the public interest to quote them expressing a view or making a claim about which they would lie to a journalist.</p>
<p align="center">To obtain access to a place or person by pretending to be someone other than a journalist</p>
<p>Obtaining access to a person or places could be OK on the proviso the reporter identifies himself at the start of an interview and gives the subject the opportunity to refuse to be interviewed. Sometimes we need to break down the barriers to getting the news - if that means entering a building or crime scene without identifying oneself it can be excused.</p> <p>Not so much disguise identity as not be completely forthright to gain access to something where journalists might otherwise be excluded.</p> <p>It would be OK to disguise the fact you are a journalist to gain entry to a nightclub where you believe drug deals are happening, or to some other venue where you thought a crime was being committed. It would never be OK to disguise the fact you're a journalist to get into someone's home, however.</p> <p>Getting to someone: where secretaries, doorpersons, bureaucrats, spin doctors etc are being obstructive.</p> <p>To expose possible criminals, to prove or disprove allegations, to get "beyond surface access" or to gain access to restricted areas such as detention centres, jails etc, when you plan to use interviewees as anonymous.</p> <p>For example gaining access to an immigration detention facility (as happened on Nauru) to expose mistreatment of detainees (after the government had denied legitimate media access).</p> <p>When governments, powerbrokers, companies want to hide something that the public has a right to know about it is appropriate to disguise yourself to find out that truth.</p> <p>You are under duress or your life would be in jeopardy if your status was known.</p> <p>Where your security as a journalist might be in danger by advertising your profession (especially in overseas conflict zones)</p> <p>When you believe you may be denied access to interviews or photos if you disclose you are a journalist, and you believe the story is in the public interest . . . and it is LEGAL to do so.</p> <p>In some circumstances your position as a journalist may not allow you to get the same treatment as anyone else, for example as a food critic. In a case such as this it may be necessary to not reveal your employment to gain an unbiased view of a situation.</p>

Table 3.2continued: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED
(JOURNALISTS)

<p>To use hidden microphones, tape-recorders or cameras to secretly record what people say or do</p>
<p>Hidden cameras may be used if the subject is in a public place and the story is deemed to be in the public interest. Hidden cameras may also be used to protect the safety of the journalist e.g. in some dangerous situations overseas.</p> <p>Hidden recorders etc are OK if it is the only way to get someone you know for a fact is committing a crime to either admit to it or for you to prove it.</p> <p>I think this would unfortunately be essential with respect to in-depth cases where it is the only way to gain information. It should not be used unless the story is particularly significant.</p> <p>I think that the case of the police corruption investigations in NSW offered a case for the use of hidden tape recorders and cameras. Where there are cases of people working in official capacities, eg. police, elected officials, who are presenting one face to the public, but are privately acting in a way that's corrupt, it might be necessary to gather information that demonstrates their deceit. How else could corruption be exposed?</p> <p>When an interviewee has been openly approached for an interview on an important issue and has lied in that interview; when a person has lied in a public forum and through the use of secret sound or pictorial recording the lie can be clearly demonstrated. In ANY circumstance of secret recording, the motivation must only be greater public good. Some of the greatest investigative journalism which has altered the course of public events has had an element of covert investigation. I do not think it is ethical to conduct such investigations for reasons of malice, monetary gain or titillation - including paparazzi and general muck-raking about public figures simply to find a juicy bit of gossip.</p>
<p>To pretend to be sympathetic to a person's situation in order to obtain an interview</p>
<p>If for example I am interviewing a Liberal politician and I am opposed to their policies I am not going to say that to their face as they might not want to talk, so it is OK to not give your views if you know they will put the person off. I wouldn't lie but I would maybe just soften my approach to their views. The same would go for a public figure that I might personally dislike. I'm hardly going to tell them that while interviewing them.</p> <p>Maybe dealing with a murderer/child molestor (ie someone whom I would normally not like or approve of)</p> <p>There are always cases when it is appropriate to be sympathetic, especially when the interview subject is feeling intense emotions such as loss or grief.</p> <p>Expressing sympathy for a person to get a story is a well-known tactic. If it does not harm the person (for example, the opportunity for a family to tell their story during an intrude) then I would see it as one of the tools of the reporter so long as it is not overused or misused. It can also be justified in getting a first-person piece from a criminal who is seeking unjustified sympathy.</p> <p>Sympathy: without going over the top, to persuade someone to talk to you who is hostile or needs reassurance that their side will be put fairly.</p> <p>There are occasions, when your potential interviewee is very reluctant, to give the impression that you are understanding of their position and stance. There is a significant difference though between that, and constructing your story with that bias, or letting it come through in the interview itself. I also feel that the understanding you express to the interviewee should be expressed with the proviso that you are a journalist, and thus are charged to construct your story in a fair and balanced way and will need to seek both sides of the argument.</p> <p>If you were to fail to get the interview then feigning some sympathy is OK.</p>

Table 3.2continued: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED
(JOURNALISTS)

In terms of pretending to be sympathetic to get an interview, I think there can be circumstances where it is necessary for an interviewee to believe you are sympathetic towards them in order to agree to talk to you. For example, a large number of recent i/v with Taliban/AI Qaida etc have demanded the wearing of head scarves, or burkabs by Western female journalists.

A recent example: The Queensland Conservation Council presented a report on the effects of a dam under construction. Many local landholders disagreed with the report. I told the QCC the interview was an opportunity for them to get their point across etc etc. Also went to landholder groups for a reaction, and told them it was their chance to have their say on the report. I didn't lie to either party, but made it sound it was in their best interests to participate and that I was on their 'side'. (During pre-phone prep of course, not on tape!) Each party felt I was on their 'side' - when in truth I didn't really care either way and I think the finished program was as unbiased as possible.

If you empathise with the talent to obtain an interview. For example, a sensitive interviewee may need some convincing first.

When there has been a death and you need to talk to family members, for instance. And often you actually do feel sympathetic. In fact, I've never done a death knock where I didn't feel a degree of sympathy. On the other hand, I certainly wouldn't pretend to be sympathetic to a political viewpoint in the same way and for the same purpose.

Question

Which of these statements comes closer to your view:

Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings, or

Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth

Table 3.3: JOURNALISTS' PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Perception	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings	76	76	76	83	74	70	86	81	52
Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth	16	17	15	14	16	20	12	14	26

Don't know	8	7	9	3	11	11	2	5	22
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A large majority of journalists said that generally journalists wrote the truth as best they knew it, regardless of the effect on sales or ratings. Print journalists were even more likely than electronic journalists to assert this, as were journalists with more than 10 years' experience. Student journalists were much more likely to be sceptical of this than were practising journalists.

COMPARISON WITH WEAVER AND WILHOIT, AND HENNINGHAM

As mentioned earlier, two of the five ethical issues presented to the survey of Australian journalists were presented – though in somewhat different form – to journalists in the United States in trend studies begun in 1976. In the early 1980s the study was replicated, with variations in sampling procedures, in Britain and Germany,⁶⁰ and in the early 1990s certain key areas of the survey were replicated in Australia by Henningham.⁶¹ In these surveys, the questions on ethical issues were presented with the following stem:

Journalists have to use various methods to get information. Given an important story, which of the following methods do you think may be justified on occasion and which would you not approve under any circumstances?

The privacy scenario was: Making use of personal documents such as letters and photographs, without permission.

The declaration-of-function scenario was: Claiming to be somebody else.⁶²

The results from the initial comparative surveys in the US, Britain and Germany in 1982, and Henningham in Australia published in 1996 were:⁶³

Table 3.4: COMPARISON OF JOURNALISTS' ATTITUDES IN US, BRITAIN,GERMANY AND AUSTRALIA

Proposition	Percentage saying it may be justified			
	US (n = 1001)	Germany (n = 450)	Britain (n = 405)	Australia (n = 1068)
Making use of personal documents without permission	28	5	53	39

⁶⁰ *The American Journalist*, op.cit. pp 137-138.

⁶¹ Op. cit.

⁶² Ibid. p 180.

⁶³ Ibid. p 139.

Claiming to be somebody else	20	22	33	13
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These responses showed that Australian journalists were more likely than journalists in the US and Germany, but less likely than those in Britain, to condone a breach of privacy. They were less likely than journalists anywhere else to condone deceiving people about whether they were a journalist.

In the survey carried out for the present research, different scenarios were used and the stem of the question was different. The privacy scenario was: To take a picture of someone in their back yard from outside their property without their knowledge of consent. The statement about journalistic function was: To interview a person for a story without saying you were a journalist. In each case, respondents were asked whether this was always all right, never all right, or all right in some circumstances. On the privacy question, 60 per cent said it was all right in some circumstances to breach privacy in the manner described; on the declaration-of-function question, 26 per cent said it was all right in some circumstances not to declare journalistic function.

On the issue of deception, a recent Web-based survey of 740 investigative journalists in the United States, showed that competition and type-of-medium emerged as the two most salient predictors of journalists' tolerance of deception. Journalists who viewed competition as an important consideration in ethical decision making were more tolerant of deception. Television journalists had a higher tolerance of deception than print journalists. Overall, organizational factors such as medium and organization size were better predictors of deception tolerance than individual-level variables such as age, education, work experience, or media ethics instruction.⁶⁴

One important pattern is common to all the surveys, including the present one: journalists in all countries are divided on what is ethically permissible. This indicates a deep flaw in the development of journalism as a profession, and makes the task of creating an effective accountability structure extremely difficult. If there is no consensus on what the rules are, it is not possible to hold people to account for breaking them.

⁶⁴ Seow Ting Lee, "Predicting Tolerance of Journalistic Deception", *Journal of Mass Media Ethics*, Vol 20 (1) p 22.

SURVEY OF VOTERS

Question

*I'm going to read out some statements that some people might make about **journalists as a whole in Australia**. As I read each one, I would like you to tell me how you would apply it to **journalists as a whole in Australia**. For each statement, I would like you to give me a number between zero and ten.*

Table 3.5: VOTERS' PERCEPTIONS OF JOURNALISTS

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Honest or dishonest, where zero means always dishonest and 10 means always honest									
0-3	6	8	5	7	4	8	5	6	
4-6	56	55	57	54	61	56	53	59	
7-10	37	36	39	38	35	35	42	36	
Don't know	*	1	--	*	--	1	--	--	
Mean	5.9	5.8	6.1	6.0	5.8	5.9	6.0	5.9	0.11*
Try to get the story right or don't try to get it right, where zero means they never try and 10 means they always try to get the story right									
0-3	5	6	5	6	4	5	8	3	
4-6	44	45	44	45	44	46	47	43	
7-10	50	49	50	49	51	48	45	54	
Don't know	*	--	1	1	--	1	--	--	
Mean	6.3	6.2	6.4	6.3	6.4	6.4	6.0	6.5	0.09
Biased or unbiased, where zero means they are always biased and 10 means they are never biased in the way they present their stories.									
0-3	22	25	19	24	17	21	25	21	
4-6	53	51	54	52	56	47	56	59	
7-10	25	23	26	24	27	32	18	21	
Don't know	*	--	1	*	--	--	1	--	
Mean	4.9	4.8	5.0	4.8	5.2	5.2	4.5	4.9	0.09
Trustworthy or untrustworthy, where zero means they are never trustworthy and 10 means they are always trustworthy									
0-3	14	17	11	14	13	15	11	14	
4-6	52	46	58	54	47	50	59	49	
7-10	34	37	31	32	40	35	30	37	
Don't know	--	--	--	--	--	--	--	--	
Mean	5.5	5.4	5.5	5.3	5.8	5.5	5.4	5.6	0.09
Respect or do not respect the people they deal with in getting their stories, where zero means they never treat these people with respect and 10 means they always treat these people with respect.									
0-3	21	23	18	23	16	24	21	15	
4-6	53	53	53	51	58	43	60	60	
7-10	25	24	25	24	26	31	16	23	
Don't know	2	--	4	3	--	2	3	1	
Mean	5.2	5.0	5.3	5.1	5.3	5.3	5.0	5.1	0.05

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

Voters give journalists a mediocre ranking on all five of these tests of professional ethics, credibility and behaviour. They give journalists their highest ranking – a mean of 6.3 – for “trying to get the story right”. They give journalists their lowest ranking – a mean of 4.9 – on the question of bias. It happens that allegations of bias form a very large proportion of the complaints against journalists recorded by the various agencies of accountability. This is shown in Chapters Five to Nine.

On all the other criteria, journalists score just above 5 -- the mid-point of the 11-point range offered to the survey respondents.

The application of a significance test (t-test) reveals that there is no significant difference between men and women on these questions, nor between people living in Melbourne and non-metropolitan Victoria, nor between people who get their news mainly from different sources.

However, there is a significant difference at the 90% ($p < 0.10$) confidence level between age groups on the question of honesty, with older people being more inclined to say journalists are honest than are younger people.

Overall, moderately high rank order (Spearman) correlations among respondents' attitudes indicate that individuals hold consistent views on these matters; that is, some respondents believe that journalists are relatively ethical on all these issues, while others see journalists as consistently unethical.

On the issue of accuracy, the public give the media their highest rating (6.3). In fact, a study done on the accuracy of Australian newspapers in 1990 showed they were on a par with North American newspapers for accuracy. The same study also found that most major Australian papers admitted their mistakes when they were pointed out to them, but corrected only a small number of the mistakes they made.⁶⁵

⁶⁵ Julianne Schultz, Accuracy in Australian Newspapers, Australian Centre for Independent Journalism, Working Paper No 1, 1990, University of Technology, Sydney.

Question

And now a few questions about what it might be all right or not all right for journalists to do. Would you say it was **always** all right, **never** all right, or all right **in some cases**:

Table 3.6: VOTERS' ATTITUDES TO CERTAIN ETHICAL ISSUES

Rightness	Total	Gender		Place of residence		Main source of news			
		Male	Female	Melb	Other Vic.	TV	Radio	Paperr	Age ^a
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
To take a picture of someone in their backyard from outside the property without their knowledge and consent									
Always all right	1	1	--	*	1	--	2	1	
Never all right	92	88	95	89	97	91	92	92	
All right in some cases	8	11	5	10	2	9	7	7	
Don't know	--	--	--	--	--	--	--	--	
									-0.02
For a journalist to interview a person for a story without saying they were a journalist									
Always all right	1	3	--	2	1	2	--	2	
Never all right	87	83	91	86	91	88	86	87	
All right in some cases	10	13	8	12	7	10	14	8	
Don't know	1	1	1	1	1	--	--	3	
									0.03
To obtain access to a place or person by pretending to be someone other than a journalist									
Always all right	2	3	2	3	--	3	--	2	
Never all right	85	83	86	82	91	85	85	84	
All right in some cases	13	15	12	15	9	12	15	14	
Don't know	--	--	--	--	--	--	--	--	
									0.12**
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do									
Always all right	2	2	2	2	2	3	--	3	
Never all right	76	75	77	73	84	75	74	76	
All right in some cases	22	23	21	25	14	22	26	21	
Don't know	--	--	--	--	--	--	--	--	
									0.18**
To pretend to be sympathetic to a person's situation in order to obtain an interview									
Always all right	3	6	1	3	2	3	2	4	
Never all right	70	66	73	66	78	72	61	69	
All right in some cases	26	27	25	29	18	24	34	27	
Don't know	1	1	1	1	1	1	3	--	
									0.03

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

An overwhelming majority of voters say it is “never all right” for journalists to:

- ❑ Take a picture of someone in their backyard, from outside the property, without their knowledge and consent;
- ❑ Interview a person without disclosing the fact that they are a journalist, or
- ❑ Obtain access to a place or a person by pretending to be someone other than a journalist.

Large majorities say it is “never all right” for journalists to:

- ❑ Use hidden microphones, tape-recorders or cameras to secretly record what people say or do, or
- ❑ Pretend to be sympathetic to a person’s situation in order to obtain an interview.

Spearman correlations reported in the table reveal that older people are more likely than younger people to disapprove of journalists’ obtaining access by deception and of their using hidden recording devices. Older women disapprove particularly strongly of these practices.

Small minorities of voters said that these measures might be all right in some circumstances. Those who did were asked if they could imagine what these circumstances might be. The question to these respondents was:

Question

Can you briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

Table 3.7: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED (VOTERS)

To take a picture without consent etc		To interview but not disclose etc		To obtain access by pretending etc		To secretly record people etc		To pretend to be sympathetic etc	
Base 24		Base 31		Base 40		Base 66		Base 78	
Circumstance	%	Circumstance	%	Circumstance	%	Circumstance	%	Circumstance	%
Where there is criminality	44	To gain better insights/depth	22	Where there is criminality	23	Where there is criminality	29	To gain better insights/depth	40
To expose fraud/rip-offs	25	Where there is criminality	20	To expose fraud/rip-offs	14	To expose fraud/rip-offs	23	Where there is criminality	12
To expose paedophiles	10	Where there is dishonesty	9	Matters in the public interest	9	Matters in the public interest	22	Matters in the public interest	7
Can't imagine	12	Can't imagine	21	Can't imagine	24	Can't imagine	5	Can't imagine	27

It is clear that the small minorities of voters who conceded there might be circumstances in which these measures might be all right confined these circumstances to journalistic investigation of criminal conduct, fraud, consumer rip-offs and matters that are of substantial public interest.

One exception to this was about interviewing without disclosing that the interviewer was a journalist, and pretending to be sympathetic to a person’s situation in order to obtain an interview. A small minority of voters were prepared to countenance those if it was necessary to gain better insights or greater depth of information.

Table 3.8: VOTERS’ PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Perception	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melb	Other Vic.	TV	Radio	News-paper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings	24	24	24	24	23	26	18	25
Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth	73	73	72	72	75	72	76	72
Don't know	3	3	4	4	2	3	6	3

Perhaps not surprisingly in the light of the mediocre assessments they gave journalists for ethical standards, credibility, behaviour and performance, a large majority of voters in Victoria saw journalists as placing sales and ratings ahead of the truth.

This perception was consistently held across all demographic variables and across television and radio audiences and newspaper readers.

Synthesis of the journalists’ and voters’ responses

Tables 3.9 and 3.10 show a comparison of journalists’ and voters’ responses on the identical questions on ethics contained in the two surveys. There is considerable consonance between the journalists and members of the public on these reasons for breaching ethical constraints: promotion of the public interest, revelation of criminal wrong-doing, the need to gain access in order to get better information. The difference is that journalists are far more likely than members of the public to say that such breaches are justified in the first place. This is shown clearly in Table 3.9.

Table 3.9: COMPARISON OF JOURNALISTS' AND VOTERS' ATTITUDES ON CERTAIN ETHICAL ISSUES

Rightness	Total	
	Journalists	Voters
Base	168	300
	%	%
To take a picture of someone in their backyard from outside the property without their knowledge and consent		
Always all right	2	1
Never all right	38	92
All right in some cases	60	8
Don't know	1	--
For a journalist to interview a person for a story without saying they were a journalist		
Always all right	1	1
Never all right	74	87
All right in some cases	26	10
Don't know	--	1
To obtain access to a place or person by pretending to be someone other than a journalist		
Always all right	1	2
Never all right	38	85
All right in some cases	61	13
Don't know	1	--
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do		
Always all right	1	2
Never all right	43	76
All right in some cases	55	22
Don't know	1	--
To pretend to be sympathetic to a person's situation in order to obtain an interview		
Always all right	11	3
Never all right	28	70
All right in some cases	57	26
Don't know	4	1

These data show there is a very large gulf between journalists and the community on what is regarded as ethical. People in the community are far less likely than journalists to say that these ethical breaches are justifiable in some circumstances. The only question on which journalists and community remotely agree is the second one: that of declaring oneself as a journalist before interviewing someone for a story.

Table 3.10: COMPARISON OF JOURNALISTS' AND VOTERS' PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Perception	Total	
	Journalists	Voters
Base	168	300
	%	%
Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings	76	24
Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth	16	73
Don't know	8	3

As Table 3.10 shows, people in the community are far less likely than journalists to say that journalists put the truth ahead of sales or ratings. In fact, journalists and the community are diametrically opposed in their beliefs about this. A threshold difficulty surrounding the question of “truth” is that journalists develop a view of the “truth” that is coloured, even distorted, by their becoming habituated to the structures of news stories and the competitive environment in which they work. The ethical dilemma that this presents is captured by Cranberg, who argues that while codes of ethics enjoin journalists to tell the truth, no code obligates the media to tell the truth about the “exaggerations and outright falsehoods it creates”.⁶⁶

These findings go some way to explaining the profession’s low ethical standing in Australia. A profession whose ethical approaches to its work are so out of step with community norms is not likely to be seen as ethical. Moreover, it is a measure of the profession’s credibility gap on one of its core functions, that of providing reliable information. If people think that generally speaking, journalists write what they think will be best for sales or ratings, rather than the truth as best they know it, the public cannot be expected to rely on the information provided.

The comparatively low standing of the profession has been shown in many surveys. For example, Roy Morgan Research has tracked the standing of various professions, including journalism, since 1985. At the time of writing, the most recent survey had been conducted in September 2004. The findings showed the percentage of Australian voters who said that journalists had high or very high standards of ethics and honesty, and were broken down for newspaper journalists and television reporters. Table 3.11 shows the period over which this issue

⁶⁶ Gilbert Cranberg, *Columbia Journalism Review*, Vol 44 (2) p 10.

has been tracked by Morgan, the highest percentage achieved by each category of journalist, the lowest percentage and the percentage as at September 2004.

Table 3.11: PROPORTION OF AUSTRALIAN VOTERS WHO SAY JOURNALISTS HAVE HIGH OR VERY HIGH STANDARDS OF ETHICS OR HONESTY⁶⁷

Medium	Tracking period	Highest score	Lowest score	Sept 2004 score
		%	%	%
Newspaper journalists	1985-2004	13	7	10
TV reporters	1989-2004	18	11	16

The findings from both the surveys conducted for this research and by the Morgan organisation present a serious challenge to the profession of journalism. The profession's stock-in-trade is credibility. The findings from the voter survey for this thesis on the score of truth-telling alone indicates its credibility is shot to pieces. It may well be that this jaundiced public view is part of a wider loss of faith in institutions generally but even if this were true, it neither fully explains nor partially excuses these truly appalling findings. Nor can they be dismissed as mere hypocrisy by the community, the hypocrisy that enables people to revile the media for its behaviour but sit rivetted to the television or absorbed in the newspaper relishing material created by practices it pretends to abhor. People get what publishers think they want, and it is a measure of community powerlessness to exert pressure on the media to change, as much as hypocrisy, that results in apparent acceptance of this state of affairs. It certainly does not mean the community would not welcome, and benefit from, a more ethical and reliable media.

CONCLUSIONS

A system of ethics is necessary as something broader and more refined than the law, fine-grained so it can seep into the interstices and deeper reaches of a profession's realm, as a body of behavioural norms and moral guidance against which professionals may be held accountable, providing a means of enforcing the social contract between a profession and society.

Grounds for requiring professional accountability rest not on whether an occupation is classifiable as a "profession" on some set of criteria relating to education, skills, or registration to practice, but on two overarching considerations and three particular characteristics. The overarching considerations are the advancement of the public interest, and the existence of the

⁶⁷ Source: Roy Morgan Research finding 3778 of 16 September 2004, at roymorgan.com/news/polls

social contract. The three particular characteristics are power, privilege, and potential for harm. The media qualify on all counts as a profession which the public is entitled to call to account.

Because the law is insufficient for the purpose, the means for achieving this accountability must include an ethics-based mechanism. To give effect to such a mechanism, codes of ethics and/or practice are needed to define the behavioural norms expected of those engaged in the profession's work. To be effective, these codes need to command consensual agreement and bind all members of the profession, regardless of status or function. In the case of journalism this means staff and management of media organisations. This is essential for two reasons: first as a matter of principle there is no reason to exempt certain members of the profession merely on grounds of status or function; second as a matter of practicality if accountability is to be achieved in respect of any one piece of work, it is likely that more than one person, each with different functions and status, is going to be called to account. This is because very often one piece of work is the product of many different hands, and accountability should weigh upon each in proportion to his or her degree of responsibility. Where exemptions exist accountability breaks down, and so does natural justice.

Experience in many Western democracies over the past century or so has shown that it is difficult to formulate and enforce codes of ethics and practice for the profession of journalism. Many factors seem to be responsible for this, but the most enduring and insurmountable is the culture of the profession itself. This culture has its roots in the historical struggle to establish the principle of the free press and in the conviction held by practitioners that this freedom is under permanent and sinister assault. Such a culture promotes a sense of antagonism against other loci of power, which fits neatly with another cultural imperative – the image of the journalist as the iconoclast, the outsider, the defender of the public good against those who would do wrong by it. In this culture an individualistic and highly autonomous sense of self prevails. This militates against restraint and conformity, and creates a climate where the merest hint of regulation leads to cries of censorship.

All these factors are present in Australian journalism. In addition, however, there are two other forces which strengthen the resistance to effective codes and mechanisms of accountability. One is the dominance of the sovereign proprietor throughout much of the history of the Australian media. The other is the conflating of ethical systems with industrial considerations. All efforts to create a professional non-industrial body of journalists have failed. Instead a body that started

life as a professional association morphed into an industrial organisation when the legislative opportunity came along because it was the only way it could sustain itself. Since then its schizophrenic existence as both a mechanism of accountability and as a body dedicated to protecting its members' livelihood has perpetuated the position where ethics have become inextricably bound up with industrial interests. This has weakened it as an accountability mechanism and kept open the gulf between management and staff which is inimical to the creation of an effective accountability structure. Weaver and Wilhoit's research points up a particularly sharp irony in this state of affairs since "day-to-day newsroom learning" was the factor cited most frequently by the American journalists they surveyed as being the most influential in matters of journalist ethics.⁶⁸

Insofar as codes of ethics and practice have evolved, there are many commonalities between those in Australia and in the United States and United Kingdom. They all espouse honesty, integrity, fairness, accuracy, impartiality, promotion of a free press, and correction of material errors. They also exhibit substantial gaps, perhaps because they have insufficient focus on practice. The four main gaps are: no means of judging reasonableness in relation to decisions to publish; no guidance as to the standard of proof required before publication; no guidance as to the handling of material known to have been illegally obtained, and no attempt to define the concept of the public interest. These are everyday ethical issues for journalists and their omission is perplexing.

The literature on media ethics suggests the codes are ineffectual, raising the question of how amenable journalists are to ethical constraint. The difficulties of establishing and enforcing the codes, as discussed earlier, raises similar questions.

Chadwick⁶⁹ argues that journalists in Australia are in general amenable to ethical constraint, although he qualifies this by acknowledging the existence of what he calls the "cinematic" sense of the journalist as the outsider, massively independent and idiosyncratic. The findings from the survey of journalists conducted for this research certainly bear that out, with an element of respondents arguing for very broad exceptions to be made to ethical constraint, based upon a highly developed – one might say over-developed -- sense of importance that they attach to the journalistic function.

⁶⁸ *The American Journalist*, op. cit. p 135.

⁶⁹ Op.cit.

The same survey reveals considerable ambivalence and disagreement among journalists on adherence to the five ethical issues tested for: invasion of privacy, non-disclosure of journalistic function, obtaining access by deception, use of covert recording, and pretence at sympathy with the subject of an interview. This argues not only a lack of conformity – which might be expected of such a highly individualised and autonomous group – but more fundamentally a lack of agreement on principle.

The more extreme responses – perhaps not representative of the whole but nonetheless present as a subtext to many of the arguments advanced by journalists – stated that in certain circumstances journalists should be unconstrained not only by ethical principles but by the law itself. These assertions reinforce Hulteng’s argument that ethics are regarded by journalists as “just an individual journalist’s way of doing things”.⁷⁰

The journalists surveyed were inclined to say that departure from ethical principles was justifiable where the public interest or the revelation of criminal behaviour were concerned. In defining these as the acceptable justifications, they were at one with the opinion of the general public as measured by the parallel survey of voters. Importantly, however, voters were much less likely than the journalists to countenance a departure from ethical principles in the first place.

This was one of two large gulfs between the opinions of journalists and of voters. The second concerned opinions of the journalist as truth-teller. Whereas 76 per cent of journalists said that members of their profession put the truth ahead of sales and ratings, only 24 per cent of the public were prepared to say the same.

In addition, the public gave journalists mediocre ratings (between 4.9 and 6.3 on an 11-point scale) for a range of five qualities: honesty, trying to get the story right, impartiality, trustworthiness, and treating the subjects of their work with respect.

Taking these three findings together, it is not surprising that the tracking study by Roy Morgan Research over nearly 20 years has consistently shown journalists to rate poorly in the estimation of the Australian public for ethical standards and honesty. The most recent such survey showed only 10 per cent of respondents said newspaper journalists had high or very high standards of ethics and honesty, and only 16 per cent said this about television reporters.

⁷⁰ Op. cit.

Altogether this adds up to a most unsatisfactory state of affairs. The right of the public to hold journalists to account is unarguable. The means for doing this rest more on ethical measures than legal, but getting these ethical measures and the mechanisms for enforcing them into place has not been properly accomplished for reasons that have much to do with the culture of the profession. As a result, the public have a low opinion of the ethical standards and integrity of the profession, leading inexorably to a low level of public confidence in one of the major institutions of any democratic state. This in turns weakens the democracy itself. The case for reform is overwhelming.

CHAPTER FOUR

MEDIA PERFORMANCE: QUALITY OF MEDIA CONTENT

Media performance is one of the three main themes of this thesis. We have seen that media legitimacy rests in part on the ideal of a social contract: in exchange for the freedom to publish, the media will discharge certain duties essential to the functioning of a democratic society. Therefore this chapter focuses on issues about media content. This chapter begins with a review of the literature on media performance from a number of Western democracies, including Australia. From this review are derived certain criteria for judging media performance in respect of the obligations laid on them by the social contract. There follows the findings of qualitative research conducted by the author among editors and senior editorial managers in the Australian media on this issue. Finally it reports the findings on media performance from the two quantitative surveys conducted by the author for the purpose of this thesis, one among journalism professionals, and the other among voters in the State of Victoria. Drawing together the evidence from the literature, the qualitative interviews and the quantitative surveys, the conclusion to this chapter makes findings about media performance in Australia, and assesses it against the social contract on which media legitimacy rests.

2.1 LITERATURE REVIEW ON MEDIA PERFORMANCE

From the time technology made the press possible, those propounding freedom of the press argued that the free contention of ideas is the best means by which truth may be distilled, and that the freedom of the press is the only practicable way in which everyone in society may participate in this “marketplace of ideas”. We have seen the case for freedom of expression and a free press argued eloquently by Milton, John Stuart Mill and Locke. It provided the philosophical foundation for the Libertarian theory of the press; it ultimately triumphed over the system of prior censorship embodied in the system of press licensing in England, and – in the spirit of the times – it was embodied in the First Amendment to the Constitution of the United States.

Newspaper proprietors seized upon this high-minded purpose as a means of reinforcing the legitimacy of their publications. As Boyce et al put it:

The legitimate press believed that to survive and to thrive, it must take its place in political society, and must cease to be regarded as either a pariah or as a dangerous and revolutionary force. It must occupy some kind of middle ground between revolution on the one hand and subservience on the other. And to establish such a role, the press and its advocates devised a series of practical arguments concerning the role of the press. They described “a political society destined to be created in the future” In that ideal political society, the press would act as an indispensable link between public opinion and the governing institutions of the country. ¹

In sometimes orotund rhetoric, the newspaper proprietors proclaimed their mission from their mastheads, eschewing partisan bias, promising to provide information of the most indispensable kind, and declaring their fitness for the great tasks required of a free press. The development of political theory throughout the nineteenth century factored in this function of the press as the essential provider of information and forum for argument on which public opinion depended for making decisions about the conduct of the state. Bentham saw the press as “a check upon the conduct of the ruling few”.² And for the same reason, James Mill argued for freedom of the press to comment and criticise:³

So true is it that the discontent of the people is the only means of removing the defects of vicious government, that the freedom of the press, the main instrument of creating discontent, is in all civilised societies, among all but the advocates of misgovernment, regarded as an indispensable security and the greatest safeguard of the interests of mankind.

Out of such convictions grew the concept of the “public interest”, and alongside it the press’s role in upholding and defending it. McQuail (1992), in discussing the form of public interest associated with public-sector broadcasting, went on to say:

Privately owned communications media are also expected to deliver similar benefits for society on public interest grounds.”⁴

¹ G. Boyce, J. Curran and P. Wingate, eds, *The Fourth Estate: The Reappraisal of a Concept*, in *Newspaper History from the 17th Century to the Present Day*, London, Constable, 1978.

² Jeremy Bentham, “On the Liberty of the Press” in *The Works of Jeremy Bentham, Vol II*, John Bowring, Edinburgh, William Tait, 1837, p.279.

³ James Mill, “Liberty of the Press” in *Essays on Government, Jurisprudence, Liberty of the Press and the Law of Nations*, New York, Kelly, 1967.

⁴ McQuail, Denis, *Media Performance: Mass Communication and the Public Interest*, 1992, London, Sage.

Privately owned communications media of course include the press. McQuail added that the first half of the nineteenth century:

. . . saw the emergence in political thought of the concepts of a “public communication” and of the “public sphere”, more or less as we now understand the terms. The (“public sphere”) referred to the metaphorical space available to all, legally protected from state or church oppression, for the free expression of views and interest claims, for rational debate and public decision-making on public and judicial matters. Intimately connected with the emergence of this space is the large and unrestricted circulation of books, pamphlets, news sheets etc. Characteristic of this whole period was an increased recognition of the shared interest between individual citizens and authorities in having some channels and forums for the public expression and exchange of information and opinion. By the mid-nineteenth century, the open expression of opinion had been established as a legitimate and normal feature of political life, and even as a right, especially after the wave of revolution in Europe in 1848.⁵

Formal statements about the role of the press – and by direct extension the expectations society has of the press – may be found in the Declaration of the Rights of Man, the constitutions of many European states, and the International Covenant on Civil and Political Rights. While it is not to be found in the Australian Constitution, formal recognition of the centrality of the media in the functioning of a democratic society can be found in the judgment of the High Court of Australia in *ABC v Lange*.⁶

It has long been recognised that the media are “not just another business” – to borrow the title of a widely cited critique of the Australian media edited by Julianne Schultz.⁷ Justice Felix Frankfurter of the US Supreme Court, put the position in a succinct and well-travelled statement:

“In addition to being a commercial enterprise, it [the press] has a relationship to the public interest unlike that of any other enterprise for profit. The business of the press . . . is the promotion of truth regarding public matters by furnishing a basis for the understanding of them”.⁸

⁵ *ibid.*

⁶ *Op. cit.*

⁷ Julianne Schultz, ed. *Not Just Another Business: Journalists, Citizens and the Media*, Sydney, Pluto Press, 1994.

⁸ *Associated Press v US* (1,28, 1943).

This duality was also articulated by the Menzies Government following the report of the Royal Commission on Television in Australia in 1953:

By its very nature, commercial television, like commercial broadcasting, is a business undertaking. But the conduct of a commercial television service is not to be considered as merely running a business for the sake of profit . . . The business interests of the licensees must at all times be subordinated to the overriding principle that the possession of a licence is indeed, as the royal commission said, a public trust for the benefit of all members of our society.⁹

The experience of the major Western democracies throughout the twentieth century is that the media continually and habitually fall short of the expectations held of them by their societies; that the media are regarded as not discharging the social responsibilities laid upon them in exchange for their freedom to publish. In McQuail's words:

At the very least, the events of the early twentieth century, as well as the "sensationalist direction" often chosen by the mass popular newspaper press, led very widely to a loss of informed public confidence in the media as the only or best representative and defender of the public interest in communication. ¹⁰

In the United States, public disquiet over the performance of the media – in particular, newspapers – led to debate about whether there should not be some fetters placed on the freedom to publish, regardless of First Amendment immunity. The climate of criticism became so intense that in 1947 the publisher of Time magazine, Henry Luce, was emboldened to take the extraordinary and pre-emptive step of establishing a commission of inquiry into the press, under the leadership of a distinguished philosopher, William Ernest Hocking.

The report came out strongly for continued freedom from government, but contained unwelcome messages, including that the failings of a free press could lead to government-imposed control. The report was very critical of press sensationalism, the heavy concentration of ownership, the failure to provide citizens with information they might need in a democracy. The commission concluded that the time "had come for the press to assume a new public responsibility".¹¹

⁹ Quoted in Paul Chadwick, *Media Mates*, Melbourne, Macmillan, 1989, p.1.

¹⁰ *Media Performance*, op. cit. P7.

¹¹ Op. cit.

As we have seen, this commission's report provided the foundation for the development of the Social Responsibility theory of the press.

At the same time in the United Kingdom there was also serious disquiet, leading – as we have seen – to the establishment of the first of what were to be three royal commissions into the performance of the press in that country in the second half of the twentieth century. Much later – in the early 1980s -- commissions were also appointed in Canada and Australia.

The foci of these various commissions varied widely. Only the United States commission made journalistic standards and the role of the press its principal focus. Its findings and admonitions have already been summarised: they provided the marrow as well as the name for the Social Responsibility theory of the press. The first two British commissions and the ones in Australia and Canada tended to focus on issues of industry structure, economics and diversity.

The first of the British commissions (1947) made the issue of concentration in media ownership its primary focus. The politicians pressing for the inquiry had expressed concern about variety of opinion, editorial freedom, and partisan bias.¹² Concentration in ownership, being directly related to diversity (of opinion, among other things), was clearly an issue which bore upon the concerns expressed by the politicians. It was also susceptible of being objectively measured.

The largely subjective issues of editorial freedom and partisan bias were much more difficult to deal with and, in any case, it was well known in Britain at that time that some newspapers were owned or financed by political parties or interest groups such as the trades unions. In these circumstances, the commission devoted much of its attention to the question of ownership concentration, and came to the surprisingly sanguine conclusion that while ownership had indeed become more concentrated, it was unlikely that this would continue to the point where it became a matter of serious concern.

On the matter of the social responsibility of the press, the first British commission distilled from a survey of 100 editors a list of the components of "freedom of the press". These included a number of "duties": to give chances to the public to express their views; to serve the public good; to present alternative points of view, including unpopular or disagreeable matter; to act as a

¹² Seymour-Ure, C. (1996), *The British Press and Broadcasting Since 1945*, 2nd ed., Oxford, Blackwell.

trustee on behalf of the public. It recommended the establishment of a Press Council to supervise the performance of the press.

The performance of the British press in discharging these duties left so much to be desired that a second royal commission was appointed in 1962. Among other things, it found itself obliged to revise the sanguine forecast of its predecessor that concentration of media ownership was unlikely to become a matter of serious concern. It found that the share of circulation controlled by the major chains had substantially increased in all sections of the press. Only among local weeklies was concentration negligible. In 1977 the third commission was forced to revise even this conclusion. The greatest acceleration in concentration had been recorded in the local weekly press (Curran and Seaton)¹³.

In the opinion of these writers, this steady and unremitting concentration of media ownership had created a crisis in the legitimacy of the media:

At the heart of this crisis has been the economic transformation of the British newspaper industry during the post-War period. This has called into question the traditional liberal theory of a free press by rendering the premises on which it is based increasingly unconvincing. According to classical liberal theory, political and economic freedom are embodied in the rights of proprietorship. The freedom to publish and direct papers as a property right safeguards the expression of diversity of opinion independent of the state, and the freedom to buy newspapers in a free market ensures that the consumer ultimately controls the press: how he spends his money determines which publications are profitable. In order to make profits, the proprietor must respond to public demand. His power is thus rendered accountable and representative through the operations of the free market.

Growing disenchantment with this traditional liberal representation of the press is illustrated by the response of successive royal commissions on the press reporting in 1949, 1962 and 1977. With the economic changes in the post-War industry, the last two commissions have found it increasingly difficult to reconcile liberal theory based on a plausible representation of the press in Victorian Britain with the economic realities of the post-War period.

Curran and Seaton summarised these economic realities and their impact on the diversity of opinion -- a cornerstone of Libertarian theory -- with data showing that over a 50-year period in

¹³ J. Curran and J. Seaton, *Power Without Responsibility: The Press and Broadcasting in Britain*, Glasgow, Fontana, 1981.

Britain there was a reduction of 36% in national daily titles, a reduction of 50% in national Sunday titles, of 51% in morning provincials, and of 15% in evening provincials.¹⁴ Noting that “the process of competition reduces competition”, they quoted the first and third British royal commissions as saying:

“The monopolist, by its selection of news and the manner in which it reports it and by its commentary on public affairs, is in a position to determine what people shall read about the events and issues of the day, and exert a strong influence on their opinions.”

The third British commission (1977) also stated:

“Anyone is free to start a national daily newspaper, but few could afford even to contemplate the prospect.”

The “freedom to publish” was weighted not only in favour of capital, but of incumbent capital. This acted as a “formidable barrier to new entrants”. The commission noted that no new provincial morning paper had been launched in competition with another since the First World War. No new provincial evening newspaper had been launched in competition with another since the 1930s.

The clearest expressions of concern about the Canadian newspaper press can be gained from the report of the royal commission on newspapers, known after its chairman as the Kent Commission, set up in 1980 and reporting in 1981. The commission’s main terms of reference were devoted to considering the degree and effects of the increase in chain ownership of newspapers, and the concomitant decline in independent editorial control. Its terms of reference required it to assess the degree to which economic trends, concentration and loss of individual newspapers were affecting the newspaper industry’s “responsibility to the public”.

As a standard for assessing media performance, the Kent Commission cited approvingly the “Statement of Principles” adopted by the Canadian Daily Newspapers Publishing Association. This contained detailed statements on such concepts as responsibility, independence and access.

Beginning in the 1980s the adequacy of Social Responsibility theory as a continuing basis for media legitimacy came under serious challenge. The impetus for this came from a concern that

¹⁴ *ibid.* p.293.

media representations of events were biased towards a Western worldview, and that the role of the media as defined by Social Responsibility theory was unsuited to the needs of emerging nation states because of its potentially destabilizing effects on immature economies and political systems.¹⁵ And more recently it has been argued that the very structure of the media has been altered by the arrival of the Internet, giving rise to speculation that a new communitarian dimension of media is being created.¹⁶

Even so, as Richards argues,¹⁷ Social Responsibility theory remains the grounding for existing codes of ethics and practice and defines the basis for debate on these issues

In Australia, a commission of inquiry into the media was conducted in Victoria by the Hon. John Norris, a retired judge of the Victorian Supreme Court, in 1981.¹⁸ Once more the focus was on the concentration of ownership and the reduction in diversity of information and opinion that was assumed to flow from it. Other criticisms of the performance of the press aired at that inquiry were narrow, ideological, self-interested and few. The Australian Labor Party complained about the essentially commercial nature of newspapers, and the Australian Journalists' Association complained about the effect of a reduction in the number of owners on the employment prospects of its members.

Its terms of reference demonstrated that the Norris Inquiry was never intended to produce a wide-ranging critique of press performance. The terms of reference were that it should establish:

1. The extent to which beneficial ownership of shares or the power to control the exercise of voting rights in respect of shares in corporations publishing newspapers having a substantial circulation in Victoria or any part of Victoria is concentrated in a particular person or group of associated persons.
2. Whether it would be in the public interest (a) to regulate the ownership and control of corporations publishing such newspapers or any class of such newspapers, (b) to restrict the number of shares in such corporations . . . which may be beneficially held by one person or group

¹⁵ See, for example, John Merrill, *Global Journalism: A Survey of the World's Mass Media*, Longman, New York, 1983; *The Mass Media Declaration of UNESCO*, UNESCO, Paris, 1984.

¹⁶ John Merrill, Gade, P. & Blevens, F., *Twilight of Press Freedom: The Rise of People's Journalism*, Lawrence Erlbaum, New Jersey, 2001.

¹⁷ Ian Richards, *Quagmires and Quandaries*, *op. cit.* p.10.

¹⁸ *Inquiry into the Ownership and Control of Newspapers in Victoria, Report to the Premier of Victoria*, September 1981.

of associated persons, (c) to restrict the number of votes which any one person or group of associated persons can direct or control at meetings of such corporations . . . and if so what form of regulations or restrictions are considered warranted and desirable.

In its conclusions, the inquiry sounded as sanguine about the present as that first royal commission in Britain had been about the future. It found (par 2.22) that the two major publishers in Victoria controlled between them 80.2% of the total weekly circulation of newspapers in Victoria, and that concentration of ownership had accelerated over the previous decade as both the Herald & Weekly Times and David Syme & Company had moved from the Melbourne daily newspaper field into other areas of newspaper publishing in Victoria, such as regional and suburban newspapers. It then went on:

The general conclusion seems reasonably clear. In the words of the Australian Press Council, there is so far no evidence of a deleterious effect of concentration which exists in Victoria. This conclusion does not, however, involve the further proposition that the potentiality for a deleterious effect does not exist. Mr Macdonald [Ranald, then managing director of Syme, publishers of *The Age*] . . . ultimately based his attack on the present situation on what he regarded as a potential, rather than a present, threat to the public interest. Again, the concerns of the AJA relates to a potential, rather than a present, threat.

However, the Norris Inquiry was not so sanguine about the future. It recommended the creation of a statutory authority to scrutinise future transactions which might lead to increased concentration of ownership, with a presumption that these should be headed off as being against the public interest:

(Para 20.8) The public interest requires that in general there should be no further concentration of ownership and control of the press in Victoria.

(Para 20.9) Accordingly, there should be established by legislation an independent authority to whose scrutiny would be submitted certain transactions involving the acquisition by corporations publishing newspapers, or by persons with a substantial interest in such corporations, of interests in other newspapers. Any transactions to which the legislation applied would be deemed to be contrary to the public interest unless the applicant showed that the further concentration of ownership and control of the press was not contrary to the public interest.

(Para 20.10) The scheme proposed is designed to regulate ownership and control of corporations publishing newspapers with a substantial circulation in Victoria. It is designed to avoid any

interference with the content of the press or the liberty of persons to publish. It is designed also to be completely free of control or influence by the executive government.

At the time of writing (22 years on) these recommendations had not been acted upon. The recommendations of the Working Party into Print Media Ownership which reported to the Victorian Attorney-General in 1990 met the same fate.

A decade on from Norris, the Federal Labor Government confronted a new set of challenges concerning the diversity of newspaper ownership in Australia. In 1987, News Ltd had acquired the Herald & Weekly Times in a takeover that resulted in 76 per cent of the capital city and national newspaper circulation in Australia being in the hands of Rupert Murdoch.¹⁹ In 1990, the Fairfax company was placed in receivership as a result of a hopelessly over-ambitious and incompetent attempt by the younger son of Sir Warwick Fairfax (also named Warwick) to privatise the company. The banks that had lent “young” Warwick the money to buy back the necessary shares now sold him up and put the newspapers on the market.

The fate of the Fairfax company became a matter of substantial political controversy as attempts were made by the company’s staff and groups of concerned citizens to exert pressure on the Government not to allow it to fall into the hands of foreign interests or of Kerry Packer, who already owned substantial television, magazine and other interests in Australia. It was against this background that the Labor Party met for its 1991 national conference in Hobart. The conference resolved that the Government should convene a public inquiry into the state of the print media industry in Australia. The House of Representatives Select Committee on the Print Media was subsequently established in August 1991 under the chairmanship of a Labor MP, the Hon Michael Lee. It consisted of seven Labor and five non-Labor Members and produced a report whose title was distinguished by an execrable pun on the Fairfax name.²⁰ It is a case study in the difficulties governments have in exerting power over the media industry and in keeping up with technological change.

¹⁹ *Media Mates*, op. cit. p.42.

²⁰ *News & Fair Facts: The Australian Print Media Industry*. Report of the House of Representatives Select Committee on the Print Media, March 1992, Canberra, Australian Government Publishing Service, Appendix 1, p.363.

News & Fair Facts

The terms of reference of the Lee inquiry, as it became known, were to inquire into and report on:

- (a) structural factors in the print media industry inhibiting competition;
- (b) the print media's distribution and information-gathering arrangements;
- (c) the extent to which ownership or control provides a barrier to entry;
- (d) the adequacy of current Commonwealth legislation and practices to foster competition and diversity of ownership in the print media, and
- (e) the practicability of editorial independence between proprietors and journalists.²¹

The committee reported in March 1992. It was divided along party lines, with the five Liberal-National Coalition members writing a dissenting report, and one of these five, the lone National Party representative, Ian Sinclair, writing a further dissenting report.

The committee found that ownership of the Australian print media was highly concentrated²² and that the mass market end of the print media industry was not contestable because of relatively high barriers to entry.²³ These barriers were economic and structural. The high fixed costs of newspaper production gave an established newspaper a relatively large cost advantage over new entrants with smaller circulations.²⁴ Vertical integration between newspapers, newsprint mills and news agency services represented another barrier to entry, and the power of the established publishers to influence the opening hours and home delivery arrangements of newsagents gave incumbent publishers a competitive advantage.²⁵

A majority of the committee considered there was insufficient evidence to conclude that the high level of concentration of ownership had resulted in biased reporting, news suppression or lack of diversity. However, the committee wrestled with the potentialities:

A well-informed democracy should have access to a wide range of opinions and information. An excessive level of print media ownership concentration can be a potential threat to maintaining the diversity of sources of information. The provision of information, however, cannot be shielded from economic forces. The available research . . . strongly suggests that head-on competition for

²¹ *Ibid.* p xiv.

²² *Ibid.* p 101.

²³ *Ibid.* p 153.

²⁴ *Ibid.* p 154-157.

²⁵ *Ibid.* pp 188-190.

the same market segment between two newspapers in the same primary market eventually leads to dominance by one of the competitors. While competition law may prevent a newspaper in a market from taking over a competitor, it cannot prevent the effect of the economic forces which may render one of the competitors unviable.²⁶

What to do? Divestiture and numerical limits on the number of titles which any one proprietor could own were rejected as policy options. Instead the committee preferred to encourage greater competition and wider diversity by changing the Trade Practices Act. Specifically the committee proposed a more exacting test for determining whether a merger of print media interests would be permitted under the Act. The committee proposed that the existing “dominance” test be replaced by a “substantial lessening of competition” test, and that the Trade Practices Commission, in considering mergers in the print media industry, should take into account the likely impact of the merger on freedom of expression, fair and accurate presentation of views, and the economic viability of the publication should the merger not proceed.²⁷

On the matter of editorial independence, the committee examined a variety of measures, including charters of editorial independence, the MEAA Code of Ethics, contracts for editors, and the functioning of the Australian Press Council. It concluded that even though the standards and conduct implied by editorial charters were desirable, proprietors should not be required by legislation to sign them. On the matter of the MEAA Code, it enjoined editors and proprietors to join with journalists in accepting the code as providing the overriding principles governing the performance of their duties. It also recommended that a commitment to these principles be included in contracts of employment for journalists.²⁸ The committee suggested that the Australian banking and telecommunications industries’ ombudsmen provided useful models for complaints-handling.²⁹

On the matter of cross-media ownership, the committee strongly supported the retention of the rules introduced in 1987 which limited common ownership of newspapers and broadcasting outlets in certain markets.³⁰ The committee stated that these rules had been “very effective” in breaking up the media conglomerates which had existed before 1987 when, for example, the Fairfax company owned *The Sydney Morning Herald*, radio station 2GB and the television

²⁶ Ibid. pp 223-224.

²⁷ Ibid. pp 230-232 and 237.

²⁸ Ibid. pp xxvii - xxviii.

²⁹ Ibid. p285.

³⁰ Ibid. pp316-317.

station ATN7 in the Sydney market. In order to retain ownership of the *Herald* it had had to divest itself of 2GB and Channel 7.

On foreign ownership of the print media, the committee noted that it would be inconsistent to argue on the one hand that there was a lack of diversity and on the other to prohibit foreign investment. It concluded that proposals with up to 20 per cent foreign control should be approved and beyond that foreign control should be approved only if a strong national-interest case had been made out.³¹

In their joint dissenting report the five Coalition members stated that while they participated in the hearings and in the preparation of the overall report, they did so under protest, believing that the inquiry had been established to meet an internal Labor Party political problem arising from the 1991 National Conference, and was therefore a misuse of the Parliamentary inquiry system.³²

They also dissented on various substantive matters. Four of the five stated that the cross-media rules should be abolished in respect of radio because of “dramatic technological change” taking place in radio and the “mature nature of the industry”. All five dissented from the committee’s setting of a 20 per cent limit on foreign ownership, saying each case should be dealt with on its merits, the criteria being the effect on market concentration and the level of competition.

The dissenters argued strongly against the change to the threshold test for mergers, rejecting the majority’s argument that it would lead to increased competition:

Plainly it will not. Anti-merger provisions are designed to prevent numbers in an industry declining by merger. They are not designed to produce increasing numbers.

They also expressed “serious reservations” about giving the Trade Practices Commission a role in judging the effects of a proposed merger on freedom of expression and presentation of news.

We are concerned that a Government-appointed body with coercive powers should be delegated such a sensitive task . . . We have serious disquiet in extending its obligations into more nebulous, contentious areas where it has no professed expertise.³³

³¹ *ibid.* pp 332-333.

³² *ibid.* p.345.

³³ *ibid.* p.352.

Mr Sinclair dissented from the dissenters on the matter of cross-media ownership, saying that cross-media ownership offered the best prospect for ensuring localism in media coverage, especially television.³⁴

Discussion

Whatever the political motives behind the establishment of the print media inquiry, at least it provided an opportunity for arguments about media ownership, diversity and editorial independence to be ventilated. These opportunities are rare enough. However, the recommendations from this inquiry fared little better than those from Norris or the Victorian Working Party. In the words of Julianne Schultz:

The Committee's cautious recommendations made almost no impact, and the Hon Michael Lee, MHR, won sufficient industry support for Prime Minister Keating to appoint him Minister for Communications 18 months later.³⁵

The Trade Practices Act was amended to establish a “substantial lessening of competition” threshold,³⁶ but for all mergers, not just those involving print media, and not as a direct consequence of this inquiry. The recommendation to have the effects on free expression taken into account were not acted on, although under Section 90 (9) of the Trade Practices Act, the Australian Competition and Consumer Commission (ACCC)³⁷ has discretion to examine a range of “public benefit” effects from proposed mergers. This discretion has never been exercised in respect of free expression.³⁸

The recommendations concerning levels of foreign investment in effect affirmed the status quo. This meant that any foreign investor seeking more than 20 per cent equity in an Australian print media company would need to persuade the Government that this was in the public interest. This might have been put to the test immediately when the Canadian publisher, Conrad Black, joined the auction for Fairfax. It is just conceivable that the recommendation had the effect of making it politically impossible for the Labor Government of the day to approve a holding of

³⁴ *ibid.* pp.353-355.

³⁵ Julianne Schultz, *Reviving the Fourth Estate*, Cambridge, Cambridge University Press, 1998.

³⁶ Trade Practices Act, Section 50.

³⁷ The ACCC replaced the Trade Practices Commission in 1995.

³⁸ Author's interview with an official of the Australian Competition and Consumer Commission 29 September 2005.

greater than 20 per cent by Black, but we will probably never know. The Government's decision-making processes on this matter were so opaque as to make it impossible to establish exactly what criteria were applied. Black was cleared to purchase up to 20 per cent of the Fairfax equity and did so. He was subsequently refused permission to lift his stake beyond 20 per cent and eventually sold out.

As for editorial independence, very little has occurred in the 13 years since the report was published to develop charters or editors' contracts, or to strengthen the mechanisms of media accountability. In this respect, the only event of any consequence occurred in early 2005 when the journalists' union rejoined the Australian Press Council, as the inquiry encouraged it to do. The Press Council's procedures remain substantially unaltered and the criticisms it attracted then are levelled at it still. These matters are dealt with in greater detail in Chapter Six.

There is still no unified code of ethics for journalists, editors and publishers; it follows that adherence to such a code is not part of the conditions of employment for journalists. The two main newspaper companies, News Ltd and Fairfax, have developed somewhat more comprehensive in-house codes and complaint-handling procedures than existed in the early 1990s but it would be drawing a long bow to say that this was a consequence of the inquiry, since most of them were introduced many years after it was held. These in-house mechanisms are considered in more detail in Chapter Nine.

Cross-media ownership rules continue to be the subject of political controversy, and although the Liberal-National Coalition Government has from time to time foreshadowed changes, so far none have occurred. In the meantime, technological change has altered the terms of the debate out of recognition. The rise of the Internet and of digital information technologies have created whole new media formats that were not contemplated by this inquiry, causing policy-makers to take an entirely different view of media markets. The new view was outlined by Graeme Samuel, Chairman of the ACCC, in a paper to the Melbourne Press Club's 2005 conference:

The traditional approach when considering mergers in the media market has been to regard television, radio and newspapers as separate markets.

In the future, a media market might be defined by the content such as, for example, classified advertising, or even just employment advertising, rather than the medium used to convey the content. In other words, the ACCC won't simply be saying "one newspaper, one radio and one

TV” doesn’t amount to a substantial lessening of competition. . . In our market analysis we might increasingly be focusing on markets such as classified advertising, maybe even markets as small as classified advertising for jobs, for motor vehicles, for real estate, and display advertising.

A substantial lessening of competition in any one market could raise implications under Section 50 and be possible grounds for us to intervene.³⁹

If Samuel is right, ownership of newspapers, radio and television is likely to become a less relevant consideration for the regulators than the level of competition in markets for particular classes of information.

What never changes, however, is the vigilance of the main media players in protecting themselves from every form of incipient competition. In September 2005 the public debate over media regulation was revived when News Ltd attempted to forestall possible changes adumbrated by the Minister for Communications, Senator Helen Coonan. These would have the effect of opening up the pay-TV industry to greater competition from free-to-air channels. In a completely unsourced front-page article,⁴⁰ News Ltd’s national newspaper, *The Australian*, wrote that the Prime Minister, John Howard, had “signalled” that he wanted any changes to media regulations to be confined to lifting cross-ownership and foreign investment restrictions. In other words, News Ltd’s 25 per cent stake in Australia’s dominant pay-TV provider, Foxtel, would be protected from additional competition, and any changes in the rules would be confined to areas which the ACCC chairman already regards as less relevant indicators of market power.

CONCLUSIONS

From these extensive writings about media performance, we can distil some criteria by which to judge how the media perform by reference to their functions. The criteria we have developed are:

1. Providing material which informs citizens about the important things that are going on, enabling them to know and make judgments about matters of public interest, including who may be best equipped to form government.
2. Providing a forum in which the “marketplace of ideas” can operate. This implies providing access to a diverse range of information, ideas and opinions.
3. Assisting citizens to distinguish reliable information from propaganda.

³⁹ Address to Melbourne Press Club annual Journalism Conference, Melbourne, 26 August 2005.

⁴⁰ “PM Reins In Media Reforms”, *The Australian*, 28 September 2005, p 1.

4. Being a watchdog on what government and others in power are doing.
5. Keeping people entertained.
6. Being independent of rich and powerful forces in society.

The increasing concentration of media ownership has been a constant threat to the media's capacity to meet the second of these criteria. This has been perceived and documented by many commissions of inquiry. It has also given rise to such disillusionment in the community as to have provoked the development of a "democratic-participant" theory of the media,⁴¹ an effort to assert an alternative to what has come to be seen as a betrayal by the media to the interests of big business and the establishment. Concentration of media ownership in Australia is illustrated by the fact that two newspaper proprietors, News Ltd (Rupert Murdoch) and Fairfax control about 80 per cent of the capital-city daily newspaper circulation in Australia.⁴² Such concentration does not on its own prove lack of a diversity of information, ideas and opinion. However, it creates circumstances where the risk is increased.

The Australian media's performance on the remaining criteria is the subject of qualitative and quantitative research conducted for this thesis and reported below.

EDITORS AND EDITORIAL MANAGERS ON MEDIA PERFORMANCE

The four editors and editorial managers interviewed for this thesis were asked to say how well they thought their own particular media outlet performed the functions they themselves had nominated as being the main functions of the media in a modern democracy. As we saw in Chapter One, their answers were broadly consonant with what the US Commission on the Freedom of the Press had found in 1947, when it formulated what came to be known as the Social Responsibility theory of the press.

Question

How well do you think you carry out those functions here?

I think we do a pretty good job of it here. Our papers are mass-market newspapers, and have to cater for a lot of different interests and we like to think that in every edition there is something for everybody. Not everything for everybody, but something for everybody.

⁴¹ Denis McQuail, *Mass Communication Theory (3rd ed)*, London, Sage, 1994, p.132.

⁴² Communications Law Centre, *Communications Update* No.164, April 2002, p.26.

The feedback we get – that comes in a number of forms. Each of our papers runs two pages of letters to the editor. We also run a reader helpline which gets 600 calls a week.

Nominally it's there so people can call us and find out where they can get more information on things, but needless to say it turns into a bit of a gripe line. It's a way they can interact with the paper and it runs 24 hours a day. They do a weekly report that goes to about 30 executives around the place, so we're all the time getting feedback.

You wouldn't change policy based on any one of those things, but overall that sort of accountability to the public's opinion gives you an impression of what's going to interest people.
-- Newspaper editorial manager

On accountability and scrutiny, with varying degrees of success. I think we do it as well here as any media. It's become harder to do because there are armies of PRs and spin doctors. That means the barriers have become bigger, more sophisticated and harder to crack. Compared to 25 years ago, governments have in place structures that make it much more difficult to scrutinise what they do.

Q: How have media responded?

We've tried to devote more time to stories. We've tried to give people time to get beyond the PR spin. We have re-instituted an investigations unit that is a pretty heavy-hitting team of journalists. They would comprise the most senior journalists on the paper in some ways. It's expensive journalism. At a time when all media are under pressure on costs and staff numbers and efficiency, maintaining that takes some doing.

Q: Holding up the mirror?

Not as well as I would hope. Society is much more complicated than it was 25 years ago. People are better educated. They know more. Their sources of information have mushroomed. There's a hell of a lot of information "noise". I don't think we've kept pace by having the necessary level of expertise in journalism to match the better-educated audience. The best business journalists take years to develop. You can't do it after two years in the game. The best medical reporters – you're not really at the top in that area until you've done it for seven or eight years. And yet in the media there's a feeling that after two or three years it's time to move on. That's ludicrous.

One of the telling things for me is that every time I read a story on something I know, I think, "This is inadequate". I think that happens across the board. Every time a medical researcher reads a report on medical research, here or wherever, they think that they really haven't quite "got it". Over and above that, I think there were more senior journalists working [here] than there are now. That has an impact. Young journalists can be incredibly talented but they can't write with the authority of an older journalist who has seen a fair bit and can put things in context. It's not just true of [this newspaper]. I think the age profile of journalists has come down.
-- Newspaper editor

Around Australia this morning we had 60 microphones open at once. So we have scrutiny of what's going on in those areas, reflecting the interests and aspirations of the people who live there.

-- Television and radio editorial manager

More often than not we get it right, we do it pretty well. We have a lot of internal mechanisms that tell us what people think. We're monitored all the time by daily readership, circulation, if anything we're over-monitored. We get scrutinised by people, by other forms of media, all the

time. But that's fine. But more often than not we scrutinise ourselves. We work hard at judging ourselves.

-- Newspaper editor

It can be seen that while there is some complacency about contemporary media performance, there is also some acknowledgement that the performance is not as good as it should be – and perhaps once was. This is put down to inexperience among journalists, increased cost pressures, and the development of stronger countervailing forces in the form of public relations people and “spin doctors”, who interpose themselves between the media and those in positions of power, such as government officials and corporate executives.

What also emerges in some of these answers is a hint of how editors see the issue of their own accountability. For some of these editors, accountability generally took the form of audience feedback, movements in circulation figures, and unspecified scrutiny by other forms of media. (It became clear later that this was a reference to the ABC TV program *Media Watch*.) Formal accountability, or accountability through the established mechanisms, were not the top-of-mind forms of accountability, whereas the more market-based types of accountability were mentioned unprompted.

Not mentioned by any was accountability to the proprietor. For a discussion on that topic, David Bowman's account of his experiences as Executive Editor and later Editor-in-Chief of *The Sydney Morning Herald* is uniquely valuable.⁴³ It is an insider's story on the most crucial and difficult relationship that exists in any media organisation, the relationship within which a newspaper's public interest functions, its commercial fortunes and the interests of the proprietor converge. Bowman's account was published nearly eight years after his abrupt dismissal as Editor-in-Chief, and is a frank description of the way in which the editor-proprietor worked at a time when his proprietor, Sir Warwick Fairfax, exercised an extraordinary degree of corporate control in his capacity not only as a major shareholder but as a Chairman to whom the Board had delegated considerable executive power. One of Bowman's vignettes illuminates many facets of the proprietor-editor relationship.

The time is the late 1970s. Bowman is Executive Editor, not the Editor. That office is occupied by Guy Harriott. At the *Herald* in those days the ideal of separating news from opinion was so embedded that the function of Editor was confined entirely to the opinion sections of the paper –

⁴³ David Bowman, *The Captive Press*, Penguin, Melbourne, 1988.

basically the leader page, and the books and arts reviews. It was a fusty little empire disparagingly referred to by the news staff as Poets' Corner. The news pages of the paper were presided over by the Executive Editor, a boiled-down version of Bowman's original title, Executive Assistant to the Editor. Harriott reported to Sir Warwick; Bowman reported to the General Manager, Robert Percy Falkingham, lay preacher and former banker.

It is against that background that Bowman describes the nature of the proprietor-editor relationship:

Sometimes editors and proprietors are in natural harmony, politically and in other respects. In theory, the closer their minds, the easier it should be for the proprietor to stand back and let the editor get on with it; but it doesn't necessarily follow. Harriott had spent 38 years, man and boy, with the *Herald*; journalistically he had grown up under Warwick Fairfax. He was a man of firm opinions on public questions, which happened to be Warwick Fairfax's opinions, more or less, and where it was less rather than more, Guy was satisfied with a token resistance. He never lacked courage – on the contrary – but he didn't believe in useless sacrifices.

Essentially, though, the relationship was one-sided. During a strike of printers, Warwick himself wrote a long editorial [a leading article or expression of the paper's opinion] about the dispute, which he ordered to be run on page one. He gave a copy to Harriott, saying he could rewrite it as necessary, but remarking to another executive that he feared something would be lost if that happened. Wisely, Harriott did nothing. By mid-evening the lawyers had decided that the leader was in contempt of court and advised strongly against most of it. The General Manager called a conference at which I, as the company's executive editor, was the only editorial representative. My view was that the leader ought not to be used, and this because it was badly written and unconvincing. Everyone nodded wisely. By telephone the chairman . . . instructed the General Manager to ignore the lawyers and anybody else and publish. And so it came to pass. From beginning to end *The Sydney Morning Herald* editor had played no part in a page one leader. The point is, a similarity of outlook of editor and proprietor by no means guarantees a proper professional relationship between them. The proper place for the Chairman's views on the strike would have been a statement reported in the news columns – with whatever reply the union might care to make.⁴⁴

Another question that arises from this story is, how does a newspaper's news staff function independently of the company's commercial interests when the Executive Editor reports to the

⁴⁴ Ibid. pp 150-151.

General Manager? Experience tells us that it depends entirely on the individuals occupying those positions, charters of editorial independence and other semi-formal devices notwithstanding. Two contrasting cases, again from the *Herald*, illustrate the point.

In 1977, the ABC TV program *Four Corners* broadcast a program severely criticising the Utah corporation over its coal-mining operations in Queensland. Utah sought to retaliate with a full-page advertisement in the *Herald*. A rule existed in the company that any advertisement containing an idea for a news story should be brought to the attention of the news staff, and in accordance with that rule a copy of the advertisement was brought to the present author in his capacity as Acting Chief of Staff (chief reporter). It was a gross attack on the integrity of the *Four Corners* journalists, and undoubtedly defamatory. This was brought to the attention of David Bowman, who obtained legal advice to the same effect. He then told the advertising manager it should not be published. The objections were two-fold: it carried the risk of an action for defamation, and it was against the newspaper's principles to carry such an unbridled attack on anyone without giving them the opportunity to reply. The advertising department informed Utah that the advertisement would not be published because of the legal risks, to which Utah responded that they would indemnify the newspaper against any costs or damages arising from publication. At this point the matter was referred to the General Manager, Falkingham. In a characteristically principled decision, he ordered that it not be published: "You don't publish something just because a man with a lot of money stands behind you."

A decade later, the company was a very different place with very different individuals in senior managerial and editorial positions. It was 1987 and the company had just been privatised by "young" Warwick Fairfax, Sir Warwick's younger son. He had installed a former public relations consultant, Martin Dougherty, as Editorial Director, and made the editors answer to him. The *Herald's* business news staff discovered that Warwick's takeover vehicle, Tryart, had not paid a number of shareholders for the shares purchased in the privatisation. The story was taken to Dougherty for comment. He told the *Herald's* acting Editor, Max Prisk, that there were material inaccuracies in the story and on that basis Prisk held it for further checking. In fact there were no material inaccuracies but Dougherty had bought enough time for Tryart to pay the debts. It was an egregious example of outright dishonesty by the proprietor's agents to protect his commercial interests, regardless of the public interest.⁴⁵

⁴⁵ Paul Chadwick, *Media Mates*, op. cit. pp.162-163.

Bowman, in his discussion of the editor-proprietor relationship, concludes by saying:

There is abundant evidence that editors are under such pressure to please their proprietors that they are in no position to carry out properly their professional responsibilities to the public, and that often enough they can only attempt this at unreasonable risk to their livelihood.⁴⁶

Various devices such as charters of editorial independence (at *The Age*, for example) and independent directors (at *The Times*, for example) have been developed to try to mediate this extremely complex relationship. None, in the end, has proved to work except where the individuals concerned want to make it work. That is not to say they are useless: far from it. They provide a standard against which conduct may be tested and to which all involved may aspire. They provide a reference point for argument. But their limitations must be acknowledged. In the end the proprietor's will trumps all, and the editor may exercise the privilege of resignation.

As media companies become commercial conglomerates with a range of interests inside and outside the media industry, the stakes get higher, as Schultz has pointed out:

The early idea that commercial success would help guarantee the independence of the press has been distorted by the scale and profit of the news media, and the capacity for advancing other corporate interests through cross-promotion by these diversified conglomerates. As such, the commercial priorities of the news media present a considerable challenge to the continued viability of the Fourth Estate ideal.⁴⁷

A former Editor-in-Chief of *The Australian*, Paul Kelly, has identified a further difficulty with charters, arising from the increased commercialisation of the editor's role:

One of the great ironies is that these days at Fairfax [where editorial charters gained most ground in Australia] the editors-in-chief are also the publishers, so the problem is defined out of existence. The manager or publisher or executive against whom the charter was devised now actually runs the paper.⁴⁸

⁴⁶ *The Captive Press*, op. cit. p 158.

⁴⁷ *Reviving the Fourth Estate*, op. cit. p 105.

⁴⁸ Quoted in Ian Richards, *Quagmires and Quandaries*, op. cit. p.95.

Table 4.1 continued: JOURNALISTS' ASSESSMENT OF JOURNALISTS' PERFORMANCE

	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Keeping people entertained									
Very well	24	15	34	25	18	35	18	23	26
Quite well	61	63	59	59	61	48	65	60	67
Not very well	11	15	6	13	13	15	16	13	--
Not at all well	4	7	--	3	3	15	12	3	7
Mean	0.9	0.6	1.2	0.9	0.8	1.0	0.8	0.9	1.0
Don't know	1	--	--	--	5	2	1	--	--
Informing people in a way that helps them to decide how to vote at elections									
Very well	8	7	9	10	5	11	7	9	4
Quite well	54	59	48	57	55	70	51	57	37
Not very well	29	22	38	24	32	15	32	26	44
Not at all well	9	13	5	9	8	4	11	9	11
Mean	0.2	0.3	0.2	0.3	0.2	0.7	0.1	0.3	-0.2
Don't know	1	--	--	--	--	--	--	--	4
Being independent of rich and powerful forces in society									
Very well	5	3	8	4	8	2	6	5	7
Quite well	35	31	40	43	24	37	38	38	22
Not very well	38	39	36	36	39	50	31	37	41
Not at all well	21	26	15	17	29	11	25	21	22
Mean	-0.3	-0.5	-0.1	-0.2	-0.6	-0.3	-0.3	-0.3	-0.5
Don't know	1	1	1	--	--	--	--	--	7

The means are derived by assigning values of +2 for "very well", +1 for "quite well", -1 for "not very well" and -2 for "not at all well". It follows that any positive mean indicates a view that journalists perform a particular function well, and any negative mean indicates a view that journalists do not perform a particular function well.

It is clear that journalists think they do best at entertaining people (mean of positive 0.9), and worst at being independent of rich and powerful sources in society (mean of negative 0.5).

They regard themselves as doing a reasonable job of reporting the really important things that are going on (mean of positive 0.4) and reporting on what powerful people are doing (positive 0.5). They do not think they do particularly well at sifting out truth from propaganda or public relations "spin", or of informing voters helpfully (means of positive 0.2).

Male and female journalists consistently make differing assessments of journalists' performance. On four out of the five functions, female journalists take a more positive view of journalistic performance than do male journalists. The exception is "informing voters", where journalists of both genders tend to say the performance is only fair, at best (means of positive 0.3 and 0.2).

Length of experience in the industry also seems to alter perceptions about journalistic performance, those with less than 10 years' experience generally tending to think better of journalists' performance than do those with more than 10 years' experience. There is little difference in the assessments by print and electronic journalists, both having broadly similar perceptions of journalistic performance.

Johnstone et al, Weaver and Wilhoit's and Henningham's surveys also included a question on media performance, though again it was considerably different from the questions asked in this survey. There was a question about the importance journalists attached to various media functions or roles, whereas the emphasis in the present survey was on assessing how well journalists perceived the media as performing those functions.⁴⁹

The question used by Johnstone et al, and Weaver and Wilhoit for their US survey was:

How important is it for the news media to . . . (and a list of functions followed, along with a scale ranging from "extremely important" to "not really important").

The 1983 survey by Weaver and Wilhoit, and Henningham's a decade later⁵⁰ yielded the shown in Table 4.2.

Table 4.2: IMPORTANCE U.S. AND AUSTRALIAN JOURNALISTS ASSIGN TO VARIOUS MEDIA ROLES

Role	Percentage saying extremely important	
	US	Australia
Investigate government claims	66	81
Provide entertainment	20	28
Serve as adversary of government	20	30
Serve as adversary of business	15	27

It can be seen that Australian journalists attached greater importance to all these functions than did US journalists. No comparison can be made with the present research, because questions on media function and performance were so different in form, content and intent.

⁴⁹ *The American Journalist*, op. cit. pp 114, 180-181.

⁵⁰ Op. cit.

VOTERS' SURVEY

The public's responses on this question indicate broadly similar contours, although the actual mean scores are different, as Table 4.3 shows.

Table 4.3: VOTERS' ASSESSMENT OF JOURNALISTS' PERFORMANCE

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Sifting out truth from propaganda or public relations "spin"									
Very well	4	3	5	4	3	5	4	4	
Quite well	46	45	46	43	53	43	49	50	
Not very well	37	35	38	40	28	38	35	33	
Not at all well	9	14	5	8	12	9	7	11	
Don't know	4	3	5	4	4	5	5	2	
Mean	0.0	-0.1	0.1	-0.1	0.1	-0.1	0.1	0.0	-0.03
Reporting on the really important things that are going on									
Very well	21	19	22	22	18	23	18	19	
Quite well	52	52	52	50	59	52	47	55	
Not very well	20	22	19	22	16	18	23	23	
Not at all well	6	6	6	6	7	7	8	2	
Don't know	1	1	1	2	--	--	3	1	
Mean	0.6	0.6	0.7	0.6	0.6	0.7	0.5	0.7	-0.10*
Reporting on what powerful people like politicians and big business people are doing									
Very well	24	25	23	25	21	27	26	19	
Quite well	46	46	46	43	53	47	33	53	
Not very well	23	25	22	25	19	19	31	24	
Not at all well	3	2	3	2	3	2	5	2	
Don't know	4	2	6	4	4	5	6	2	
Mean	0.7	0.7	0.7	0.7	0.7	0.8	0.5	0.6	-0.11*
Keeping you entertained									
Very well	22	17	27	23	19	25	21	17	
Quite well	48	51	46	45	57	48	49	48	
Not very well	20	21	19	21	16	18	19	23	
Not at all well	6	8	5	6	7	6	10	5	
Don't know	4	4	4	5	1	3	1	6	
Mean	0.6	0.5	0.7	0.6	0.7	0.7	0.5	0.5	-0.08
Informing you in a way that helps you to decide how to vote at elections									
Very well	12	12	11	12	10	15	6	10	
Quite well	41	40	43	42	39	37	46	46	
Not very well	31	30	32	32	30	28	32	34	
Not at all well	11	14	9	10	14	12	15	9	
Don't know	4	5	4	3	7	8	1	2	
Mean	0.1	0.1	0.1	0.1	0.0	0.2	0.0	0.2	-0.06

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

Table 4.3 continued: VOTERS' ASSESSMENT OF JOURNALISTS' PERFORMANCE

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Being independent of rich and powerful forces in society									
Very well	7	6	7	8	2	11	--	5	
Quite well	37	39	34	34	44	38	34	34	
Not very well	41	38	43	41	39	36	46	45	
Not at all well	11	14	9	12	10	10	16	10	
Don't know	5	4	6	5	4	5	3	6	
Mean	-0.1	-0.1	-0.1	-0.2	-0.1	0.0	-0.4	-0.2	-0.12**

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-19, 20-24, 25-29.... 80-84, 85+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

The means are derived by assigning values of +2 for "very well", +1 for "quite well", -1 for "not very well" and -2 for "not at all well". It follows that any positive mean indicates a view that journalists perform a particular function well, and any negative mean indicates a view that journalists do not perform a particular function well.

Journalists are rated as doing "well" (scores above the mid-point) for:

- reporting on the really important things that are going on;
- reporting on what powerful people are doing, and
- keeping people entertained.

They are scored just above the mid-point for:

- informing people in a way that helps them decide how to vote at elections;

They are scored at the mid-point for:

- Sifting out truth from propaganda and public relations "spin".

They are scored below the mid-point for:

- being independent of rich and powerful forces in society.

These scores are quite consistent across gender and geographic variables, and across the various audience types – those who mainly get their news from different media. Spearman rank-order correlations indicate that women rate journalists' performance in penetrating spin and in entertaining people as more satisfactory than men do. Older people are slightly more satisfied

with journalists for reporting on what powerful people are doing, and being independent of the rich and powerful.

The assessments of professionals and the public are not really very different. Table 4.4 compares the means for the total samples (professionals and public) on the six criteria.

Table 4.4: COMPARISON OF JOURNALISTS' AND VOTERS' ASSESSMENT OF MEDIA PERFORMANCE

Criterion	Mean ratings	
	Journalism professionals	Voters
Base	168	300
Sifting out truth from propaganda or public relations "spin"	0.2	0.0
Reporting on the really important things that are going on	0.4	0.6
Reporting on what powerful people are doing	0.5	0.7
Keeping people entertained	0.9	0.6
Informing people in a way that helps them decide how to vote	0.2	0.1
Being independent of rich and powerful forces in society	- 0.3	- 0.1

It is clear that the broad contours of the responses are similar. Journalists are seen by the public and by themselves at doing best at "keeping people entertained" and worst at "being independent of rich and powerful forces in society". They are not seen to do well at "sifting out truth from propaganda or public relations spin" or at "informing people in a way that help them decide how to vote". On the remaining two criteria – "reporting on the really important things" and "reporting on what the powerful are doing" – the public give the journalists a better mark than the journalists give themselves.

The poor score on "sifting out truth from propaganda and public relations spin" echoes the concern expressed by one of the editors that these days journalists have neither the experience nor the time to properly perform this function. However, this is the only substantial point of similarity between the findings from the quantitative surveys and the interviews with the editors and editorial managers.

The scores suggest that the media's performance is mediocre on all these criteria (on not a single criterion did they score even 1 out of a possible 2). And the fact that both the public and more so the journalists themselves made the assessment that journalists were not independent of rich and powerful forces in society is a most serious indictment of the Australian media.

The findings from this survey of journalists reinforce those of an earlier survey in which journalists showed a strong attachment to the Fourth Estate ideal but acknowledged it had been undermined by commercial considerations. Sixty per cent of journalists said they “strongly agreed” with the notion of the Fourth Estate, but only nine per cent said they “strongly agreed that the existing situation in Australia reflected the realisation of the ideal.”⁵¹

If the journalists do not believe themselves to be independent – and if this perception is shared by the public they serve – media credibility is at a dangerously low ebb. Loss of independence casts a shadow over journalistic motive. Audiences are entitled to ask, whose interests are being served by the presentation of this story? In this climate, the ancient boast of *The Sydney Morning Herald* -- “Sworn to no master; of no sect am I” – has a hollow ring and a strong whiff of hypocrisy.

An example of how this lack of independence can play out was to be found in the way the media covered the Murdoch takeover of the Herald & Weekly Times in 1987 and other major takeovers that changed the media ownership landscape in Australia that year. Chadwick’s assessment is scathing:

I believe the main media did not cover the takeovers in a way that consistently put journalistic principle above the interests of owners. Journalism miscarried. It failed readers, the public interest, and itself. If it were needed, this is the proof of the journalistic sickness that concentration of ownership spreads.⁵²

In Australian journalism, if an owner decides to use a media asset to pursue personal aims, or if an executive reaches for the whip and issues orders to slant or suppress, journalists have only the choice of complying or refusing. Refusal means resignation, the sack, retarded promotion or redeployment to an undesired job intended to produce either eventual resignation or a more compliant attitude. As ownership becomes more concentrated and alternative employers more scarce it is inevitable that more journalists will comply more often, even when they know what is being done is not right according to journalistic principle.⁵³

⁵¹ Julianne Schultz, *Reviving the Fourth Estate*, op. cit. pp.119, 257.

⁵² Paul Chadwick, *Media Mates*, op. cit. p 108.

⁵³ *ibid.* p 215.

CONCLUSIONS

Libertarian theory rested upon the argument that truth was most likely to emerge from a free contest among rational human beings in a “marketplace of ideas”. A free press was essential as a means of putting ideas into the market and as a forum for arguing their merits. This presupposed several conditions. One was that the diversity of ideas and opinion put into the marketplace broadly reflected the diversity of ideas and opinions existing in the community. Another was that enough people were interested in the contest to make the publication of these ideas and opinions commercially worthwhile. A third was that those consuming the published material were sufficiently intelligent and well-informed to make rational judgments and to know dishonest or disingenuous material when they saw it.

Such a theory was unable to survive the technological and social changes of the following 300 years. The growth of conglomerate media companies, many with interests to serve outside their media interests, coupled with the relentless increase in the concentration of media ownership seriously undermined the first condition – that of diversity. If there are fewer owners, there are fewer loci of opinion and fewer sources of information. Diversity is thereby reduced. The reach of the media to all – even the functionally illiterate – has created an audience which demands a far broader range of content than could have been foreseen in the seventeenth century, creating a set of commercial imperatives that have altered out of sight what it means to be a commercially viable media outlet.

The refinement of the techniques of propaganda, particularly in the twentieth century, and the post-War explosion in the fields of public relations and advertising has been such as to impose on the media the function of a filter. The media have a duty to help the public make sense of the information, and to evaluate it in some fair-minded way. The development of the Internet has simply increased the importance of this function: the greater the flood of information, the greater the need for a reliable filter. From the research conducted for this thesis, it is apparent that editors and journalists have barely begun to appreciate the increased importance of this function.

In addition to this, six criteria are proposed by which to judge the performance of the media in discharging its functions.

The first of these concerns informing the public. The results of this research indicate that the public do not consider themselves to be particularly well served by the media in this respect –

and journalists don't think they do it too well either. The second concerns diversity and we have seen that this has shrunk very considerably in Australia to the point where two newspaper companies control about 89 per cent of Monday-to-Friday capital city daily circulation. On top of this, many conglomerates syndicate material so that the same information, the same arguments and opinions are retailed not just in a single publication but in hundreds or thousands of publications. The third concerns assisting people sift the truth from the propaganda and voters and journalists alike see this as a serious failure. The fourth concerns being a watchdog on the powerful. On this the media are seen to perform better than on other criteria, but even so the ratings are mediocre. The fifth, keeping people entertained, is what the media are seen to do best, and on the sixth – being independent of rich and powerful forces – the Australian media score abysmally, probably because journalists and the public see the media as part of the rich and powerful forces.

Media proprietors have always been swift to assert their public interest function, based upon the free-speech value articulated by Milton, Mill and Locke and given constitutional or common-law protection in states that legitimately claim to be democratic. Political developments in the nineteenth and twentieth century elevated the concept of the public interest to a central criterion for judging the actions of government and others holding power in society, and the media claimed for themselves the role of agents in making those in power accountable for acting in the public interest.

No comparable external force has emerged to hold the media to account for the way it discharges its obligations under the social contract with society which confers on the media the right of freedom to publish in return for performing a minimum of core functions. Hence an imbalance in power and a contradiction in the power structures of society has been created. Who is watching the media while the media claims to be watching everyone else? The answer is a vague one.

Editors refer defensively to the accountability of the market as reflected in audience feedback, circulation and ratings. They do not offer, as top-of-mind responses, any of the self-regulatory mechanisms which purport to hold them accountable. Nor do they exhibit any sense of urgency over the need to improve media performance. Their answers to questions concerning performance reflect complacency mixed with a tincture of concern.

The Libertarian view promotes freedom based on the assumption of self-correcting mechanisms, rather like the idea in classical economics that all markets tend to equilibrium. However true that may be over the long run, in the short run much damage is done if mechanisms do not exist to mediate any negative effects of unregulated activity. These ought not be government regulators, but the public demand for accountability requires that they exist.

Journalism professionals more broadly are far more critical of the media's performance. In this they are generally in tune with community opinion. In contemporary Australia, as in many democracies over many decades past, the media are seen to fall well short of community expectations about their performance.

Worst of all, journalism professionals and the public see the media as lacking independence from rich and powerful forces in society, the most fundamental criterion for a genuinely free press. This indicates a serious lack of confidence in the media as an institution, and hence a weakness in the Australian body politic. It raises important questions concerning the effectiveness of media accountability mechanisms. In Australia these are a mixture of self-regulation and legislative control. For historical reasons, as we shall see, the print media are entirely self-regulated; the broadcast media are partly self-regulated and partly the subject of co-regulation between the broadcasters and a government agency. The operations and standing of these accountability mechanisms are considered in detail in the following chapters.

There are peculiar difficulties in developing effective accountability mechanisms for the media. As has been seen in the previous chapter, there is no consensus within the profession of journalism about what the ethical rules should be, and a similar difficulty must be confronted with respect to media content. As articulated by Tiffen, this arises from what he thinks of as functionally useful imprecision:

Reporting is shaped by understood formats of presentation and organisational priorities and by a shared sense, no matter how vague and shifting its foundations and how commonly breached, of the rules of fair reporting, and the proper role of news. The ambiguity and imprecision in the nature of news values is not organisationally disturbing. Rather it may be functional for an enterprise that has to face audiences with a range of beliefs, and deal with sources of conflicting hues while maintaining its own cohesiveness . . . Similarly, there is a useful mixture of, on the one hand, principles and pretensions ("freedom of the press", "a calling" etc) and on the other the rhetoric of a commercial enterprise which cannot be expected to be altruistic or go beyond what its customers want . . . The imprecision not only decreases external accountability, but increases

internal cohesiveness . . . There is little room for general doubts to grow. Rather, work is dominated by the immediate absorption in the particularities of news stories.⁵⁴

These are insightful observations, and are borne out by much of what the editors interviewed have themselves indicated. It merely adds to the complexity of the challenge, however, and does not represent conclusive evidence saying it is all too hard.

⁵⁴ Rodney Tiffen, *News & Power*, op. cit. pp.68-69.

PART III: EXTERNAL ACCOUNTABILITY

MECHANISMS

CHAPTER FIVE

THE AUSTRALIAN BROADCASTING AUTHORITY

In this chapter The Australian Broadcasting Authority (ABA) is examined as the mechanism of accountability for commercial broadcasters and as a review mechanism for the public-sector broadcasters. First, its history and powers are set out. This is followed by an analysis of the complaints it has dealt with over a defined period of time, and then conclusions are drawn about the ABA's efficacy as a mechanism of accountability. Findings from the qualitative interviews and quantitative surveys, as they apply to the ABA, are then reported. The chapter concludes with a case study concerning the ethical dimension of media accountability. The case is what became known as the "cash for comments" affair. It should be noted that the ABA was subsumed within the new Australian Media and Communications Authority on 1 July 2005.

HISTORY AND POWERS

The Australian Broadcasting Authority (ABA) is a statutory authority established under the Broadcasting Services Act 1992 to perform a range of duties relating to broadcasting and data-casting. These include managing the electro-magnetic spectrum, controlling the broadcast licensing system, helping broadcasters formulate codes of practice, monitoring compliance with the codes, and investigating complaints against broadcasters.⁵⁵ While it is independent of government, it is obliged to "take account of" any directions given to it by the Minister for Communications (Commonwealth), to whom it is ultimately responsible.⁵⁶

⁵⁵ Australian Broadcasting Authority, Annual Report 2000-2001, p.12.

⁵⁶ *ibid.* p.13.

The ABA is the primary mechanism of accountability for commercial radio and television, and the secondary mechanism of accountability for public-sector radio and television (the Australian Broadcasting Corporation and the Special Broadcasting Service). These public-sector broadcasters carry primary responsibility for investigating complaints against themselves.

The ABA has power to initiate investigations into the conduct of commercial broadcasters (though not into public-sector broadcasters) as well as to investigate complaints made to it by others. In carrying out its investigations the ABA has wide-ranging powers, including power to require the production of documents, examine witnesses under oath, and hold public hearings.⁵⁷ These powers apply to the investigation of complaints of the kind relevant to this thesis concerning news and current affairs.

The Broadcasting Services Act defines the ABA as a “co-regulator” with the broadcasting industry. Thus it is a hybrid – a statutory authority but required to regulate in partnership with the broadcasting industry rather than alone. This approach is specifically set out as a “goal” of the Authority:

Goal 1: In partnership with industry and the community, safeguard the public interest through co-regulation of broadcasting services.⁵⁸

A similar “goal” exists for the Authority’s co-regulation of the online industry with one additional component -- positive industry development:

Goal 2: In partnership with industry and the community, implement a co-regulatory scheme for Internet content that addresses community concerns and encourages use of the Internet.⁵⁹

The ABA’s predecessor, the Australian Broadcasting Tribunal, was a fully fledged regulator with court-like powers. It was thought by the industry to be too prescriptive,⁶⁰ and the industry persuaded the Keating Labor Government that this criticism had merit. The industry argued that a more open and self-regulatory approach would force broadcasters to take more

⁵⁷ *ibid.* p.38.

⁵⁸ *ibid.* p.25.

⁵⁹ *ibid.* p.46.

⁶⁰ Interview with two ABA compliance officials, 31 August 2004.

responsibility for their actions. It would be sufficient, so the Government thought, to have a statutory authority as a fallback to ensure that the requirements of the Broadcasting Services Act were complied with. And deregulation was one of the big public policy fads of the time. It was in this climate that the ABA was established as a “co-regulator”.

Consistent with this remit, the Authority’s approach to the investigation of complaints is a collaborative one with the broadcasters. The ABA requires that complaints initiated by the public must first be made to the broadcasting station or channel itself.

Complaints must be framed as a breach of a particular code of practice. These codes are devised by the peak bodies representing commercial radio and television broadcasters and approved by the ABA. They are then registered with the ABA. The scope of the codes must cover matters outlined in Section 123 of the Broadcasting Services Act, 1992. In relation specifically to news and current affairs this is not very demanding. S123 (2) (d) requires the code to promote accuracy and fairness, and (e) (i) requires that the code prohibit the simulation of news in a way that misleads or alarms the audience.

In fact the current commercial television code goes somewhat beyond these modest requirements. Even so, it is much more limited in scope and detail than the code developed by Australia’s main public-sector broadcaster, the Australian Broadcasting Corporation, which is dealt with in Chapter Eight. The most recent commercial television code was developed by the industry’s peak body, Free TV Australia (previously Commercial Television Australia and before that the Federation of Australian Commercial Television Stations)⁶¹ and registered with the ABA in July 2004. The clauses dealing with news and current affairs are set out in Section 4 and the complaints process in Section 7.⁶²

Section 4 states that news and current affairs programs should be fair, accurate, impartial, respectful of personal privacy and cultural differences, and that they should be presented with an awareness that children might be watching. In addition, news and current affairs programs:

- must not present material in a way that creates public panic;
- should have regard for the feelings of relatives and viewers when presenting images of dead or seriously injured people;

⁶¹ Code of Practice <http://www.ctva.com.au/documents/code_of_practice_July_2004.

⁶² Ibid.

- ❑ should warn viewers when images are about to be broadcast that may cause distress or offence, and
- ❑ should not invade a person's privacy except where there is an identifiable public interest in doing so.

The peak body for commercial radio stations is Commercial Radio Australia. It has eight codes of practice, all of which were most recently revised and registered with the ABA in September 2004. Code of Practice 2 sets out the requirements for presenting news and current affairs programs.

This code states that licensees must:

- ❑ present news accurately;
- ❑ not create public panic or cause unnecessary distress;
- ❑ distinguish news from comment;
- ❑ not invade a person's privacy unless there is a public interest in doing so;
- ❑ make reasonable efforts to correct substantial errors of fact;
- ❑ make reasonable efforts to present significant viewpoints while an issue has immediate relevance to the community, and
- ❑ avoid misrepresentation.

The television and radio codes also set out what commercial broadcasters are required to do if they receive a complaint. Commercial radio stations, in addition, are required to broadcast an announcement at least once a week about the existence of the codes of practice. These announcements must be at a various times and in various types of programs each week.

The ABA's experience is that the television stations typically employ someone in their regulatory and compliance divisions to administer the complaints procedure. The radio stations, usually smaller, handle it as best they can with whatever resources they can muster.

The station must receive the complaint, make a judgment about whether it raises issues relevant to the code of practice, and respond to it within 30 days.

What happens next is anomalous. If the station has dealt with it – but not to the complainant's satisfaction – within 30 days, the complainant may complain to the ABA. However, if the station

simply ignores the complaint altogether, the complainant cannot approach the ABA for 60 days. To make it worse, one of the station's obligations in replying to a complaint is to advise the complainant that they have the right to take the matter to the ABA. If the station simply ignores the matter, the complainant is deprived of this piece of information.

A dissatisfied complainant, or one who has been ignored, may then complain to the ABA, assuming they know of its existence and their right to complain. The complaint must be in writing and any response from the station must be forwarded to the ABA with the statement of complaint.

The ABA has an investigations section for dealing with complaints. The manager of that section assesses the complaint to see whether it raises an issue covered by a code of practice, this being the test of the ABA's jurisdiction. If a complaint falls outside a code, it is *ipso facto* outside the ABA's jurisdiction, unless it impinges upon the station's licence conditions. However, a matter relating to news and current affairs is not likely to fall outside the ABA's jurisdiction.

It is not necessary for the complainant to frame the complaint by reference to a clause of a code, but the complaint must raise an issue comprehended by a code. If the ABA does receive such a complaint, it is bound to investigate. It does not make an *a priori* judgment on the merits. It obtains from the broadcaster a tape of the material complained of, and a statement from the broadcaster on the question of whether the material complies with the code. The broadcaster has 21 days in which to respond.

The ABA investigator listens to, or views, the tape, assesses whether a breach has occurred and writes a draft report, including preliminary findings. These reports, whether they find a breach or not, go to the Board of the ABA. Depending on the seriousness or complexity of the matter, it might go to a full Board meeting, or to a committee of the Board or to a senior manager exercising delegated Board power, to be signed off. In latter cases the report is circulated to the Board before being finalised.

If a breach has been found, the report is sent to the broadcaster for comment as a matter of natural justice before the report is published. The parties are notified in writing. There is no appeal.

The ABA has statutory powers to impose a range of penalties. This range is rather oddly weighted. The ABA may impose a condition on the station's licence. These conditions fall into two types. One is designed to foster compliance and may require the station to train staff or take other action and report to the ABA on what has been done. The second type elevates the relevant provision of the code into a licence condition, a breach of which could ultimately lead to the licence being suspended or revoked.

ABA officials say that neither of these actions is lightly taken.⁶³ There would be have to persistent breaches before a condition was imposed on the licence.

More commonly, the sanctions for a breach rely heavily on the concept of "shaming" – as is the case with the Australian Press Council. The findings in each case are reported in the Authority's annual report for the reporting year in which the complaint decision was determined. This might not be the year in which the complaint was made. In 2000-01 the average time taken by the ABA to complete an investigation was 11 weeks, and generally the clear-up speed lags behind the Authority's targets.⁶⁴ The penalties or action taken for breaches are not reported.

The full report is also published on the ABA's website more or less straightaway, and a summary is published in the ABA newsletter. In serious or far-reaching cases a media release might be distributed. The Authority is protected by law from actions for defamation arising from the publication of these reports.

COMPLAINTS ANALYSIS

An examination of the public complaints data over the period 2000-2003⁶⁵ shows that complaints about news and current affairs programs, as a proportion of all complaints, grew sharply over the triennium: from 26.9% in 2000-01 to 54% in 2002-03. Over the triennium, complaints about news and current affairs programs accounted for 39.77% of all complaints. This can be seen from Table 5.1.

The proportion of news and current affairs complaints upheld varied widely, with no discernible trend over the triennium. The same can be said about complaints generally, as Table 5.2 shows.

⁶³ Interview with two ABA compliance officials, 31 August 2004.

⁶⁴ Australian Broadcasting Authority annual report 2000-01, p41.

⁶⁵ Based on ABA annuals reports for 2000-01, 2001-02 and 2002-03.

However, as the table also shows, higher proportions of complaints about news and current affairs programs were upheld than was the case with other complaints.

For the purposes of this research, complaints are divided into two basic categories: complaints about performance – in effect, about content – and complaints about behaviour or ethics. This means the analysis is consistent with the basic scheme of the research, which is based on the proposition that the media are accountable in these two ways – for how they perform their functions, and how they behave in doing so.

The type of complaint most commonly upheld was that the original complaint to the broadcaster had been mishandled. This was upheld in 62.07% of cases, and suggests that the complaints-handling procedures within commercial radio and television stations need to be smartened up. The least commonly upheld complaint was of inaccuracy: this was upheld in only 32.59% of cases. The patterns are shown in Table 5.3.

Table 5.3 also shows that the commonest types of complaint against news and current affairs programs on commercial radio and television were of inaccuracy, complaint-mishandling, unfairness, and invasion of privacy. This is a quite different pattern from the complaints against news and current affairs programs broadcast by the ABC, and from the pattern of complaints against newspapers. In the case of the ABC, complaints were more likely to be about news values and bias, with inaccuracy in third place. In the case of newspapers, complaints were more likely to be about general irresponsibility and inaccuracy, followed by lack of balance.

**TABLE 5.1: TOTAL COMPLAINTS AGAINST COMMERCIAL BROADCASTERS
INVESTIGATED BY THE ABA 2000-2003**

Category of complaint	2000-01		2001-02		2002-03	
	Number	% of total complaints	Number	% of total complaints	Number	% of total complaints
Base		N = 108		N = 99		N = 50
News and current affairs*	29	26.9	47	47.5	27	54
Other	79	73.1	54	54.5	23	46

*News and current affairs includes talkback. Community radio and television, and reviews of ABC and SBS cases, excluded.

TABLE 5.2: OUTCOMES OF NEWS AND CURRENT AFFAIRS COMPLAINTS AGAINST COMMERCIAL BROADCASTERS 2000-2003

Outcome of complaint	2000-01		2001-02		2002-03	
	News & Current Affairs	Other	News & Current Affairs	Other	News & Current Affairs	Other
Base	N = 29	N = 79	N = 47	N = 54	N = 27	N = 23
	%	%	%	%	%	%
Breach found	55.2	39.2	38.3	22.2	44.4	34.8
No breach found	44.8	60.8	61.7	77.8	55.6	65.2

TABLE 5.3: OUTCOMES OF COMPLAINTS AGAINST NEWS AND CURRENT AFFAIRS PROGRAMS BY COMPLAINT TYPE 2000-2003

Type of complaint	Outcomes of complaints					
	2000-01		2001-02		2002-03	
	Breach	No breach	Breach	No breach	Breach	No breach
Complaints about function or content						
Inaccuracy	9	5	9	11	5	4
Unfairness	3	3	3	3	5	4
Vilification/Disparagement	2	2	1	2	--	3
Bias/Prejudice	1	--	4	5	1	--
Comment not distinguished from fact	1	1	--	1	--	--
False/misleading	--	--	--	--	2	--
Racism	1	1	--	2	1	1
Offensiveness	2	--	1	4	1	3
Discrimination	--	--	--	--	--	2
Complaints about behaviour						
Complaint mishandled	9	--	6	10	3	1
Breach of privacy	2	4	7	4	5	3
Cash for comment	2	--	--	--	--	2
Failure to correct errors	--	--	3	--	--	--
Other						
	1	2	2	8	2	--
TOTAL	33	18	36	50	25	21

*The total number of complaint types add up to more than the number of complaints because many complaints were multi-faceted, for example, inaccuracy and complaint mishandled.

EDITORS AND EDITORIAL MANAGERS ON THE ABA

Q: What is your opinion, if any, of the ABA as a mechanism for holding broadcasters accountable?

The ABA is very much – whether by design or practice – a light-touch regulator, a co-regulator. That means the stations and networks have their codes of practice that they register with the ABA and then are held accountable to it. An analyst who looks at the ABA's track record in areas like cash-for-comment⁶⁶ – I know the ABA would say they don't have the punitive functions of

⁶⁶ A case in which the ABA investigated complaints against five talkback radio announcers that they made comments on air about companies and products that purported to be their own honestly held opinion

the FCC [Federal Communications Commission] in the United States, or Ofcom [Office of Communications] in the UK – would see flaws.

There are two downfalls that are foremost in my mind. Before the election that Kennett⁶⁷ lost, there was an election announcement on 3MP. It went for two hours. It wasn't clear what it was. It was a music program, and the Liberal Party candidate for a by-election appeared during the program, as did Jeff Kennett. Any casual listener to the station may have thought it was part of the programming.

There was a complaint made, I think by the Labor Party, and it was found that the two hours had been bought by the Liberal Party and the station hadn't declared that. The ABA looked at the matter and reported on it and noted the breach on the station's licence.

By contrast, a similar situation happened in London, where on Virgin Radio one of the presenters made some favourable comment on one of the candidates in the London mayoral election, and the radio authority fined the station many tens of thousands of pounds for that breach.

So if you're looking comparatively at the posture and profile of regulators, you can see that it does vary a bit.

They would argue that that's the nature of the legislation, the Broadcasting Services Act, but there are some levers that they do have that include suspending a station's licence for persistent breaches.

Q: An issue to come out of Cash-for-Comments Two⁶⁸ is the division between their function as a regulator of the licence-holder and of the individual broadcasters. Is that a difficulty?

There's a weakness in the code, but clearly the licence-holder is responsible for everything that is published. So if a person is making money personally out of endorsements that haven't been declared to the audience, that is clearly a matter for the licence-holder because they are doing it under the aegis of that licence. They wouldn't have the capacity to do it otherwise.

-- Broadcasting editorial manager

It's government licensing. The ABA can cancel your licence. It's not licensing the individual journalist. It's licensing the voice. I'd have thought the way to go is have as many voices as possible and not have a licensing system. It's an odd thing that you have a broadcasting licensing system. There has to be some concern too that government itself is a broadcaster. They don't produce their own newspapers.

-- Newspaper editorial manager

The ABA's a toothless tiger. That's how it seems. On the cash-for-comments controversy, how is it possible that they couldn't foresee that there was a simple way around their regulations?

-- Newspaper editor

without declaring that in fact they were being paid by the companies to make them. The ABA did not punish the offenders but introduced a set of new standards concerning such comments.

⁶⁷ Jeff Kennett was a Liberal Party Premier of the State of Victoria.

⁶⁸ This case arose as a sequel to the original, when it was discovered that one of the original announcers had continued receiving money for comments, having circumvented the new standards by arranging for the money to be paid to the station, of which he in turn was to become a beneficial part-owner, rather than to himself. Again the ABA's response was not to punish the offender. Instead it established a review of its recently instituted standards on this matter.

QUANTITATIVE RESEARCH – SURVEY OF JOURNALISM PROFESSIONALS

In the survey of journalism professionals, respondents were asked to rate a number of media accountability mechanisms against stated criteria. Respondents were given the option of saying that they did not know enough about the mechanism in question to rate it.

This in itself was revealing. Thirty-six per cent of respondents said they did not know enough about the Australian Broadcasting Authority to give it a rating.

The five criteria were:

1. How well the mechanism was known among journalists.
2. How well it was known among the general public.
3. How respected it was among journalists.
4. How fair it was.
5. How good a system it was generally.

Each criterion was presented on a bi-polar scale, for example: widely known about among journalists/not widely known about among journalists. Eleven points were provided on this scale from zero to ten, where zero represented the most negative rating and ten represented the most positive rating. The mid-point of this scale was 5. Hence any rating below 5 is on the poor side and any rating above 5 is on the good side.

For the purpose of presenting the results, these ratings were grouped into three categories:

Low (0 to 3)

Medium (4 to 6)

High (7 to 10)

A mean score was then given for each mechanism's rating on each criterion.

Question

Thinking about the Australian Broadcasting Authority as the body that deals with public complaints against commercial broadcasters. Using the scales below, please give this system a rating for the various attributes mentioned.

If you feel you don't know enough about the ABA's complaints procedure to have an opinion about it, please indicate that by ticking the box here and move to the next question.

Table 5.4: JOURNALISTS' RATING OF THE AUSTRALIAN BROADCASTING AUTHORITY

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	108	63	45	69	22
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	3	2	4	3	5
Medium (4 to 6)	16	19	11	13	32
High (7 to 10)	81	79	84	84	64
Mean	8.1	7.8	8.4	8.3	7.2
Widely/Not widely known among the public					
Low (0 to 3)	10	11	9	7	18
Medium (4 to 6)	41	46	33	42	50
High (7 to 10)	49	43	58	51	32
Mean	6.4	6.1	6.8	6.6	5.5
Respected by journalists					
Low (0 to 3)	48	62	29	61	41
Medium (4 to 6)	31	29	33	25	41
High (7 to 10)	21	10	38	14	18
Mean	3.9	3.2	4.9	3.1	4.5
Fair/Not fair to both sides					
Low (0 to 3)	43	51	31	49	36
Medium (4 to 6)	43	35	53	39	45
High (7 to 10)	15	14	16	12	18
Mean	4.0	3.7	4.3	3.5	4.5
Generally a good/poor system					
Low (0 to 3)	56	70	36	64	45
Medium (4 to 6)	29	21	40	23	45
High (7 to 10)	16	10	24	6	9
Mean	3.3	2.6	4.3	2.8	3.8

The Australian Broadcasting Authority was rated poorly (mean of 3.3) by journalists as “generally a good/poor system”. It was rated highly (mean of 8.1) for being “widely known among journalists”, and reasonably highly (mean 6.4) for being “widely known among the public”. It rated on the poor side (mean 4.0) for being “fair to both sides” and more poorly still (mean 3.9) for being respected by journalists. Female journalists rated it more highly on every criterion than male journalists. This was a pattern across the survey: females tended to give more generous assessments than males for all the accountability mechanisms.

It is likely that the Authority’s handling of the cash-for-comment cases, dealt with in detail below, contributed to its poor ratings.

QUANTITATIVE RESEARCH – SURVEY OF VOTERS

In the survey of voters, respondents were asked where they would go in the event that they wished to complain about the conduct of a journalist.

Question

Can you tell me the name of any organisation that you could go to if you wanted to complain about the way a journalist had carried out his or her professional duties? (Unprompted.)

Table 5.5: VOTERS' AWARENESS OF WHERE TO GO TO COMPLAIN ABOUT A JOURNALIST'S PERFORMANCE (ABA)

Where to go	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Aust. Broadcasting Authority	8	10	6	8	9	5	13	6

More than half the people in this survey – 55 per cent – did not know or could not guess where they could go if they wanted to complain about the way a journalist had carried out his or her professional duties.

However, low though it is, the recognition level of the Australian Broadcasting Authority was the highest of the three “external” accountability mechanisms – higher than that of the Australian Press Council and the ethics panel of the Media, Entertainment and Arts Alliance (the journalists’ trade union).

One-fifth of voters said they could go to the journalist’s employer, and a further 14 per cent assumed they could go to the Ombudsman (who actually exists to receive complaints about public sector authorities). Beyond that, a small number of respondents hazarded a large number of guesses about where they could go.

The public clearly has little awareness of the roles of the Australian Broadcasting Authority, the Australian Press Council and the ethics panels of the Media, Entertainment and Arts Alliance as mechanisms of journalistic accountability.

CONCLUSIONS

It is doubtless difficult for an agency that is required to be a “co-regulator” alongside the industry it is charged with holding to account, to maintain the right balance between encouragement and punishment. This has been the experience of many government agencies that are required simultaneously to promote the industry for which they are responsible, and to regulate it.

In the case of the Australian Broadcasting Authority, this balancing act is made more difficult by the extremely uneven range of penalties that are available to it. At one end there is “shaming” – publicising the fact that a broadcaster has behaved unacceptably, but with no material penalty – and at the other end there is the power to put a broadcaster out of business by cancelling its licence.

Given the breadth of this gap, it is no wonder that licence conditions – breach of which can lead to cancellation -- are not imposed lightly. Indeed the ABA says that a licence has never been suspended or revoked for a breach of the codes relating to news and current affairs.⁶⁹ The usual response is to require licence-holders to educate their staff and monitor their performance. This has little value as a means of penalising the original offence and none as a deterrent to others. The sanctions would be more effective if there was something in between “shaming” and the imposition of licence conditions, such as a scale of fines.

Absence of clear power to bring wrongdoers to heel – and demonstrated willingness to use that power – tends to undermine confidence in any regulating agency. Lack of public profile makes this worse. The ABA suffers from both these deficiencies. On top of that, the improprieties and follies surrounding the handling of the cash-for-comment cases – for which the Authority as a whole should not be blamed – has probably further undermined confidence in it, as demonstrated by the assessments of professional journalists about the respect in which it held by their profession.

On a positive note, in two respects the ABA complaints procedure is more accessible for complainants than the Australian Press Council's. First, complainants are not required to waive their right to sue the broadcaster over the material complained of, as is the case with the Press Council. So, for example, a complainant may complain about the broadcast and still sue the

⁶⁹ Interview with two compliance officials 31 August 2004.

broadcaster for defamation. Second, the complainant is not required to formulate the complaint as a breach of a code. The ABA will do that for him, if the subject-matter of the complaint falls within one of the codes.

In one important respect, however, the ABA's and the Press Council's mechanisms are identical. In neither case is it the individual journalist who is held to account, but the licence-holder or the publisher. The ABA has no powers to bring individual journalists to account. It follows that as a mechanism for journalistic accountability, it suffers from the same flaws as the Press Council: a complete disconnectedness from the people who actually gather and present the news.

The vast majority of complaints are handled in the way described above. Occasionally, however, the scope and gravity of the complaint requires a more formal and intensive investigation. Such an occasion arose when it was alleged that certain commercial radio talkback presenters had broadcast what sounded like statements of editorial opinion but were in fact paid announcements promoting the interests of sponsors. It was alleged that the presenters had misled their audiences by failing to disclose the fact that the statements had been paid for and therefore were not editorial opinion but a form of advertising or endorsement. In popular parlance, this practice became known as "cash for comment".

The ensuing controversy degenerated into one of the tawdriest episodes in the history of Australian broadcasting. It diminished the reputation of the Australian Broadcasting Authority's chairman, raised questions about the Authority's capacity as a co-regulator, revealed deficiencies in the regulatory framework, and showed up two of Australia's best known talkback presenters as arrogantly defiant of the accountability processes. It even reached out a thin and whitened tentacle to the Prime Minister himself.

Case study: Cash for comment

The "cash for comment" saga began on Monday 12 July 1999, when the ABC TV program *Media Watch* broadcast an item alleging that the Australian Bankers Association had struck a deal with a talkback radio presenter, John Laws, of the Sydney station 2UE. Under the deal, Laws would eliminate from his talkback program negative comment about the banks in return for a consideration.

Two days later, on Wednesday 14 July 1999, four public-interest and consumer-protection organisations issued a media release calling on broadcasting and consumer regulators to investigate the financing of commercial radio talkback radio in Australia. The four organisations were the Communications Law Centre, the Australian Consumers' Association, the Financial Services Consumer Policy Centre, and the Australian Pensioners and Superannuants Federation.

The next day, Thursday 15 July 1999, the then Director of the Communications Law Centre, Jock Given, wrote to the Chair of the Australian Broadcasting Authority, Professor David Flint, on behalf of all four organisations requesting that the Authority set up an investigation into the financing of commercial talkback radio in Australia, pursuant to the Authority's powers under S170 of the Broadcasting Services Act 1992. The letter stated that the investigation should focus on the way in which payments were made in relation to talkback programs, "with particular emphasis on the extent to which these payments are conditional on certain views being expressed by the program presenters".

Professor Flint replied four days later saying the ABA had decided to commence an investigation, and the day after that the ABA issued a media release to this effect, along with the terms of reference. The key term was:

The Australian Broadcasting Authority will conduct an investigation under Division 2 of Part 13 of the Act into the following matters:

The terms and conditions of any arrangements, agreements or understandings entered into by or on behalf of:

- (i) Radio 2UE Sydney Pty Ltd
- (ii) Mr John Laws, or
- (iii) Any other presenter on radio 2UE

or a corporation associated with any of the above persons, with any third party or parties concerning the content of any program, comment or discussion to be broadcast on radio 2UE pursuant to the commercial broadcasting licence granted to Radio 2UE . . .

The effect of any such agreement, arrangement or understanding on the content of programs, comments or discussions broadcast on radio 2UE from 5 October 1992 to the date of the commencement of this investigation.

Whether any consideration paid to or for the benefit of Radio 2UE Sydney Pty Ltd pursuant to any such agreement, arrangement or understanding has been included in the gross earnings of Radio 2UE Sydney Pty Ltd in:

- (i) the financial accounts of Radio 2UE Sydney Pty Ltd
- (ii) the statutory declarations made by or on behalf of Radio 2UE Sydney Pty Ltd pursuant to S205B of the Act, and

Whether Radio 2UE Sydney Pty Ltd remains a suitable licensee within the meaning of S41 of the Act.⁷⁰

Before the process went any further, however, more cash-for-comment allegations were made, this time about John Laws's fellow talkback presenter at 2UE, Alan Jones.

The Authority then received information relating to commercial arrangements entered into by an announcer at 6PR Perth, Howard Sattler. In addition, further allegations were raised on *Media Watch* of 26 July 1999 concerning Jeremy Cordeaux and radio stations 5AD and 5DN Adelaide. As a result, on 30 July 1999 the Authority expanded the terms of reference to include these allegations. In November 1999, the Authority expanded the terms of reference further to include allegations involving 3AW Melbourne. So now there were five commercial broadcasters in the frame.

The inquiry began on 19 October 1999, presided over by Professor Flint, with him a member of the ABA Board, Mr Michael Gordon-Smith. Within a month there was a serious problem with Professor Flint. Concurrently, a political campaign was under way in the lead-up to a referendum on whether Australia should become a republic, and Professor Flint was one of the leading figures on the monarchists' side. Not long after the inquiry began, Professor Flint was a guest on the John Laws program promoting the position of the monarchists in the referendum campaign. On behalf of the Communications Law Centre Mr Henric Nicholas, QC, appeared at the inquiry and entered an application that Professor Flint should disqualify himself from further participation. It was argued that Professor Flint's appearance on a radio program that was the subject of the inquiry, for the purpose of advancing a cause in which he had an interest, had placed him in an untenable position as Chair of the inquiry. On 18 November 1999, after brief resistance, Professor Flint stood down and Mr Gordon-Smith took over the chair. He was joined by two other members of the ABA Board, Ms Kerrie Henderson and Mr Ian Robertson.

⁷⁰ ABA media release 57/1999 of 20 July 1999.

In February 2000, the inquiry reported. It found that in all cases the commercial agreements surrounding talkback programs represented a “substantial failure” by the licensees to comply with the commercial broadcasting Codes of Practice. The inquiry also found that there appeared to be a “systemic failure” of self-regulation, and that the Codes were not providing effective safeguards for the community. In addition, it found 2UE to be in breach of its licence condition concerning the broadcasting of “political matter”.⁷¹

As a remedy, the ABA adopted three new standards for commercial broadcasters. One was about disclosure: making on-air disclosure of agreements between sponsors and presenters mandatory, requiring the stations to keep a register of such agreements, and requiring that they make it a condition of a presenter’s employment that they comply with the new standards, the relevant Codes of Practice, and the Broadcasting Services Act. One was about compliance, requiring licensees to formulate, implement and maintain a compliance program, and one was about advertising, requiring that advertisements be distinguishable from other program content.

In addition, the ABA recognised that it did not have the power to punish presenters because the Broadcasting Services Act confined it to regulating licensees, not their employees. To overcome this, it proposed two options for Parliament to consider, one of them modelled on the so-called “payola” laws in the United States which are aimed exactly at the cash-for-comment problem. Subsequent inquiries revealed that the Australian Government was entirely uninterested in this proposal.

Laws and Jones came out badly from the inquiry – at least on paper. The inquiry rejected Jones’s evidence that his decision to broadcast material was not influenced by his relationship with Optus, a large telecommunications company. (In the light of later events, his relationship with Optus should be kept in mind.) The inquiry also rejected Jones’s evidence that he was unaware of obligations under contracts with Optus and another sponsor, Walker Corporation.

Laws was found to have misled his listeners on numerous occasions, including in relation to Star City casino, the Trucking Association, and the Australian Bankers Association.

⁷¹ Australian Broadcasting Authority, *Commercial Radio Inquiry Final Report*, 2 August 2000.

The ABA found that the presenters' on-air behaviour had led to 90 breaches of the radio industry's codes of practice and five breaches of 2UE's licence conditions.

Not that any of this seemed to do them any harm professionally or socially. As the Communications Law Centre reported in its newsletter of March-April 2000:⁷²

The party for John Laws's third year at Foxtel was reportedly attended by political leaders and social luminaries.

And continued:

The resurrection and public adulation of "disgraced" 2UE presenters seems to be *de rigueur* these days. Alan Jones hosted an event for the Prime Minister [John Howard] only weeks after having been described by Counsel Assisting the ABA Inquiry, Julian Burnside, QC, as having given evidence which "defies belief".

Jones in particular seemed to go from strength to strength. As well as continuing to dominate the ratings in his breakfast timeslot, he became a kind of on-air policy-maker for the New South Wales State Government. In November 2001 Jones dined with the New South Wales Premier, Bob Carr. The two men discussed a range of government policies, particularly policing. The following week Carr sent to Jones's home the man he was about to appoint Police Minister, Michael Costa. The Minister-designate was to discuss policing policy with Jones and two other men who had been publicly critical of the police service. The New South Wales Director of Public Prosecutions, Nicholas Cowdery, QC, was outraged. He made a public statement condemning Carr's action as showing "selfish disregard" for his position as Premier by allowing Jones to have such an influence on government policy in an attempt to win the broadcaster's support.⁷³

In February 2002 Jones was making waves again, this time by switching from 2UE to its main rival in the Sydney "talk" market, 2GB. The terms of his agreement with 2GB set the scene for a new outbreak of the cash-for-comment scandal. Under his agreement with 2GB, all money from advertising went to Macquarie Radio, owners of the station. This included any sponsorships of the cash-for-comment kind. The agreement also opened the prospect that Jones would in time receive a share in the station's ownership. Thus it created a way round the new standards adopted by the ABA after the first cash-for-comment inquiry. The cash would go to the station, not to Jones, but Jones would become a part-owner of the station and so benefit anyway.

⁷² *Communications Update*, issue 163, March-April 2000.

⁷³ Melissa Fyfe, Carr Attacked for Consulting "Shock Jock" Jones, *The Age*, 1 December, 2001, p14.

According to the ABA's subsequent report into this arrangement, when Jones had been signed up, 2GB immediately put a proposal to Telstra, Australia's largest telecommunications company. The proposal was that Telstra "sponsor the Alan Jones breakfast show exclusively for a three-year period".⁷⁴ It will be remembered that at his old station, 2UE, Jones had had a cash-for-comment arrangement with Optus, Telstra's main rival. Now Telstra was being invited to have Jones switch sides. Jones was at pains to distance himself publicly from the Telstra negotiations. On ABC radio he said:

"... the deal had nothing to do with me. The radio station has people – who are sales people and managerial people – negotiated that deal."⁷⁵

Evidence to the ABA's subsequent inquiry showed this was not true. The ABA found that he had played a "key role" in resolving differences between Telstra and Macquarie Radio, and that the station's chief executive officer, George Buschman acknowledged this in a memorandum to Jones:

"Thanks to your effort, Telstra have already rescinded the original document and have put together a far simpler document which I will review."⁷⁶

The deal between Telstra and Macquarie Radio was sealed in July 2002. In the weeks leading up to the signing, the ABA noted that Jones kept criticising Telstra on air, especially in relation to fees and charges.⁷⁷ Then from 17 July 2002 onwards, Jones turned around. Instead of criticism there was what the ABA called predominantly positive comment from him, supporting Telstra's service standards, public image and credibility.⁷⁸

Other favourable comments followed, concerning some of Telstra's political interests – full privatisation, its involvement in a drought-relief scheme that was seen as a way of winning over rural voters in the argument over privatisation, and the payment of \$10 million for naming rights to two large sporting stadiums, one in Sydney and one in Melbourne. The broadcasting of political matter is governed by the terms of a broadcaster's licence and is therefore especially risky if not done in accordance with those terms.

⁷⁴ Australian Broadcasting Authority, *Investigation Relating to the Sponsorship of Alan Jones' Program Pursuant to an Agreement Between Telstra Corporation and Macquarie Radio Network Pty Ltd*, April 2004, p20.

⁷⁵ ABC Local Radio, *Sunday Profile*, 13 October 2002.

⁷⁶ ABA report, op. cit. p.21.

⁷⁷ *ibid.* p.8.

⁷⁸ *ibid.* p.8.

Ultimately, however, the ABA concluded that it could not prove that Jones's political comments had been requested and authorised by Telstra and so did not find Macquarie Radio in breach of its licence conditions.

Nor did the ABA find any breach of the codes of practice. It found that callers critical of Telstra's service standards were generally contradicted, but because of the "absence of any evidence that the producer of the program filtered out negative calls or that callers with different viewpoints were cut off more quickly than those who agreed with Mr Jones", no breach was found to have occurred.⁷⁹

So in the ABA's final report on the matter, published in April 2004, Jones and Macquarie Radio were exonerated. However, as *Media Watch* discovered, there had been a draft report in December 2003 and it had found the exact opposite: that Macquarie Radio was in breach of the codes by not allowing reasonable opportunities for countervailing views, and by broadcasting a statement by Jones that he had "never had a cent from Telstra in my life". The *Media Watch* program of 19 April 2004 published excerpts from this draft report, the veracity of which had been attested to by the General Manager of the ABA, Giles Tanner.

Concerning Jones's statement about never having received "a cent" from Telstra, *Media Watch* reported the ABA's draft report as stating:

There was a significant increase in Mr Jones's salary . . . when he moved to 2GB which appears at least in part to have resulted directly from his ability to attract Telstra sponsorship.⁸⁰

The draft report also expressed the opinion that Telstra, Jones and Macquarie Radio had found a way round the cash-for-comment rules introduced in 2000 after the first scandal:

The available evidence suggests that the key parties – that is Macquarie Radio Network, Telstra and Alan Jones – structured the commercial agreement of 17 July 2002 to fall outside the regulatory requirements of the Act so that they were free to act, albeit carefully, in a manner inconsistent with the policy objectives of the Act.⁸¹

⁷⁹ *ibid.* pp.46 and 47.

⁸⁰ www.abc.net.au/mediawatch/transcripts/s1090576.htm

⁸¹ *ibid.*

The ABA's Giles Tanner told *Media Watch* that this draft report was considered to be “barking up the wrong tree” and had a “tendentious tone in places that really wasn't warranted by anything that we had or would be likely to get”.⁸² It never went to the ABA board. The report that did go to the Board was the vindictory one published five months later in April 2004.

Even while it had been investigating Jones, the ABA had been conducting a similar inquiry into arrangements between Telstra and Jones's great rival John Laws, who was still at 2UE. As *Media Watch* revealed on 26 April 2004, Jones and Laws had identical arrangements with Telstra – except that Telstra was paying \$1.2 million a year for the Jones deal but only \$300,000 a year for Laws. In sharp contrast to the vindictory report for Jones, the ABA found Laws and 2UE had breached the new disclosure standard 19 times and 2UE's special licence condition (imposed after the original cash-for-comment inquiry) six times. The ABA had a muscle spasm and referred the matter to the Commonwealth Director of Public Prosecutions. However, the prosecution went nowhere: in July 2004 it was dropped by the DPP for want of evidence.

But the contrast between the two cases was stark, and now the position of Professor Flint was under challenge again. As early as October 2003 – before the condemnatory draft on Jones had been completed – he had told *Media Watch* that Jones was in the clear: “There is nothing that would indicate any breach of standards or the code.”⁸³ After the revelations about the *volte face* between the draft and final reports on this matter, *Media Watch* now wrote to the ABA in the following terms:

It is appropriate for Professor Flint to be involved in this investigation after expressing and allowing his prejudgment of the investigation to be published?⁸⁴

Media Watch followed this up by broadcasting the contents of a flattering letter written by Professor Flint to Jones on 11 June 1999 – just before Flint embarked on the chairmanship of the original cash-for-comment inquiry. The Chair wrote:

Dear Alan,

Thank you for your letter of 2 June. Alan, you have an extraordinary ability of capturing and enunciating the opinions of the majority on so many issues.

This of course annoys those who have a different agenda. I suspect it is extremely irritating to them that you do it so well . . .

⁸² *Media Watch* program 19 April 2004.

⁸³ *Media Watch* program 20 October 2003.

⁸⁴ www.abc.net.au/mediawatch/transcripts/s1090576.htm, p5.

Keep up your considerable contribution to the widening of our national debates.

All this proved too much for John Laws. On 28 April 2004 he used his own program to launch a counter-attack. He recounted on air the content of a conversation he said had taken place at a dinner party attended by him and Jones in November 2000. (These were the days when Jones and Laws were still colleagues at 2UE.) In this conversation, Laws had made a disparaging comment about David Flint, to the effect that he was “wishy-washy” or similar. According to Laws, Jones had sprung to Flint’s defence, saying words to the effect of: “Well, you know, careful what you say about him. If it wasn’t for him, God knows where we’d be. As a matter of fact, I feel it is so important he is reappointed as head of the ABA that I went to Kirribilli House [official Sydney residence of the Prime Minister] and I told John Howard, ‘Reappoint David Flint or you won’t have my support in the forthcoming election.’”

Jones dismissed Laws’s account of the conversation as “fanciful and ludicrous”. The Prime Minister, in a characteristically carefully worded statement, said: “The Prime Minister does not take instructions from anybody in the media about appointments.” In the face of this, Laws was unmoved. Of the Prime Minister’s statement he observed: “He just said he doesn’t take instructions, but did he get an instruction?” On ABC TV’s *7.30 Report* he agreed with the proposition that his allegations might look like revenge for his receiving an adverse finding from the ABA when Jones was cleared.⁸⁵

If somebody hurts you and you get an opportunity to retaliate, don’t you retaliate?

After a reference to the fact that his alleged breaches had been referred to the DPP, he went on:

I had a pretty rough run, and Mr Jones didn’t have a pretty rough run. I don’t deny human frailties. There probably is a bit of payback.

A further statement from the Prime Minister’s office said Mr Howard had no recollection of Alan Jones having raised the David Flint reappointment with him.

Flint himself was then interviewed on the *7.30 Report*. Asked why he had not revealed “this glowing personal exchange” with Jones before the original inquiry, he replied: “The inquiry wasn’t about his ability as a commentator.”

⁸⁵ www.abc.net.au/7.30/content/2004/s1096935.htm pp4,5

But events had now acquired a political momentum at the highest levels, and whatever fine points of debate Professor Flint was able to score were as chaff in the wind. Two days after becoming embroiled in this unseemly affair, the Prime Minister ordered a report on the whole matter. Proceedings took a vaudevillian turn when a junior member of the Cabinet, the Veterans' Affairs Minister Danna Vale, wrote a supportive letter to Alan Jones enjoining him to "stay brave and true", but mistakenly faxed it to Jones's old station, 2UE. It was gleefully read over the air, and *Media Watch* promptly offered T shirts bearing this mantra.

The ABA board expressed "serious concern" at the writing of the letter to Jones, and Flint stood down from another sensitive inquiry, this time into allegations of bias brought against the ABC by the Commonwealth Minister for Communications, Senator Richard Alston (dealt with in Chapter Eight). The Board did not have the power to remove the Chair, but time was running out for Professor Flint. On 7 June 2004 the ABA put out a media release saying he was "stepping down" from 2 July 2004. He disavowed any connection between his departure and his conduct in the cash-for-comment imbroglio, insisting that "notwithstanding the recent controversy, I am encouraged by the observation of my colleagues that they cannot recall an occasion when I have demonstrated actual bias in any decision I have taken".⁸⁶ Seven months later he dismissed the whole matter as a "storm in a teacup" and claimed to have been "targeted" by the media.⁸⁷

Nothing could better illustrate the impotent, politically cowed, ethically impoverished state of commercial broadcasting regulation in Australia in the early years of the twenty-first century than the cash-for-comment cases. It is a picture of comprehensive policy failure. It makes a mockery of the concept of co-regulation. In the course of its inquiries the ABA itself identified "systemic failures" in the system of accountability, codes that were ineffectual in governing the conduct of broadcasters, and inadequacies in the sanctions available to enforce compliance and punish wrongdoing.

On top of this, the ABA itself stood revealed as either incompetent or guileless in not anticipating the simple ruse by which Alan Jones and Macquarie Radio Network were able to circumvent its new standards, ensuring that Jones continued to be an unacknowledged beneficiary of cash-for-comment income by becoming a part-owner of station 2GB. The ABA's political impotence was shown by its inability to get the Australian Government to even contemplate a more effective

⁸⁶ Australian Broadcasting Authority media release NR55/2004, 7 July 2004.

⁸⁷ ABC Local Radio, *Sunday Profile* interview with Monica Attard, 27 February 2005.

“payola” sanctions regime in the face of probable forthright opposition from high-profile broadcasters who clearly had strong political connections.

Successful co-regulation requires a relationship of *primus inter pares*, where the regulating authority exerts strong moral leadership and in matters of dispute has the last word. It requires both sides to accept the spirit as well as the letter of the law, and to have a common purpose with an emphasis on co-operation. The alternative is reversion to a black-letter regime like the ABA’s predecessor, the Australian Broadcasting Tribunal, with an emphasis on legalism and enforcement. The broadcasting industry did not like that system and prevailed upon the Commonwealth to change it.

The conduct of powerful segments of the industry in the cash-for-comment cases calls into question whether the industry can be trusted with a co-regulatory model. The willingness of Jones and Macquarie Radio to find ways around the new standards, and the open disdain shown by Jones and Laws for the accountability processes, provide evidence that these powerful and high-profile figures are unsuited to a co-regulatory approach. If it is to be persevered with, a regulating agency with far stronger leadership than the ABA’s is essential if the public interest is to be entrusted to its care.

Bad as it is, Australia’s experience with cash-for-comment is not unique. In the United States, despite its so-called “payola” laws designed to prevent cash-for-comment arrangements, a series of scandals erupted in early 2005 over the payment of fees to journalists in return for various services. As *The Economist* reported,⁸⁸ Michael McManus, a syndicated columnist, received \$10,000 from the Department of Health and Human Services for helping train marriage counsellors; another syndicated columnist, Margaret Gallagher, received \$21,500 from the same department for helping draft brochures promoting marriage, and a talk show host, Armstrong Williams, received \$241,000 from the Department of Education to promote the “No Child Left Behind” initiative. Not only did the journalists act corruptly in receiving the money, they compounded their offence by failing to disclose to their audiences that they had taken it, even while writing and broadcasting about these issues. As *The Economist* noted, journalists who do not disclose their financial interests are open to the charge of perpetrating a fraud on the public, since they are pretending to be impartial.

⁸⁸ Fourth Estate or Fifth Column? *The Economist*, 5 February 2005, p33.

In fact it goes further than this. Whether they are pretending to be impartial or not, journalists writing about a matter in which they have a material interest ought to declare the interest so the audience can evaluate their work in that light. In some media organisations – *The Age*, for instance – all journalists are obliged to disclose their material interests in any story they write that touches on those interests. In the late 1980s, the Editor established a register of interests to which the executive journalists were asked to volunteer information. There were no behind-the-scenes investigations to check whether they had been truthful in this, but it was known without a doubt that the discovery of an undisclosed interest would almost certainly mean the sack. Such an ethos promotes honest dealing which permeates conduct far beyond the bounds of the specific matter of material interests. The reverse is also true.

CHAPTER SIX

THE AUSTRALIAN PRESS COUNCIL

In this chapter The Australian Press Council is examined as the mechanism of accountability for newspaper publishers. First, its history and powers are set out. This is followed by a description and discussion of its complaints-handling procedures and an analysis of the complaints it has dealt with over a defined period of time. Findings from the qualitative interviews and quantitative surveys as they apply to the Press Council are then reported. There is also a report of a complainant-satisfaction survey conducted by the Council itself. Conclusions are then drawn about the Council's efficacy as a mechanism of accountability, including recommendations for change.

HISTORY AND POWERS

The Australian Press Council was established on 22 July 1976. Its birth had been preceded by a 34-year gestation period that began with attempts by the journalists' union, the Australian Journalists Association (AJA), to establish a Standing Committee on Newspaper Ethics in each State. It was proposed that this committee should consist of representatives from the newspaper publishers, the union, and academia. It would be presided over by a judge, and would have the power to require offending newspapers to publish its adjudications. According to Deborah Kirkman's history of the Australian Press Council,¹ the AJA wanted the press proprietors to be as accountable to the public as the journalists saw themselves as being.

The AJA did not succeed in persuading the stakeholders in each State of the need for such a committee, but after a celebrated skirmish between the press proprietors and the Commonwealth over censorship during World War II the proprietors came to the view that the AJA might be useful allies in staving off government intervention in the industry's affairs.

¹ Deborah Kirkman, *Whither the Australian Press Council: Its Formation, Function and Future*, Sydney, Australian Press Council, 1996, p.5.

In 1945 discussions were revived and the Australian Newspaper Board was established with four objectives:

- ❑ to ensure harmonious relations within the industry;
- ❑ to protect and advance the freedom of the press;
- ❑ to protect and advance the welfare of journalists and journalism, and
- ❑ to deal with ethical issues.

The concepts of accountability and the public interest were notably absent. This is a recurring feature of the mechanisms created by the industry: the main driver is the welfare of the industry. The welfare of the public is merely implied as a by-product of the industry's welfare. In other words, what is good for the industry is good for the public. This is at the very least questionable.

The Australian Newspaper Board consisted of two proprietor representatives and two AJA representatives. As Kirkman noted, however, the industrial fault line was never far below the surface:

Whenever the two halves of the press (proprietors and journalists) meet, their association does tend to be adversarial, with only one goal in common – freedom of the press.²

The Board met only once between 1945 and 1953 to consider complaints about the press: it died, as Kirkman said, of malnutrition. Another 16 years were to pass before the AJA once more attempted to revive the idea of a council as a mechanism for holding newspaper publishers to account. By then there had been rumblings about whether some statutory press complaints authority ought to be established, most notably from Justice Else-Mitchell of the New South Wales Supreme Court and, as ever, the prospect of external statutory mechanisms galvanised proprietor and unionist alike into a new round of discussions. The editor of *The Age*, Graham Perkin, summed up these perceptions candidly:

My great fear is that unless the newspaper industry establishes some form of self-surveillance . . . then we will one day, perhaps soon, have surveillance forced upon us by government.

Yet the proprietors -- with the exception of *The Age* -- still held out against the concept. Alone among the proprietors, Ranald Macdonald, managing director of David Syme and Co,

² *ibid.* p.5.

publishers of *The Age*, advocated the establishment of a voluntary body to “judge the performance of the press and improve the credibility of newspapers”.³ “Unless we act we’ll have it forced on us.”

His prediction began to look prescient when in August 1975 the Federal Minister for the Media issued a discussion paper. This proposed a raft of possible control and accountability mechanisms, including: an Australian Newspapers Commission similar to the Australian Broadcasting Commission; a research unit to monitor and report on press performance, and a system of press licences which could be issued, suspended or revoked on the basis of public satisfaction with a newspaper’s performance. Here were spectres from seventeenth-century England rising from their graves to haunt the press proprietors of Australia in the late twentieth century. But as Kirkman observed, the proprietors really had no one to blame but themselves.⁴

In response, the proprietors issued a media release announcing the formation of an Australian Press Council. It would consist of an independent Chair, three public members, three AJA members and six industry members. The founding chairman would be Sir Frank Kitto, a retired judge of the High Court of Australia. It would be financed by the proprietors.

Even now one of the biggest publishers, John Fairfax & Sons Ltd, refused to join. Sir Frank Kitto wrote to Sir Warwick Fairfax, who was then chairman of the company, inviting him to a meeting to discuss the council’s work. He received a dusty and imperious reply:

We not only decline to join the Council, we believe that in principle the formation of such a council was not in the interests of the ideals and aims which newspapers pursue, and we do not agree with your statement that the cause of the freedom of the press will suffer if we do not join the Council. We believe we have good reasons for this and we do not want to engage in public debate about them.

We believe that the very existence of a Press Council will do harm rather than good through giving the impression that it would be able to exercise a degree of supervision and influence which it cannot in fact achieve.⁵

³ Address to Australian Association of Advertising Agencies symposium, 18 September 1972.

⁴ *ibid.* p.11.

⁵ Gavin Souter, *Company of Heralds*, op. cit. p.642.

Fairfax did eventually join – in 1982 – but by then another major publisher, Rupert Murdoch’s News Ltd, had withdrawn. Murdoch was dissatisfied with a finding which upheld a complaint of bias against his South Australian newspapers during a State election there.

Worse was to follow. In 1986 Murdoch launched a takeover bid for one of Australia’s largest newspaper companies, the Herald & Weekly Times. This put to the test the Council’s capacity to fulfil one of its two key objectives – upholding freedom of the press. There was already considerable concern, expressed by the Norris Inquiry into press ownership in Victoria, that increased concentration of press ownership was a real and present threat to press freedom since it reduced plurality and concentrated media power in fewer hands. Now here was a newspaper proprietor who already owned a considerable proportion of Australian newspapers, trying to execute the largest media takeover in Australia’s history. If successful it would place more than 60% of the nation’s daily newspaper circulation under Murdoch’s control.

The council split down the middle. Lay members and some AJA members voted in favour of making a statement opposing the takeover, while the others – mostly proprietors’ representatives -- voted against making such a statement. In the end the council was forced to squib it. An anodine press release was issued in which no opinion was expressed but a promise made to monitor events. The Chairman resigned, the AJA withdrew, Murdoch rejoined, and the council was restructured. The restructure left the council with an independent Chair, seven public members, one editorial member, two journalist members and 10 publishers’ representatives. In other words, 13 industry members and 8 public members.

The public perceptions of the Press Council as an effective watchdog were damaged profoundly. In the years since, it has been described by Stuart Littlemore, presenter of the ABC TV program *Media Watch*, as “the newspaper proprietors’ lapdog”, and even a major magazine and television proprietor, Kerry Packer, told the House of Representatives Select Committee on the Print Media that it was “a complete and absolute piece of window-dressing”.⁶ Kirkman believes that only if the Council has a majority of public members will the public view it as not top-heavy with industry members.⁷ This has not happened.

⁶ *News & Fair Facts*, op. cit., p.283.

⁷ *Whither the Australian Press Council*, op. cit. p.16.

The present Chair of the Council, Professor Ken McKinnon, was asked about these issues in an interview for this thesis.⁸

Q: Some people say that because the Council is funded by the newspaper industry, it cannot be truly independent. What is your view of the present funding arrangements, and would you advocate any change?

We don't see the proprietors. We had a meeting with their representatives yesterday about whether they wished to change the formula by which they fund the Council. The present formula is a percentage contribution by each based on circulation. They didn't want to change. It has proved too hard in the past to change. The present formula

That is all we see of them. They sign off on the budget. They are, of course, not very keen to increase the budget, but we discuss the services we all think are necessary and their cost and come to a consensus.

Q: What is the budget?

\$715,000. It's a bit better than it's been. The last two years we have had increases.

In very recent times, there has been a rapprochement with the journalists' union. After years in which certain members of the Council sternly opposed its readmission, discussions took place between Professor McKinnon and the Media Entertainment and Arts Alliance, into which the AJA was subsumed during the late 1980s. In 2005 the union rejoined the council, but on a new footing, as Professor McKinnon had made clear in his interview with the author a few months before the readmission:

MEAA made overtures to us about three or four months ago [mid-2004] to rejoin. The Council took a decision about a month ago to invite them back under certain conditions: that they wouldn't have as many people on it as they had before [one now, possibly two long-term, compared with three previously]; that they would have to have a senior practising journalist as their representative rather than an industrial person.

I think they are quite keen. There are mixed feelings among the organizations [the newspaper companies] because they say unionized journalists are a small proportion of all employed journalists now.

I believe it is helpful to have the MEAA as a member organisation. If the Press Council is to claim that it represents the whole industry, then there is a legitimate membership for representatives of the non-executives. The MEAA objects are not limited to achievement of better awards. They include achievement of better journalism, and I'd encourage that.

It is not clear whether we will have any effect on their ethics committee work, but between us holding the newspaper responsible for what they publish, as distinct from holding the journalist responsible, there may be some interplay.⁹

⁸ Interview with the author 20 October 2004.

⁹ Ibid.

The readmission of the union to the Press Council had been urged upon the parties by the House of Representatives Select Committee of Inquiry into the Print Media 13 years earlier.¹⁰

Much contumely has been heaped upon the council, and as the history of the council shows it is not difficult to see why. The dominance of the industry around the council table, its total reliance on the publishers for funding, and its demonstrated incapacity to stand up for the principles of press freedom when it was not in the publishers' interests to do so, left it vulnerable to the charge that it cannot be a credible vehicle for holding the publishers to account. Professor McKinnon is not oblivious of these concerns.

Q: Do you have any sense of the public's view of the Council?

Yes, I think the public would say that our responses are too little, that they are not strong. They would want us to force the newspapers to write apologies to complainants and give those who justify it unlimited space to present their point of view.

And yet that is not the full picture. A fair assessment of the Council's work requires a look at how the complaints process works in practice, and at the satisfaction or otherwise of those members of the public who have availed themselves of it. It also requires a more comprehensive assessment of its work in advancing the cause of press freedom.

THE COMPLAINTS PROCESS

A member of the public who has a complaint against a newspaper must first try to obtain satisfaction from the newspaper itself. Only if this fails will the Press Council contemplate taking up the matter. The complaint must be set out in writing, and framed as a breach of the Press Council's Principles. There are nine of these, and they are given in Appendix E to this thesis. The complaint is then assessed for substance. Those judged by the council's secretariat to be trivial or in bad faith or not in breach of the principles are refused. Should the complaint be accepted, the complainant must sign a waiver declaring that he or she will not take legal action against the newspaper over the article in question.

The newspaper is sent a copy of the complaint and invited to respond. The response is sent to the complainant and if there appears to be the chance of successful mediation a Public member of the council will try to mediate. According to Professor McKinnon, complaints are increasingly being resolved by mediation.

¹⁰ *News & Fair Facts*, op.cit. p 287.

We have had quite a lot of success recently with mediation. We say to complainants that we are not trying to find a winner or a loser. What we trying to do is get satisfaction for you. What would satisfy you? And we provide the complainant with one of our public members, not affiliated with any newspaper, who can sit down with them and a representative of the paper and try to arrive at a mutually satisfactory resolution to the person's complaint.

There's really quite a few of those.

If mediation fails, the matter proceeds to a formal adjudication by the council's Complaints Committee, which has a majority of Public members. The complainant and the publisher are invited to the hearing but it can proceed in their absence. The proceedings are semi-formal. The complainant may make an opening statement and the publisher may respond. However, no new material may be introduced by either side. The parties then withdraw and the committee makes its adjudication, of which the parties are notified in writing. The adjudications are publicly released and publishers are enjoined to publish them, even when the adjudication is adverse. Whether they do is entirely up to them. There is no other sanction. Professor McKinnon is conscious of the perception that this is a weakness in the Press Council's capacities.

Many people see it as a weakness that what we publish is adjudications, that we cannot force newspapers to apologise or give complainants space.

The Council asks newspapers to publish adjudications in a prominent position. We do not push for Page One because it is not fair to the remit of the newspaper which is in the business of publishing the news. But by and large newspapers publish adjudications quite prominently. Only one newspaper in my time has refused. The Council responded by advising the newspaper that if it did not publish the adjudication by the next Sunday, it would buy space in a rival newspaper and publish it there. Which the Council did. I forget whether the Council had to pay for the space or whether the rival gave us the space for nothing.

Fundamentally the adjudication and publication process makes use of the shame motive, in effect saying, look, this is a serious reflection on your standards.

Professor McKinnon believes there is great power in "shaming" as a sanction.

Shame is not to be under-estimated as a force if you pitch and frame it right. I'm happy with that power. I don't think we need any more. And anyway if we're going to improve newspapers, there is the necessity to set up a dialogue approach, which is what the adjudication process is about.

He says it is not taken lightly in newspaper offices.

Last year we were talking to one metropolitan newspaper about whether the Press Council has any sting. The answer from this editor was, "My God, I'll say so. We hate getting a complaint in the Press Council. I would sooner pay double my sub (subscription to the Council) if you would guarantee me no complaints, that we would not have to respond to or appear before the Press Council."

So I have a price on it now: it's actually fifty grand!

Q: What didn't he like? Was it the paperwork?

No no. It is the reflection on professional standards, the attitudes of colleagues across Australia.

The second example comes from a Sunday newspaper. It published a real beat-up about a drowning in a tub of a woman, and the person who had been jailed for murder. The convicted person had the support of a partisan group that was trying to re-open the case. They conned the paper into publishing a seven-page re-enactment with a whole series of staged photographs, with no facts to back the story. The Council found the paper grievously in error. Subsequently I sent a letter to all the editors in Australia drawing attention to the adjudication. That editor was gone in two weeks.

Those two examples suggest that neither the proprietors nor the editors take the Council lightly these days.

The following observations about how the complaints process works are made by the writer on the basis of about eight years' experience as an editorial executive with responsibility for Press Council matters, first at *The Sydney Morning Herald* from 1984 to 1986, and then at *The Age*, Melbourne, from 1986 to 1992, where the responsibility was shared among two or three executives.

For all their aggressive bravado, journalists and publishers do not like getting tangled up with a Press Council complaint. The process is time-consuming and administratively relentless, and adverse outcomes reflect poorly on the newspaper. No doubt there are elements in the newspaper industry who simply ignore it, but the major newspapers do not ignore it. They realise that an adverse finding can chip away at their credibility.

Editorial executives to whom it falls to attend the Complaints Committee's hearings know already that in many cases a single grievance – about what was published – has now become a double grievance – about what was published plus the newspaper's response to the original complaint. Very often the original complaint, if responded to civilly and promptly, could have been dealt with inside an hour. Now the newspaper faces the task of explaining why this was not done, as well as constructing the best defence possible against the original charge.

Remarks by Professor McKinnon indicate that this is as much a problem today as it was in the 1980s and 1990s:

The chief newspaper weakness is that editors are so busy trying to be God that they are unwilling even to admit egregious errors. And they frequently will not publish a sensible correction. Even where editors are willing to do that, it is often in a tiny little token column and it isn't either open or frank.

[And later:]

Q: How would you describe the newspaper industry's attitude to being held accountable to the public? Do they accept the idea that they ought to be accountable? Do they pay lip service to it?

It is not obvious what their underlying attitude is. We encourage more willingness to admit errors by talking to them about research in the USA, which suggests that if newspapers are clever enough to admit mistakes, explain mistakes, and explain why they were there in the first place, that it's actually a circulation-builder.

Q: What did you find they had by way of internal mechanisms?

Now all of the metropolitan newspapers have a senior person in charge of complaint handling. The Herald-Sun has a logging of all complaints which they use for executive reflection. Complaint-handling is built into the cadet training. The Council is starting to add to techniques for better complaint handling within newspapers by advising that the person who wrote the article should not be the person that handles any complaint about it. That's poison. The Council takes information about successful complaint handling techniques from meetings of editors in one State to those in other States, saying, have you heard what newspaper A is doing? What are editors in this State doing?

Consciousness about newspapers taking action on their own to cut off complaints is now much higher. I think newspapers are increasingly concerned to respond, but whether it is the broader accountability issue – this is our responsibility in return for the community giving us the privilege of publishing a newspaper -- or not, I don't know. It may just as likely be self-protective: "better complaint handling is one way of living a less stressful life", than any kind of altruism about the role of newspapers.

So usually confronting a double grievance, the newspaper's representative attends the hearing. The Complaints Committee are not to be trifled with. The Public members in particular tend to be people of formidable intellect and commitment to the public interest: senior public servants, surgeons, academics and so on. Then there is the Chair – initially and for many years a retired judge of the High Court, followed by a retired judge of the New South Wales Supreme Court, and currently Professor McKinnon, a former Vice-Chancellor of the University of Wollongong and a person with extensive experience at very senior levels of the public service. Professor David Flint, mentioned in the preceding chapter as a former Chair of the Australian Broadcasting Authority, preceded him.

Sometimes there is a case of substance to argue on behalf of the newspaper, but more often than not the publisher's case rests on a plea in mitigation, citing the innumerable pressures and complexities of daily newspaper production. Here the newspaper's advocate is on friendlier ground. On these matters, the Public members of the council tend to defer to the Industry members who, for their part, have had altogether too much experience of them and are inclined to be sympathetic. Out of this there usually emerges an adjudication which goes fairly gently on

the newspaper, even if it is adverse. Sometimes there is trenchant criticism, but that is not the rule.

Back at the newspaper office the whole matter has become ancient history. Someone might be reprimanded – or more probably has been reprimanded some time since by the executive responsible for the carriage of Press Council cases. The adjudication is usually published verbatim, as far back in the paper as decently possible. Once it was common to use a jam-label heading such as “Press Council Adjudication”. In recent years the headings have tended to exhibit at least some of the qualities expected of a news headline – a verb, the active voice, and a hint of the story’s content.

COMPLAINTS ANALYSIS

The following analysis of these complaints is based on 10 years of Press Council records, 1993-2002. As Table 6.1 shows, the largest single category was a general one – irresponsibility – followed by inaccuracy or misrepresentation. The data show clearly that these two categories of complaint are by far the most common. Various ethical breaches – bias, lack of balance, lack of fairness, invasion of privacy, racial or religious disparagement, false representation, distortion, suppression of information – account for another 33.81%.

**Table 6.1: PATTERN OF COMPLAINTS ADJUDICATED BY
THE AUSTRALIAN PRESS COUNCIL 1993-2002**

Nature of complaint	No. of this type	Percentage
Complaints about performance or content		
Irresponsibility	668	16.0
Inaccuracy/misrepresentation	544	13.0
Imbalance	361	8.7
Offensive covers	283	6.8
Unfair treatment	278	6.7
Racism/religious disparagement	230	5.5
Bias	173	4.1
False representation	162	3.9

Table 6.1 continued: PATTERN OF COMPLAINTS ADJUDICATED BY THE AUSTRALIAN PRESS COUNCIL 1993-2002

Distortion	143	3.4
Headline	136	3.3
Censor/suppress information	133	3.2
Advertising	110	2.6
Offensive cartoons	60	1.4
Bad taste	56	1.3
Sensationalising	52	1.3
Sexism	42	1.0
Unfair treatment (multicultural)	6	*
Distort (multicultural)	2	*
Complaints about behaviour or ethics		
Letters not published or edited	224	5.4
Ethical standards (not further elaborated)	216	5.2
Invasion of privacy	209	5.0
Abuse freedom of the press	36	0.9
Threat to freedom of the press	12	*
Other		
	38	0.9
TOTAL	4174	99.6

*Less than 0.5. Percentages add to less than 100 because of rounding.

Other data from the Press Council's database show that overwhelmingly complaints are made by individuals, although they do come from other sources too – associations, political candidates or parties, ethnic groups, government agencies.

Table 6.2 shows what happened to the 4174 complaints dealt with between 1993 and 2002. Just over one-fifth were withdrawn by the complainant. There was a substantial rate of attrition among the remainder: 33.83% were refused, not followed up by the complainant, or stopped because of the complainant's unwillingness to sign the waiver on legal action. A small proportion – 4.48% -- were referred to some more appropriate authority, for example authorities dealing with advertising standards, or broadcasting.

A comparatively large proportion – 17.44% -- were settled by mediation facilitated by the Council. Only 20.60% went to adjudication, 12.53% being dismissed, 5.17% being upheld in full and 2.90% being upheld in part.

Table 6.2: OUTCOMES OF COMPLAINTS ADJUDICATED BY THE AUSTRALIAN PRESS COUNCIL 1993-2002

Outcome	Percentage
Withdrawn	22.62
Mediated	17.44
Refused	15.31
Not followed up by complainant	13.25
Dismissed	12.53
Legal action – waiver not signed	5.27
Upheld in full	5.17
Referred to some other authority	4.48
Upheld in part	2.90
Other	1.03

The final criterion on which this assessment of the Press Council rests is the extent to which complainants are satisfied or not satisfied with the process.

In 1994, the Press Council commissioned an independent survey of complainants and of newspaper executives who had been involved in Press Council cases. It was carried out by Katrina Roiter of KRC Consultants and reported as part of the Council's twentieth anniversary papers.¹¹ Allowing for certain methodological deficiencies made unavoidable by the limited budget, the survey produced useful and informative data based on 251 self-completion questionnaires from complainants (a response rate of 34%), and 32 from newspaper executives (a response rate of 40%). A comparison of the results from these two sets of respondents shows a sharp disparity between them on the question of satisfaction with the outcome:

Question: *How satisfied were you with the outcome?**

Table 6.3: SATISFACTION LEVELS OF COMPLAINANTS AND RESPONDENTS ABOUT THE AUSTRALIAN PRESS COUNCIL'S COMPLAINTS OUTCOMES

Satisfaction level	Complainants	Newspaper executives
Base	184	23
	%	%
Very satisfied	13	17
Satisfied	19	65
Neutral	10	4
Dissatisfied	28	13
Very dissatisfied	30	--

*Asked only of complainants and newspaper executives whose cases had gone all the way through to the Complaints Committee, and had not been abandoned or settled in some other way.

¹¹ Jack R. Herman, ed., *Australian Press Council Survey of Complainants [and survey of editors]*, Twentieth Anniversary Papers, Vol 4., Sydney, Australian Press Council, 1996.

These figures should be read with caution because the samples, especially of the executives, are small, and because there were limited controls, this being a self-completion survey. Yet it is clear that the newspaper executives were much more likely to be satisfied with the outcomes of the Press Council complaints procedures than were the complainants – 82% compared with 32%. Conversely, complainants were much more likely to be dissatisfied -- 58% compared with 13%.

The survey results indicate that complainants made a distinction between processes and outcomes.

In general, on processes the Press Council did reasonably well: 64% agreed that the Press Council was receptive when they presented their complaint, 57% were satisfied with the speed with which the Council handled the matter, and a bare majority (50%) thought the process of taking a complaint before the council was fair. Once it got to the hearing stage, however, the picture changed.

To assess respondents' attitudes to the way the hearing was conducted and to the outcomes achieved, questions concerning thoroughness and impartiality from the survey have been analysed. In these questions, respondents were invited to agree or disagree with a series of statements on a five-point scale from "strongly agree" through "neutral" to "strongly disagree". These have been analysed using means derived from this five-point scale. The results are set out in Table 6.4.

Table 6.4: COMPLAINANTS' ATTITUDES TO THE WAY THE AUSTRALIAN PRESS COUNCIL CONDUCTED ITS HEARINGS AND ARRIVED AT OUTCOMES

Statement	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Mean
	%	%	%	%	%	
The Press Council was biased towards the Press	26	20	24	20	10	0.32
The Press Council took the media organisation's word for what happened	22	23	25	22	8	0.27
In investigating the facts in the case, the Council was thorough enough to determine the truth	15	26	21	15	23	-0.05

It becomes clear that complainants believed the Press Council was biased towards the press, preferred the media organisation's word over the complainant's, and lacked thoroughness in its investigations. In these circumstances, it is not surprising that a majority were dissatisfied with the outcome.

Moreover, complainants were particularly dissatisfied with the publicity given to decisions and the way the media responded to those decisions. They strongly indicated that the Press Council should be able to instruct the press to print a public apology or impose a fine if the press behaved irresponsibly. As matters stand, there is no compulsion to publish and even if an adjudication is published, the newspaper usually makes no acknowledgement of wrong-doing. It simply presents the adjudication and leaves it at that.

Professor McKinnon is encouraged to think that perceptions of the Council's performance as arbiter of complaints against newspapers are improving.

I think the Council has an increasing reputation for objectivity, for trying to get to the bottom of what the nub of each complaint is.

Is that objectivity as between the two sides?

Yes.

Defender of a free press

The Press Council asserts a dual role – handling complaints and upholding press freedom. Professor McKinnon was asked about the compatibility of these two functions.

I do not see any problem whatsoever. We are not just defending press freedom. What the Council aims for is, a free and responsible press. So it is chasing the idea that the price of freedom is responsibility.

And with the complaints, what the Council is trying to say is, what is the fair way through? The Council receives complaints about matters that are often essentially ethical issues, that are not black and white: it deals with the shades of grey: there is something to be said for one point of view and something to be said for the other.

I have never seen one vote on the Press Council that could be said to have been on proprietary lines. I don't think the representatives of newspapers on the Council get any instructions.

He listed a number of policy issues on which the Council had been consulted by policy-makers, or had inserted itself into the policy-making process, because of potential effects on press

freedom. These included attempts by the courts to re-write the rules about contempt of court; formulation of privacy laws [from which the media obtained certain exemptions]; responding to a proposal by the Premier of Queensland Premier for a government-appointed newspaper ombudsman; media ownership legislation; Freedom of Information (FoI) legislation, and national security legislation.

The Council investigates and lobbies about Freedom of Information laws, which it does not think are operating intelligently or well. Similarly the Council intervened when revised national security laws were being considered, to try to protect historic civil liberties to the maximum extent. Before the Government was prorogued it had a Bill it was about to pass, justified as being in the interests of national security, which had the potential to include within its scope a broad range of information which not only relates to matters of public interest, but which it would be appropriate to debate publicly. So we worked to get the definitions restricted. The Council made submissions to government both before and after the election, drawing attention to the absurdities of the definition and the need for better drafting, as well as the need to re-consider the restrictions on civil liberties..

The Council had also been a major player in attempts at reforming the law of defamation. This is dealt with in Chapter Ten.

In this work Professor McKinnon believes the Council produces services which have real value for the newspaper companies and that this in turn strengthens the Council's hand as an accountability mechanism.

There are pretty considerable benefits to [the companies]in the Press Council taking up a number of public interest issues. The Federal Government gives the Press Council enough respect to respond to many of its submissions. In the last two years, when it enacted legislation about privacy, it exempted journalists from the provisions of the Privacy Act, while the organization they work for continues to be a member and abides by the Press Council's Charter.

And the same with the new Financial Services legislation. A journalist who gives newspaper column advice as detailed as 'buy this or sell that' has to be licensed, in the same way that everybody else wh is in the financial industry has to be licensed. But other journalists who, in the course of their work, report company results, what the chairman has said, movements in the shares and any problems they have, do not have to be licensed as long as the paper is a member of the Press Council (meaning that a complaint about what the paper published can be lodged and adjudicated in the same way).

They are two good signs of government trust.

Professor McKinnon shared the industry's perennial concern that if the press did not get its own house in order, governments would step in with legislation.

Q: Do you think there's any risk of statutory intervention?

Always. If the chips are down and there are difficulties, yes, interference and legislative control could come with changes of media ownership law. As you know the electronic media are regulated by the ABA and the Australian Communications Authority. The government is going to merge those two. If the government makes laws that allow a proprietor to own television and newspapers or radio and newspapers, then particular newspapers might get swept up as a minor part of somebody's empire and, without anybody thinking about it, the successor to the ABA might be authorized to deal with complaints against proprietors, including their newspapers.

I don't think there's any push on from the Commonwealth Government to do that, but what the government is going to do with media ownership, nobody knows. Included in the possibilities are issues I cannot comment very much on. For instance, the ACCC regards the media as three markets, not one – television, radio and print – but if the government (or the ACCC) decides to regard all three as part of one market, one industry – and two are already regulated by legislation – what do you do with the third one to keep it free of government regulation? Frankly, I don't know what the proprietors would do.

Q: Following the Calcutt inquiries in the UK, there has been some talk about the possibility that governments might use statutory intervention to enforce a process of media accountability. Is that a risk in Australia, and what is your view about the principle of statutory intervention?

Would there be less delay and better accountability if the print industry was regulated by a statutory body? Very doubtful, probably not. As soon as there is statutory regulation, the complaint resolution process would change; the regulator would be forced to admit lawyers with complainants and respondents. And then every step of procedure would have to carefully codified. The upshot would be the whole legal paraphernalia of injunctions and counter-injunctions to delay and defer.

EDITORS AND EDITORIAL MANAGERS ON THE PRESS COUNCIL

I'm heavily involved in this as a member of the Press Council. We've got two strands at work in the Press Council. One is the complaints mechanism. The second is, we work hard on policy development so the Press Council has a view on law changes and freedom-of-the-press issues.

The Press Council is taken far more seriously these days by the publishers than it was in its early days. It goes to your credibility if you're willing to publish an adjudication. And you'd rather not publish an adverse one.

Q: Is it an effective means for the public to hold publishers to account?

I think it is. The Press Council tries to mediate complaints a lot more. We use a public member to come in here, for example, and sit down with the editor and try to work through an issue and get an outcome. So it brings the public closer to the newspaper. The days of telling them to get stuffed don't exist any more.

And the deal is –and I think editors see this -- that in exchange for dealing with complaints, they get a voice that will raise their concerns on broader issues at higher levels.

We often get complaints that say, "And I'm writing to the Press Council and Media Watch".

So it makes journalists a little bit more accountable, out of a fear of being embarrassed or exposed.

-- Newspaper editorial manager

The problem with the Press Council is that it lacks profile. Most journalists wouldn't know who's on the Press Council, who runs the Press Council, who's the chairman of the Press Council. That's a real problem.

I think the Press Council is now too narrow. It's funny to have a "press" council when there's been a proliferation of media. I mean, our Internet sites aren't covered by the Press Council. That's a bit of a problem. A lot of our journalism is published on the Web, and at the moment the Press Council only covers print.

I can't remember the last time the Press Council dealt with a major issue, where it had some impact. In the seven years I've been editor, I can't remember a case where I've thought, "That really is significant and important and we ought to be sitting around talking about what it means".

Q: Is there any problem with it being completely financed by the publishers?

No, I don't think so. I certainly wouldn't want it to be financed by the government. So what's the alternative to publishers' financing it? I can't see any real alternative.

-- Newspaper editor

It's a start. The publication of the Press Council adjudications is a good thing. One thing that has enormously impressed me in the US and UK is their commitment to a clarifications and corrections policy. Under the editorial (leading article) in most newspapers there would be corrections and clarifications that would run into several lines and sometime a third of a column. And papers take that very seriously. I don't see an equivalent here. I think it would be a great enhancement.

-- Broadcasting editorial manager

They have a difficult role. They've put up with accusations of being a toothless tiger. But we are obliged to publish what they find. It's a recourse for people who can't successfully sue a newspaper. I think it fulfils its role pretty well. I disagree with a lot of things the Press Council have done. I've had some adjudications I've been astounded by; some I agree with. They uphold quite a few complaints. I think they give people a very fair hearing. It's professionally run. The Press Council often takes a hard line. They do oblige us to answer to the issues. They mediate between two parties and they can't be seen to be other than independent arbiters, and I think they are. There've been times when I've thought, gee they've given that person a fair go, and we go by the rules. We publish their adjudications in full whenever it affects us.

The Press Council are one of many things that work hard at keeping the media honest.

-- Newspaper editor

QUANTITATIVE RESEARCH – SURVEY OF JOURNALISM PROFESSIONALS

Table 6.5: JOURNALISTS' RATING OF THE AUSTRALIAN PRESS COUNCIL

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	104	60	44	71	18
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	5	5	5	6	--
Medium (4 to 6)	22	20	25	25	11
High (7 to 10)	73	75	70	69	89
Mean	7.5	7.5	7.6	7.4	8.5
Widely/Not widely known among the public					
Low (0 to 3)	23	27	18	24	11
Medium (4 to 6)	48	50	45	51	44
High (7 to 10)	29	23	36	25	44
Mean	5.1	4.9	5.5	5.0	6.1
Respected by journalists					
Low (0 to 3)	21	25	16	24	11
Medium (4 to 6)	42	48	34	44	50
High (7 to 10)	37	27	50	32	39
Mean	5.4	5.0	6.0	5.1	6.1
Fair/Not fair to both sides					
Low (0 to 3)	10	10	9	10	6
Medium (4 to 6)	47	50	43	49	44
High (7 to 10)	43	40	48	41	50
Mean	6.1	6.0	6.3	6.0	6.8
Generally a good/poor system					
Low (0 to 3)	24	32	14	27	17
Medium (4 to 6)	39	35	45	35	56
High (7 to 10)	37	33	41	38	28
Mean	5.2	4.8	5.7	5.1	5.3

The Australian Press Council rated just above the mid-point (mean 5.2) for being “generally a good/poor system”. It rated best (mean 7.5) for being “widely known among journalists”. It rated least well (mean 5.1) for being “widely known among the public”. Female journalists rated it more highly on every criterion than did male journalists. Journalists who were not members of the journalists’ union, the MEAA, rated the Press Council more highly on every criterion than did journalists who were members of the union.

This difference between unionised and non-unionised journalists mirrors the results of the corresponding question about the union’s own ethics panel. It might reflect attitudes grounded in long-standing divisions between the union and newspaper management people over the whole issue of accountability and the mechanisms for giving effect to it.

QUANTITATIVE RESEARCH – SURVEY OF VOTERS

Table 6.6: VOTERS’ AWARENESS OF WHERE TO GO TO COMPLAIN ABOUT A JOURNALIST’S PERFORMANCE (PRESS COUNCIL)

Where to go	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Australian Press Council	4	7	2	5	4	4	6	5

Public awareness of the existence of the Australian Press Council as a place they can go with a complaint is woefully low, worse than for the Australian Broadcasting Authority but, as we shall see, slightly better than for the MEAA’s ethics panel.

CONCLUSIONS

On the evidence of its fractious history, the outcomes of its complaints procedures, its own research into complainant satisfaction, and findings from the surveys of voters and journalists, it is clear that the Press Council falls short of being an effective mechanism for holding newspaper publishers to account. On the other hand, its achievements deserve recognition and it should not be written off as no more than a “proprietors’ lapdog” or a piece of “window-dressing”, even if that is more or less how it started out in 1976.

Its achievements are to have become established as an educative presence in an industry that tends not to value professional education and makes little time for professional reflection; to have become the source of some discomfort to journalists and editors who do wrong, and to be a voice for press freedom in the debates of policy-makers whose own interests and inclinations are not always best served by a free press. It also deserves credit for attempting to bring the

journalists' union back into its fold, since the more unified the system of accountability is, the more effective it is likely to be.

The pity is that these achievements are to a large extent overshadowed by its flaws. These flaws are perceived to some extent by the council itself, certainly by members of the public who have availed themselves of its complaints procedures, and by professional journalists, who do not hold it in particularly high regard. A further pity is that these flaws are to some extent based on perception as much as reality.

This applies particularly to the issue of independence. The fact that the council is wholly funded by the newspaper companies, while not ideal, is unlikely to mean that in fact the companies wield improper influence. The calibre of the Chair and Public members indicates the contrary: people with distinguished records in other fields are unlikely, as a matter of habit and principle, to countenance improper interference. Politically it is very improbable that the newspaper companies would attempt to emasculate the council by reducing or removing its funding, since the almost certain alternative would be the imposition somewhere of a statutory authority. Even as this was being written the Premier of Queensland flew a kite about setting up a media ombudsman, although he quickly backed away in the face of immediate media hostility. More than this, if the newspaper companies did not fund it, who would? Government funding would be entirely unacceptable on the ground that in any country claiming to be democratic, government control of the press is out of the question.

The real restraint on the council is probably much more subtle, having its roots in the council's tumultuous history. This history suggests an institutional fragility. Institutions with such a history tend to lack boldness and a capacity to take hard decisions that carry risks of internal dissension. One issue will serve to illustrate the point. It is scarcely credible that a robust organisation would endure the pillorying that the Press Council gets for its weak sanctions regime without doing something to strengthen it. The sanction of "shaming" is a considerable one, and valued also by the Australian Broadcasting Authority, but on its own is limited. The limitation is severe when the council's own survey of complainants shows such profound dissatisfaction with the outcome of the complaints process, especially about the lack of publicity given by newspapers to setting the record straight or making amends.

The council needs to unshackle itself from its history and make it clear to the newspaper companies that continuing lack of public credibility does nothing to reduce the ever-present threat of government regulation. The surest and swiftest way to build public credibility – and for that matter credibility among journalists – would be the introduction of a sanctions regime that included the power to compel newspapers to publish adjudications and acknowledge wrong, and the power to fine newspapers for serious breaches of the Council’s principles. The need for a stronger approach to the publication of adjudications was also urged upon the council by the Lee inquiry.¹²

If signing up to the Press Council confers the benefits that the Chair claims – exemption from certain aspects of privacy and consumer-protection legislation, for example – the act of signing up should be made to mean a great deal more than contributing an annual subscription and some portion of the time of a couple of executives to sit on the council and attend complaints hearings. It should certainly mean submitting to a sanctions regime with credible bite.

The weighting of Public and Industry members also needs to be shifted so – as Kirkman recommended in 1996¹³ – there is a majority of public members. If this were done as a first step, unshackling the reconstituted council from its past would be easier, and the introduction of a more credible sanctions regime made more likely. It would also be a strong demonstration of independence from the newspaper companies and so greatly enhance the council’s public standing.

Another serious flaw is that the Press Council is limited in its jurisdiction to dealing with complaints against newspaper publishers. It has no jurisdiction over individual journalists. This is an absurd and insupportable distinction. It is individual journalists who make nearly every operational and policy decision that goes into the editorial processes of a newspaper. It is extremely rare for the publisher or the company management to become involved in these processes, and the bigger and editorially stronger a newspaper is, the less likely it is that there will be proprietorial or management input into editorial decision-making. This is because editorially strong newspapers respect what is called “editorial independence”, or the right of the journalists to make decisions based on a story’s merit rather than on whose interests might be served by publishing or suppressing it.

¹² *News & Fair Facts*, op.cit. p.288.

¹³ Op. cit.

It is true that a single story is very often the work of many individual journalists – from the reporter who writes it, to the news editor who assesses it for publication, to the sub-editor who edits it, might re-write it, and puts a heading on it. This is used as a convenient excuse to avoid holding each of those individuals to account for their own contribution. Instead, in the Press Council's processes, no one who had anything to do with the story turns up to take responsibility for it. It is a nonsense.

This was raised with Professor McKinnon.

Q: You've got the Press Council's writ running over the proprietors but not the journalists, and the MEAA's writ runs over its members and nobody else, and so there's a whole heap of people, non-unionised journalists and executive journalists who, in a sense, escape altogether.

My entire objective, in accepting to be the chair of the Press Council, was that I would help raise the quality of newspapers in Australia. I did not kid myself that I could fully achieve that objective but I thought it was a worthy thing to sign up to. So I am not inhibited by any preconceptions about who plays what role to do that. I accept that as far as the Press Council's concerned, we only assess the newspaper. I think that is proper because between what a journalist writes and what comes out in the paper, is a big gulf. Many journalists do not even see how their work will be presented, what pictures get put with it, what headlines will be written. So it is proper that the newspapers be responsible, but it is also proper that individual journalists are reminded that they have to work by ethical standards themselves.

If the Council can, as part of its rapprochement with the journalists' union, develop a united system of accountability encompassing publishers and journalists, it will have accomplished genuine progress towards a credible and workable system of accountability – at least for the print media. The division between print and electronic publishing, of course, will still exist.

Finally, the Press Council needs to be empowered to investigate issues of its own volition. As matters stand it can only respond to complaints. As Professor McKinnon said, it is a passive organisation:

The Press Council is a passive organization, by and large, and cannot easily – because of that tradition since it began – take action in its own right to tackle a problem that it sees. So unless somebody complains, nothing happens.

In summary, four reforms are needed to make the Press Council an effective mechanism for holding the print media to account:

1. Restructuring its membership to create a majority of Public members.
2. Introducing a complaints mechanism which brings before it the journalists and executives actually involved in publication.

3. Strengthening and broadening its sanctions to include the power to compel publication of adjudications and acknowledgement of wrong-doing, and to impose fines.
4. Empowering it to initiate investigations without waiting for a complaint to be laid.

A person wise in the ways of the world might ask, why would the newspaper companies go on financing an organisation over which they had relinquished total control? The answer is, because it is better to have some control than no control, which is what they would have if any form of statutory mechanism were established. Professor McKinnon paints a highly plausible scenario when he talks about the possibility that in the foreshadowed changes to media ownership laws in Australia, some statutory controls could be introduced over the print media, either through legislative sleight-of-hand or misadventure.

The political levers are to hand and easy to exercise. The public standing of the media is low; there is little public awareness of, or faith in, the existing self-regulatory mechanisms; media ownership legislation offers the opportunity for governments to create tempting trade-offs between financial inducements and submissiveness to regulation. Some newspaper companies these days are owned by people whose commitment to, or even grasp of, concepts such as freedom of the press or editorial independence is open to question: banks, superannuation funds, insurance companies and the like. In this climate it would be naïve to think that the present state of affairs in media accountability is likely to continue unchallenged. By taking the initiative in strengthening the Press Council, the newspaper companies would position themselves strongly to resist these risks while improving their dire public reputation and – incidentally – strengthening the Australian democracy.

CHAPTER SEVEN

THE ETHICS PANEL OF THE MEAA AND *MEDIA WATCH*

In this chapter the ethics panel system of the Media, Entertainment and Arts Alliance is examined as the mechanism of accountability for individual journalists. First, its history and powers are set out. This is followed by an analysis of the complaints it has dealt with over a defined period of time. Findings from the qualitative interviews and quantitative surveys, as they apply to the MEAA are then reported. Conclusions are drawn about the MEAA's efficacy as a mechanism of accountability.

The final part of the chapter is devoted to an examination of the ABC TV program Media Watch, which was set up as a public form of media accountability by the national broadcaster.

7.1 THE ETHICS PANEL OF THE MEDIA, ENTERTAINMENT & ARTS ALLIANCE

HISTORY AND POWERS

The Media, Entertainment and Arts Alliance (MEAA) is the trade union that has coverage of journalists in Australia. This coverage includes journalists working in print or electronic media. Membership of the union is not compulsory. Although the union itself estimates that 80 per cent of the journalists working in the Australian media are members,¹⁴ estimates by employers are considerably lower than this, varying between 50 and about 70 per cent.

¹⁴ Estimate provided to the author by Pat O'Donnell, Victorian branch secretary, MEAA, 17 September 2003.

Journalists holding certain positions are specifically exempted from membership under the rules of the union. They are:

The proprietor of a newspaper who does not derive the greater part of his or her income from journalistic work;

The editor-in-chief and editor of major metropolitan newspapers;

The chief of the general reporting staff of capital city daily newspapers.

In practice the exemptions are much wider, and include most of the editorial executives of daily newspapers, such as news editor, chief sub-editor and associate editor, as well as editors of major sections such as business and sport. The exemptions are negotiated between the employer and the union as part of the industrial award or house agreement. The employer typically presses for more because the more he has, the greater his strike-breaking capabilities. The present writer was exempted from membership of the union from 1979 until he left the industry in 1993.

During that time he held successively the positions of chief of staff, chief sub-editor, night editor, news editor and assistant editor of *The Sydney Morning Herald*, and associate editor of *The Age*, Melbourne.

Since only members of the union are subject to the MEAA's complaints procedure, it follows that non-members as well as journalists in these exempt positions are not subject to the procedure. At the same time journalists in exempt positions are the people making most of the operational decisions in news organizations, including assigning reporters and sub-editors to stories, editing the copy, and deciding whether, where and in what exact form it should be published. Their functions also include managing and disciplining staff, and handling complaints from the public. They are acculturated to exercise their managerial prerogatives in the interests of the editorial department of the newspaper and to resist being second-guessed either by the company's corporate management or by outside forces.

This acculturation is a by-product of that element in Social Responsibility theory which enjoins journalists to act independently. The intent is that journalists should resist being influenced by improper pressure, whether from their own corporation or elsewhere. These values are reinforced by various journalistic codes of ethics, including the code of the MEAA. It is scarcely surprising, then, that when complaints are made against editorial staff, editorial managers see it as their exclusive prerogative to decide whether the complaint has merit and, if so, what should

be done. To do otherwise is seen as yielding ground to other interests. Here begins a slippery-slope argument: if ground is yielded over this, where might it end, and what will be left of editorial independence?

The answer to this rhetorical question is seldom articulated, but the concomitant question – who sees that the managerial prerogative is justly exercised? – is seldom even asked. Two consequences flow from this state of affairs. First, the in-house managers most responsible for editorial decisions and behaviour of journalists are not covered by the accountability procedures of the union. Second, the in-house managers regard the handling of complaints against their staff – whether members of the union or not -- as their exclusive prerogative. It follows from this that there is no collaboration at all between newspaper management and the union over the handling of complaints against journalists. The two avenues of complaint – through the newspaper's management, or through the union – are both open to the general public, but are completely independent of each other, and the outcome of one will not necessarily have any influence at all in the halls of the other.

More than this, the jurisdiction of the MEAA is confined strictly to the professional activities of its members, not to that of publishers, who fall with the purview of the Australian Press Council. The distinction can be a fine one and not always clear to members of the public. A case which came before the national panel of the MEAA in 2002 illustrates the point:

The national ethics panel can only deal with complaints against MEAA members. In this case, it believes many of Mr Barton's grievances concern the Herald Sun in general and/or the actions of staff members other than Mr Mickelborough. These are matters which might be more suitably directed to the Press Council.¹⁵

Not only is the distinction fine, it is highly artificial, and it creates a crack through which the line of accountability can vanish without trace. The journalist is almost always the publisher's agent, whether in researching, writing, editing or publishing a story. The publisher employs the journalist to carry out these functions. Moreover, the preparation of a story for publication involves many hands: the person who assigns the reporter to the story in the first place; the reporter who researches and writes it; the news editor or chief sub-editor who assesses it and

¹⁵ Sporting Shooters Association of Australia v Peter Mickelborough, September 2002.

may re-write the first few paragraphs; the sub-editor who edits it, may cut it, and writes the heading; the check sub-editor who revises the sub-editor's work before typesetting the story; the night editor or editor who might take a hand in deciding the general direction of the story. Some stories appear as an amalgam, or a "pull-together", of more than one story.

In these circumstances, who is the journalist and who is the publisher? To create two categories, one accountable through the trade union and the other through the Press Council – and some through neither because they are not members of the union – is preposterous and untenable. It is as if the system were designed with this crack in it for the express purpose of destroying the line of accountability. History tells us this is not so: it is not a deliberate act of sabotage, but it has the same effect.

From the MEAA's perspective, the distinction is clear enough because the union's jurisdiction is determined by a simple question: Is the journalist complained about a member or not? The union's view was put by Prue Innes, chair of its National Ethics Panel:¹⁶

I see it as complementary and I'd query that the distinction is highly artificial. We are bound by our rules. I would agree it might seem highly unsatisfactory to a complainant.

In looking at the complaints procedure of the MEAA, a threshold question is, how well is its existence known among members of the public? A survey conducted for this thesis found only 3 per cent of respondents nominated the MEAA as a place they could go to complain about a journalist's professional misconduct.

These findings accord with those of the Senate Select Committee on Information Technologies in April 2000 that "there was significant confusion among the community about where to lodge complaints about the media".¹⁷

In the light of this confusion and low awareness level, it is not surprising that the number of complaints brought before the MEAA is extremely modest. Over the 10 years 1993-2002 inclusive, 23 complaints were received by the ethics panel of the Victorian branch. An analysis of those complaints is provided below but there are a number of procedural issues about the process that warrant examination beforehand.

¹⁶ Interview with the author 5 May 2005.

¹⁷ *In the Public Interest: Monitoring Australia's Media*. At the Committee's website, <http://www.aph.gov.au/it>.

First, complaints must be framed within the terms of the Code of Ethics. The code appears in Appendix E. Complainants must identify the clause they say is breached, matching as best they can the conduct complained of to one or more of the clauses.

Until 2001, complaints were handled by ethics panels elected by each state branch, with appeals being heard by a national panel. Each of these panels consisted only of MEAA members, of whom there was a minimum of three and a maximum of five.

In June 2001, however, a national panel was established in place of the state panels to hear complaints at first instance. According to a pamphlet published by the MEAA¹⁸, the new panel consisted of 21 journalists elected by journalist members of the union, and nine members of the public. The procedure for lodging a complaint remained unchanged: it had to be in writing, name the journalist, describe the action believed to be unethical, and be framed within the terms of the code of ethics.

The panel hearing the complaint at first instance consists of two journalist members and one public member. While not operating under law, the panels operate under the rules of natural justice. Journalists found to have breached the code are liable to a warning, reprimand, fine of up to \$1000, suspension of membership for up to one year, or expulsion from membership. There is an avenue of appeal to a panel of five consisting of at least two public members, available to either party. No statement was made in the pamphlet about the time within which complaints were to be handled, although the rules of the union require this to be done “expeditiously”. These changes did not meet with universal approval inside the union. The objections were based on five main grounds:

1. The reduction in the journalist members of the panel pool from 69 to 21;
2. What was said to be the cumbersome and unnecessarily sluggish nature of the centralized system, leading to unconscionable delays;
3. The introduction of a fixed limit of three MEAA members on a panel in place of an open-ended MEAA representation with a quorum of three ;
4. The introduction of a new power to dismiss complaints without further action;
5. The introduction of a rule which, if strictly construed, would make the personal appearance of one party contingent on the appearance of the other.

¹⁸ Media, Entertainment and Arts Alliance, Australian Journalists Association Section: *Code of Ethics: Complaints Procedures*, authorized by Christopher Warren, Alliance Federal Secretary. Undated.

Construed this way, if the journalist complained about refused to appear, then the complainant could not appear either. Ms Innes said it was not construed this way in practice, and that while journalists were not obliged to appear, they tended to turn up.¹⁹

Despite the internal dissent over these changes – and the manifest injustice inherent in the final one – they went ahead anyway.

The journalist complained against is given a written copy of the complaint and invited to respond. The matter is then heard by the panel. The complainant is able to make a representation in person, as is the journalist. The panel meets subsequently to make a ruling, which is then notified to the parties and to the union executive.

The ruling is not notified to the journalist's employer nor is it published more widely. The reason advanced by the union – and confirmed in written legal advice – is that the union may be liable at law for defaming a member against whom an adverse finding has been made.²⁰ The practical result of this is that no one other than the parties, the panel and the MEAA executive ever hear about the complaints that are lodged, or what happens to them. This not only severely circumscribes the effectiveness of the procedure as a mechanism of accountability, but it offends against the principles of free expression, openness and transparency, and leaves the profession open to accusations of hypocrisy. For these reasons the Victorian branch of the union has made more than one representation to the government for legislation specifically providing for the defence of qualified privilege to apply to the publication of findings by the ethics panel. So far these representations have not been successful.²¹

There are further legal complications.

Legal counsel at Fairfax, Australia's second-largest newspaper publisher, advises its journalists against having anything to do with the MEAA's complaints procedures.²² The reason given was that complainants were not required to sign a waiver abrogating their right to sue the newspaper

¹⁹ *ibid.*

²⁰ This information was provided to the author by the Chair of the Victorian complaints panel, Ms Prue Innes, who also permitted the author to see legal advice on this matter prepared by a specialist defamation lawyer, Peter Bartlett, partner at Minter Ellison, Melbourne, and dated 17 March 1998.

²¹ See, for example, the letter from Michael Lavarch, then Commonwealth Attorney-General, to the Victorian Chair of the judiciary committee of the MEAA, dated 22 December 1994.

²² Interview with legal counsel Richard Coleman, 14 August 2003.

for defamation over the matter at issue. The publisher's view is that under the MEAA procedures, complainants are able to obtain materials which they would not be able to obtain under the legal process of "discovery". It follows, on this view, that a potential litigant could steal a march on the newspaper by first complaining to the MEAA and obtaining all materials to which that process entitled him, then suing the newspaper for defamation.

The union contends that this view is mistaken, saying that nothing can be obtained by complainants under the MEAA's procedures that would be capable of use in a court of law. Mistaken or not, however, it is a fact of life that impinges upon the effectiveness of the MEAA to hold its members to account.

Nor are these the only difficulties confronted by the MEAA's complaints procedures. The panels have no power to compel the attendance of a member, do not always enjoy the support of the house committee whose member is complained against, and sometimes must operate in the shadow of defamation or other litigation. Such a case arose in Victoria in 1997.²³

In her response to the MEAA's letter telling her of the complaint against her, the journalist in this case said that the complainant was threatening proceedings for defamation. She had been advised by her employer's legal representatives not to attend the MEAA hearing so long as the risk of an action for defamation existed. The MEAA replied that any action for defamation was a separate matter and that the union's rules required the panel to deal with complaints expeditiously. This provoked a written protest from the journalist's house committee (a committee of the MEAA itself), saying among other things: "While a member is exposed to the threat of legal action, our union should not be conducting internal hearings which may used against that member in a court of law". In the event, the hearing of the complaint was deferred and it was ultimately dismissed.

This case illustrates the complex way in which the MEAA's position as a trade union, the inadequacies of its complaints procedures, and the workings of the defamation laws interact to hinder journalistic accountability.

²³ *Sariyaya v Svendsen*, May 1997.

Ms Innes does not agree that the procedures are inadequate. She says that they deliver respectful and prompt handling of complaints. However, she is frustrated by the rules under which the complaints procedures operate:

The rules are badly drafted. We survive in spite of them.

Her biggest frustration is that only members of the union can be held accountable under the union's system. She advocates a unified system in which all journalists are held accountable.²⁴

COMPLAINTS ANALYSIS

Below is an analysis of 10 years of complaints handled by the Victorian branch of the MEAA over the period 1993 to 2002 inclusive. By its nature, the MEAA deals only with matters pertaining to journalists' behaviour, so the complaints described below all fall into that category.

Table 7.1: PATTERN OF COMPLAINTS DEALT WITH BY
THE MEAA ETHICS PANEL, VICTORIA, 1993-2002

Year	Nature of complaint and complainant (and Code clause)	Result and penalty
2002	Lobby group. (Clause 1 –Bias, inaccuracy and misrepresentation, Clause 4 – Conflict of interest because of biased pre-disposition, Clause 5 similarly, Clause 12 –failure to correct error).	Dismissed.
2000	Individual and members of religious group. (Clause 1 – Distortion and bias.)	Upheld. Reprimand. Also an example of lack of jurisdiction – only one of two authors came under MEAA jurisdiction, although the second author participated by phone in the hearing..
2000	Lobby group. (Clause 1 – Misleading, Clause 12 – failure to correct error)	Both dismissed. Also dismisses complaint that complainant was denied procedural fairness. Also notes in correspondence that the ethics committee cannot compel journalists to attend hearings.
1999	Individual. Old Clause 1 – misleading, deceptive and wrong emphasis.	Dismissed. Subsequent complaint by complainant about conflict of interest by panel member.
1997	Individual. (Old Clause 9 – intrusion on grief)	Upheld. Reprimand.
1997	Private couple. (Old Clauses 1, 2, 4, 9, 10) Use of position to advance personal faction in ethnic group, distortion, inaccuracy.	Upheld in respect of Clause 4 (use position to advance personal interest). Warning. Otherwise dismissed.
1997	Individual member of lobby group. (Old Clause 1 – inaccuracy.)	Dismissed.

²⁴ Op. cit.

**Table 7.1 continued: PATTERN OF COMPLAINTS DEALT WITH BY
THE MEAA ETHICS PANEL, VICTORIA, 1993-2002**

1997	Individual. (Old Clause 1 - dishonest presentation of material, suppression of relevant facts. Old Clause 10 – failure to correct error.)	Dismissed. Journalist's House Committee complained of procedural unfairness. Also an issue about whether to proceed in light of a threat by the complainant to sue for defamation over the same article as the one complained of. Hearing went ahead.
1997	Individual. (Clause 1 – Bias).	Withdrawn.
1996	Individual. (Old Clause 3 - breach of confidence)	Upheld. Reprimand.
1996	Individual member of lobby group. (Old Clause 1 – suppression of relevant facts)	Dismissed. Appeal also dismissed.
1996	Individual. (Old Clause 1 – misreporting)	Abandoned when complainant walked out during the hearing.
1995	Individual (Colleague in same media organization). (Old Clause 4 – suppressing for reasons of personal interest)	Upheld. Reprimand.
1994	Individual (Old Clause 7 – use of dishonest means to obtain information)	Dismissed.
1994	Individual. (Old Clause 9 – intrusion on grief and privacy)	Dismissed.
1994	Individual (Clause 1 failure to disclose all relevant facts by denying right of reply)	Upheld. Reprimand.
1994	Individual (Old Clause 3 – breach of confidence)	Upheld. Reprimand. Statement that hearings are held in private, results not published and results not usually sent to employer.
1994	Individual (Old Clause 3 – breach of confidence)	Not recorded, but correspondence suggests it lacked substance.
1994	Individual (Old Clause 1 – inaccuracy)	Dismissed.
1994	Couple. (Old Clause 1 – dishonest interpretation and suppression of relevant facts, Old Clause 2 – unnecessary emphasis on marital status, Old Clause 7 – use of unfair means, Old Clause 9 – breach of privacy.	Upheld on Old Clauses 1 and 9. Otherwise dismissed. Fined \$200 for Clause 1 breach and \$100 for Clause 9 breach. Appeal by journalist dismissed.
1993	Individual (Old Clause 2 – racism)	Administratively deflected to television channel on the ground that the reporter had not been identified by the complainant. Judiciary chair questioned whether the AJA could find out who the reporter was, and noted a “moral duty” on the part of the AJA to assist complainant.
1993	Individual (Old Clause 7 – use fair and honest means to obtain information)	Upheld. Warning.
1993	Individual (Old Clause 3 – breach of confidence)	Not recorded.

This summary straddles the period when the Code of Ethics was being revised and various draft versions of the revised Code had been published. This, coupled with the sometimes inexact nature of case documentation, made it difficult in some cases to establish exactly which clause

the journalist was alleged to have breached. Every effort has been made to establish the correct nature of the alleged breach, and the broad pattern of complaints over this period is unlikely to have been seriously misrepresented here. The term “Old Clause” has been used to denote the clauses of the Code in use from 1984 until the adoption of the new Code in 2001.

It cannot be claimed that this survey of complaints is representative of all complaints dealt with in all jurisdictions of Australia over this period. However, it does represent the complete record of complaints dealt with in Victoria over that time. There is no reason to think that Victoria would be different in any material way from other jurisdictions. It is therefore argued that the data in this summary give a good indication of the volume of complaints, type of complainant, nature of complaint, and results across Australia in that period. An analysis of the data for Victoria shows:

- 23 complaints were the subject of a hearing by the judiciary committee/ethics panel for Victoria, an average of 2.3 per year.
- Of these, 39% (nine cases) were upheld in whole or in part, and 61% were dismissed. Thus the ratio of complaints dismissed to those upheld was nearly 2:1.

Of the nine cases in which the complaint was withheld, the penalties in ascending order of severity were:

Warning	2
Reprimand	6
Fine	1

The most common ground for complaint was that the journalist had breached Clause 1 (common in broad terms to all versions of the Code). This clause is all about accuracy and honesty in the presentation of information. It states:

(Journalists will:)

Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts.

[N]ot suppress relevant available facts, or give distorting emphasis. Do [their] utmost to give a fair opportunity for reply.²⁵

²⁵ MEAA Code of Ethics for Journalists, Rules of the MEAA as amended in 2001, pp 53-55.

Alleged breaches of this clause featured in 52% (12 out of 23) of the complaints dealt with in Victoria over the period reviewed. Otherwise, there were:

- ❑ Four complaints alleging breach of confidence (Clause 3);
- ❑ Four alleging intrusions into privacy or grief (Clause 11);
- ❑ Four alleging failure to attempt to correct an error (Clause 12);
- ❑ Three alleging undue emphasis on personal characteristics such as race, ethnicity, religion, sexual orientation (Clause 2);
- ❑ Three alleging conflict of interest on the part of the journalist (Clauses 4 and 5), and
- ❑ Three alleging the use of unfair or dishonest means to obtain information (Clause 8).

It should be noted that multiple breaches were alleged in several cases.

Overwhelmingly, complainants were individual citizens or couples acting in their private capacity in an attempt to redress an alleged wrong affecting them personally or someone close to them such as a spouse. There were 17 such people, or 74% of complainants.

Four complainants (17%) were members of a lobby group acting either on behalf of the group or on their own behalf as members of the group. One complainant was from an individual member of a religious group, and one was an individual acting in a professional capacity complaining about the conduct of a colleague in the same media organization.

EDITORS AND EDITORIAL MANAGERS ON THE MEAA PROCESS

Q: What is your opinion, if any, of the ethics panel of the MEAA as a mechanism for making individual journalists accountable?

Not too sure. You never see outcomes. Similarly, our internal processes remain private too. We don't announce to the public that we've sacked so-and-so for making a cock-up two weeks ago.

Q: Do you think the public have ever heard of it?

I think that's the problem. I don't think the public realise that's an avenue that they can complain to. You're more likely to be talking about the conduct of a journalist, rather than what's published. I don't really know the effectiveness of that kind of accountability.

Similarly, I couldn't tell you how the public perceive the effectiveness of our internal policies here and how they operate. The public would know nothing about it.

-- Newspaper editorial manager

It is so secret that I don't know what it actually does. I don't know how many hearings it's had. I have no idea whether that panel has actually dealt with complaints. I've been involved once in the past with a complaint where I was a witness for somebody. It was totally secret. I couldn't speak to anyone about it – nor would I – but it means I don't know whether it works well or doesn't work well, how many complaints they deal with, how many go to a hearing. I don't know.

-- Newspaper editor

I've never had anything to do with that. I haven't been involved in seeing it at work and I can't recall anyone here going through that process. So I'm not across it, I'm sorry.

-- Broadcasting editorial manager

That can be part of the process by all means. We have a mix of people who are in the MEAA and who aren't. Pretty close to half. I'm happy for the MEAA to play a role.

Q: Do you know if they ever have?

No. To be honest I've not had a lot of dealings with the MEAA at all.

Q: Its ethics panel?

No involvement with that at all. If we have issues of ethics to deal with, we deal with them quickly and aggressively internally. And I'll be involved in that. It's an area the MEAA get into if they wish, but it will never be the sole way because so many journalists have chosen not to be part of the MEAA.

-- Newspaper editor

QUANTITATIVE RESEARCH – SURVEY OF JOURNALISM PROFESSIONALS

Question

As you may know, the Media Entertainment and Arts Alliance has an ethics panel that deals with public complaints against members. Using the scales below, please give this system a rating for the various attributes mentioned.

Table 7.2: JOURNALISTS' RATING OF THE MEAA ETHICS PANEL

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	83	49	34	54	15
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	29	41	12	37	27
Medium (4 to 6)	33	33	32	35	33
High (7 to 10)	39	27	56	28	40
Mean	5.3	4.6	6.3	4.6	5.4

Table 7.2 continued: JOURNALISTS' RATING OF THE MEAA ETHICS PANEL

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	83	49	34	54	15
	%	%	%	%	%
Widely/Not widely known among the public					
Low (0 to 3)	75	88	56	85	73
Medium (4 to 6)	20	10	35	11	27
High (7 to 10)	5	2	9	4	--
Mean	2.5	1.9	3.4	2.1	2.1
Respected by journalists					
Low (0 to 3)	22	29	12	20	40
Medium (4 to 6)	49	43	59	50	47
High (7 to 10)	29	29	29	30	13
Mean	5.3	5.0	5.7	5.4	4.0
Fair/Not fair to both sides					
Low (0 to 3)	7	6	9	4	13
Medium (4 to 6)	53	53	53	52	60
High (7 to 10)	40	41	38	44	27
Mean	6.1	6.0	6.2	6.3	5.1
Generally a good/poor system					
Low (0 to 3)	17	22	9	13	40
Medium (4 to 6)	48	39	62	48	47
High (7 to 10)	35	39	29	39	13
Mean	5.4	5.3	5.6	5.7	4.0

The MEAA ethics panel was rated just above the mid-point (mean 5.4) for being “generally a good/poor system”. It rated best for being “fair to both sides” (mean 6.1). It rated poorly (mean 2.5) for being known to the public. Female journalists rated it more highly than male journalists on every criterion. Members of the union rated it higher than non-union journalists on three of the five criteria.

QUANTITATIVE RESEARCH – SURVEY OF VOTERS

Question

Can you tell me the name of any organisation that you could go to if you wanted to complain about the way a journalist had carried out his or her professional duties? (Unprompted.)

Table 7.3: VOTERS' AWARENESS OF WHERE TO GO TO COMPLAIN (MEAA)

Where to go	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Ethics committee of MEAA	3	4	2	4	--	1	7	3

It is obvious that public awareness of the MEAA ethics panel is lower even than that of the Australian Broadcasting Authority and the Australian Press Council.

CONCLUSIONS

There is a fundamental conflict between the two organisational functions of the MEAA as an industrial trade union which exists to protect the livelihoods of its members and as a forum for making those members publicly accountable for misconduct which, in severe cases, might require their removal from the profession.

The MEAA – or more to the point, the Australian Journalists' Association which preceded it – has a long and proud history of advocating professional ethics and journalistic accountability. As its history shows, however, it made little headway either in recruiting members or in attaining recognition among the newspaper proprietors so long as its main focus was on professional ethics. It really only grew into a force within the industry when its trade union activities made it materially attractive to join and a force to be reckoned with at the negotiating table. This history was set out in Chapter Three.

The MEAA clearly has a contribution to make towards journalistic accountability, but it is not equipped to do it alone. It would make a more effective contribution by becoming part of a unified system, covering print and electronic media, public and private sectors, publishers and journalists alike.

7.2 MEDIA WATCH

While not an external mechanism of accountability in an institutional sense, the ABC TV program *Media Watch* has, since 1998, been the most visible of all, at least in the eyes of the profession itself, as the data below show. Broadcast once a week, it takes the form of a pastiche. It retails ridiculous errors of fact, absurd headlines, appalling lapses of taste or judgment, and an entertaining variety of general media silliness. It has also revealed many instances of serious lack of professionalism, including a case of children in a war zone who were placed at risk of harm by being cajoled into posing near damaged military weaponry. The reporter involved, who had been employed by the ABC itself, was dismissed. It has also revealed many instances of plagiarism. This cost the jobs of at least two journalists at *The Age*, one a very high-profile commentator.

It has also tackled major issues, most notably serious conflicts of interest affecting Professor David Flint in his capacity as Chair of the Australian Broadcasting Authority. *Media Watch* broadcast the text of flattering letters written by Flint to a Sydney broadcaster, Alan Jones, who was at the time the subject of an ABA inquiry into what became known as the cash-for-comments affair, dealt with in Chapter Five.

What the editors and editorial managers said about *Media Watch* is instructive about its effect on the profession.

EDITORS ON *MEDIA WATCH*

Because of Media Watch, there are things that some editors and journalists might have done that they don't do. So it has that effect, I think. Obviously, [presenter David] Marr's done good work on Jones and the ABA, and [a previous presenter Stuart] Littlemore's done some of that as well. I wonder if it's been too trivial. It hasn't dealt with – for instance I don't know whether Media Watch has ever dealt with the issue of accountability: how do you make journalists accountable, and are they accountable enough?

-- Newspaper editor

It's another one of those outside influences that journalists have always got half an eye on. You don't want to get a guernsey on Media Watch. It picks up on things that journalists should be aware of. They're more likely to find plagiarism than anyone else. Plagiarism is so easy to do these days, documents being freely available on the Internet. So Media Watch performs a function in that it makes journalists aware that someone is watching them.

Media Watch does have a down side. It trivialises some things – mistakes in headlines and stuff like that. By the same token, a journalist who's done the wrong thing by plagiarising or something like that will expect to get a guernsey on Media Watch before anyone else.

-- Newspaper editorial manager

That's gained in status. They do an excellent job – and I've been subjected to some of their analyses.

-- Broadcasting editorial manager

I don't fancy it much. I'm all for the concept of the program and I think the media should be monitored like that, and it's had a lot of highlights and done some very good things, but it's been driven too often by people with clear agendas who are hopelessly biased against certain parts of the media and I've seen them twist and distort things way beyond . . . I've had plenty of grievances over the years with things they've done.

“No correspondence will be entered into” with them. Very arrogant organisation. Very pretentious. There’s a function for it. I’m probably glad it exists but I’d like to see it be a bit fairer.

That said, people with a grievance against the media have somewhere that they like to turn. That concept is fine. I think we should be scrutinised as much as possible.

-- Newspaper editor

QUANTITATIVE RESEARCH – JOURNALISTS’ VIEWS OF *MEDIA WATCH*

In the survey of journalists conducted for this thesis, they were asked to rate *Media Watch* on the same criteria as were used for the other external accountability mechanisms. The results are given in Table 7.4.

Table 7.4: JOURNALISTS’ RATING OF *MEDIA WATCH*

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	164	88	76	107	31
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	1	1	1	1	--
Medium (4 to 6)	1	1	--	1	--
High (7 to 10)	98	98	99	98	100
Mean	9.5	9.5	9.5	9.6	9.6
Widely/Not widely known among the public					
Low (0 to 3)	3	3	3	3	3
Medium (4 to 6)	32	35	29	30	42
High (7 to 10)	65	61	68	67	55
Mean	7.1	6.9	7.3	7.2	6.7
Respected by journalists					
Low (0 to 3)	5	8	1	2	13
Medium (4 to 6)	14	15	13	15	19
High (7 to 10)	81	77	86	83	68
Mean	7.6	7.4	7.8	7.8	6.6
Fair/Not fair to both sides					
Low (0 to 3)	10	13	7	7	19
Medium (4 to 6)	26	22	30	22	39
High (7 to 10)	65	66	63	70	42
Mean	6.8	6.8	6.9	7.0	5.8
Generally a good/poor system					
Low (0 to 3)	7	10	3	6	16
Medium (4 to 6)	20	17	22	19	29
High (7 to 10)	74	73	75	76	55
Mean	7.3	7.2	7.5	7.5	6.4

Media Watch was rated exceptionally highly (mean 9.5) on being “widely known among journalists”, and highly on all other criteria. With a mean of 7.3 for being “generally a good/poor system” it decisively out-rated the other three accountability mechanisms canvassed in this survey – the MEAA ethics panel, the Australian Press Council, and the Australian Broadcasting Authority.

It also out-rated all the other mechanisms for being “widely known among the public”, “respected by journalists”, and “fair to both sides”.

It was clear from this survey that *Media Watch* is the mechanism of accountability that journalists most respect and which has, in their view, the best public profile.

However, only a very small proportion of the public nominated *Media Watch* as a place they could go to complain about a journalist’s performance.

Table 7.5: VOTERS’ AWARENESS OF WHERE TO GO TO COMPLAIN ABOUT A JOURNALIST’S PERFORMANCE (MEDIA WATCH)

Where to go	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Media Watch/the ABC	4	3	4	5	--	3	3	5

CONCLUSIONS

It is clear that the least formal but most visible mechanism, *Media Watch*, is the most highly regarded by the profession. Even some of the editors who have been on the receiving end of its strictures and carry bruises from the experience concede that it performs a useful function.

As a media program itself, it must tread a fine line between entertainment, information and calling people to account. It has no formal procedures beyond those of standard journalism: receive information, check it, ask the relevant parties for their response and present the lot in as riveting a package as possible. But to avoid accusations of hypocrisy, it must not fall into the traps it accuses others of falling into. Some of the evidence from this research suggests it has sometimes failed this test.

It is ironical indeed that the media look upon one of their own as the most effective mechanism of accountability. It also reveals a certain robustness of spirit: those who live by the journalistic sword are prepared to perish by it, even if it is a far from perfect instrument. It also reveals the power of the sanction of “shaming”. Where it differs from the Press Council, the ABA and the MEAA is that its shaming is damningly public. This contains a lesson for those other external agencies: to be credible, “shaming” must be highly visible. Not only is it humiliating for the individual, but the newspaper or broadcaster who employs the person finds it difficult to sweep the matter under the carpet. The reputation of the whole organisation is placed on the line. The number of scalps claimed by *Media Watch* testifies to its effectiveness in this regard.

It is possible, even likely, that this form of self-regulation in which various agencies of the media themselves take on the role of professional watchdog, will grow. In the United States, for instance, Internet “bloggers” or webloggers exposed a fraud that led to the retirement of a high-profile news anchorman Dan Rather, and pressed successfully for the removal of Howell Raines as executive editor of *The New York Times* in the wake of the scandal surrounding Jayson Blair, a reporter who concocted stories. These events caused the newspaper to embark on a major exercise to repair its reputation.²⁶

²⁶ See Elizabeth Blanks Hindman, *Journal of Communication*, Vol 55 (2) p 225.

PART IV: INTERNAL MECHANISMS OF ACCOUNTABILITY, AND DEFAMATION LAW

CHAPTER EIGHT

THE AUSTRALIAN BROADCASTING CORPORATION

This chapter describes and analyses the internal accountability mechanism that exists in Australia's major public sector broadcaster, the Australian Broadcasting Corporation (ABC). The accountability mechanism is described and the incidence and type of complaints over a defined period is set out and discussed, along with the outcomes. A case of bias brought against the ABC by the then Senator Richard Alston, as Minister for Communications in the Howard Government, is used to illustrate how the full battery of ABC accountability procedures played out in a matter relating to the performance dimension of media accountability. This is followed by a discussion of the concept of bias as it relates to the media.

The Australian Broadcasting Corporation (ABC) is a public-sector broadcaster established by statute.²⁷ The enabling legislation guarantees the editorial independence of the ABC's program services, and one of the services it is required to provide is an independent news service. It follows that the editorial independence of the ABC's news service is guaranteed by statute. This is a far more deeply entrenched guarantee of independence than exists in the private sector of the media, whether electronic or print. The ABC complaints procedure is also grounded in statute.²⁸ Again this has no parallel in the private sector.

The complaints procedure consists of a voluminous Code of Practice setting out, among other things, ethical standards for news, current affairs and information programs, and the process by which complaints are to be dealt with.²⁹

²⁷ The Australian Broadcasting Corporation Act, 1983 (Commonwealth).

²⁸ The Broadcasting Services Act, 1992, Ss 13 and 151.

²⁹ About the ABC <http://www.abc.net.au/corp/codeprac.htm>, December 2003.

The ethical standards require factual accuracy, balance, impartiality, protection of confidentiality of sources, sensitivity in dealing with grief-stricken people, moderation in the content of reports concerning suicide, and the clear identification of re-enactments. They also require careful judgment to be exercised about what to broadcast at certain times of the day, particularly when children may be among the audience. It also declares that:

Demonstrable errors of fact will be corrected in a timely manner and in a form most suited to the circumstances.

The process by which complaints are to be dealt with begins with the statement that the process does not apply to any complaint concerning a program which is, or becomes, the subject of legal proceedings. A complaint must be laid within six months of the broadcast, and can be made in writing or by phone. Serious complaints must be in writing, as must those complaints where the complainant wants a response in writing. The ABC undertakes to respond to all written complaints within 60 days.

The ABC Statement of Editorial Policies describes how complaints are to be handled.³⁰ Telephone complaints are to be responded to on the spot where possible by either the audience-contact staff or the program-making staff. Where the matter is complex or the complainant requires a written response, the complainant will be asked to put the complaint in writing. All written complaints must be sent to the head of audience and consumer affairs for assessment. That unit will either investigate the matter itself or refer it to the appropriate division. Complainants alleging serious bias, lack of balance, or unfair treatment will be provided with a copy of the Code of Practice and will be informed about the availability of two external review mechanisms. (These are dealt with below.)

Responses to routine complaints are generally prepared by the program-making staff, and may be co-ordinated or reviewed by the audience and consumer affairs unit. If a dispute arises between the unit and the program-making staff, the matter will be referred to a senior manager with editorial experience for adjudication. This individual is called the Complaints Review Executive, or CRE. The CRE also reviews cases where a complainant is dissatisfied with the outcome. In exceptional circumstances, the Chairman, the Managing Director or the head of audience and consumer affairs may refer matters directly to the CRE.

³⁰ About the ABC <http://www.abc.net.au/corp/edpols.htm> October 2002.

Beyond these internal procedures of complaints-handling, there are two external mechanisms of review. The first is the Independent Complaints Review Panel, established by the ABC Board to deal with complaints alleging bias, lack of balance, or unfair treatment where the matter is so serious or such a matter of public notoriety that the internal handling of the matter is not considered sufficient without external review. The convener and members of this panel – whom the convener selects -- are all outsiders: no member of the ABC Board or staff sits on it.

The convener may initiate a review if approached by a dissatisfied complainant, or a review may be initiated by the Managing Director. Complainants must sign a legal waiver in respect of the material complained of. Proceedings are informal and legal representation is not permitted. The panel must produce a written report containing its findings and reasons. This goes to the Managing Director, who gives a copy to the complainant, relevant ABC staff, and members of the ABC Board. It is also made public. The Managing Director decides what action, if any, to take in response to the report.

The second external mechanism of review is provided by the Australian Broadcasting Authority (ABA). If a complainant does not receive a response from the ABC within 60 days or is dissatisfied with the outcome – including the outcome of a review by the Independent Complaints Review Panel -- he or she may take the matter to the ABA. The ABA's powers are limited in this area. If it finds a complaint justified, it may write to the ABC recommending remedial action, but it has no powers of enforcement over the ABC. The ABA is required to notify the complainant of the outcome. If the ABC does not comply with the recommended action, the ABA may report to the Federal Minister for Communications on the matter, and the Minister is obliged to place a copy of the report before each House of the Commonwealth Parliament.³¹

In addition to the ethical standards for news and current affairs set out in the ABC's Code of Practice, ABC journalists are obliged by the terms of their employment to adhere to the Corporation's editorial policies, part of which is a Charter of Editorial Practice.³² In addition to standards relating to accuracy, balance, impartiality, and the correction of demonstrable errors as set out in the Code of Practice, the Charter requires ABC journalists to:

³¹ The Broadcasting Services Act, 1992, Ss 152 and 153.

³² About the ABC <http://www.abc.net.au/corp/edpols.htm> October 2002.

- ❑ avoid taking an editorial stand (that is, advocating a particular line of argument about an issue);
- ❑ avoid conflicts of interest;
- ❑ be enterprising in perceiving, pursuing and presenting issues which affect people;
- ❑ respect “legitimate” rights of privacy, and
- ❑ ensure that their coverage is comprehensive and non-discriminatory.

The Charter thus provides a further set of criteria against which the conduct of ABC journalists is assessed when complaints are being considered.

Reporters and presenters are not permitted to deal with written complaints themselves: these must be referred to those who administer the complaints procedure in the audience and consumer affairs unit.

Data on complaints have been analysed in some detail by the ABC since 1998. Until then, no detailed annual analysis had been done. The catalyst for doing so was a flood of audience letters – about 20,000 over two months – concerning coverage of a major waterfront industrial dispute in Australia in 1998, which showed that ABC viewers and listeners were deeply divided in their assessment of the coverage.³³ The ABC also came under sustained public attack from the Commonwealth Government, in particular the Prime Minister, John Howard, the Minister for Industrial Relations, Peter Reith, and the Minister for Communications, Senator Richard Alston, for alleged anti-government bias in its coverage of the dispute.

The Corporation, lacking detailed analysis of audience reaction, had limited data with which to defend itself against these attacks. As a result, a weekly complaints file was instituted for every news and current affairs program produced by the ABC in Australia. From these, a monthly report was compiled for the Board. The data for the period 1 July 2001 to 30 June 2002 were provided by the ABC to the author. These data comprehended all “program contacts” – phone calls, letters, and emails. During this period there was a federal election in Australia and there occurred the terrorist attacks on New York and Washington of 11 September 2001. It was, therefore, a period of particular intensity in the field of news and current affairs.

³³ Interview with Heather Forbes, Skills Development Manager, News and Current Affairs, the ABC, January 2003.

Complaints comprised 30.3% of total contacts (the majority consisting of requests for further information, suggestions, and expressions of appreciation). The 10,996 complaints broke down as follows:

Table 8.1: PATTERN OF COMPLAINTS TO THE ABC CONCERNING NEWS AND CURRENT AFFAIRS PROGRAMS, 2001-2002

Nature of complaint	Number	Percentage
Complaints about performance or content		
Content/News values	2609	23.7
Bias (Non party-political)	1058	9.6
Alleged errors of fact/Accuracy	900	8.2
Scheduling/Program changes	592	5.4
Bias (Anti Liberal-National/Pro Labor)	574	5.2
Balance	539	4.9
Language (Other than grammar or pronunciation)	435	4.0
Sport	338	3.1
Weather	284	2.6
Bias (Anti Labor/Pro Liberal-National)	250	2.3
Complaints about behaviour		
Presenters'/Comperes' presentation/appearance	1303	11.6
Language (Grammar and pronunciation)	312	2.8
Invasion of privacy	154	1.4
Violence	27	0.3
Aboriginal/Torres Strait Islander (insensitivity)	16	0.2
Other		
	1605	14.6
TOTAL	10996	99.9

Percentages do not add to 100 due to rounding.

The category of "content/news values" refers to complaints about what is or is not included in news reports, or the relative importance accorded to stories.

It can be seen that aside from the essentially superficial issue of presentation or appearance of the compere, the commonest complaints were about bias and factual inaccuracy. In this respect the pattern of complaints about ABC news and current affairs is broadly similar to complaints against the print media, although the incidence of general (non party-political) bias against the ABC is about twice that for newspaper publishers. Why this should be so is a matter of speculation. While it may be that the ABC is more widely perceived as being biased, it may equally be that the audience's expectations of the ABC are different from their expectations of the newspapers: they may expect newspapers to be biased, while expecting the ABC not to be. Or they may apply different standards of what constitutes bias as between newspapers and the ABC.

However, a national opinion poll conducted by Newspoll for *The Australian* newspaper in May and June 2004, found more than 90 per cent of media consumers considered that all the main ABC TV and Radio news and current affairs programs were “politically balanced and even-handed”.³⁴

By contrast, the incidence of complaints about lack of balance is nearly twice as high for newspapers as for the ABC, and the incidence of complaints about invasion of privacy is three-and-a-half times higher for newspapers than for the ABC.

The incidence of complaints against the ABC about violence is very low, particularly considering that the period included the September 11 terrorist attacks on New York and Washington in 2001.

Since these data were assembled, the ABC has extended its dissemination of data on audience contacts, and provides a quarterly report on its website.³⁵

The reports for 2003 show the following incidence of complaints categorised under the heading of “Fairness, Accuracy and Independence”. These have been singled out because they are the relevant ones for the purpose, and are distinguishable from complaints concerning programming, reception and miscellaneous matters such as an unintentional re-run of an episode of *Monarch of the Glen*, which generated no fewer than 309 complaints.

It is clear from the analysis in Table 8.2 that bias of one kind or another is the commonest complaint in this category, followed by factual inaccuracies. Once more this pattern by and large resembles the pattern of complaints against journalists in the print media.

The quarterly reports contain data indicating that the ABC meets its policy obligations of responding to complaints within 60 days in nearly all cases. At this stage there are no data on the proportion of complaints in this category that are upheld or dismissed.

³⁴ See Errol Simper, *Majority Find ABC Fair and Balanced*, *The Australian*, 9 September 2004, p20.

³⁵ www.abc.net.au/corp/pubs/PublicReport-Oct-Dec-2003

Table 8.2: PATTERN OF COMPLAINTS TO THE ABC CONCERNING NEWS AND CURRENT AFFAIRS PROGRAMS, 2003

Nature of complaint	March		June		September		December	
	n	%	n	%	n	%	n	%
Complaints about performance or content								
Bias (non party political)	68	13.1	205	28.6	206	33.3	214	31.9
Bias (party political)	157	30.3	156	21.7	169	27.4	118	17.6
Factual inaccuracies	54	10.4	139	19.4	92	14.9	138	21.0
News values/content	108	20.9	83	11.6	55	8.9	71	10.6
Lack of balance	50	9.7	76	10.6	35	5.7	52	7.8
Unfair treatment	23	4.4	19	2.7	13	2.1	21	3.1
Complaints about behaviour								
Invasion of privacy	1	0.2	3	0.4	3	0.5	3	0.1
Other								
	57	11.0	37	5.2	45	7.3	53	7.9
Total	518	100.0	718	100.0	618	100.0	670	100.0

Ranked by sum of incidences across the four quarters.

CASE STUDY: ALSTON AND THE ABC

To illustrate the working of the ABC complaints procedures in their full panoply, as well as to examine more closely the issue of bias which figures so prominently in the canon of complaints against journalists generally, there follows an examination of the case of bias brought against ABC news and current affairs by Senator Richard Alston in 2003. At all relevant times, Alston was Minister for Communications in the Liberal-National Coalition Federal Government of John Howard. As such, he was the minister with portfolio responsibility for the ABC. It will be remembered that he also figured – with Howard and another minister, Peter Reith – in an earlier series of allegations of bias against the ABC concerning its coverage of a large industrial dispute on the Australian waterfront.

In May 2003, Alston wrote to the Managing Director of the ABC claiming that his ministerial office had received a number of complaints of “biased, and in particular anti-American, coverage by the ABC, particularly on the *AM* program” of the war between American-led coalition forces and Iraq in March and April 2003. Australian forces were part of this coalition.

AM is a morning radio current affairs program broadcast nationally by the ABC, one of three such programs broadcast each week day, the others being *The World Today* at noon and *PM* in the evenings. They are regarded as the “flagships” of ABC radio current affairs programs. Alston provided 68 examples from the *AM* programs of 21 March to 14 April which he contended

showed biased coverage, being “one-sided and tendentious commentary by program hosts and reporters”.

The Managing Director, Russell Balding, considering it to be a serious complaint of bias,³⁶ exercised his discretion to refer this complaint for determination directly to the Complaints Review Executive, Murray Green, who was also the ABC Manager for the State of Victoria. Having analysed all transcripts and audio recordings of AM from 20 March to 14 April 2003, and evaluated their content against the ABC’s Charter of Editorial Practice,³⁷ Green upheld two of the sixty-eight complaints. Neither of them, however, was upheld on the ground of bias but on the grounds that they represented speculative reporting without evidentiary support and contained a tendency to sarcasm.

Green went further. He accused Alston of “often” taking remarks out of context, and of selectively applying the ABC Charter of Editorial Practice in a way that limited both the professional duties of a journalist and the operation of the charter. By these means:

... the complainant could be advocating a form of reporting that is more passive if not deferential.³⁸

And he turned the argument of bias back on Alston:

Sometimes the assumption of the critique appeared to be that the coverage would be remedied if it were supportive of a Coalition position in the war.

Alston rejected these findings. Reacting to this, the Managing Director arranged to have the matter reviewed by an Independent Complaints Review Panel. A panel of five was convened under a former chief executive of a commercial television channel and included an academic lawyer specialising in media law, a retired foreign correspondent from *The Sydney Morning Herald*, a former newspaper and commercial television news executive, and a former chair of the Special Broadcasting Service (SBS).

³⁶ ABC Complaints Review Executive, *Determination on a Series of Complaints from Senator Richard Alston*, <http://www.abc.net.au> December 2003.

³⁷ *Ibid*, p2.

³⁸ *Ibid*, p4.

While the workings of the review panel are described in the ABC's editorial policies³⁹ there are no guidelines about how it should conduct an investigation except that "procedures should be as simple and flexible as possible to enable speedy investigation in the interests of both the complainant and the ABC". The panel is able to interview relevant ABC personnel and people outside the ABC, and to hear or view tapes of relevant programs. It is given wide discretion in how to conduct its investigations, but must have regard to the editorial policies of the ABC. ABC staff are required to assist the panel, but are not obliged to disclose confidential sources.

In this case, there was no mention in the panel's report of its having interviewed anyone, and indeed the ABC's Corporate Affairs division confirmed that the panel did not interview anyone within the ABC nor show to the ABC documentation from Senator Alston rebutting aspects of the original report by Murray Green, the Complaints Review Executive.

In October 2003 the panel produced a 61-page report consisting of an overview of its findings and particular responses to each of the 68 complaints. Its central finding was another rebuff for the Minister:

The Panel finds no evidence, overall, of biased and anti-Coalition coverage as alleged by the Minister, nor does it uphold his view that the program was characterised by one-sided and tendentious commentary by program presenters and reporters.⁴⁰

However, the Panel did uphold 17 complaints – 12 on the ground of bias, four on the ground that the program breached a managerial directive to avoid emotive language in reporting the war, and one on the ground that the source was not properly identified. Among the 17 were the two upheld by Murray Green.

In the broad, though, the Panel concluded:

These instances aside, the Panel believes that the *AM* coverage of the war was competent and balanced.

³⁹ ABC Editorial Policies 12.6.9 <<http://abc.net.au/corp/edpols.htm>>

⁴⁰ ABC Complaints Review Executive, *Determination on a Series of Complaints from Senator Richard Alston*, <http://www.abc.net.au> December 2003, p8.

The fact that the panel did not interview those whose conduct it criticised, nor showed the ABC the rebuttal by Senator Alston of the Green report, aroused considerable resentment in at least one of the journalists complained about. Linda Mottram, presenter of *AM*, wrote a letter to *The Australian* newspaper⁴¹ stating that neither she nor anyone else complained about had been contacted by the panel, and asserting that natural justice was thereby denied. In a subsequent interview published in the same newspaper⁴² Mottram was reported as saying she did not accept the panel's findings. She also questioned the process: "I just don't see how we can consider it to be fair when they haven't spoken to the people at the heart of the matter". And it had made no difference to how the *AM* staff worked: "Nobody is telling me to do anything differently on the basis of it".

Senator Alston also was dissatisfied and referred the matter to the Australian Broadcasting Authority. Already, however, political difficulties had arisen in anticipation of Senator Alston's having recourse to the ABA. The difficulties arose over the position of the Authority's chairman, Professor David Flint, in relation to both the ABC and the Government. In mid-2003 Flint published a book, *Twilight of the Elites*, in which he particularised two ABC TV current affairs programs as instances where "media elites" were dominated by a left-wing worldview. The book also expressed approval of the Howard Government's deploying Australian troops to Iraq, and contained a foreword written by another Howard Government minister, Tony Abbott. These factors gave rise to allegations that should Flint find himself presiding over a review of Alston's complaint against the ABC, he would have a conflict of interest.⁴³ Flint rejected the allegations.

In November 2004 a leaked draft report of the ABA investigation showed that the ABA had dismissed the Alston claims of bias.⁴⁴ By then Alston had retired from government and Flint had resigned from the chairmanship of the ABA. At the time of writing (January 2005) the final report of the ABA on the Alston matter had not been made public.

These events lead to two conclusions. First, the requirements on the independent panel need to be spelt out more specifically, particularly in relation to procedural fairness. Second, even a complaints procedure as thoroughgoing as the ABC's is not ultimately immune from contamination by extraneous influences.

⁴¹ *The Australian*, 14 October 2003, p10.

⁴² *The Australian*, 18 October 2003, page 25.

⁴³ See for example Annabel Crabb, Flint Denies ABC Conflict of Interest, *The Age*, Melbourne, 23 July 2003, p3.

⁴⁴ See Jason Koutsoukis, ABC War Bias Claim Dismissed, *The Age*, Melbourne, 3 November 2004, p7.

In the aftermath of the Alston case, the ABC Board reconstituted the Independent Complaints Review Panel. A retired judge of the New South Wales Supreme Court, the Hon Michael Foster, QC, was appointed convenor, and two independent members were appointed, to complete the panel's complement of three. The members were Dr Simon Longstaff, Executive Director of the St James Ethics Centre in Sydney, and Dr Derek Wilding, Director of the Communications Law Centre at the University of New South Wales.

New policies were introduced to enhance procedural fairness, including specific opportunities for ABC staff to respond to preliminary findings. The panel's remit was also extended to include allegations of serious factual inaccuracies, as well as serious bias, lack of balance and unfair treatment, as before.⁴⁵

THE CONCEPT OF BIAS

Because bias was alleged in this case study, and because it is such a common complaint against the media, there follows a discussion about the concept as it relates to the media.

Three general questions might be thought of as central to a discussion about media bias:

1. What does a complainant think indicates bias?
2. What does a media organisation think indicates bias?
3. What do the differences, if any, tell us about how this issue might be approached in a way that is seen to be fair and reasonable by both sides?

Alston gave 68 examples of what he considered to be instances of bias; the ABC found none to be an instance of bias, and the independent review panel – consisting of non-ABC media personnel and media law experts -- found bias in only 12. Clearly, “bias” is a highly subjective matter. Like beauty, it can be in the eye of the beholder. But because of its ubiquity as a source of complaint against the media, it requires further analysis.

This analysis begins by taking three of the Alston examples that were found not to be an instance of bias either by the ABC or the review panel, and three of the twelve cases where the review panel found there was an instance of bias. Each set is then examined to see what distinguishes

⁴⁵ www.abc.net.au/corps/pubs May 2005

one from the other. These distinguishing features are then discussed with a view to finding some common ground on which complaints of bias against the media might be assessed.

GROUP 1: ALSTON EXAMPLES NOT UPHOLD BY THE REVIEW PANEL

Case No.	What Alston said showed bias	What the review panel found
4	Turkey's parliament today <u>grudgingly</u> (<i>no evidence provided</i>) passed legislation allowing allied planes to use Turkish airspace.	The reluctance of the Turkish parliament to fully meet US requests was widely known at the time.
8	The Bush Administration <u>concedes</u> (<i>why not "says" or "believes"?</i>) that the voice on the tape is that of Saddam Hussein.	The Panel believes "concedes" is appropriate in the context of the report.
10	With the reports of more American losses overnight in fighting in places like Nasiriyah, is that having any impact on morale where you are?	The AM program earlier reported Iraqi claims of killing 25 US soldiers in Nasiriyah. The presenter was seeking the opinion of an embedded reporter regarding the effect of claimed casualties on morale.
6	White House spokesman Ari Fleischer, said the President hadn't watched the opening of the air offensive on television, <u>an indication of just how sensitive he is</u> to launching a massive bombing campaign in an area so heavily populated.	The Panel believes the CRE's finding (also upholding the complaint) was grudging. The Panel heard clear evidence of reporter partiality . . . "an indication of just how sensitive he (the President) is". The word "sensitive" is taken by the CRE and the panel to be central to complaint 6. The CRE says the reporter was only engaging in speculation. The Panel goes further and finds that the word, in the context it was used, to be one man's judgmental opinion.
7	Indeed today the Joint Chiefs of Staff said, <u>I am not sure he meant to say it</u> , but he said that the progress had been swift, swifter than it would have been if chemical weapons had been used. <i>Alston's comment: John Shovelan (the reporter) seems to have assumed the JCOS was talking about what would have happened if the Americans had used chemical weapons. Why should he so assume when the logic of the statement is quite to the contrary?</i>	The statement by John Shovelan was open to the interpretation that (a) the US (JCOS) had considered using chemical weapons and (b) was concerned that an unguarded remark had revealed this to the general public. There is no evidence to support these allegations.
12	Saddam Hussein loyalists are working behind the scenes fighting using guerrilla tactics, <u>and this is really unsettling the Pentagon</u> . <i>Alston's comment: And the evidence?</i>	The Panel could not find evidence to support the contention that the Pentagon was unsettled.

Analysis

In Case 4, Alston's argument of bias rested on the absence of evidence within the confines of the report itself to support the use of the word "grudgingly". The Panel took the view that the evidence was already widely known and implied that it was therefore unnecessary to present it within the report itself. This is consistent with the well-established principle in Australian defamation law that to qualify as fair comment a statement must be supported by true facts that are stated with the comment, or be so widely known as not to require stating.

In Case 8, Alston's argument rested on the use of the loaded word "concedes" instead of the more neutral "says" or "believes". The Panel took the view that "concedes" was justified by the context. This suggests that again the media – as represented here by the Panel -- look beyond the confines of a single statement or report to the wider context in making judgments about bias. If the evidence from the wider context justifies the use of a loaded word, then the media judges that there is no bias.

In Case 10, Alston's argument rested on what was itself a subjective proposition – that the losses were "modest and predictable". The Panel took the view that having established the fact that Iraq claimed to have killed 25 US soldiers, *AM* had a basis for asking a reporter who was embedded with a US military unit his opinion about the effect on morale of reported losses.

The common thread running through these three findings is that the media do not find bias where there is evidentiary support for a statement, even if the statement contains loaded words or is someone's opinion. The media feel it is proper to look for this evidentiary support in a context wider than the confines of the statement or report itself.

The complainant in this case tended to take a narrower view of the contextual scope from which the supporting evidence should be drawn, indicating that it should be provided within the statement or report itself.

As stated earlier, the wider approach is well established in media law – specifically in the principles underpinning the defence of fair comment in defamation – and it seems reasonable as well as consistent for the Panel to have adapted it for the purpose of determining whether there was bias in the reports complained of.

Turning now to the cases upheld by the Panel, the criterion of evidentiary support was decisive in two of the cases, numbers 7 and 12. In Case 6, however, the Panel introduced a further element – “judgmental opinion”. This unhelpful tautology – all opinions contain a value judgment, by definition – appears to raise an inconsistency between the Panel’s finding in this case and in Case 10. In Case 10, the Panel rejected the complaint of bias on the ground that the presenter was seeking the opinion of the reporter about effect on morale of reported losses among US troops. The implication was that the giving of this opinion was justified on the basis that the fact of Iraq’s claim to have killed 25 US soldiers had already been reported.

How can the giving of an opinion not be bias in that case and yet be bias in this? The answer would appear to lie once more in whether there was evidentiary support for the opinion. In Case 10 the evidentiary support existed in the form of the factual information about the Iraqi claim; in Case 6 there was no evidentiary support. Thus it open to conclude that, in the media’s view, the stating of an opinion is not of itself an instance of bias, but it becomes bias when it lacks evidentiary support. The offending element might therefore be called gratuitous opinion.

Discussion

It was a recurring feature of Alston’s complaints that he asserted lack of evidence as the basis for his charges (see Cases 4, 10, 7 and 12), and a recurring feature of the Panel’s adjudications that they turned on the presence or absence of evidentiary support. Therefore it may be concluded that there is one criterion on the issue of bias that is shared by the complainant and the media. That shared criterion is the existence of evidentiary support.

It may also be concluded that there is a second criterion which is not shared by the two sides. That second criterion is the scope of the context from which the evidentiary support may be derived. The complainant requires a narrower scope, being the intrinsic content of the report or statement complained about. The media look at a wider context, taking into account contiguously presented information and the existence of facts that are widely known even if not stated in the report.

It would doubtless assist the public and enhance the credibility of media accountability mechanisms if the media were to develop tests based on criteria such as these not only in relation to bias but in relation to other subjective concepts such as balance and fairness, and use them explicitly as the basis for adjudicating complaints not just against the ABC but against all media.

CHAPTER NINE

FAIRFAX AND NEWS LTD

This chapter describes and analyses the internal accountability mechanism that exists in Australia's two biggest newspaper houses, Fairfax and News Ltd. The accountability mechanisms are described, but no data exist that allow any analysis to be done of the incidence and types of complaint, nor of the outcomes. The Fairfax segment begins with a case study of an experiment unique in Australian media history: the appointment by *The Sydney Morning Herald* of an external and independent editorial "ombudsman" to investigate complaints against the paper.

9.1 FAIRFAX

The "Who is Right?" Experiment

In March 1989, *The Sydney Morning Herald* embarked on an experiment in independent in-house accountability that is unique in the history of the Australian media. It appointed an outside investigator, George Masterman, QC, to deal with readers' complaints about the content of the paper. As Gavin Souter⁴⁶ said, Masterman had acquired a reputation as a fiercely independent investigator during a six-year term as the Ombudsman for New South Wales, and his appointment to the investigative position at the Herald was made mainly because of this reputation for independence. Masterman recalled that the Editor-in-Chief, John Alexander, had said he wanted Masterman for the job because the Press Council's investigation of complaints was notoriously weak and he wanted a more credible system for the *Herald*.⁴⁷

The Fairfax company entered into a formal and legally binding agreement which, within closely defined boundaries, gave Masterman considerable powers. These were set out in the following terms⁴⁸:

⁴⁶ Souter, G., 1991, *Heralds and Angels: The House of Fairfax 1841-1990*, Melbourne, Melbourne University Press, pp 332-334.

⁴⁷ Interview with the author 19 November 2003.

⁴⁸ Provided to the author by George Masterman, as published in the proceedings of the House of Representatives Select Committee on the Print Media, Hansard, Canberra, November 1991, pp 1548-9.

- A. The Publisher has appointed the Author (Masterman) to *The Sydney Morning Herald* to provide a service to readers whereby the Author and the Assistant (a one-time colleague of Masterman at the Ombudsman's office) from time to time and in the Author's absolute discretion will investigate and evaluate complaints concerning published articles appearing in the *Herald* and will determine whether such articles are accurate and fair.
- B. The Author and the Assistant may investigate and evaluate complaints which are made to the Author and may initiate investigations themselves without a complaint having been made to the Author.
- C. The publisher will publish the Author's reports on investigations from time to time.

The agreement excluded from Masterman's purview complaints likely to reach the Australian Press Council, the ethics committee of the Australian Journalists' Association (later the Media, Entertainment and Arts Alliance) or the courts of law.

Masterman's letter of appointment, over the signature of John Alexander, noted that Masterman would not be paid for this work, but that Fairfax would pay his assistant at an agreed rate. The letter also stated that Fairfax would indemnify Masterman against any action for defamation arising from the work.⁴⁹

The *Herald* proposed at first to use the title "ombudsman" for this position, but Masterman would not agree, wishing to honour a request from the Swedish Ombudsman's office that the term be confined to offices investigating the conduct of governments. Instead the position itself was given no title, but the entire service was called "Who Is Right?"

The *Herald* publicised the new service with a front-page article⁵⁰ on 6 March 1989 in which much was made of Masterman's independence. According to Souter⁵¹ more than 100 complaints were received in the first few months.

The procedures for investigating complaints were as follows.⁵²

First, complaints – which had to be in writing – were filtered by Masterman's assistant to eliminate matters that were trivial and old. If at least a preliminary investigation were

⁴⁹ Shown to the author by George Masterman, 19 November 2003.

⁵⁰ Steketee, M., *The Sydney Morning Herald*, 6 March 1989, P1.

⁵¹ *Op. cit.*

⁵² *Who Is Right: Usual Procedures for the Conduct of Investigations*. Document provided by Masterman to the author 19 November 2003

warranted, the staff member concerned was sent a copy of it for comment. When the comment was received, a decision was made on whether further action was needed. This might involve publishing a correction or some other ameliorating device. That would be the end of it unless the public interest required further action. If the staffer's comments or the findings of the preliminary investigation indicated that further action – beyond the publishing of a correction – were needed, a fuller investigation would be carried out. This would involve interviewing the staff concerned, as well as the complainant and others who might be able to shed light on the matter.

A provisional report would then be drafted and circulated to the staff concerned, the complainant and the Editor-in-Chief for comment. Any feedback would be assessed, and a final report sent to the Editor-in-Chief for publication.

Asked what might constitute “the public interest” in this context, Masterman⁵³ explained that it might mean that a case illustrated a particular principle, or revealed some systemic weakness requiring the professional attention of the editorial staff, or provided the opportunity of informing the public about relevant aspects of newspaper production.

These reports were comparatively rare: from the 100-plus complaints dealt with, Masterman wrote only eight reports for publication. The first of these was published in May 1989. It stated that the journalist concerned had freely admitted the complaint was justified, although the mistake had been made not by him but in the production process. The second stated that the *Herald* was justified in not publishing a letter taking issue with an article which had drawn a complaint from the Bar Association of New South Wales.

Trouble occurred, however, with his third and fourth reports. The third arose from a complaint by a medical practitioner about the publication of a photograph of a child, identified by name, as part of an article concerning aspects of child abuse. The child and its family had no connection with the article at all; the photograph had been simply taken from the *Herald's* photographic library and used as a generic illustration. The medical practitioner, who was the family's doctor, complained that the family were justifiably angry and embarrassed by the publication. Masterman upheld the complaint and wrote a report suggesting ways of preventing the misuse of file photographs.

⁵³ In interview with the author 19 November 2003

The fourth report contained an adverse finding concerning a feature article about a backpackers' hostel at Murwillumbah, where there had been a clear dispute on the facts between the reporter and the hostel proprietor. On balance, Masterman had preferred the hostel proprietor's version of events on at least one of the issues. According to Masterman, this was the only case in which he took an active investigative role. He had done so because there had been a dispute on the facts and he felt that he should bear the responsibility for any findings.

Neither of these reports was published because the Fairfax House Committee of the Australian Journalists' Association imposed a black ban, first on publication of the reports and then on the whole "Who Is Right?" project. Souter⁵⁴ explained:

Reasons advanced for this ban included the following concerns expressed by journalistic staff about the conduct of Masterman's investigations:

- (i) questioning seems to vary from the very casual to a legal cross-examination;
- (ii) a bias towards complainants and a tendency to presume the worst;
- (iii) an assumption that journalism consists only of facts rather than (especially in features) impressions or opinion;
- (iv) the possibility of journalists suing their own paper for defamation;
- (v) time-consuming procedures;
- (vi) assumptions that a journalist's observation of the facts is not enough.

Masterman and the AJA House Committee had a "round table" discussion about this in January 1990. Arising from this, Masterman set out written answers to a series of questions.⁵⁵ He made it clear that "Who Is Right?" did not have the power to compel journalists to co-operate with its investigations, but that the absence of co-operation would not prevent investigations being carried out and reported on. He also said that generally Herald staff were not named in the reports unless necessary, because of the House Committee's concern about naming.

Finally, Masterman said he had no objection to Herald journalists seeing the initial correspondence between himself and Alexander leading up to the establishment of "Who Is Right?", and the formal agreement. Here was a dead give-away. From the nature of the House

⁵⁴ Op. cit.

⁵⁵ Provided to the author, 19 November 2003

Committee's questions, it was obvious that the project had been established by the newspaper's management without consulting the staff.

While Masterman said that the discussions with the House Committee had been amicable and he had thought some progress had been made, the black bans remained in place. Meanwhile, six reports had piled up, including the contentious third and fourth, and there was no sign that the Herald's management was going to force the issue by publishing them.

Masterman was particularly concerned that his report on the child photograph had not appeared. He wrote to Alexander on 26 March 1990 saying he understood that the journalists had met and passed "some resolutions" concerning the project.⁵⁶ He went on:

It was of the essence of the discussions and the agreement reached that you would be obliged (his emphasis) to publish the articles whether you agreed with them or not . . . It was certainly not the intention or the terms of the agreement reached between us that publication of the articles should be subject to the approval of your journalist employees. That of course would have made nonsense of the whole concept.

To exemplify this point, Masterman pointed out that the journalist who had compiled the list of questions arising from the "round table" discussion was himself the subject of a serious complaint from a judge of the Federal Court. He went on:

Other journalists, rightly the subject of complaint, have been active in the recent discussions coming to the black ban decision.

And he concluded with an ultimatum:

The present position is untenable. I hereby give you and your company notice that in the event that you do not publish the . . . complaint article within 28 days from the date of this letter I will consider terminating the agreement . . . I have expended considerable time and effort on the faith of the agreement with your company in response to your own personal entreaties to participate in your proposal. In the event of default by you, I reserve the right to take such action as I may be advised.

⁵⁶ Copy of the letter supplied by Mr Masterman to the author, 19 November 2003

Masterman did not receive a reply to this ultimatum, but Souter ⁵⁷ reports that 25 days later the newspaper management took advantage of a journalists' strike (over pay, not "Who Is Right?") to publish the article in an issue of the paper put out by staff who were exempt from membership of the journalists' association.

Thus the terms of Masterman's ultimatum were met, but the project was fatally poisoned from an industrial point of view. No further reports were published, and by early 1991 Masterman drew a line under it. He wrote to all complainants in respect of whose complaints draft reports had been written but which had elicited no response from the staff:

“. . . [S]ome time ago the AJA members of the Fairfax Newspapers Chapter placed a black ban on the publication of any article by me under the "Who Is Right?" concept. The various editors of the *Herald* have accepted this position and no subsequent articles have been published. The concept is in fact dead.

I have come to believe that ... despite what was said in the initial announcement the editors were not prepared to stand up to any joint action of the journalists.

In November 1991 Masterman gave evidence at a hearing of the House of Representatives Select Committee on the Print Media (the Lee Committee), during which he was questioned on why he thought "Who Is Right?" failed where similar concepts had succeeded overseas. He replied:

Firstly, it was introduced without discussion and agreement with the staff. . . . Nobody likes being investigated. . . . The journalists who called for and supported the giving of increased powers of investigation in relation to police and prison officers . . . were less enthusiastic about in-depth investigation of complaints against their activities. That is human nature and they had a strong union and a weak management.⁵⁸

Two approaches by telephone and one by e-mail were made to John Alexander inviting him to contribute his views and recollections on the Masterman experiment but no response was received.

What conclusions might be drawn from this short-lived and unhappy experiment?

⁵⁷ Op. cit.

⁵⁸ Proceedings of the House of Representatives Select Committee on the Print Media, Hansard 27 November 1991, pp.1547-48.

First, it is obvious that the industrial divide that has bedevilled all attempts at establishing systems of accountability for Australian journalists is as potent a factor now as at any time in the past.

Second, it is equally obvious that when it comes to the crunch, the Australian Journalists' Association (now the MEAA) will put its members' welfare ahead of public accountability. This is understandable: the association is a trade union, after all, and exists primarily to protect the livelihood of its members. What the Masterman experiment demonstrates conclusively is that the union is not equipped by constitution or disposition to provide an effective accountability mechanism.

Third, any system of accountability, to be workable, must have the agreement and the confidence of both publishers and journalists. Given the long history of industrial tension between the two, such a system is unlikely to come from either of these two sources: any system proposed by one is likely to be rejected by the other. Therefore, if it is to succeed, the greatest chance lies in its coming from outside.

Fourth, boundaries were tightly drawn around "Who Is Right?" Its focus was on the fairness and accuracy of published content, and did not extend to journalistic behaviour generally. Moreover, matter that was the subject of complaint to the Press Council or the AJA's judiciary process or the courts was outside its jurisdiction. A credible mechanism of accountability must encompass both the published material and journalists' professional behaviour in gathering material. It must also enjoy privilege against suits for defamation where its processes have been fair and reasonable.

Fifth, such an arrangement did nothing to reduce the fragmentation of accountability mechanisms that has been an abiding feature of journalism in Australia throughout its history. Energy expended on this experiment, well-intentioned though it undoubtedly was, would have been better directed at establishing a unified system of journalistic accountability across all media.

The ombudsman concept has been adopted by about 45 newspapers in a range of countries – the United States (which has about half of them), Canada, Britain, Spain, Brazil, France, Japan and

Italy.⁵⁹ They have their own international group, the Organization of News Ombudsmen (ONO). There has been little research into their collective experiences, but in 1997 the ONO did conduct a survey of its members, asking about their methods of operation and resourcing. Twenty-six of the forty-five responded.⁶⁰ The overwhelming majority have a regular column in which they publish their findings or observations; they also write internal memoranda about the issues they have dealt with. These activities are seen as “very valuable”. It is also very common for them to address community groups, but they are divided about the value of this (no reasons for these responses are given). A minority (about one-third) say they are under-resourced and need a secretary or assistant. Just over half had been in the job for between two and five years, and another one-third had been there longer than that, so their experience was not inconsiderable. It also indicated a degree of commitment on the part of the newspaper to persevere with an office that brings with it an element of internal discomfit. It is a pity that the one experiment in Australia ended so abruptly and divisively.

Fairfax’s internal mechanisms today

The story of in-house accountability mechanisms at Fairfax now jumps forward ten years to 2001. In between, the Fairfax newspapers reverted to the pre-Masterman processes under which a senior editorial executive on each paper would deal with complaints as he or she saw fit, with occasional visits to the Press Council to defend the paper there, as a former Assistant Editor of the Herald, Ian Hicks, attested.⁶¹

It should be remembered that during this intervening decade, the ownership of Fairfax was for a long time in flux. The ill-fated privatisation by “Young Warwick” Fairfax, youngest son of the late Sir Warwick, ended with the bankers who had financed the privatisation placing the company in receivership, and with the receivers putting the company up for sale. There followed a long, opaque, and highly politicised auction process consisting largely of private meetings between various bidders and influential political figures including the Prime Minister, Bob Hawke; overt pressure on the Federal Treasurer, John Kerin, whose grasp of his portfolio was fatally inadequate, and dithering by the Minister for Communications, Kim Beazley, who was a hostage

⁵⁹ Organisation of News Ombudsmen website, www.newsombudsmen.org/jacoby.html

⁶⁰ www.newsombudsmen.org/survey.html

⁶¹ Interview with the author 18 November 2003.

to his bureaucrats.⁶² Even the eventual winner, the Canadian publisher Conrad Black, described the process as “sleazy, venal and despicable”⁶³.

Black put a broom through the entire organisation, starting with the editors, but in the end became frustrated at not being able to acquire a majority interest and walked away. Ultimately the substantial shareholdings fell into the hands of three major institutions, the Commonwealth Bank of Australia, Colonial Ltd, and Permanent Trustee Company Ltd.⁶⁴

A defining characteristic of the “Young Warwick” and Conrad Black regimes was close monitoring by corporate management of editorial decision-making. This had become foreign to the culture at Fairfax which, as Carroll (1990) pointed out had always been a journalists’ company. The managing director had to be a journalist. Other senior executive positions were filled by journalists. The latitude the journalists enjoyed and their pre-eminence in the company, which riled the company’s critics, could be limited and undermined by a change in ownership.⁶⁵

Young Warwick and later Conrad Black appointed senior corporate executives who were given the specific function of keeping close tabs not only on editorial opinion but on news reporting as well. Young Warwick’s man was a former public relations consultant, Martin Dougherty. He was equipped with an editorial computer terminal that allowed him to roam at large through the work of the company’s journalists at any time. This led to new waves of industrial unrest. Conrad Black’s man was Michael Hoy, a former Murdoch production executive, whose presence was not as invasive but equally ubiquitous. His overriding instruction to Alan Kohler, appointed by Black as editor of *The Age* in October 1992 was “change the culture”. This message was conveyed by Kohler to senior editorial executives at *The Age*, including the present author.

It is not surprising that in these circumstances Fairfax journalists became increasingly intolerant and suspicious of any form of monitoring, and that any major in-house initiative to increase their level of accountability would almost certainly have gone the way of the Masterman experiment.

⁶² For detailed expositions of this policy debacle, see Colleen Ryan & Glenn Burge, *Corporate Cannibals: The Taking of Fairfax*, Melbourne, William Heinemann, 1992; *Heralds and Angels*, op.cit., and V.J. Carroll, *The Man Who Couldn't Wait*, Melbourne, William Heinemann, 1990.

⁶³ Ryan and Burge, *Corporate Cannibals*, p.404.

⁶⁴ Communications Update: Media Ownership Update, the Communications Law Centre, University of New South Wales, Issue 164, April 2002.

⁶⁵ V.J.Carroll, *The Man Who Couldn't Wait*, p.248.

By the turn of the millennium, however, the share register had settled down and with Conrad Black gone, the institutional investors had shown no interest in riding shotgun on the editors and journalists after the manner of Dougherty and Hoy. At the same time, the Board was far from sanguine about the incidence of errors that were appearing in the papers and in 2001 it adopted a policy on editorial quality. This gave rise to two in-house initiatives, a reader service called Readerlink, and an editorial corrections policy.

The editorial corrections policy was announced to staff of the *Herald* by its publisher and editor-in-chief, Alan Revell, and editor, Robert Whitehead, in a memorandum dated 25 October 2001. The stated rationale for the policy was that “accuracy is the key to our credibility”. The memo continued:

Research shows readers are more likely to believe newspapers which recognise their own fallibility and publish corrections.

The policy aims to ensure:

We recognise when we have not provided accurate information;

We publish a fair correction where necessary.

The policy requires that any staff member who becomes aware of an error must bring it to the attention of the relevant section editor and the senior editor in charge of corrections.

In an attempt to quantify and classify errors, the staff were asked to fill in a pro-forma describing any error, explaining how it happened, and suggesting how it might be avoided in future. A journalist on the paper was assigned to audit the paper and create a benchmark against which future performance would be judged.

The second initiative, Readerlink, was copied from “reader advocacy desks” which had been established on some overseas newspapers, according to its founding manager, Nerida Little. She said the rationale was that readers who had a voice were likely to be more loyal to the newspaper.⁶⁶ Readerlink had been set up to give readers a voice, as well as to improve production processes, and to measure the reaction by readers to content published in the papers.

Ms Little was not a journalist. Her background was in nursing and science, and she had been appointed from the editorial administrative staff to run Readerlink.

⁶⁶ Interview with the author 22 August 2003.

Data were kept on:

- How many people contacted the service;
- How many complained;
- How many corrections were published as a result;
- How quickly they were published.

Call centre software for help desks had been adapted for the purpose of recording reader contact.

The service had begun in March 2003. At the time of interview (five months later) the service was available only to readers of the *Herald* and *Sun-Herald* and their magazines. The intention was to roll it out to *The Australian Financial Review* and other Fairfax publications, but there was no timetable for this.

Readers were able to contact the service by phone, fax, e-mail, online, or in writing. A link was provided in the navigation bar of the Fairfax website.

The volume of reader contact had increased significantly since the introduction of the service, from about 900 contacts in March to more than 2000 in July. About 30% were complaints. The goal for turning around complaints was two days. This had not yet been generally accomplished.

Readerlink made no editorial decisions. All complaints were referred to the editorial departments of the papers, and decisions on what to do with them were made by editorial executives. Asked how the journalists had reacted to the scheme, Ms Little said that because the initiative had been introduced “from on high”, on the whole there had been buy-in by the journalists.

Readerlink was able to receive complaints about journalistic behaviour as well as about content. There had been once such case, involving an alleged conflict of interest. This had been recorded and passed on to senior editorial management. However, Readerlink had logged it and would track its progress.

In 2002, mainly in an effort to standardise in-house styles across the Fairfax group, a Style Book and Media Law Guide was produced for use by all Fairfax newspapers. “Style” in this context

means a set of rules for spelling, punctuation and myriad other details of presentation. The guide book also contained the corrections policy, the MEAA code of ethics, the Australian Press Council's statement of principles, *The Age's* code of conduct and *The Sydney Morning Herald's* code of ethics. These codes are consistent with the MEAA's, but also set down rules concerning the receipt of free travel, gifts and other benefits, and participation in external activities that may compromise a journalist's independence or impartiality. They do not rule out paying for information or access ("chequebook journalism") but discourage it, the *Herald* saying money shall not be "proffered" and *The Age* saying it is a decision for the editor.

An editor of one of the major Fairfax newspapers described the corrections system as it worked on his paper:

There have been audits on all the Fairfax papers in terms of errors, how many, and how many corrections are published. I've seen some preliminary findings on what parts of the papers make the most mistakes, that sort of thing. We have a system where we follow up every suggestion we get of a mistake from reader feedback, for a start. We get quite a few of those. And the editor from each section has to follow up what it is that the reader has complained about, if it's a question of error, and do a written form saying, "Yes, there was one, it was made by person X, it came about because of pressure of deadlines, subbing mistake, whatever it was. For each correction that we publish, the editor of the section and the reporter or the sub-editor have to fill out a form that says this is how it happened, this is what we got wrong, this is our suggested correction, and this is what we're going to do to ensure that that sort of mistake doesn't happen again.

Q: Where does that form go?

They're filed here, at my office. Every few months I can go through them and see if there are patterns there. It's not so much to see which sub-editors and reporters make mistakes – even though it does that as well – it's more to see whether there are patterns to things that we're doing that we need to address.

When I came here I said that it's very hard to impress on journalists the impact we have on people. So how about we have a random system where we choose an editor who chooses two stories a month or two stories every three months, and goes back to the people about whom the story was written, and ask them, "What impact has this story had on you? Was it accurate?" People were horrified. They thought that was about not trusting them. But that was not what I was talking about. I still think that's a very good idea. We didn't have to publish anything. We just had to come back and say, "This is the way this story operated for the people in this town or the people in this organisation. This is the impact we had."

There is a common thread running through the rationales for each of these initiatives: it is that they are in the company's own interests because they may make the papers more credible, and may increase reader loyalty. Reference to the public interest is scant. Now it is unarguable that more credible newspapers are in the public interest, but the public interest itself is not given

specifically as a driver for accountability in its own right. In this there is an echo of the rationale behind the establishment of the Australian Press Council nearly a quarter of a century earlier.

9.2 NEWS LTD AND ITS SUBSIDIARIES

News Limited group publications operate across five divisions:

Nationwide News Pty Ltd, Sydney, Perth and Darwin (*The Australian, The Daily Telegraph, The Sunday Telegraph, The West Australian, The Northern Territory News*);

H&WT Ltd, Melbourne (*The Herald Sun, The Sunday Herald Sun*);

Davies Bros Ltd, Hobart (*The Mercury*);

Advertiser Newspapers Ltd, Adelaide (*The Advertiser*);

Queensland Newspapers Ltd, Brisbane (*The Courier Mail, The Sunday Mail*).

The Group Editorial Manager of News Limited, Warren Beeby, stated that there was a standard procedure at all of the group's newspapers for dealing with complaints. At each newspaper a person was designated to take calls from the public and this person decided where the complaint belonged. This included complaints against journalists. It was also this person's responsibility to liaise with those to whom the complaint was directed to establish whether the complaint was valid and, if so, what action was to be taken in response.⁶⁷ This action might include the publication of a correction or a letter to the editor. Any complaints which appeared to have legal implications or in which a threat of legal action was made were referred to in-house lawyers. Any agreement to publish a correction was usually arrived at only after negotiations about the withdrawal of any legal action.

All News Limited journalists operated on the basis of two procedural documents:

1. The company's internal professional conduct policy
2. The MEAA code for its members.

⁶⁷ Interview with Warren Beeby, Group Editorial Manager, News Ltd, 10 December 2003

Beeby estimated the proportion of MEAA members among News Limited journalists at about 50%.

In addition to the codes designed to regulate the conduct of journalists, each paper was subject to the Press Council's principles. Another senior editorial manager at News Ltd described the process more fully:

If the complaint was about the conduct of an individual journalist, we would investigate that in terms of our code of conduct. The code is a standard one across the organisation.

We would respond to the complainant. We'd tell them we'd investigated it. We might be willing to publish a letter to the editor so long as it didn't attack the journalist personally. If the journalist was found to have been at fault and gone outside our code of conduct, they go into our employment processes: counselling, warning, those sorts of things.

There may be times when actions that are outside the code are called for and valid, but that comes down to an editor's call.

Q: How does your code fit in with the other codes? Does it supercede the MEAA?

It would. We probably wouldn't be able to take any punitive action against an employee who was found in breach of the MEAA code, because we're not a party to it. So in terms of disciplinary action we can only really deal with our own code. Our own code, however, doesn't necessarily cut across the MEAA's code or the Press Council's principles.

The worry is, of course, that journalists might feel I'm bound by three things here: the Press Council, our code, and the union code. There is a danger that you feel a bit under siege with all of that. But the reality is that what these codes have done is make the journalist aware of getting it right.

If it hasn't gone to the lawyer, we can offer the complainant a correction, clarification, apology or whatever. We have to be a bit careful, though. We would need an undertaking that they won't go any further with it, because if you go making admissions and they run off to their lawyer, you've lost your defence. So unfortunately that's something that makes dealing with complaints difficult.

So you don't see apologies given immediately. You might get clarifications or corrections immediately, but apologies we usually take under advice.

The company's internal professional conduct policy is contained in a 12-page booklet.⁶⁸ It states on its opening page that the policy applies to editorial employees of the newspaper operating divisions of News Limited (the divisions listed above) and continues:

⁶⁸ *News Ltd Regional and Suburban Newspapers, Professional Conduct, The Policy of Our Newspapers.* (No publication details shown.)

News Limited group publications aim for the highest editorial and ethical standards. Editorial employees and contributors should be open-minded, fair and respect the truth. To this end, all need to be familiar with the policy detailed in the following pages, to follow the rules they contain, and to apply their underlying principles. The booklet sets out 22 rules under these headings: accuracy, mistakes, misrepresentation, privacy, covert activities, confidential sources, harassment, discrimination, grief and distress, children, suicide, illegal drugs, weapons and threats, payment for information, personal gain, financial reporting, plagiarism, interviews, advertising, conflict of interest, other obligations, and breaches of policy.

Under “breaches of policy” are the following:

22.1 Group publications must regularly publish advice to readers on how to lodge a complaint about the conduct of an editorial employee or the content of a story.

22.2 A “help line” should be established and publicised to enable readers to discuss complaints and complaints procedures with a responsible member of staff.

22.3 Complaints involving alleged breaches of this policy will be investigated by the managing editor of the newspaper concerned, or by an executive of equivalent status.

22.4 Proven breaches will be dealt with in accordance with the company’s disciplinary procedures.

The *Herald Sun* in Melbourne, also has a reader helpline service not dissimilar in function to the Fairfax Readerlink system. However, no data were available to indicate complaint patterns.

CONCLUSIONS

It can be seen that the in-house accountability mechanisms for journalists vary widely in scope and detail, from the exceedingly elaborate and exacting procedures of the ABC to the comparatively simple, though improving, systems at Fairfax and News Ltd. Without complainant satisfaction data or details about patterns of complaints it is impossible to make comparisons about effectiveness.

In-house mechanisms are indispensable, of course. People will complain and it is impractical to have no system for handling them. However, the approach at both the newspaper houses

appears to be driven primarily by the need for reader feedback to inform editorial decision-making, rather than the more disinterested ideal of providing a means of accountability. Partly for this reason, and partly because it will always be necessary to have some external processes if accountability is to have any meaning at all, the in-house systems need to be complemented by strong external processes.

As has been seen in Chapters Five, Six and Seven, none of the three external mechanisms could be described as strong. It follows that the total picture is of weak accountability, with the single exception of the public-sector ABC, where the process is out of the hands of the journalists and subject to two layers of review.

In fact the ABC system contains features of a first-rate system of internal accountability from which other organisations could learn. The other systems also contain good features which, if brought together, would create immeasurably better processes than exist in the private-sector media organisations at the moment. The challenge is to persuade private sector companies to invest sufficient resources to make their systems thorough and credible, without having to outlay the cost of running something as elaborate as the ABC's.

The first particular strength of the ABC's system is that it is managed and operated by a corporate division of the organisation that is at arm's length from the journalists. This means the investigations and subsequent actions have a degree of independence which makes them more workable. Editorial executives who must keep good working relations with their journalists are always in a difficult position when investigating one of their own. An executive in charge of internal investigations at one newspaper said in a non-attributable interview: "They hate it when they see me coming." The author, who carried out this function for *The Sydney Morning Herald* from 1984 to 1986, can say from personal experience that this is no exaggeration. Seizing notebooks or cassette tapes, cross-examining reporters on what they did to establish the facts, establishing whether they have made a mistake at all (which is often hotly contested), maintaining a proper detachment from someone that one knows quite well – often giving the impression that the journalist is not being believed – creates difficult circumstances in which to carry out an investigation which both complainant and journalist will accept as fair.

From the complainant's viewpoint, it looks like what it is –journalists investigating their own. This is hardly calculated to inspire confidence in the impartiality of the investigation. Thus the

outcome is tainted before the investigation begins, no matter how hard the investigator tries to be fair. The journalist gets the benefit of any doubt, this being a kind of built-in understanding in a culture where the practitioners often feel in an adversarial relationship with their subjects.

Therefore someone outside the editorial staff, responsible to the company's senior management, is in a far better position to carry out these investigations. It would be essential that this person have considerable experience in journalism, but better that it should have been somewhere else than on the paper where he or she is the investigator. Too often these positions are seen as soft landings for aging journalists who have given good and faithful service – and who as a consequence have a deep attachment to the paper and its staff.

The second particular strength of the ABC process is that the investigative process is well-resourced. As a result cases are generally dealt with promptly and thoroughly, and proper records are kept, allowing quantitative and qualitative analysis of complaints over time.

The third particular strength of the ABC system is that it has a process of external review. In the ABC's case this process has two layers and is exceedingly elaborate. This is a response to the highly political environment in which the ABC operates and, further, is a consequence of its being a broadcaster. This makes it subject to the review of the Australian Broadcasting Authority as a last resort. Nothing so elaborate or costly is necessary for private sector newspapers. An *ad hoc* panel of three or so people with journalistic and non-journalistic backgrounds, serviced by the investigator's secretariat, would suffice.

The ABC and the News Ltd newspapers have developed their own internal codes with which their journalists must comply, and Fairfax have developed a system for auditing mistakes. The ABC documentation is perhaps more bureaucratically labyrinthine than most newspaper journalists would have patience for. Even so it is a model of thoroughness and could provide the basis for a more comprehensive code of practice against which private sector journalists could be held accountable. The great benefit of this is that it confers certainty: people know what is expected and can't say they weren't told.

Finally, the existence of a thorough, impartial internal accountability process needs to be well advertised. There is no reason why newspapers should not carry with reasonable prominence a panel setting out its broad policies and procedures in this area, and supplying a direct telephone

line, fax number and web address. Some do already. It can only enhance the paper's standing in the community – so long as the process delivers natural justice swiftly. The essentials are independence, demonstrable impartiality, thoroughness and speed.

Establishing such a system can be risky, as the Masterman experiment showed. Thorough staff consultation and a commitment from the Board and senior management are absolutely necessary if a system like this is to be introduced successfully. Industrial relations must be kept out of it. The work of any journalist on the paper, from the Editor down, should be subject to it; union and non-union staff likewise. Its scope needs to encompass both content and behaviour. Its existence must be grounded in Board policy, and as with the News Ltd and ABC systems, adherence to it should be a condition of employment.

CHAPTER TEN

DEFAMATION

No examination of media accountability in Australia would be credible or complete without an analysis of the defamation laws. The reason is that in Australia these laws are notoriously complex, imposing themselves as the most severe and uncertain form of accountability to which the Australian media must submit. Moreover, considerations about defamation infiltrate the very fabric of the existing mechanisms of media accountability, as has been seen in earlier chapters, particularly those concerning the Australian Press Council and the Media, Entertainment and Arts Alliance. This chapter examines the nature of defamation law, the way in which it is applied in Australia, and its effect on media decision-making, including a discussion of the so-called “chilling effect”. It also reports the results of surveys conducted in Australia among journalists and the public on questions to do with defamation and making amends.

The questions canvassed in this chapter are: How do the defamation laws act as a mechanism of media accountability? Are the interests of free speech and protection of reputation from wrongful harm balanced reasonably in Australia? Do the defamation laws have a “chilling effect” in that they prevent the media publishing information which is true and in the public interest? What do journalists and ordinary members of the community – from whom juries are drawn – think about making amends when defamation occurs?

The law of defamation exists to control the intersection between freedom of communication and protection of reputation from wrongful harm. It is different in kind from other laws that daily affect the media -- laws concerning contempt, copyright, trespass and breach of confidence. Each of these is comparatively straightforward and may be generally determined by reference to facts. Did a media report breach an order of the court or have a tendency to interfere with the administration of justice? Did publication violate copyright held by some other person? Was a journalist on private property without permission or in defiance of an order to leave? Was information conveyed to a journalist in circumstances where he knew, or ought to have known, that it was being given in confidence? These are all arguable points, but generally can be resolved by reference to facts.

Defamation law is qualitatively different. An action for defamation rests ultimately on what meaning the audience took from the published material and whether the “ordinary reasonable person” would have considered that meaning to be defamatory of the party about whom the material was published. This can be highly subjective. It arises from what the “ordinary reasonable person” understands to be the “natural and ordinary meaning” of the words, unaided by special knowledge¹. This, of course, can depend on context, background knowledge, personal prejudice, habits of contemporary language usage, and social mores. Meanings can also arise from a person’s special knowledge of the subject matter.²

A meaning is defamatory if it tends to hold a person up to hatred, ridicule or contempt; or lower a person in the estimation of right-thinking people; or cause people to shun or avoid a person; or injure a person in their profession, trade or occupation. The standard against which these potentially injurious effects are tested is the standard considered to be applied by “ordinary decent folk in the community, taken in general”.³

Each of the States and Territories of Australia has its own defamation laws, and a defamed person has the right to choose where to sue. Publication of defamatory material occurs when the material is conveyed to someone other than the person defamed, and every individual publication can provide a new and separate cause of action. It follows that all the main news media in Australia are considered by the law to publish in all the States and Territories of Australia, because even one reader of a newspaper, or one listener to a radio broadcast, or one viewer of a television program in any of the jurisdictions is sufficient to satisfy the test of publication. Taken together, these factors present the media with an acute difficulty: they must make decisions on what to publish, taking into account eight different sets of defamation laws.

These laws differ significantly, and nowhere are the differences more obvious or important than in the defences available to the publisher. Broadly speaking there are four main defences to defamation: justification, qualified privilege in two different forms, and fair comment. The defence of justification illustrates vividly the problems that arise from the eight jurisdictional variations. In Victoria, South Australia, Western Australia and the Northern Territory, the defence of justification has a single limb. In these places, it is a complete defence if a defendant can prove (on admissible evidence) that the meanings were true. In the other four jurisdictions,

¹ *Readers Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 505-506, per Brennan J.

² See, for example, *Tolley v JS Fry & Sons Ltd* [1931] AC 333 (House of Lords).

³ *Boyd v Mirror Newspapers Ltd* [1980] 2 NSWLR 449 (Supreme Court of New South Wales), per Hunt J.

the defence of justification has two limbs. In Queensland, the Australian Capital Territory and Tasmania, the publisher must not only prove that the meanings were true, but that there was some “public benefit” to be gained from publishing the material. In New South Wales, the publisher must prove that the meanings were true and that there was a “public interest” in publishing the material.

There are other important differences too. In some jurisdictions, defamation cases are heard by a jury, in others by a judge alone, in others by a magistrate. In some places – notably New South Wales – the damages awarded are much higher than in other parts of Australia, for reasons that can only be speculated about.

Jurisdictional differences are likely to become more acute as Internet publication expands, bringing a global dimension to this problem. One core issue – place of publication -- has already been confronted in the *Gutnick* case⁴, where it was held that the place of publication was where the material was downloaded, not where it was uploaded. While this appears to be settled law in Australia now, it remains a contested issue in other jurisdictions.

The media industry has also made a rod for its own back by its unreasonably defensive and rigid responses to various attempts at reform. The industry’s long-term approach, going back at least to the last serious attempt at reform by the Commonwealth Government in the early 1980s, has been to grab at any concession on offer, but yield nothing in return. Its attitude to court-ordered corrections is a case in point, a matter alluded to below.

The civil law of defamation has been described as “probably the major restriction on the publication of information by the media in Australia”.⁵ The particular complexities of the defamation laws occasioned by their lack of uniformity and by the steady reading down of the “public interest” and “public benefit” tests by the courts, are compounded by the absence in Australia of any constitutional guarantee of free speech. There is no equivalent in Australia of the First Amendment to the Constitution of the United States.

There is no equivalent of the protections to free speech contained in the Canadian Charter of Rights and Freedoms (1982), the New Zealand Bill of Rights Act (1990), or the South African Bill of Rights (1996). In Australia it has been left to the courts to delineate and express whatever

⁴ *Dow Jones & Company Inc v Gutnick* [2002] HCA 56

⁵ Sally Walker, *Media Law Commentary and Materials*, Sydney, LBC Information Services, 2000, p.87.

freedoms exist in relation to speech and the press. It is a task to which the Australian courts, steeped in the traditions of black-letter literalism inherited from England, are singularly ill-suited. Without clear constitutional or legislative guidance, Australia's courts have been reluctant to assert civil and political rights, as illustrated by the High Court's discomfiture over the doctrine of implied rights that it developed in the early "free speech" cases. This matter is further developed later in the discussion of the *Lange* case.

In defamation law, an important principle was finally established by the High Court in 1988 when it upheld what had become known as the "Newspaper Rule".⁶ In a long line of cases stretching back many decades, publishers had argued for a special privilege to enable them to protect their sources of information from being disclosed in court. The courts in Australia had refused to confer the privilege, but as a rule of practice they had excused the media from having to disclose the identity of sources so long as the litigant who wanted to the source disclosed could achieve effective legal remedies without having to do so.

The case that settled the "Newspaper Rule" in Australia was brought against the publishers of *The Sydney Morning Herald* by Eduardo Cojuango of the Philippines. Cojuango applied to the New South Wales courts for an order forcing the writer of the *Herald* article, Peter Hastings, to reveal the identities of his sources of information. Cojuango said he wanted to know the identities so he could bring actions for defamation against them. Hastings refused to disclose them. When the matter finally came before the High Court, the rule was confirmed in the following terms:

Generally speaking . . . the courts will not compel disclosure unless it is necessary to do justice between the parties.⁷

This concession recognised the necessity in a democracy of attaching some weight to the value of free speech, while maintaining the right of individuals to remedies for wrongful harm to reputation.

In September 2005, the Commonwealth Attorney-General raised the possibility that some form of specific privilege would be conferred on journalists to allow them to resist disclosing the identity of their sources in court proceedings. If implemented, this would widen and strengthen

⁶ *John Fairfax & Sons Ltd v Cojuango* (1988) 165 CLR 346.

⁷ *Ibid.*

the protection afforded by the Newspaper Rule, referred to earlier. The Attorney announced on 30 September 2005⁸ that he had asked the Commonwealth Solicitor-General to seek leave of the County Court, Victoria, to appear on his behalf in possible contempt proceedings brought against two journalists from the *Herald Sun* newspaper in Melbourne. The journalists, Michael Harvey and Gerard McManus, appeared as witnesses in the prosecution of a former public servant alleged to have leaked information in breach of the Crimes Act, 1914. Both journalists refused to disclose the source of leaked information they had obtained, citing their obligations under the Code of Ethics of the Media, Entertainment and Arts Alliance.

The Attorney noted that the issue of privilege to protect journalists' sources was being considered by the Australian Law Reform Commission and a report was due in December 2005.

The only other instance of a formal recognition of the media to be forthcoming from the Australian courts occurred in 1992. In that year, a media company challenged the constitutional validity of a Commonwealth law banning the broadcasting of political advertising during election campaigns. The Commonwealth's objective was to reduce the costs of campaigning and so protect Australia from the risks of corruption caused by voracious political fund-raising of the kind that blights American politics.⁹

The High Court struck down the laws as constitutionally invalid. In doing so, four of the Justices, including the Chief Justice, Sir Anthony Mason, argued for the existence in the Constitution of an implied guarantee of freedom of communication on matters of government and politics. This was controversial. The doctrine of "implied rights" was new to Australian jurisprudence and was by no means accepted by all the Justices of the Court. However, it was seized on by the lawyers for the *Herald & Weekly Times* when they were called upon to defend an action for defamation brought against the *Herald Sun* by a federal MP, Andrew Theophanous, in 1994.¹⁰

Again by a 4-3 majority, the High Court upheld the existence of an implied guarantee of freedom of expression on matters of government and politics. The majority found that where a person sought redress for defamation, he or she needed to do so in a way that did not violate the implied freedom. It was still controversial; it was still not settled law.

⁸ Philip Ruddock, Attorney-General, Media Release 179/2005 www.ag.gov.au

⁹ *Australian Capital Television Pty Ltd v Commonwealth* (1992) CLR 106.

¹⁰ *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104

Then in 1997 there came an opportunity to revisit this troublesome issue. The former Prime Minister of New Zealand, David Lange, sued the Australian Broadcasting Corporation for defamation over a broadcast concerning his prime ministership. The ABC relied on the defence used by the Herald & Weekly Times in *Theophanous*. The matter went to appeal and the High Court reopened its consideration of the whole question of implied rights. In a judgment grounded on first principles, the High Court refined its approach to implied rights, but at the same time gave some formal judicial recognition to the media as an institution essential to the functioning of a modern democracy. This was dealt with in detail in Chapter 1.

The judgment in *Lange* recognised the function of the media as being, in today's society, the means by which most electors exchange information, opinions and arguments concerning government and political matters. It made the media parties to the reciprocal duty-and-interest partnership with the citizenry that provides the basis for the existence of qualified privilege. It is as near as the Australian courts have got to formally acknowledging the institutional role of the media in the nation's political arrangements.

The condition of Australia's defamation laws has been the subject of trenchant criticism, even from the judiciary. Justice David Levine, the judge in charge of the Defamation list in the New South Wales Supreme Court until his recent retirement, virtually wrote off the laws as useless in their present form:

It has virtually come about that [the defamation laws] can no longer be seen to be a remedy in tort for the wrong, or a mechanism for the assertion of the right of free speech in any sensible, reasonable, practical way¹¹

From time to time, efforts have been made to bring uniformity and a measure of workability to these laws. In 1979 the Australian Law Reform Commission produced a report entitled *Unfair Publication: Defamation and Privacy*, which concluded that substantial reform to the law was required. This stimulated an effort by the Australian Government in the early 1980s to reform the law and make it uniform throughout Australia. The effort foundered for complex reasons: the inability of the States to agree on a common approach, and the unwillingness of the newspaper publishers to agree to proposals concerning remedies and making amends. In the early 1990s Queensland, New South Wales and Victoria reviewed their laws with a view to making them uniform but this effort also dissolved into nothing. In 2002 New South Wales passed an amended law in that State and in 2003 the Commonwealth Attorney-General, Philip

¹¹ Quoted in Brian Walters, *Slapping on the Writs*, Sydney, University of New South Wales Press, 2003, p59.

Ruddock, tried to goad the States into uniformity by the time-honoured means of threatening to introduce federal legislation.

The difficulty with this is that under the Australian Constitution, defamation falls within the jurisdiction of the States. Nothing prevents the Commonwealth passing its own law, but if the States do not agree to refer their power over defamation to the Commonwealth, the introduction of a Commonwealth law would make matters worse by adding a ninth set of laws to the existing eight. In an effort to bring the States along, in March 2004 Ruddock published a discussion paper proposing a national defamation law which would include several novel provisions. One of these provisions very substantially narrowed the defence of comment; another introduced the right of a dead person to sue through the surviving members of his or her family. The paper generated considerable controversy. One of Australia's leading defamation lawyers, Peter Bartlett, of Minter Ellison, described his reaction:

I saw the present Attorney-General's first discussion paper and there were issues in there that I had significant problems with. One was the comment defence, where the comment needed to be what the judge thought was reasonable.

That was outrageous, because our present position is that if the publication has the facts in it, if the facts are accurate, then you're allowed to comment on those facts. You can be over-the-top in the comment, with the rationale that the public had the right to look at the facts, look at the comment and decide whether they agree or disagree.

This [the Ruddock proposal] was basically saying you had to have mainstream comment or you had no defence, which was a huge attack on freedom of speech.

Then there was a controversial thing in relation to juries. Juries were abolished. All trials were in the Federal Court.

There were a whole range of things in the first discussion paper that were just issues you would have to oppose, and oppose very strongly.

In July 2004, Ruddock produced a revised discussion paper. The right of action on behalf of the dead had been retained but the changes to the defence of comment had been substantially modified. Under the revised proposal, the key changes to existing law were to be found in:

- ❑ the definition of defamatory matter;
- ❑ the right of the dead to be able to sue through his or her survivors;
- ❑ the defences available to publishers of defamatory material;
- ❑ the role of juries, and
- ❑ remedies.¹²

¹² Discussion Paper on Defamation, Summary of Proposals, at www.nationalsecurity.gov.au, 9 August 2004.

The changes to the definition of defamatory matter introduced a broader test than the present set of tests, by using the formulation “. . . matter that tends to adversely affect the reputation of a person.”

The changes to the defences were significant. The “public interest” test was retained as part of the defence of Justification, but would be broadened so that a matter would be considered of “public interest” unless it involved the “unwarranted disclosure of specified ‘private affairs’.” There would be a list in the legislation of “warranted disclosures”, being generally those concerned with goods or services offered to the public, or the conduct of persons in their public, commercial or professional capacities. This imported some elements of a privacy test into defamation law. A defence of “contextual truth” would be established to cover a circumstance where a seriously defamatory charge is made out against a plaintiff, but not a lesser charge. The plaintiff would not be able to successfully sue on the lesser charge where the more serious charge had been proven.

The defence of Comment was substantially restored to its present scope, but again an opportunity for judicial interpretation was introduced by a requirement that there be “a rational connection between the facts and the opinion formed”. This was a surviving remnant of the “reasonableness” test which provoked such an outcry when the first discussion paper was published.

The defence of qualified privilege in the Discussion Paper contained no reference to the axis of reciprocity created by the High Court in *Lange*¹³ between the media and the citizenry concerning freedom of communication on matters of government and politics. Instead the defence would be available in certain specified circumstances or where publication was “reasonable in all the circumstances”. The list of circumstances was based largely on the nineteenth-century Queensland defamation laws. Otherwise, the defence of qualified privilege in the Discussion Paper was modelled on the virtually moribund S22 of the New South Wales Defamation Act.

Peter Bartlett’s view of the way that section has operated was expressed thus:

If you look at the qualified privilege area, both at the common law and Section 22 of the New South Wales Defamation Act, you find that the wording of Section 22 reads pretty well. It looks very balanced. It looks quite a good defence. But the way it’s been interpreted by the judges has basically made it impossible for the media to succeed.

¹³ Op. cit.

This pre-dated Lange by many years, and I think in Australia there have been only two or three cases in which the media has got up on qualified privilege under Section 22. It is very very difficult.

Nonetheless, taking the revised Discussion Paper as a whole, he was more accepting of it than he had been of the original:

I saw a couple of drafts of the revised discussion paper before it was released, and I have been involved, directly or indirectly, with every attempt at uniformity since at least 1979.

I saw the first discussion paper and there were issues in there that I had significant problems with. When I got the draft of the second discussion paper, I'm going from page to page waiting for the bomb to hit me, waiting for the proposal that you would die in the ditch to try to stop. And I was staggered that I got to the end of it thinking, this has been prepared by someone who knows a lot about the area. It is very astute in that it tries to compromise on a lot of the difficult areas that were in the first one.

He's supported the Lange provisions. It needs to be looked at a bit further. There are suggestions that that will be extended beyond the area of political discussion.

So there is a lot of positive stuff in the Ruddock proposals.

Uniformity is an important goal because we have eight separate sets of defamation laws, plus the Lange federal defence, which is basically nine sets of defamation laws, in an era of technological advancement that make the Territory and State borders totally irrelevant. We don't think, are we crossing the State border to send an e-mail to Sydney? So separate defamation laws are past their use-by date.

The Australian Press Council has had a hand in the whole push for reform of the defamation laws. Its role was outlined by the Chair, Professor Ken McKinnon:¹⁴

Contrary to what most people think, Ruddock hasn't started it; Ruddock's coming into it two-thirds of the way through. We picked it up in New South Wales and convinced the newspapers to get in line, which is two-thirds of the job, I might say: what is it we really want? Then that got translated into amendments to the NSW defamation law. They then established a committee comprising the Solicitor-General, me, a professor of law and one of their own staff members, and we put in a paper. I didn't win everything.

It fell at the last hurdle at the end of 2002 in little bits which the newspapers didn't like – a bit I was particularly keen on called “making amends”, so that before you got to defamation [litigation], there'd be a process which would require complainants and newspapers to meet and try and make amends in some way, either by a financial offer or something else. And if an offer was made that a complainant didn't accept, and it eventually still went to litigation, the judge would be obliged to take into account the attitude of the newspaper in making amends.

Q: Did the proprietors accept that?

Up to the last gasp of the legislation, they were all for it.

So then I said to the New South Wales people who chair this Standing Committee of Attorneys-General, [SCAG] let's try and make this national. So they put it on the agenda. The States responded because in the meantime, as a consequence of our movement here, the Attorney-

¹⁴ Interview with the author 20 October 2004.

General of Western Australia had created a committee which came up with something very similar to ours.

So there were two reports. McGinty [the NSW Attorney-General] said he would sponsor it in the SCAG. [Defamation law reform] is a long-standing issue that's been thrown off the table at least twice in 20 years because they couldn't get their act together. So we thought our job would be to act as the whipper-in. Having six or seven different laws is stupid.

We offered to them the possibility that we were not just on the publishers' side, we're on the side of the public too. And we're interested in struggling with the authorities over injured innocent people.

Ruddock's had two drafts of the bill already and he wants very badly to get the credit for it and will probably railroad it through regardless of whether the States want it or not.

We're saying to him and everyone else, look, the worst outcome possible is for you to pass a law when there are extant State laws. You've got to get your act together. So we're nipping him and nipping them and generally pushing it along. And the owners and everybody else appreciate that there's a kind of honest broker.

In November 2004 the State members of the Standing Committee of Attorneys-General issued a model for a uniform law which Ruddock said did not go far enough. By April 2005, discussions between Ruddock and the States had reached the point where three sticking points remained. In each case Ruddock wanted something not provided for by the States:

1. Continuance of the right of corporations, including statutory corporations, to sue for defamation;
2. The power of the courts to order corrections, and
3. The role of juries to be made uniform.

Ruddock also wanted a formal guarantee in a memorandum of understanding or some other instrument that the law would remain uniform and not be changed by individual States. He issued a warning that if the States could not achieve uniformity and, by implication, find a way to accommodate his wishes, the Commonwealth would look again at bringing in its own defamation laws.¹⁵

The States' proposals contained a number of other provisions which are not the subject of dispute with the Commonwealth. These include choice of forum, and a cap on damages. The law governing the choice of forum in relation to, for example, a national publication would be the state or territory with the closest connection to the harm occasioned by the publication. In deciding this question, the court might take into account the residence of the plaintiff; the extent

¹⁵ Address at uniform defamation law seminar, Clayton Utz, Sydney, 13 April 2005.

of publication in the various states and territories; the extent of the harm sustained by the plaintiff in the various states and territories, and any other matter that the court considered relevant.

A cap for non-economic loss damages of \$250,000 would be set, adjusted yearly in accordance with average weekly earnings. This amount could, however, be increased by award of aggravated damages. There could be no award for exemplary or punitive damages. Two of the factors that could be taken into account in mitigation of damages would be apologies and corrections.¹⁶

The States' proposal departed from the Commonwealth's in a number of respects, but there appeared to be room for negotiation over most of these. The Commonwealth, for its part, was prepared to give ground, including on the defamation of deceased persons.

While this politico-legal imbroglio was being played out, the media in Australia continued to be subject to the eight defamation laws currently in force. It has been widely argued¹⁷ that defamation laws have a "chilling effect" on the media in that they prevent the publication of material that is true and in the public interest. Bartlett certainly believes the "chilling effect" is real:

There's no doubt in my mind that the defamation laws do have a chilling effect. If you look at the exposure of the media to legal costs, which are very significant if you fight a defamation case through to judgment: the potential damages are very high – we've had an award against Fairfax of \$2.3 million, we've had one of \$1.4 million, the ABC went down for \$1.1 million, although they did a lot better in settling it on appeal.

You need to sell a heck of a lot of newspapers to make \$2.3 million and all the legal costs of both sides over and above that. And you've got to show a lot of television programs to justify \$1.1 million, especially the ABC, which doesn't have advertising revenue.

And now most media companies are far more attuned to financial performance -- and in this financial year. So they are not throwing the resources into investigative reporting. They are far more conscious of the risks of a defamation case. And they are not risk-takers to the degree they might have been 20 years ago.

¹⁶ Extracted and summarised from a paper delivered by Michael Sexton, SC, Solicitor-General of New South Wales, to the uniform defamation law seminar, Clayton Utz, Sydney, 13 April 2005.

¹⁷ See for example F. Schauer, "Fear, Risk and the First Amendment: Unravelling the 'Chilling Effect'," *Boston University Law Review*, 58, (1978) 685-732; E. Barendt, L. Lustgarten, K. Norrie, H. Stephenson, *Libel and the Media: The Chilling Effect*, Oxford, Clarendon Press, 1997.

One of the [causes of the] chilling effect is also that defamation trials are a bit of a lottery. It's very difficult to go into a defamation trial and be totally confident of what the outcome is going to be.

Q: More so than in other forms of litigation?

I think more so than in other forms of litigation, because in other forms of litigation, if it's a contract case or whatever, the documentation is there, the lawyers can form a view, there are lots of legal principles and the judges can form a view. Here it is a lottery.

Bartlett thus sees three factors at work: the uncertainty of the law, the financial impact of defamation litigation, and the impact of the corporate culture within media companies which nowadays is more focused on short-term financial performance than was once the case. He noted that at the time of interview (late 2004) *The Age* newspaper, which he advises on defamation, had only two writs against it, an astonishingly small number for a newspaper of its kind. He contrasted this with the position in the late 1980s, when the newspaper had a substantial team of investigative journalists working on stories concerning police, political and corporate corruption, which carried large legal risks. At that time, there were more than 20 writs out against the newspaper at any one time. The author, as an editorial executive of *The Age* at that time, can attest to those figures.

It should be noted that at a newspaper like *The Age*, the number of writs is an index of the paper's investigative activity, not just of carelessness or ineptitude. Although there is always an irreducible minimum of the latter, the bulk of writs against newspapers with substantial investigative resources are simply bluff on the part of those who have been exposed. They seldom go to trial. However, they have to be defended, and every one generates not insubstantial legal costs. They seldom go to trial because the journalists and their lawyers have taken care to ensure, before publication, that the material can be proved in court.

In New South Wales the cost factor has been made worse by the introduction of what are called "Section 7A" proceedings. Bartlett explained:

It's introduced a system where you can have two trials. The first trial is before the jury and the jury needs to decide whether the publication is defamatory and whether the imputations [defamatory meanings] arise. If they say yes, you have a full trial, with all the witnesses, all the arguments on defences, all the arguments on quantum, and then the judge makes a decision.

So you have two very significant trials. That can lead to very significant costs.

But you also have to take into account that a lot of plaintiffs are failing during the 7A process, and that brings the action to an end. There are many examples of the jury, who are pretty astute, looking at the plaintiff and taking the view that they don't have very much sympathy with that plaintiff.

And there have been cases where most lawyers would say the publication is defamatory and that the imputations do arise, but the jury has thrown it out. And that has saved the media a colossal amount of cost. I've won five or six that I was very pleased to win and certainly didn't go into the 7A procedure being over-confident of winning.

But it's also a fact that juries are fairly inconsistent. For example, there was a case where a plaintiff got \$600,000 before the jury. The Court of Appeal and the High Court said it was too much so it went back before a different jury for a new trial on quantum. The jury gave him \$1.3 million!

*I had a 7A where the same article had run in *The Age* and *The Sydney Morning Herald*. On one day I had the 7A (against *The Age*) and the jury threw it all out. We totally won. The next day a different jury heard the case against *The Sydney Morning Herald*, same article, and they found the imputations did arise. Just extraordinary.*

Richard Coleman, in-house legal counsel for Fairfax in Sydney (publishers of *The Sydney Morning Herald*, *The Australian Financial Review* and *The Sun-Herald*) said that one consequence of the 7A system was that whereas in the past many defamation actions had “gone to sleep” and had never proceeded to a hearing, now many more were proceeding to a 7A trial. For example, in 1989 only two cases out of fifty had proceeded to a hearing. Now, the Supreme Court kept pressure on plaintiffs to activate their suit or face having it stuck from the list. For all cases that proceeded to a 7A hearing, it was necessary to brief counsel, sometimes senior counsel. As a result, costs were now being incurred on an unprecedented scale. He provided data on the cost impact of S7A. These are shown in Figures 10.1 and 10.2. These data are for legal costs alone, and do not include damages. It can be seen that although the number of actions has declined, the costs have increased. Coleman attributed this increase in costs largely to the introduction of the S7A procedures.¹⁸

S7A trials began in 1999. It can be seen that between 1999 and 2002 costs rose steeply even as the number of actions stabilised. In 2003 and 2004 both the number of actions and the costs fell, but costs remained well above pre-1999 levels. This is compelling evidence in support of Bartlett's argument that the defamation laws as presently administered do exert a “chilling effect” if for no other reason than the cost of responding to writs -- whether meritorious or meretricious -- has increased substantially. While, as Bartlett pointed out, publishers save money when plaintiffs fail at the 7A stage, the extreme uncertainty of outcomes, as illustrated by the contradictory verdicts over the same story in *The Age* and *The Sydney Morning Herald*, makes this a proposition on which editors might not care to rely.

¹⁸ Interview with the author 14 August 2003.

Figure 10.1: NUMBER OF DEFAMATION ACTIONS AGAINST FAIRFAX 1989-2004

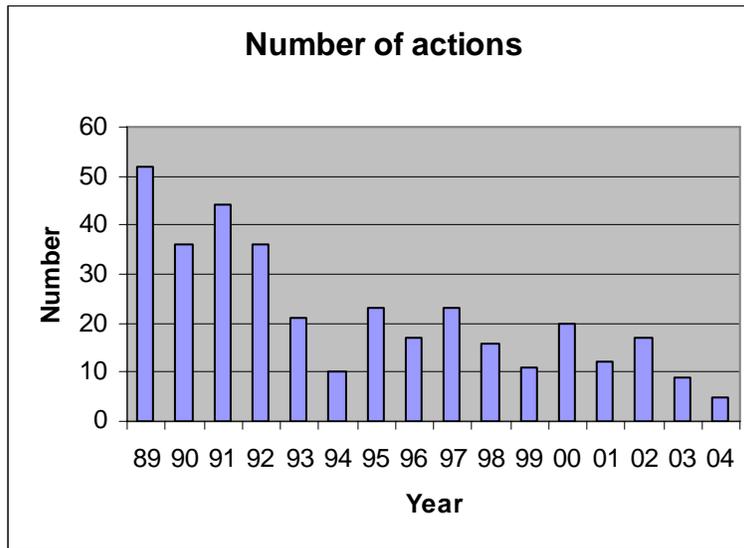
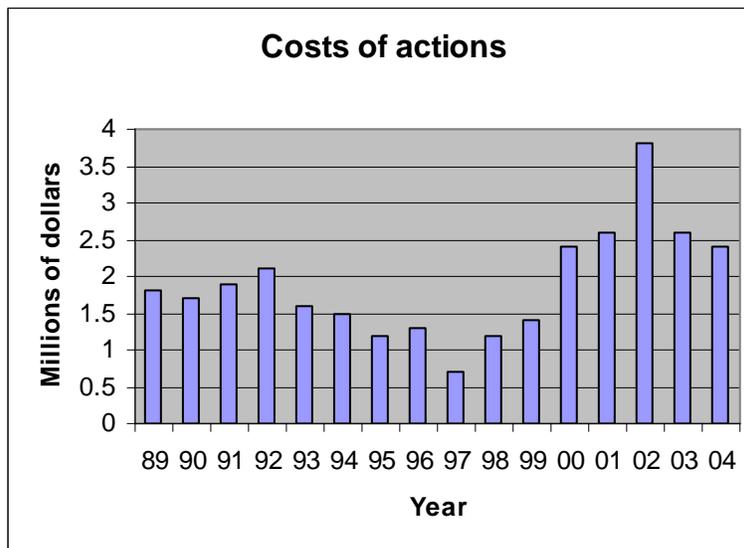


Figure 10.2: COSTS OF DEFAMATION ACTIONS TO FAIRFAX 1989-2004



The impact of legal costs on media decision-making was also noted by Marjoribanks and Kenyon in their comparative study of journalistic and legal practice between Australia and the United States.¹⁹

¹⁹Timothy Marjoribanks & Andrew T. Kenyon, *Negotiating News: Journalistic Practice and Defamation Law in Australia and the US*, *The Australian Journalism Review*, Vol 25, No 2, December 2003, pp 31-49.

Our initial fieldwork work comparing Australian and US defamation law has suggested the issue of legal fees is significant to the media, particularly in Australia.

The “lottery” aspect of defamation laws has been found by researchers in the United Kingdom to exert a “chilling effect” there²⁰ but a recent study in New Zealand argued tentatively that the laws there did not produce “excessive” chilling effects, although they did produce some.²¹ The existence of the “chilling effect” is not universally accepted, however, even among journalists themselves. In a quantitative survey for this research, journalists were asked:

Question

Some people say the defamation laws Australia have a “chilling effect” on the media, meaning that they prevent publication of material that is true and in the public interest. Others disagree, saying the defamation laws do not prevent publication of material that is true and in the public interest. Would you say the defamation laws in Australia do or do not have a “chilling effect” on the media in Australia, in the sense that they prevent publication of material that is true and in the public interest?

Table 10.1: JOURNALISTS' VIEWS OF THE “CHILLING EFFECT” OF DEFAMATION LAWS

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Do have a chilling effect	45	60	28	48	39	30	53
Do not have a chilling effect	41	31	53	40	45	46	39
Don't know	13	9	19	13	16	24	8

Journalists were divided over whether the defamation laws in Australia have a “chilling effect” in the sense that they prevent the publication of material that is true and in the public interest. Male, print and more experienced journalists were much more likely than female, electronic and less experienced journalists to say the defamation laws have a “chilling effect”.

This is a very interesting finding, because it is at odds with what editorial managers and their legal advisers say. It may be that journalists are not as inhibited as those who have to make the final decision about whether to publish and, if that is so, it is probably because ordinary

²⁰ Eric Barendt, Laurence Lustgarten, Kenneth Norrie and Hugh Stephenson, *Libel and the Media: The Chilling Effect*, Oxford, Oxford University Press 1997.

²¹ Ursula Cheer, *The Chill of Defamation Law: NZ and Australian Journalism and Law Reform*, paper presented at the Centre for Media and Communications Law, University of Melbourne, 1 March 2005, p39.

journalists are not usually exposed to either to the pre-publication debates about legally risky stories, nor to the costs that follow when the writ arrives. Journalists tend to be shielded from these, partly because decisions on the publication of risky stories are taken by senior editorial executives, and partly because the employer usually indemnifies the journalists against costs and damages in the event that the newspaper is sued.

The research by Marjoribanks and Kenyon also raised questions about how real the “chilling effect” was.²² In a limited but useful survey, they interviewed 14 editorial managers, investigative journalists and media lawyers in Australia and the United States, exploring whether the very different regimes governing free speech and defamation in those two countries made any difference to the way journalists operated. Because of the small number of respondents, the results need to be read with caution, but the differences between the two regimes are profound.

In Australia:

- ❑ Defamatory material is presumed by the courts to be false. The onus of proving it true rests on the publisher.
- ❑ The publisher must prove, on admissible evidence, the truth of the imputations, not simply of the facts. The standard of proof is the civil standard (on the balance of probabilities).
- ❑ There is no “public figure” test, so defamation cases concerning public officials or people discharging public functions proceed on exactly the same terms as cases concerning private interests.

In the United States:

- ❑ There is a “public figure” test, which means that plaintiffs who are public officials or discharge public functions bear the onus of proving that the material published contains facts that are actually false, and they must prove that the publisher was actuated by malice. That is, the plaintiff must prove that the publisher knew the material to be false or was recklessly indifferent to its possible falsity.²³
- ❑ Conversely, the media must prove only that they based their publication on diligent inquiries which satisfied them that merely the facts were true.

²² Op.cit.

²³ Arising from *New York Times v Sullivan* 376 US 254 ; see also *St Amant v Thompson* 300 US 727.

It can be seen immediately that publishing defamatory material against public officials in the United States carries far fewer legal risks to the publisher than is the case in Australia. Marjoribanks and Kenyon focused on how the legal “obstacles” posed by defamation in the two countries were perceived and accommodated by news producers and the lawyers who advise them. Their central finding suggested that despite the different legal regimes, journalists in both countries operated in similar ways:

The most significant aspect of these findings is that the very different balance struck by US and Australian defamation law does not appear to lead to greatly differing practices by journalists and their advisers. Journalists may operate in similar ways in the two countries despite the quite different defamation regimes.²⁴

Moreover, Marjoribanks and Kenyon found that the High Court’s ruling in *Lange*²⁵ had made a practical difference to the way the Australian media approached the risk of being sued by public figures. They summarised their Australian interviews as follows:

Suits by politicians have fallen very dramatically, or settle far more easily since the *Lange* decision was handed down. This change has occurred even though case law suggests it may be very hard to establish, to a court’s satisfaction, that publication was reasonable. “*Lange* gives you more scope and confidence and ability to tell important stories”. The doctrinally limited change wrought by *Lange* appears to have allowed greater change in publication practices.²⁶

Nonetheless, the four editors and editorial managers interviewed for this research had a very clear sense that the “chilling effect” was real:

If someone interprets what you’ve written differently from what you intended, you’ve got to defend the meanings that you didn’t intend to convey. That’s too restrictive. It means that everyone who writes comment has to stop and think, “Can that be interpreted in any other way than the way I meant it?” That’s a big chilling effect.

-- Newspaper editorial manager

There has to be freedom for journalists, in the pursuit of truth, to make mistakes. I don’t think our legal regime acknowledges that.

-- Broadcasting editorial manager

If I knew something to be true and in the public interest, I’d press ahead with it. The defamation laws prevent you running an awful lot of material. That is one thing that does shackle the media to a large extent.

-- Newspaper editor

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

If editors, editorial managers and the lawyers who advise them are convinced that the defamation laws inhibit them from publishing what is true and in the public interest – even if some say they would press on regardless – then the “chilling effect” is real for those who are so inhibited. This raises the question about whether the defamation laws as presently constituted are properly suited to their task of striking a balance between freedom of speech and protection of reputation from wrongful harm. Bartlett, for one, believes the law does not strike the correct balance:

I don't believe the defamation laws do strike a reasonable balance. In this country they are too tilted in favour of the plaintiff. The media is in a very very difficult position in succeeding in any of the defences that are available. The onus is on the defendant. Our defamation laws assume the matter is defamatory and it's then up to the media to succeed in one of its defences.

Not the least of the difficulties was in deciding the nature of “the public interest”.

In New South Wales you've got to look at both truth and public interest. That's difficult. For example, look at the Geoff Clark story. [This was a reference to an article published in The Age alleging that Geoff Clark, at the time Chair of the government-funded Aboriginal and Torres Strait Islander Commission, had committed a series of rapes.]

I worked on that story for about four months before it was published. I was reasonably comfortable in the position The Age was in, in relation to defending an action under the defamation law of Victoria. But obviously The Age is published in every State and Territory in the country. So we then needed to look at whether it was in the public interest (to cover New South Wales) and for the public benefit (to cover Queensland). Was it in the public interest to publish that someone was alleged involved in rape 20 or 30 years ago?

Q: Even when that person was occupying a public position?

Even when that person is occupying a public position. You could imagine that some juries or some judges might take the view that it was so long ago it was now not in the public interest to have this aired again.

Q: Would there be characteristics of an ideal defamation law that would strike the balance better in Australia between protection of reputation and freedom of speech?

The Ruddock proposal gets reasonably close. It is designed to achieve uniformity, but also to avoid any move to further restriction publication. It's also designed not to move strongly towards freedom of speech, so it doesn't move towards the US position, which is too far balanced in favour of the media.

It follows from all this that the laws of defamation are a most complex and possibly even inhibiting part of the accountability processes to which the Australian media are subject. Part of this process, as for any accountability process, is the matter of punishment and making amends. The law does this by awarding damages where a suit for defamation succeeds. The law is not able to compel the losing publisher to publish a correction, apology or acknowledgement of

wrong, although sometimes a settlement will include a provision that some such a statement be published.

As a means of vindicating reputation, then, the law is limited. The successful plaintiff may win a large sum of money and have his or her costs paid by the publisher, but the audience that saw or heard the defamatory material will not necessarily be exposed to the vindication. Attempts to reform the laws of defamation in Australia have generally included proposals to remedy this state of affairs. Court-ordered corrections were part of the reform proposals put forward by the Commonwealth Government in the early 1980s, but rejected with spluttering indignation by the newspaper proprietors who fulminated against what one editorial executive called “the editorial division of the Supreme Court”.

The revised version of the current Commonwealth reform proposals²⁷ includes giving the courts power to make orders that corrections be published. They also include provisions aimed at encouraging plaintiffs and defendants to take steps that would more effectively vindicate the reputation of the successful plaintiff. If a defendant published, or undertook to publish, an agreed vindication in the form of correction, apology or acknowledgement of wrong, then damages would be reduced. There would also be a strong incentive for publishers to give an adequate right of reply. If the defendant took action swiftly to make amends or set the record straight, and the injured party still successfully sued, the publisher’s action would be taken into account in the assessment of damages, and in the decision of the court whether to make a correction order.

Journalists in Australia were asked in a survey conducted for this research what they thought a publisher should do to make amends in two different circumstances, one where the publisher had made every effort to get a story right, and the other where the publisher had not made a proper effort to get it right.

Question

If it turns out that a defamatory media report is untrue, but the media organisation took all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to publish a correction putting the record straight; pay the person compensation; do both of these things; do neither of these things?

²⁷ *ibid.*

Table 10.2: JOURNALISTS' VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE TAKEN DUE CARE

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Publish a correction	67	70	64	62	82	74	64
Pay compensation	2	--	3	3	--	2	2
Do both	28	29	27	33	13	22	31
Do neither	1	1	2	2	--	--	2
Don't know	1	--	3	--	5	2	1

A clear majority of journalists said that the publication of a correction ought to be sufficient to compensate someone about whom an unintentionally untrue and defamatory report had been published, although nearly one-third said that the aggrieved person should receive some monetary compensation. More experienced journalists were more likely than less experienced journalists to say monetary compensation should be paid as well as a correction published.

Question

If it turns out that a defamatory media report is untrue, but the media organisation did NOT take all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to publish a correction putting the record straight; pay the person compensation; do both of these things; do neither of these things?

Table 10.3: JOURNALISTS' VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE NOT TAKEN DUE CARE

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Publish a correction	19	21	17	19	18	13	22
Pay compensation	4	5	2	2	8	4	3
Do both	77	74	80	79	71	83	74
Don't know	1	--	2	--	3	--	1

A large majority of journalists said that when a person had been defamed by careless publication, the aggrieved person should be compensated by both a published correction and the payment of monetary compensation.

These findings suggest that journalists are not entirely niggardly on the matter of monetary compensation, and quite straightforward in saying that errors, whether or not they are the result of negligence, should be corrected.

The public view on these questions was obtained by a survey conducted across Australia in 2004 by the Communications Law Centre as part of a substantial study into public attitudes to defamation.²⁸ The questions asked were identical, and so was the population of interest, being eligible voters. The results are shown in Tables 10.4 and 10.5.

Table 10.4: PUBLIC'S VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE TAKEN DUE CARE

Attitude	Total
Base	3004
	%
Publish a correction	49
Pay compensation	3
Do both	42
Do neither	5
Don't know	2

Table 10.5: PUBLIC'S VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE NOT TAKEN DUE CARE

Attitude	Total
Base	3004
	%
Publish a correction	23
Pay compensation	3
Do both	70
Do neither	2
Don't know	*

*Less than 1%

It can be seen that a larger proportion of the public than of journalists think that monetary compensation should be paid, as well as a correction published, even where the media have taken due care (42 per cent compared with 28 per cent). Where the media have not taken due care, however, journalists are even more inclined than the public to say monetary compensation should be paid (77 per cent compared with 70 per cent).

²⁸ Unpublished findings of Roy Baker, National Defamation Research Project, Communications Law Centre, University of New South Wales, 2005.

CONCLUSIONS

The rationale for a law of defamation is that it controls the intersection between freedom of speech and protection of reputation from wrongful harm. In fulfilling this function, the law acts as both a restraint on the media and as a mechanism of accountability. In Australia, however, the laws of defamation perform their function poorly. There are three main reasons for this.

First, the lack of uniformity among the eight sets of defamation law in Australia creates complexity and inconsistency in its application. The law has become what one distinguished defamation lawyer calls a lottery. This is unfair to plaintiffs and defendants alike. An unfair law is an affront to the law and the concept of justice. That such a law is allowed to stand reflects ill on the legislators and stakeholders whose responsibility it is to formulate and administer it.

Second it fails to strike a reasonable balance between freedom of speech and protection of reputation because the defences available have become extremely difficult to succeed with. A large part of this difficulty arises because of an anaemic and under-developed sense of the public interest concept in Australian jurisprudence. No “public figure” test exists to clearly delineate at law the public from the private sphere. No legislation or body of case law clearly enunciates what is meant by “the public interest”. The concept has been read down repeatedly by the courts so that even where it is specifically invoked in legislation, as in S22 of the New South Wales Defamation Act, it provides a most uncertain defence.

Third, litigation in defamation has become extremely expensive. This has been exacerbated by the introduction of the S7A procedures in New South Wales, where litigants are kept under pressure by the court to activate their suit in circumstances where, in the past, it would have lapsed into a permanent coma. Doubtless it is efficient for court administration not to have the lists clogged with comatose matter, but prodding artificial life into cases has created a new injustice.

In the minds of the editors, editorial managers and media legal advisers interviewed for this research, all this has created a “chilling effect” in that the defamation laws prevent the media from publishing material that is true and in the public interest. Since these are the people ultimately making decisions about whether to publish legally risky material, it follows that there probably is a “chilling effect” at work. However, this is not conclusive. The attitude of journalists, as measured by a survey for this research, is ambivalent. A substantial minority says

it does exist, and another substantial minority says it does not. Moreover, the work of Marjoribanks and Kenyon suggests that there may be little difference between the practices and decisions of journalists in Australia and those in the United States, where the law of defamation is much easier for publishers. This suggests that either claims of a “chilling effect” in Australia are unreasonable, or that all defamation laws, no matter how easy for the publishers, have some “chilling effect”. On balance, however, the arguments and data on costs alone in Australia, the sources from which those arguments come, and the more cautious and market-focused culture evident in media companies in recent years, add up to convincing evidence that the “chilling effect” is probably real.

If this is so, then it is further proof that the defamation laws do not strike a reasonable balance between freedom of speech and protection of reputation. The balance is not reasonable when material is suppressed even though it is true and in the public interest – the condition used in defining the “chilling effect” for the purposes of this research.

Nor do the laws accomplish the correlative purpose of vindicating reputation when wrongful harm has been done. This is because the remedies are confined largely to the award of monetary damages and do not extend to publication of corrections, apologies and acknowledgement of wrongdoing. This deficiency would be made good under the proposals for reform published in 2004 by the Commonwealth Attorney-General, Philip Ruddock. The newspaper companies have only ever shown hostility to this and continued to do so as recently as 2003, even when their own Press Council advocated such a change.

This is symptomatic of a bad attitude on the part of media companies generally, who never want to admit wrong. It is the cause of much unnecessary unpleasantness between the media and aggrieved persons. It contributes to the low opinion that most people in the community have of the media. The companies have traditionally argued that they do not want to correct, apologise for, or acknowledge wrong where they remain convinced that the defamatory material was right all along. The inherent weakness of this argument is matched only by its arrogance. The media are subject to the law like everyone else. If the law finds against you, that is the end of it whether you like it or not. It is also self-defeating. If by resisting a change in the remedies the media companies defeat defamation laws that would be better adapted to their purpose, fairer, more certain and above all uniform, they will lose whatever remnants of moral authority they possess in the debate, and be stuck with the present mess, to boot.

PART V: THE WAY AHEAD

CHAPTER ELEVEN

CONCLUSIONS

This chapter sets out a new normative theory of the media. This theory - a social contract theory - proposes that the media should be held accountable to specific public institutions for specific dimensions of their performance. These dimensions relate to functions and behaviours. The social contract theory goes beyond traditional social responsibility theory by stating that in a modern democracy it is not enough simply to recognise that the media have social responsibilities. There is a right on the part of society to see that those responsibilities are discharged and to hold the media to account for any abrogation of them. Before setting out the new social contract theory in detail, the groundwork is laid by reviewing key points about media legitimacy and the contemporary performance of the media in relation to both function and behaviour. The existence of embryonic online media is acknowledged and certain issues in relation to them are identified. Finally, new institutional arrangements for a more effective accountability structure are proposed.

A NEW THEORY OF THE MEDIA

The legitimacy of the news media as part of the institutional framework of a modern democracy is beyond question. It has been recognised in constitutional instruments and in the development of the common law over three centuries. The news media form part of the institutional framework of a democracy, being the means by which the sovereign people exchange information, ideas and opinions, an exchange that is essential to democratic government and to participation in a modern economy. The news media provide an important means through which the right of free expression is exercised, a right recognised by Locke as a “natural” right of man, and whose existence is considered essential in any society which can truly be called democratic.

The original Libertarian theory of the media, based on the concept of a “marketplace of ideas” has proved unequal to the pressures of technological, social, economic and political change. The development of organs of mass media, the concentration of media ownership in the hands of a very few, the high cost of entry into the industry, the cost of purchasing time or space in the mass media, all combine to create a situation in which voices are excluded from the “marketplace of ideas” because they cannot afford to make themselves heard. What is left is a “marketplace” controlled by those who control the media.

Those who control this “marketplace” must accept that it is in fact a public place and not a private domain. The public accepts their right to trade there as private enterprises on condition that they fulfil certain public duties. This is accepted, in principle at least, by Australia’s media proprietors, editors and journalists, in private as well as public sector media organisations.

The duties have been enumerated by scholars and media practitioners over many decades, and are embedded in the political culture of mature democracies. They include the duty to provide reliable information on which citizens may base choices as electors and as participants in the economy; to provide a forum for the free exchange of information, ideas and opinions; to be a watchdog on governments and others in power; to entertain, and to be independent of rich and powerful forces in society.

Over the long haul, the media have been found deficient in discharging these public obligations. By the middle of the twentieth century the disquiet over media performance had become so profound that in the United States, the United Kingdom, Canada and Australia various commissions of inquiry were established to review the matter. The most far-reaching of these was the US Commission on the Freedom of the Press, which developed what came to be known as a Social Responsibility theory of the media. This theory posited that the media are given freedom to publish in exchange for performing at least the minimum of public-interest functions listed above.

While political developments in the nineteenth and twentieth centuries created a wide range of external mechanisms for holding to account government and others holding power, including ombudsmen and various administrative tribunals, no comparable external force has emerged to hold the media to account. Indeed the media have claimed for themselves the role of agents in making others in power accountable. This has created a substantial inconsistency in the

equation of power and accountability as it applies to major democratic institutions. While the media claim the right to hold others to account, no equivalent mechanism exists to hold the media to account. Not only is this a serious institutional inconsistency, but it borders on grand hypocrisy.

That media performance is rightly a matter for public judgment is beyond question. Grounds for requiring accountability from those who wield power rest not on whether an occupation is classifiable as a “profession” on some set of criteria relating to education, skills, or registration to practice, but on two overarching considerations and three particular characteristics. In the case of the media, the overarching considerations are the advancement of the public interest, and the existence of a social contract. The three particular characteristics are power, privilege, and potential for harm. The media qualify on all counts as a profession which the public is entitled to call to account.

The media wield power equivalent almost to that of an arm of the state, although in a democracy they stand apart from the state. Increasingly in democracies, the people are demanding accountability from those who wield power. While the term “accountability” is difficult to define, it is generally accepted to mean being answerable for one’s actions or behaviours.

The nature of media power is manifold but has three main elements: to influence the course of events; to decide what shall and shall not be conveyed to the population, and to determine how a person or an event is presented to the world. For the exercise of these powers they should be made answerable on two counts: for how they perform their functions, and for how they behave in doing so.

The means for sheeting home accountability goes beyond the law to a compact based on freedom to publish in exchange for discharging certain public obligations as described above.

These means must go beyond the law for strong reasons. If the law were used as the primary means of holding the media to account, then the very freedoms that are part of the social contract between the media and society would be at risk. The law is not equipped to step delicately among the subjectivities and liberties which lie at the heart of free expression, and in any case many of the issues concerning media function and behaviour are not legal issues but ethical ones. Moreover, a law-dominated system of accountability implies registration and

striking off of journalists and licensing of the press, which would trespass unacceptably on established liberties.

A system of ethics is necessary: something broader and more refined than the law, fine-grained so it can seep into the interstices and deeper reaches of the profession's realm, a body of behavioural norms and moral guidance. We have seen that for the past half-century, society's expectations of the media have been embodied in the Social Responsibility theory of the media. While the rights and obligations set forth under that theory have become accepted on all sides, political developments over the past half-century now show it to be incomplete. The rise in public demand for accountability and the consequent creation of mechanisms of accountability across a wide range of activities in both the public and private sectors of the economy, demonstrates a change in the relationship between society and its institutions. To reflect these changes, and to meet the expectations of society that flow from them, a new theory of the media is proposed.

Entitled the Social Contract theory of the media, it extends the scope of Social Responsibility by positing the existence of a social contract between the media and society. Under the terms of this social contract, the media not only enjoy the right to freedom of expression and shoulder the obligations to discharge the public functions agreed upon, but acknowledge that society has a right to hold them accountable for their performance. They are accountable both for what they publish and for how they behave. Social Contract theory goes further than Social Responsibility theory by importing this element of accountability into the relationship between society and the media. This implies mechanisms to articulate the obligations and make judgments about whether they have been met. It also implies power to penalise failure and make amends.

MEDIA ETHICS

A range of codes exist to guide media behaviour: the code of ethics of the journalists' trade union, the statement of principles of the Australian Press Council, codes of practice formulated by the peak bodies of the radio and television industries, and internal codes formulated by the Australian Broadcasting Corporation and News Ltd.

There are many commonalities between the codes developed in Australia and in the United States and United Kingdom. They all espouse honesty, integrity, fairness, accuracy, impartiality, promotion of a free press, and correction of material errors. They also exhibit substantial gaps,

perhaps because they have insufficient focus on practice. The four main gaps are: no means of judging reasonableness in relation to decisions to publish; no guidance as to the standard of proof required before publication; no guidance as to the handling of material known to have been illegally obtained, and no attempt to define the concept of the public interest. There is also nothing on “chequebook journalism” or on the issue of suppression of information. The profession clearly needs a set of practice standards in addition to the codes which, in effect, are statements about values.

The literature on media ethics suggests the codes are ineffectual, raising the question of how amenable journalists are to ethical constraint. While experience suggests that journalists in Australia may be amenable, strong practical and cultural factors in the media inhibit the development of an ethically oriented approach. The main practical inhibitor is that editors want results and not all are very choosy about how the results are obtained. The main cultural inhibitor is the existence of what has been called the “cinematic” sense of the journalist as the outsider, massively independent and idiosyncratic. The findings from the survey of journalists conducted for this research certainly bear that out, with an element of respondents arguing for very broad exceptions to be made to ethical constraint, based upon a highly developed – one might say over-developed -- sense of importance that they attach to the journalistic function.

The same survey reveals considerable ambivalence and disagreement among journalists on adherence to the five ethical issues tested for: invasion of privacy, non-disclosure of journalistic function, obtaining access by deception, use of covert recording, and pretence at sympathy with the subject of an interview. This argues not only a lack of conformity – which might be expected of such a highly individualised and autonomous group – but more fundamentally a lack of agreement on principle.

The more extreme responses – perhaps not representative of the whole but nonetheless present as a subtext to many of the arguments advanced by journalists – stated that in certain circumstances journalists should be unconstrained not only by ethical principles but by the law itself. These assertions reinforce the argument that ethics are regarded by journalists as “just an individual journalist’s way of doing things”, a relativistic approach which ultimately has no boundaries. This approach was entertainingly described by Richards:

Approaches to ethical dilemmas are often determined by individual decisions based on such immediate considerations as what was done last time, what a colleague suggests, what the editor wants, and what it is considered possible to get away with.²⁹

The research also revealed a wide gulf between the attitudes of journalists and the public on five ethical issues presented, suggesting that the profession and the society it serves are profoundly out of step with each other on this.

Finally, there were diametrically opposed views by the journalists and public about the role of journalists as truth-tellers, with the public very widely of the view that journalists subordinated the truth to the imperatives of sales and ratings.

These findings indicate a values clash between the profession and the society it serves that undermines the profession's credibility and calls into question the extent to which its practices meet public expectations. It is very much in the interests of the profession and of society that this should be resolved. A stronger and more relevant ethical framework, coupled with visible and transparent mechanisms of accountability, would make a major contribution to this resolution.

MEDIA CONTENT

Six criteria are proposed by which to judge the performance of the media in discharging its functions:

1. Providing material which informs citizens about the important things that are going on, enabling them to know and make judgments about matters of public interest, including who may be best equipped to form government.
2. Providing a forum in which the "marketplace of ideas" can operate. This implies providing access to a diverse range of information, ideas and opinions.
3. Assisting citizens to distinguish reliable information from propaganda.
4. Being a watchdog on what government and others in power are doing.
5. Keeping people entertained.
6. Being independent of rich and powerful forces in society.

²⁹ Ian Richards, *Quagmires and Quandaries*, op. cit. p xi.

While qualitative research among editors and editorial managers shows some complacency about contemporary media performance, it also reveals some acknowledgement that the performance is not as good as it should be. However, their assessment looks positively Panglossian by comparison with the views of their journalistic staff and the public they serve. The findings from quantitative research among these two groups indicate that media performance on these criteria in Australia is weak, except in relation to criterion 5, and that there is a low level of public confidence in the institution of the media.

The first criterion concerns informing the public, and the results of the research indicates that the public do not consider themselves to be particularly well served by the media in this respect – and journalists don't think they do it too well either. The second concerns diversity and we have seen that this has shrunk very considerably in Australia to the point where two newspaper companies control about 80 per cent of weekday daily circulation. On top of this, many conglomerates syndicate material so that the same information, the same arguments and opinions are retailed not just in a single publication but in hundreds or thousands of publications. The third concerns assisting people sift the truth from the propaganda, and voters and journalists alike see this as a serious failure. The fourth concerns being a watchdog on the powerful. On this the media are seen to perform better than on other criteria, but even so the ratings are mediocre. The fifth, keeping people entertained, is what the media are seen to do best, and on the sixth – being independent of rich and powerful forces – the Australian media score abysmally, probably because journalists and the public see the media as part of the rich and powerful forces.

ONLINE NEWS MEDIA

It was argued at the outset that the online news media are too new and immature to form a meaningful part of the research for this thesis. As matters stand, online news media consist largely of online versions of the big newspapers and broadcasting organisations and derive the overwhelming proportion of their content from those sources. To that extent, they are covered by the arguments and the research already. Beyond that, there is a growing number of webloggers or “bloggers” that have little or no connection with existing news media, and they are not covered here.

There is a threshold question about these “bloggers”: is what they do capable of being defined as journalism? Five broad characteristics define journalism: finding and checking facts,

distinguishing generally between fact and opinion, evaluating material, editing, and making judgments about fitness for publication. Definitions matter, and activities that do not exhibit these basic characteristics ought not be called journalism. To do so is to debase the term and shroud its meaning in confusion.

One of Australia's best-known "bloggers" is Stephen Mayne, who created a website called *crikey.com*. At the Melbourne Press Club's *Journalism 2000* conference, Mayne gave a presentation in which he said of this website:

- Anyone could get published on it.
- Most of the material put out on it was unchecked.
- Some of the material was wrong, some defamatory, but the public's knowledge was enhanced.
- The criterion for publication was "reasonable plausibility".
- There was a "loud" policy of corrections and self-chastisement.

It is obvious that whatever else this is, it is not journalism. It is commendably democratic in its motives and in its provision of accessibility, no doubt. The "loud" policy of corrections and self-chastisement could be copied, with benefit, by the mainstream media. But it is illogical to say in the one breath that some of the material was wrong yet the public's knowledge was enhanced. The public's knowledge is added to, but in a useless and potentially damaging way. The criterion of "reasonable plausibility" falls hopelessly short of even the most lax and rudimentary standards of journalism. It is no better than gossip or urban myth.

This example illustrates the difficulty of including the online news media in this analysis at this stage. However, the potential impact and role of online media are very great. Already it is leading to a distinction between "the media" as traditionally thought of – big organisations publishing newspapers or broadcasting radio and television programs – and "journalism", the latter being conceptualised as a social function for which the conventional media will become simply one of many different vehicles. Rosen has described this as a shift in the "social location" of journalism.³⁰ He writes:

³⁰ Jay Rosen, "Each Nation Its Own Press: Nationalism, Journalism and Globalism in the Age of the Web" in *Barons to Bloggers: Confronting Media Power*; Lance Knobel and Jay Rosen, The Miegunyah Press, Melbourne, 2005.

Every day it shifts a little more. Much of it is still based in The Media (a business) and will be for some time, but some is in non-profits and some of the franchise (“the press”) is now in public hands because of the Web, the weblog and other forms of citizen media.³¹

This will provide a fertile ground for further research, particularly in relation to the democratisation of media and the furtherance of media plurality.

For the purposes of this research, the proper response is to not ignore this phenomenon but to include the ranks of internet service providers (ISPs) in the institutional mechanisms proposed below. It is the ISPs, after all, who provide the means of publication for “bloggers”.

MECHANISMS OF ACCOUNTABILITY

The present system of media accountability in Australia is fragmented, Byzantine in its complexity, lacking transparency in its operations, inherently biased towards the interests of journalists and publishers, and lacking credibility.

For all these reasons, it is argued that the mechanisms of media accountability are inadequate both in absolute terms and when compared with the standards of accountability demanded by the media of other institutions such as parliament, executive government and the judiciary.

The fragmentation is structural, caused by historical differences between the development of printing and broadcasting, a fractious industrial history, inconsistent government policies, technological differences, and the seigneurial instincts of the old-style press proprietors. As a result, no unified system of accountability covering publishers, news executives and journalists exists in Australia. The mechanisms that do exist are fragmented along technological, industrial and proprietorial lines:

1. Technologically between broadcasting and print.
2. Industrially between publishers, executive journalists and rank-and-file journalists.
3. Proprietorially between private-sector and public-sector broadcasting: the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), and commercial radio and television stations.

³¹ Ibid. pp 45, 46.

The fractured nature of the system is clearly shown in Table 11.1.

Table 11.1: A FRAGMENTED SYSTEM OF MEDIA ACCOUNTABILITY

Newspaper publishers	Unionised journalists (print and electronic)	Non-unionised journalists (print and electronic)	Commercial TV, radio licensees, and the Internet	Public sector TV and radio
Accountability mechanism				
Australian Press Council	Media, Entertainment & Arts Alliance ethics panel	Nothing (except in ABC and SBS)	Australian Broadcasting Authority	ABC and SBS internal processes, with external review
Operating framework				
Principles	MEAA Code of Ethics	In-house processes, if any	Broadcasting Services Act	Internal processes under enabling legislation
Sanctions				
Publication of adjudications	Rebukes, fines, expulsions	At employer's discretion	Rebukes, warnings, fines, licence-suspension or cancellation	Rebukes, warnings, dismissal

In addition, crises in credibility over Australia's media accountability mechanisms have erupted episodically over the years – for example, over the Australian Press Council's passivity in the face of Rupert Murdoch's acquisition of the Herald & Weekly Times in 1986, and over the handling by the Australian Broadcasting Authority of the cash-for-comment cases in 1999-2004.

This system simply is not good enough. What is required is a robust and unified ethics-based system of self-regulation, widely publicised, transparent in operation, privileged from retaliatory litigation except where there has been malice or manifest failure of natural justice.

The foci should be on the functional performance of the media and on the ethical behaviour of journalists, including editors and editorial executives.

The system should exhibit these eleven fundamental characteristics:

- Be widely known among the public
- Be easily accessible by the public
- Be independent of individual media organisations
- Have a mixture of media and public but a majority of public members
- Be inclusive of print and electronic media
- Be inclusive of publishers, editorial executives and journalists
- Have powers to rectify, make amends and punish

- Enjoy sufficient legal privileges to operate effectively
- Work from a unified code of ethics and practice
- Be funded by a combination of individual practitioners' subscriptions and levies on publishers and broadcasters
- Bind the industry parties by contract to upholding its principles and abiding by its rulings

To give effect to such a mechanism, codes of ethics and standards of practice are needed to define the behavioural norms expected of those engaged in the profession's work. To be effective, these codes need to bind all members of the profession, regardless of status or position. In the case of journalism this means staff and management of media organisations. This is essential for two reasons: first as a matter of principle there is no reason to exempt certain members of the profession merely on grounds of status or position; second as a matter of practicality if accountability is to be achieved in respect of any one piece of work, it is likely that more than one person, each with different functions and status, is going to be called to account. This is because very often one piece of work is the product of many different hands, and accountability should weigh upon each in proportion to his or her degree of responsibility. Where exemptions exist, accountability breaks down, and so does natural justice.

The institutional framework for a workable and publicly credible system of media accountability would consist of two main parts. The first would be an Institute of Media Ethics, independent of the media industry but working in co-operation with it, to develop and implement a unified code of ethics and standards of practice. These would be binding on print and electronic media journalists at all levels. Such an institute would also perform an educative function, providing professional development, developing educative materials, delivering courses, providing a ready source of practical advice to practitioners, publishing relevant literature. It would also provide a forum for public debate.

The second would be a Media Responsibility and Recognition Organisation, again covering print and electronic media journalists at all levels. It would have three main functions: to arbitrate on public complaints, to recognise excellence in the media's performance of its functions, and to administer a system of journalists' accreditation. In its complaints-handling role it would exhibit the eleven characteristics listed above. It would draw its power from a contractually binding involvement of all media organisations similar to the contractual mechanisms that bind

Australia's banks to their ombudsman system. It would replace the existing external complaints mechanisms, but draw representation from them. Such an ombudsman system was referred to approvingly by the Lee inquiry.³²

In its recognition function, it would not presume to instruct media on issues concerning content, but remind the media of their obligations, publish relevant literature, provide a forum for public debate, and recognise excellence with a special award that was integrated into, but not displacing, existing award systems. In its accreditation role it would set standards for accreditation of individual journalists and have power to confer and withdraw accreditation. Accreditation would be agreed to by the signatories to the organisation as providing a threshold requirement for employment on staff, though not necessarily for contributors. Standards for accreditation would include membership, and adherence to the codes and standards of the Institute of Media Ethics. It would be a self-regulatory organisation but with a majority of public members on its board and complaints committee.

This institutional design strikes a balance between exerting reasonable accountability on the media and protecting the value of free speech. A system of accreditation is not a system of licensing. It is a system that requires people who hold themselves out as journalists, doing work which fits the description of journalism as discussed above, to sign on to certain norms of professional behaviour which are already embodied in various codes of ethics and practice. Equally it is a system that requires people who employ journalists to sign on to a common set of values with those whom they employ. This bridges the chasm between publishers and journalists which has so bedevilled all earlier attempts at creating workable accountability mechanisms.

What comes out of this research is clear evidence that journalists in general support an ethical approach to their work, and so do editors. They also generally recognise that in respect of both dimensions of accountability – ethics and performance – the media fall short of a satisfactory standard. This suggests a certain honesty in the profession's self-assessment which the public does not see. Creating mechanisms which would reflect that honesty would raise public confidence in the profession, to its benefit and that of the body politic.

³² News & Fair Facts, op.cit. pp285-286.

Existing organisations that have an external accountability function would continue to exist for their other purposes: the Australian Press Council to be a voice for a free press and to advance the interests of the newspaper industry; the radio and television peak bodies similarly. At the time of writing, the Australian Broadcasting Authority was on the point of being subsumed into a national communications authority with responsibility for broadcast licences, spectrum management and other issues concerning the administration of telecommunications generally. They would be represented in the media accountability framework but they would not run it. The existing internal systems of accountability administered within media organisations would be maintained.

A unified system of accountability can work. It requires three conditions – one political, one industrial, and one technological. The political is the abolition of the distinctions between journalist and publisher and between print and electronic media, and preparedness by the industry to accept public accountability in practice as well as in principle. The industrial is the removal from the process of trade union and of employer representatives acting in those capacities. The technological is a reliable audit system through which changes to copy can be traced. The technology exists and has existed in one form or another for generations. If anything, it is easier than ever with computerised production.

However, any approach to reform of media accountability will need to take into account the condition of the defamation laws, partly because they already impinge on the workings of the existing mechanisms and partly because, in the absence of a constitutional guarantee of free speech, journalists and publishers have shown a propensity to oppose any further intrusions on their prerogatives, no matter how reasonable or justified they might be on public-interest grounds. The existing laws of defamation fail to strike a reasonable balance between freedom of speech and protection of reputation. Reform of those laws is an essential parallel development with reform of the mechanisms of media accountability. Developments in one are likely to assist in the development of the other.

Onora O'Neill in the 2002 BBC Reith lectures addressed the question of the erosion of trust in public life, and its replacement by formal processes of accountability and transparency. At the same time she noted that “. . . some powerful institutions have escaped the revolutions in accountability and transparency. Most evidently the media, in particular the print media -- while

deeply preoccupied with others' untrustworthiness -- have escaped demands for accountability³³."

It is time for the demand to be insistently renewed.

³³ Onora O'Neill, *A Question of Trust*, The BBC Reith Lectures 2002, Cambridge, Cambridge University

APPENDIX A

METHODOLOGY

There were four elements to the research methodology for this thesis. These were desk research, qualitative research, an online quantitative survey of journalism professionals (practitioners and students), and a quantitative survey conducted by telephone of a random sample of voters in Victoria.

The methodology was devised to find answers to the following questions:

1. What mechanisms exist for holding the media to account for (a) the performance of their functions and (b) their behaviour in carrying out those functions?
2. How were those mechanisms established and how do they work?
3. How effective are they in holding the media to account?
4. What weaknesses exist and how might they be ameliorated or eliminated?
5. What do their records tell us about the issues that give rise to complaints about the media in Australia?
6. What do their records tell us about the outcomes of those complaints?
7. What does the Australian public know and think about these mechanisms of accountability?
8. What do journalism professionals in Australia know and think about these mechanisms of accountability?
9. What does the Australian public think of the way the media in Australia perform their functions, and the way they behave?
10. What do journalism professionals in Australia think of the way the media in Australia perform their functions, and the way they behave?
11. What fit is there between public and professional opinion on these questions?
12. What does this tell us about the extent to which the media in Australia are accountable to the public and their responsiveness to what the public expects by way of media function and behaviour?
13. What public policy response might these evaluations invite?

No comparable research has been carried out in Australia or in any of the English-speaking jurisdictions with which Australia shares its media traditions.

The first element of the methodology was desk research. This consisted firstly of an examination of the functioning of the three “external” mechanisms of media accountability that exist at present in Australia:

The Australian Press Council

The ethics panels of the Media, Entertainment and Arts Alliance (MEAA)

The Australian Broadcasting Authority (ABA)

They are external in the sense that they lie outside individual media organisations but not outside the media industry. Indeed there is no accountability mechanism that lies completely outside the media industry.

In the cases of the Australian Press Council and the MEAA, records of complaints over the ten-year period from 1993 to 2002 inclusive were examined. In the case of the ABA records of complaints over the triennium 2000-2003 were examined. Attempts were made to study

records over a ten-year period, but changes to function, charter and procedures of the various broadcasting control agencies made it impossible to assemble equivalent data over that time span.

The objectives in examining these complaints records were to discover what patterns of complaint, if any, existed, and what the outcomes were. It was considered that this would be evidence about what it was that the public were most likely to complain, and how those complaints were resolved. The findings were also used to inform the design of the questionnaires for the two quantitative surveys.

Desk research was also conducted to establish the existence and form of internal accountability mechanisms at three major Australian media organizations. Two of these, Fairfax, and News Ltd, are private-sector newspaper companies that together control nearly 80 per cent of the daily newspaper circulation in Australia. The third was the Australian Broadcasting Corporation. This public-sector organization broadcasts radio and television programs nationally across Australia and broadcasts radio programs internationally through Radio Australia. Thus the research covered public and private sector media, as well as newspapers, radio and television, which the research for this thesis showed were the main sources of news for 98 per cent of Australian voters.

It should be noted that the other public sector broadcaster, the Special Broadcasting Service, was also approached, but after discussion it was decided that its complaints patterns were so idiosyncratic that their inclusion would skew the overall findings. The overwhelming majority of complaints to SBS were reported to be of bias, and coming almost exclusively from contending factions within ethnic communities. The three commercial television stations in Melbourne were approached by telephone but none of the relevant officers returned the calls.

Each accountability mechanism – internal and external – is given a separate section in this thesis. Each section begins with a description and history of the mechanism. In the case of Fairfax, this general description is augmented by a case study arising from a unique experiment in accountability by one Fairfax newspaper, *The Sydney Morning Herald*. In 1989 the *Herald* appointed a prominent Sydney lawyer, Mr George Masterman, QC, as an independent ombudsman to deal with editorial complaints. This is the only known instance of such an appointment in the history of the Australian media and it therefore merits particular attention.

Of the internal mechanisms, only the ABC's had records that allowed any substantial analysis. The period chosen was 1 July 2001 to 30 June 2002, being the latest full reporting year for which records were available at the time the research was carried out. The opportunity to draw on longitudinal data was limited, since the ABC began its current system of collating and analyzing complaints only in 1998 and had progressively built it up to the point where substantial analysis could be done.

The second element of the research was qualitative. It consisted of in-depth interviews with:

- ❑ people responsible for administering the various complaints mechanisms, external and internal;
- ❑ individuals who had been involved in relevant occurrences, such as the “ombudsman” experiment at *The Sydney Morning Herald*, or the 1990s review of media ethics;
- ❑ experts in media law, and
- ❑ editors and editorial managers at the three media organizations referred to above.

There were 13 in-depth interviews: Mr Peter Bartlett, Chair of MinterEllison lawyers and one of Australia's foremost media lawyers; Mr Peter Blunden, Editor-in-Chief of the Herald-Sun, Melbourne; Mr Paul Chadwick, Privacy Commissioner for the State of Victoria and one of the authors of the revised Code of Ethics published by the Media, Entertainment and Arts Alliance in 1993-5; Mr Richard Coleman, in-house legal counsel at Fairfax; Ms Heather Forbes, Skills Development Manager, News and Current Affairs, the ABC ; Mr Michael Gawenda, Editor-in-Chief of The Age; Mr Murray Green, Complaints Review Executive for the ABC and Victorian Manager of the ABC; Ms Prue Innes the Chair of the Victorian ethics panel, and later the national ethics panel, of the MEAA; Ms Nerida Little, administrator of the in-house complaints process at Fairfax; Professor Ken McKinnon, Chair of the Australian Press Council; Mr Chris McLeod, Editorial Manager, the Herald & Weekly Times, Melbourne; Mr Masterman, QC, in relation to the ombudsman experiment of which he was a part, and two administrators in charge of investigations at the Australian Broadcasting Authority who were interviewed jointly on behalf of the Authority and not in their own right.

Separate interview schedules were developed for each interview, tailored to the expertise of the interviewee, but where it was relevant to do so – for example in the interviews of the various editors and editorial managers – a common schedule was used. These are provided in Appendix B.

The third element of the methodology consisted of a quantitative survey of journalism professionals, being practising journalists and journalism students, between July and September 2004.

Constructing the sample for this survey presented a challenge. It would have been preferable to adopt a conventional random sample, stratified according to known characteristics of the population of interest, in this case journalists. In order to do so, however, it would have been necessary to have a listing of the entire population of interest from which to make a random selection.¹ There is no list of practising journalists in Australia. A previous survey of journalists² used the membership list of the Australian Journalists' Association, as it then was. At that time (1992) the union claimed as members 95% of journalists working in Australia. Today the proportion in the union is contested. The union itself claims 80 per cent; employers estimate it probably lies between 50 and 70 per cent. These are guesstimates because it is a breach of the law for an employer to inquire whether an employee belongs to the union. Added to this, privacy policies at the three organisations approached to participate in this research prevented them providing a list of the journalists they employed.

It was considered entirely unsatisfactory to consider the unionised sub-group of the population as an appropriate universe from which to sample on the assumption that it contained an inherent bias and could not be considered even remotely representative. A practical, economically viable and methodologically defensible means of constructing a sample had to be found, allowing for these barriers.

It was noted that Henningham (1993)³ was able to assemble a sample from the staff lists of all dailies, commercial television stations, the two national news magazines, AAP, ABC, and from a sample of weekly newspapers and commercial radio stations, and achieved a response rate of 90.1%. While this was the first comprehensive national survey of journalists in Australia, and

¹ Weisberg, Herbert F., Jon A. Krosnick and Bruce D. Bowen, *Survey Research and Data Analysis*, Scott Foresman, Illinois, 1989, p 36.

² *Reviving the Fourth Estate*, op. cit. pp 239ff.

³ Op. cit.

remains the benchmark for surveys of journalists in Australia, it was nonetheless not a random sample of the population of journalists, being confined to those in the “mainstream” media, of whom 90.1 per cent agreed to participate. Contemporary sensitivities and legislative requirements concerning privacy and discrimination made it impossible to obtain similar databases on which to build the current sample.

This difficulty faces social scientists and survey researchers across the board in Australia in present times. A common response is to adopt a controlled self-selection approach. In this case, the focus of the research project was on journalists working for newspapers, radio and television stations, so it was considered reasonable to confine the selection to those outlets. Second, the qualitative research had been carried out at Australia’s two largest newspaper companies, News Ltd and Fairfax, and at the national broadcaster, the ABC, which broadcasts by radio and television. A relationship had thus been established with editorial management in those three organisations. The News Ltd publication where the research had been carried out was the *Herald Sun*, a tabloid newspaper; by contrast, the Fairfax newspaper had been *The Age*, a broadsheet. Thus a sample of journalists drawn from those organisations would potentially include tabloid and broadsheet newspaper journalists, and public-sector radio and television journalists. Persistent attempts to enlist the co-operation of the commercial broadcasting sector were unavailing.

Given the difficulties of sample construction described above, the surest available method by which to give every journalist in the three media organisations an equal chance of participating was to distribute an invitation to do so on each organisation’s intranet. Information in these systems is sent to every journalist employed by the organisation. Thus every journalist in each organisation had an equal chance of participating. This is an important element in any survey design. Beyond that, the sample was self-selecting, or volunteer. The limitations to such a survey are well-known: those who select themselves in may be atypically interested in the topic, atypically altruistic in general outlook, have atypical amounts of time available or be atypical in any number of unknowable ways. However, this does not invalidate self-selection as a method. It is widely used, especially in studies of various elites who are notoriously difficult to survey, and journalists are among the most notorious, as Schultz acknowledged.⁴ Indeed she too resorted to the self-selection method: 600 journalists were sent her questionnaire by mail on a self-completion basis, and 41 per cent responded.

It is essential, however, to build in certain controls. The most important of these are (a) to prevent multiple responses, and (b) to prevent participation by people who do not qualify for inclusion. In the present study, multiple responses were controlled for by the recording of each respondent computer’s IP cross-analysed against age and gender of respondent. This is the current industry standard adopted by the Australian Market and Social Research Society, of which the author is a member. In the present study, access to the questionnaire was controlled via the Intranets of the three media organisations, and only journalist staff members were sent the invitation to participate. The actual questionnaire was reached via a link from the invitation. The opportunity for non-qualifying persons to participate was thus minimised.

The quality of a self-selecting sample may be judged partly by the rigor of these controls, partly by an assessment of the composition of the self-selected sample itself, and partly from an assessment of the response patterns against what might be expected. In the present case, the controls were equal to the current market research industry standard; the characteristics of the

⁴ Ibid.

actual sample are set out and discussed below and on the basis of the distributions of gender, age and length of time as a practising journalist, is indicative of a reasonable cross-section, although not, of course, necessarily representative. As for response patterns, responses by the ABC respondents on the questions concerning ethics indicate a stricter adherence to ethical standards than from the newspaper respondents. Given the comprehensiveness of the ABC's editorial accountability processes (far greater than those of the two newspapers), this is a pattern that might reasonably be expected. Taken together, these three indicators suggest that the self-selected sample, while not necessarily representative, at least may be taken as a reasonable approximation of the population of interest.

Every survey methodology is designed against constraints of budget, respondents' likely attention span or willingness to spend time answering questions, and the total time available to carry out the fieldwork. Any limitations imposed by these constraints or other methodological expediencies must be made explicit in the presentation of findings. The present survey has its share of these limitations. They are made explicit, and the findings are presented with appropriate caution.

Because the sample of journalists is not random, tests of significance are not possible for that survey. Tests of significance have been applied to the voter survey.

The *Herald-Sun* and *The Age*, Melbourne, Leader Newspapers (a Melbourne-based suburban newspaper group and subsidiary of News Ltd) and the ABC all agreed to circulate on their respective intranets an invitation to their journalistic staff to participate in the survey. It was clearly stated that participation was voluntary and that the employer did not necessarily endorse the survey. Participation was also anonymous.

A dedicated website was established by Australian Fieldwork Solutions of Carrum Downs, Victoria, where the questionnaire became available to those who clicked on a hotlink embedded in the invitation circulated on the company intranets. Control for multiple responses consisted of automatic matching of each respondent's computer identification code and two demographic variables, gender and age.

The survey was also conducted among third-year students in journalism at the Royal Melbourne Institute of Technology (RMIT University). The questionnaire was administered to them in hard copy. It consisted of the same questions on accountability, performance and ethics as the journalists were given, but excluded demographic questions concerning employment and the questions on defamation which they would not have had the experience to be able to answer.

A total of 168 responses were received from this survey of professionals, 141 from practising journalists and 27 from journalism students. Because the sample was self-selecting, it is not possible to give an estimate of sampling variance. Neither can it be asserted that the sample is representative of the profession. However, some assessment of its representativeness can be made from the characteristics of the respondents. The following assessment is based on an analysis of the practitioners who responded ($n = 141$).

Of these respondents, 52 per cent were male and 48 per cent were female. A clear majority had been in journalism for more than ten years, as Table A.1 shows.

Table A.1: LENGTH OF TIME A JOURNALIST

Length of time	Proportion of sample
	Base 141
	%
Less than two years	9
Two to five years	10
Six to ten years	13
More than ten years	67

Further analysis shows that:

- ❑ of those who had been in journalism for up to ten years, 61 per cent were female and 39 per cent were male, and
- ❑ of those who had been in journalism for more than ten years, the proportions were almost exactly reversed – 62 per cent were male and 38 per cent were female.

Most respondents – 73 per cent – worked in the print media (newspapers or magazines) and 27 per cent worked in electronic media (television, radio or online).

Thirty-two per cent had a university degree in journalism and 39 per cent had a university degree in some other discipline.

Seventy-six per cent were members of the Media, Entertainment and Arts Alliance (the journalists' trade union) and 24 per cent were not.

The age distribution, set out Table A.2, shows that about two-thirds of the sample was aged between 30 and 50.

Table A.2: AGES OF PRACTISING JOURNALISTS

Age	Proportion of sample
	Base 141
	%
Under 30	19
30 to 40	41
41 to 50	26
51 to 60	11
Over 60	2

Responses came from practitioners in a wide range of journalistic positions. The largest body of responses came from reporters, followed by sub-editors/production journalists, as shown in Table A.3.

Table A.3: OCCUPATIONAL POSITIONS
OF PRACTISING JOURNALISTS

Age	Proportion of sample
	Base 141
	%
Reporter	45
Sub-editor/Production journalist	18
Feature/leader writer/commentator	11
Section/Program editor/Producer	11
Editorial executive	7
Other	6

There is no central data base that would allow a comparison to be made between the demographic characteristics of the full body of practising journalists and of those who participated in this survey.

Based on anecdotal evidence only, however, it would appear that the age, experience, gender and occupational-position profile of the sample reasonably approximates the profile of the current body of practising journalists.

There is some dispute about the trade-union membership profile. The MEAA itself claims that about 80 per cent of practising journalists are members. The employers vary widely in their estimates of this, and they are not permitted by law to ask whether an employee is a union member.

At the *Herald-Sun*, the employer estimates that probably not more than 50 per cent would be in the union, on the basis that about 50 per cent of journalists there are on individual contracts. At *The Age* the employer estimates that possibly as many as 60 or 70 per cent might be in the union, but thinks it unlikely that the proportion is higher. At the ABC it is simply not known.

It is possible, therefore, that the proportion of 76 per cent in the sample might indicate an over-representation of union members, but this is conjecture.

The fourth element of the research was a quantitative survey among voters in Victoria. This was conducted in May and June 2004 and consisted of a telephone survey of a stratified random sample of 300 residents of Victoria who were eligible to vote. Telephone numbers of private occupied dwellings were generated at random and a randomizing expedient was used to give each voter in each household an equal chance of being interviewed. The fieldwork for this study was carried out by Australian Fieldwork Solutions also. Both surveys were carried out to specifications set down by the researcher, using instruments designed by him and approved by the research ethics procedures of the University of Melbourne. Data were analysed according to specifications designed by the researcher.

A random sample of 300 yields a sampling variance of plus or minus 5.8 per cent, and the data should be read with this in mind.

Both questionnaires contained a core of common questions on media performance, media ethics and media accountability. The objective was to measure the degree of fit between the attitudes of journalists and of the public on these matters.

COMMON QUESTION ON MEDIA PERFORMANCE

How well would you say Australian journalists in general perform the following functions:

Sifting out truth from propaganda
or public relations “spin”

Reporting on the really important
things that are going on

Reporting on what powerful people
like politicians and big business
people are doing

Keeping people entertained

Informing people in a way that is
helpful in enabling them to choose
how to vote at elections

Being independent of rich and powerful
forces in society

The performance indicators were derived substantially from Social Responsibility theory of the press, this being the theory closest to that which guides the media in present-day Australia and which might be expected to broadly accord with what the public expect the media to do these days. For each performance indicator, respondents were offered a four-point scale: very well, quite well, not very well, not at all well. Numerical values were attached to each point so that means could be derived.

COMMON QUESTIONS ON MEDIA ETHICS

QUESTION: Would you say it was always all right, never all right, or all right in some cases:

To take a picture of someone in their
backyard from outside the property
without their knowledge and consent

To interview a person for a story without
telling them you were a journalist

To obtain access to a place or person by
disguising the fact that you are a journalist

To use hidden microphones, tape-recorders
or cameras to secretly record what people say
or do

To pretend to be sympathetic to a person's
situation in order to obtain an interview

QUESTION: If you answered "all right in some cases" to any of the questions, would you please briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

(Write in)
or
Can't imagine

These ethical questions were chosen because they represent some of the major ethical issues over which the media are criticized or which present the media with common dilemmas – invasion of privacy, deception of one kind or another, the use of secret recording. The final question deals with betrayal, the subject-matter of a widely read book on media ethics.⁵

The third common question in this battery on ethics concerned truth-telling, and really was about both ethics and performance.

QUESTION: Which of these statements comes closer to your view:

Generally speaking, journalists write stories that
tell the truth as best they know it, without regard for
sales or ratings.

Or

Generally speaking, journalists write stories they
think will be best for sales or ratings, even if it means
exaggerating the truth.

Forced-choice questions of this kind are used to obtain people's broad opinion on what is often a complex and multi-faceted question. To obtain fair data, they need to be constructed so that both limbs of the question are as near as possible exact opposites. It was used here to measure media credibility as well as perceptions about media performance.

⁵ Janet Malcolm, *The Murderer and the Journalist*, New York, Knopf, 1990.

COMMON QUESTION ABOUT AN INDEPENDENT ACCOUNTABILITY BODY FOR JOURNALISTS

QUESTION: Some people say that when they are accused of doing something wrong in their work, journalists should have to answer to some professional body that was not part of the media industry and not part of government. Others disagree, saying that this would be a threat to the freedom of the press.

Would you say the freedom of the press:

Would	1
Or	
Would not	2

be threatened if journalists had to answer to some professional body that was not part of the media industry and not part of government when they are accused of doing something wrong in their work?

The rationale for this question was to see whether the idea of an independent accountability body for journalists would violate the principle of a free press in the eyes both of professionals and public in contemporary Australia. It is an important question in the context of this thesis because the weaknesses revealed in the present accountability arrangements invite the prospect of some new and independent body, but such a prospect would be futile if it were to be seen as a violation of press freedom.

In addition to these common questions, respondents to the two surveys were asked different questions:

Accountability mechanisms

Journalists were asked to assess the various “external” accountability mechanisms on the criteria of visibility, respect, fairness and overall quality. The ABC TV program Media Watch was added to the list of “external” mechanisms for the purposes of this question. They were asked what internal mechanisms, if any, existed at their place of employment, and what they thought of the idea of an internal ombudsman. They were also asked in an open-ended question what the term “media accountability” meant to them.

Voters were asked an open-ended question to say where they would go to complain about how a journalist had performed or behaved. A test question was included about lawyers to give some perspective to the answer.

Media performance

Voters were asked to rate journalists on an eleven-point scale for bias and accuracy. Voters were also asked whether they liked the way the media told them about other people and then were asked whether they themselves would like to be the object of media attention.

Media ethics

Voters were asked to rate journalists on an eleven-point scale for honesty, trustworthiness and the respect they showed for people they dealt with.

Defamation

Journalists were asked a battery of questions about defamation laws. One question was about the so-called “chilling effect” of the laws; the others concerned remedies, and were designed to match questions asked of the general population in a major national defamation research project

conducted by the Communications Law Centre, data from which were made available to the author for comparative purposes.

The questionnaires from the quantitative surveys of professionals and voters are given in Appendix B.

The data from each survey are reported fully in Appendices C and D.

Conclusion

It is considered that the methodology adopted was directed at answering the questions enumerated at the beginning of this appendix, and has yielded a substantial body of original and relevant research on the various aspects of media accountability.

APPENDIX B

RESEARCH INSTRUMENTS

Questionnaire for quantitative survey of voters

Q 1. Firstly, thinking about where you **mainly** get your news. Where do you **mainly** get your news?

(Rotate order)

Television	1
Radio	2
Newspapers	3
Magazines	4
The Internet	5

(Don't read out but record if offered)

Don't use the news media	6
DK/NE	7

(If Code 6 or 7 to Q 1, go to Q 3.)

Q 2. Thinking about (medium nominated in Q 1.) Which **one particular** (TV channel, radio station, newspaper, Internet news service) do you **mainly** use for **news**?

(Don't read out. Record one only, and in one category only. If R mentions more than one, ask which one he or she MAINLY uses.)

For Television respondents:

(Note: Some respondents might use the network name rather than the channel number. These network names are in brackets.)

Channel 2 (ABC)	1
Channel 7 (PRIME)	2
Channel 9 (WIN)	3
Channel 10 (TEN)	4
Channel 28 (SBS)	5
Pay TV (Foxtel, Austar)	6

For Radio respondents:

(Note: If it is not clear to you whether the respondent is referring to an ABC or commercial or community radio station, please ask.)

ABC radio (AM or FM)	7
Commercial radio (AM or FM)	8
A community station (AM or FM)	9

For Newspaper respondents:

The Age	10
The Herald Sun	11
The Australian	12
The Australian Financial Review	13
The Sunday Age	14
The Sunday Herald Sun	15
A regional daily paper	16
A suburban paper	17

For magazine respondents:

Time	18
The Bulletin	19
The Economist	20
Other (specify)	

For Internet respondents:

The Age online	21
The Herald Sun online	22
NineMSN	23
ABC online	24
Other (specify)	
(Don't read out)	
DK/NE	25

Q 3. I'm going to read out some statements that some people might make about **journalists as a whole in Australia**. As I read each one, I would like you to tell me how you would apply it to **journalists as a whole in Australia**. For each statement, I would like you to give me a number between zero and ten.

Honest or dishonest, where zero means always dishonest and 10 means always honest

0	1	2	3	4	5	6	7	8	9	10	DK
											11

Try to get it right or don't try to get it right, where zero means they never try to get the story right and 10 means they always try to get the story right.

DK

0 1 2 3 4 5 6 7 8 9 10 11

Biased or unbiased, where zero means they are always biased and 10 means they are never biased in the way they present their stories.

0 1 2 3 4 5 6 7 8 9 10 11 DK

Trustworthy or not trustworthy, where zero means they are never trustworthy and 10 means they are always trustworthy

0 1 2 3 4 5 6 7 8 9 10 11 DK

Respect or do not respect the people they deal with in getting their stories, where zero means they never treat these people with respect and 10 means they always treat these people with respect.

0 1 2 3 4 5 6 7 8 9 10 11 DK

Q 4. And now a few questions about what it might be all right or not all right for journalists to do. Would you say it was **always** all right, **never** all right, or all right **in some cases**:

	Always all right	Never all right	All right in some cases	DK
To take a picture of someone in their backyard from outside the property without their knowledge and consent	1	2	3	4
For a journalist to interview a person for a story without saying they were a journalist	1	2	3	4
To obtain access to a place or person by pretending to be someone other than a journalist	1	2	3	4
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do	1	2	3	4
To pretend to be sympathetic to a person's situation in order to obtain an interview	1	2	3	4

(If answered "all right in some cases" to anything in Q 4, ask Q 5 for every such response):

Q 5. You said it might be all right in some cases to (state activity or activities and code as below).

Can you briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

(Don't read out but record any mentioned. Prompt: Any others?)

The journalist's newspaper/radio/television station/employer	1
The Australian Press Council/The Press Council	2
The judiciary/ethics committee of the Media Entertainment and Arts Alliance/Australian Journalists' Association	3
The Australian Broadcasting Authority/The Broadcasting Authority/The ABA	4
Mediawatch/Australian Broadcasting Corporation or Commission	5
Special media ombudsman	6
Ombudsman (general)	7
Other (specify)	
Could not name any organisation	8
Don't know/NE	9

Q 8. And what if you had a complaint about lawyers. Can you tell me the name of any organisation that you could go to if you wanted to complain about the way a lawyer had carried out his or her professional duties?

(Don't read out but record any mentioned. Prompt: Any others?)

The Law Council/Institute	1
The Bar Council/Association	2
Another lawyer	3
Other (specify)	
Could not name any organisation	4
Don't know/NE	5

Q 9. Which of these statements comes closer to your view:

Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings 1

or

Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth 2

(Don't read out)
Don't know 3

Q 10. Some people say that when they are accused of doing something wrong in their work, journalists should have to answer to some outside professional body. Others disagree, saying this would be a threat to the freedom of the press.

Would you say the freedom of the press:

Would	1
Or	
Would not	2

be threatened if journalists had to answer to some outside professional body when they are accused of doing something wrong in their work?

(Don't read out)	
DK/NE	3

Q 11. Thinking finally about your attitude to the work of journalists generally in Australia. I would like you to tell me whether you agree or disagree with the following statements:

	Agree	Disagree	DK
I like the way journalists tell me about what other people are doing	1	2	3
Whenever I see a journalist's report on something I know about, it's wrong in some way	1	2	3
I would not like to be someone about whom a journalist did a story	1	2	3

Q 12. And just a couple of questions about you. Could you tell me your highest completed level of education:

Primary school	1
Some secondary	2
Completed secondary	3
Trade/technical/TAFE/CAE qualification	4
University diploma/degree	5
(Don't read out)	
DK/NE	6

Q 13. And could you please tell me your age? (Write in)

(Only if they refuse, ask): Would you be aged:

18-24	1
25-39	2
40-54	3
55-plus	4

Q 14. Record gender (ask only if absolutely necessary)

Male	1
Female	2

Q 15. Record location

Melbourne	1
Other Vic	2

Quantitative survey of journalists

Q 1. Firstly, how long have you been a journalist?

- Less than 2 years **1**
- 2 to 5 years **2**
- 6 to 10 years **3**
- More than 10 years **4**

Q 2. What kind of media outlet do you work for? (If you work for more than one, please choose the one you work for MOST.)

- Metropolitan daily newspaper **1**
- Metropolitan Sunday newspaper **2**
- Regional daily newspaper **3**
- Weekly/bi-weekly/tri-weekly newspaper **4**
- Magazine **5**
- Public-sector radio station **6**
- Commercial radio station **7**
- Public-sector TV channel **8**
- Commercial TV channel **9**
- Pay TV channel **10**
- Online news service **11**
- News agency **12**
- Freelance **13**
- Other (please specify)

Q 3. Which of these best describes your position:

- Reporter/Roundsperson **1**
- Sub-editor/production journalist **2**
- Feature writer **3**
- Leader writer **4**
- Commentator/Columnist **5**
- Section or program editor/producer **6**
- Program presenter **7**
- Editorial executive **8**
- Photographer/Cameraman **9**
- Artist/Designer **10**
- Cartoonist **11**
- Other (please specify)

QUESTIONS ON MEDIA PERFORMANCE

Q 4. How well would you say the Australian media in general perform the following functions:

	Very well	Quite well	Not very well	Not at all well	DK
Sifting out truth from propaganda or public relations "spin"	1	2	3	4	5
Reporting on the really important things that are going on	1	2	3	4	5
Reporting on what powerful people like politicians and big business people are doing	1	2	3	4	5
Keeping people entertained	1	2	3	4	5
Informing people in a way that helps them decide how to vote at elections	1	2	3	4	5
Being independent of rich and powerful forces in society	1	2	3	4	5

QUESTIONS ON MEDIA ETHICS

Q 5. And now a few questions about ethical issues. Would you say it was always all right, never all right, or all right in some cases:

	Always all right	Never all right	All right in some cases	DK
To take a picture of someone in their backyard from outside the property without their knowledge and consent	1	2	3	4
To interview a person for a story without telling them you were a journalist	1	2	3	4
To obtain access to a place or person by disguising the fact that you are a journalist	1	2	3	4

Q 10. As you may know, the Media Entertainment and Arts Alliance has an ethics panel that deals with public complaints against members. Using the scales below, please give this system a rating for the various attributes mentioned:

Widely known about among journalists							Not widely known about among journalists					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Widely known about among the public							Not widely known about among the public					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Respected by journalists							Not respected by journalists					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Fair to both sides							Not fair to both sides					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Generally a good system							Generally a poor system					DK
0	1	2	3	4	5	6	7	8	9	10	11	

Q 11. As you may also know, the Australian Press Council has a complaints committee to deal with public complaints against newspaper publishers. Using the scales below, please give this system a rating for the various attributes mentioned:

Widely known about among journalists							Not widely known about among journalists					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Widely known about among the public							Not widely known about among the public					DK
0	1	2	3	4	5	6	7	8	9	10	11	
Respected by journalists							Not respected by journalists					DK
0	1	2	3	4	5	6	7	8	9	10	11	

Respected by publishers												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Fair to both sides												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Generally a good system												DK
0	1	2	3	4	5	6	7	8	9	10	11	

Q 12. And thinking about the Australian Broadcasting Authority as the body that deals with public complaints against commercial broadcasters. Using the scales below, please give this system a rating for the various attributes mentioned:

Widely known about among journalists												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Widely known about among the public												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Respected by journalists												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Fair to both sides												DK
0	1	2	3	4	5	6	7	8	9	10	11	
Generally a good system												DK
0	1	2	3	4	5	6	7	8	9	10	11	

Q 13. And thinking about the ABC TV program, *Media Watch*, as a program that deals with media performance and ethics more generally. Using the scales below, please give *Media Watch* a rating for the various attributes mentioned:

Widely known about among journalists		Not widely known about among journalists	DK									
0	1	2	3	4	5	6	7	8	9	10	11	
Widely known about among the public		Not widely known about among the public	DK									
0	1	2	3	4	5	6	7	8	9	10	11	
Respected by journalists		Not respected by journalists	DK									
0	1	2	3	4	5	6	7	8	9	10	11	
Fair to both sides		Not fair to both sides	DK									
0	1	2	3	4	5	6	7	8	9	10	11	
Generally good		Generally poor	DK									
0	1	2	3	4	5	6	7	8	9	10	11	

Q 14. What does the term “media accountability” mean to you? (Please write in -- just a brief sentence or two, although feel free to write more.)

Q 15. Some people say that journalists should be accountable to an independent non-government professional body for the way they carry out their professional duties. Others disagree, saying that this would be a threat to the freedom of the press.

Would you say the freedom of the press:

- Would 1
- Or
- Would not 2

- be threatened if journalists were made accountable to some independent non-government professional body?

- Don't know 3

QUESTIONS ABOUT DEFAMATION

Q 16. Finally just a few questions about defamation.

Some people say the defamation laws in Australia have a “chilling effect” on the media, meaning that they prevent publication of material to an unacceptable extent. Others disagree, saying the defamation laws do not prevent publication to an unacceptable extent.

Would you say the defamation laws in Australia

- Do 1
- Or
- Do not 2

have a “chilling effect” on the media in Australia, in the sense that they prevent publication of material to an unacceptable extent?

- Don't know 3

Q 17. Why do you say that? (Please write in if you would care to elaborate on your answer to Q16. Otherwise go to Q 18.)

Q 18. If it turns out that a defamatory media report is untrue, but the media organisation took all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to:

- publish a correction putting the record straight 1
- pay the person compensation 2
- do both of these things 3
- do neither of these things 4
- Don't know 5

Q 19. If it turns out that a defamatory media report is untrue and the media organisation did **NOT** take all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to:

- publish a correction putting the record straight 1
- pay the person compensation 2
- do both of these things 3
- do neither of these things 4
- Don't know 5

FINALLY SOME QUESTIONS ABOUT YOU

Q 20. What is your highest completed level of education:

- Some secondary schooling **1**
Completed secondary schooling **2**
Trade or technical qualification
(TAFE or College of Advanced Education) **3**
University diploma **4**
University degree or degrees **5**

If you have a university degree or degrees, please go to Q21. Otherwise skip to Q22.

Q 21. Is your university degree(s) in:

- Journalism **1**
Some other discipline or disciplines (please specify each)

(If you have degrees in both categories, please indicate by ticking the “journalism” box and by giving the name(s) of the other degree(s).)

Q 22. Are you a member of the Media Entertainment and Arts Alliance:

- Yes **1**
No **2**

Q 23. Are you:

- Female **1**
Male **2**

Q 24. How old are you? (Write in)

If you object to giving your exact age, please indicate the age group you belong in.

- Under 30 **1**
30 to 40 **2**
41 to 50 **3**
51 to 60 **4**
Over 60 **5**

Thank you very much for your time and assistance. It is greatly appreciated.

APPENDIX C

DETAILED RESULTS OF JOURNALISTS' SURVEY

In these results, the percentages may not add to 100 because of rounding.

Profile of the sample

The people given the opportunity to participate in this survey were practising journalists and journalism students. Most of the practising journalists were those working for two newspapers (The Age and The Herald-Sun) and for one electronic organization (the Australian Broadcasting Corporation). In addition, some journalists working for regional and suburban newspapers, as well as freelancers, were given the opportunity to participate. The journalism students were those in the third year of their course at the Royal Melbourne Institute of Technology (RMIT) University, Melbourne.

The newspapers were both Melbourne-based, with most of their journalists located in Melbourne. The ABC was Sydney-based but while many of their journalists were located in Sydney, many were located across Australia and overseas. The actual distribution of respondents by location was not obtained because it was not considered relevant to the study.

Of the total respondents, 52 per cent were male and 48 per cent were female.

A clear majority of the practising journalists had been in journalism for more than ten years.

Table C.1: LENGTH OF TIME A JOURNALIST

Length of time	Proportion of sample
	Base 141
	%
Less than two years	9
Two to five years	10
Six to ten years	13
More than ten years	67

Further analysis shows that:

of those who had been in journalism for up to ten years, 61 per cent were female and 39 per cent were male, and

of those who had been in journalism for more than ten years, the proportions were almost exactly reversed – 62 per cent were male and 38 per cent were female.

Most respondents – 73 per cent – worked in the print media (newspapers or magazines) and 27 per cent worked in electronic media (television, radio or online).

Of the practising journalists:

32 per cent had a university degree in journalism and 39 per cent had a university degree in some other discipline.

76 per cent were members of the Media, Entertainment and Arts Alliance (the journalists' trade union) and 24 per cent were not.

Among the practising journalists, the age distribution was as follows:

Table C.2: AGES OF PRACTISING JOURNALISTS

Age	Proportion of sample
	Base 141
	%
Under 30	19
30 to 40	41
41 to 50	26
51 to 60	11
Over 60	2

About two-thirds of the sample was aged between 30 and 50.

Responses came from practitioners in a wide range of journalistic positions.

Table C.3: OCCUPATIONAL POSITIONS OF PRACTISING JOURNALISTS

Age	Proportion of sample
	Base 141
	%
Reporter	45
Sub-editor/Production journalist	18
Feature/leader writer/commentator	11
Section/Program editor/Producer	11
Editorial executive	7
Other	6

The largest body of responses from practising journalists came from reporters, followed by sub-editors/production journalists.

It is not possible to assert that this sample is representative of the journalists practising in Australia. It was a self-selecting sample and journalists at only three organizations were given the opportunity to participate.

There is no central data base that would allow a comparison to be made between the demographic characteristics of the full body of practising journalists and of those who participated in this survey.

Table C.4 continued: ASSESSMENT OF JOURNALISTS' PERFORMANCE

	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Reporting on what powerful people like politicians and big business people are doing									
Very well	18	8	30	14	18	20	13	15	37
Quite well	53	56	50	56	55	65	52	56	37
Not very well	21	26	16	22	18	11	26	21	22
Not at all well	7	10	4	8	8	4	9	8	4
Mean	0.5	0.3	0.9	0.5	0.6	0.8	0.3	0.5	0.8
Don't know	--	--	--	--	--	--	--	--	--
Keeping people entertained									
Very well	24	15	34	25	18	35	18	23	26
Quite well	61	63	59	59	61	48	65	60	67
Not very well	11	15	6	13	13	15	16	13	--
Not at all well	4	7	--	3	3	15	12	3	7
Mean	0.9	0.6	1.2	0.9	0.8	1.0	0.8	0.9	1.0
Don't know	1	--	--	--	5	2	1	--	--
Informing people in a way that helps them to decide how to vote at elections									
Very well	8	7	9	10	5	11	7	9	4
Quite well	54	59	48	57	55	70	51	57	37
Not very well	29	22	38	24	32	15	32	26	44
Not at all well	9	13	5	9	8	4	11	9	11
Mean	0.2	0.3	0.2	0.3	0.2	0.7	0.1	0.3	-0.2
Don't know	1	--	--	--	--	--	--	--	4
Being independent of rich and powerful forces in society									
Very well	5	3	8	4	8	2	6	5	7
Quite well	35	31	40	43	24	37	38	38	22
Not very well	38	39	36	36	39	50	31	37	41
Not at all well	21	26	15	17	29	11	25	21	22
Mean	-0.3	-0.5	-0.1	-0.2	-0.6	-0.3	-0.3	-0.3	-0.5
Don't know	1	1	1	--	--	--	--	--	7

The means in this table are derived by assigning values of +2 for “very well”, +1 for “quite well”, -1 for “not very well” and -2 for “not at all well”. It follows that any positive mean indicates a view that journalists perform a particular function well, and any negative mean indicates a view that journalists do not perform a particular function well.

The five functions chosen for this question are the five generally accepted in the literature on media performance as being central to the role of the media under the social responsibility theory of the press. This best approximates the theory guiding the media in Australia, as is clear from a consideration of the theory’s content and the stated aims of the Australian media as articulated both in this survey of journalists and in interviews by editors and senior media managers conducted for this thesis.

It is clear that journalists think they do best at entertaining people (mean of positive 0.9), and worst at being independent of rich and powerful sources in society (mean of negative 0.5).

Table C.5 continued: JOURNALISTS' ATTITUDES TO CERTAIN ETHICAL ISSUES

Rightness	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
To obtain access to a place or person by pretending to be someone other than a journalist									
Always all right	1	2	--	1	3	--	2	1	--
Never all right	38	35	40	35	39	33	38	36	44
All right in some cases	61	63	59	63	58	67	59	62	56
Don't know	1	--	1	1	--	--	1	*	--
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do									
Always all right	1	1	1	2	--	2	1	1	--
Never all right	43	32	55	41	45	48	39	42	48
All right in some cases	55	67	43	57	55	50	60	57	48
Don't know	1	--	1	--	--	--	--	--	4
To pretend to be sympathetic to a person's situation in order to obtain an interview									
Always all right	11	14	8	12	3	11	8	9	19
Never all right	28	30	26	27	37	28	31	30	19
All right in some cases	57	52	63	56	55	52	58	56	63
Don't know	4	5	4	5	5	9	3	5	--

Four of the five ethical issues for this question were chosen because they represented the main ethical dilemmas for journalists as demonstrated by the MEAA's Code of Ethics, the Principles of the Australian Press Council and the various codes of practice published by the peak bodies of the television and radio industries under the aegis of the Australian Broadcasting Authority.

These four issues covered here, in order, are:

1. Invasion of privacy.
2. Declaration of journalistic function.
3. Obtaining access by deception.
4. Covert or undeclared recording.

The fifth is the dilemma of betrayal which is the subject of a celebrated paper by a journalist on *New Yorker*, Janet Malcolm.¹

There is considerable ambivalence and disagreement among journalists on four of these five ethical questions. The only ethical question on which there is a clear consensus that it should "never" be breached is number two – declaring journalistic function. Approximately three-quarters of journalists said it was "never all right" to interview a person for a story without saying they were a journalist.

For the most part, between half and two-thirds of journalists said it was "all right in some cases" to invade privacy, obtain access by deception, engage in covert or undeclared recording, and pretend to be sympathetic in order to obtain an interview.

¹ Janet Malcolm, *The Murderer and the Journalist*, New York, Knopf, 1990.

However, there is a considerable difference between male and female journalists on most of these questions. Female journalists are noticeably more likely than male journalists to say it is “never all right” to invade privacy, obtain access by deception, or engage in covert or undeclared recording. On the last issue, however – pretending to be sympathetic – the results are reversed, with female journalists less likely than males to say this is “never all right”.

There are also some differences between print and electronic journalists on these issues. Electronic journalists – who it should be remembered came largely from the publicly owned Australian Broadcasting Corporation – were noticeably more likely than print journalists to say it was “never all right” to invade privacy, fail to declare journalistic function, or pretend sympathy.

There was little difference between those who had less than 10 years’ experience in journalism and those who had more than 10 years’ experience, except on the issue of covert recording, which the less experienced journalists were more likely to say was “never all right”.

There were some differences between practising journalists and student journalists, and here the differences went both ways. Practitioners were more likely to say it was never all right to fail to declare journalistic function, and pretend sympathy; students were more likely to say it was “never all right” to invade privacy or obtain access by deception.

Question (for those who said “all right in some cases”)

Can you briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

Table C.6: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED

To take a picture of someone in their backyard from outside the property without their knowledge and consent
<p>A politician or businessman accused of fraud or some other serious crime sunning themselves in the backyard is fair game for photographers. It's fair to bypass overzealous publicists, secretaries and other minders by giving them selective information about who you are to get access to the person you want to speak to.</p> <p>If a powerful member of society who has done something wrong has refused to face the public then it would appropriate to take photos from outside their house.</p> <p>It would be OK to take a photo of someone in their back yard if they were committing a crime there (beating their wife for example).</p> <p>Where it's clearly in the public interest to expose something, e.g. a meeting that is being denied</p> <p>There are always exceptions to rules. Overall, it is not all right to photograph someone without their permission while they are on their own property, but it may be all right if it is for a story in the public interest - ie exposing crime, corruption, fraud.</p> <p>There are occasions where photographs can be taken of people where it is in the public interest. I do not believe the public's interest lies in entertainment, but in information that would be necessary or useful for people to make informed choices - about people they would vote for, products they would buy, initiatives they</p>

would support, etc. I do not believe it is right to photograph someone without their consent if the sole value of the photograph lies in the subject being a celebrity or person in public office caught in a compromising or salacious situation. I also believe that having once obtained a photograph or interview under covert means, it is fair to alert the subject to its existence and imminent publication, and to offer them the opportunity to comment.

All right if they are celebrities i.e. people who court publicity.

For a journalist to interview a person for a story without saying they were a journalist

In some circumstances people respond very differently if they know you are a reporter. If they know you are a reporter they often tailor their answers.

Where investigative reporting of a situation requires that the journalist fits in with his/her surroundings ie investigating homelessness.

Where an investigative journalist might be infiltrating an extremist group, for example.

Where it's in the public interest to quote them expressing a view or making a claim about which they would lie to a journalist.

To obtain access to a place or person by pretending to be someone other than a journalist

Obtaining access to a person or places could be OK on the proviso the reporter identifies himself at the start of an interview and gives the subject the opportunity to refuse to be interviewed. Sometimes we need to break down the barriers to getting the news - if that means entering a building or crime scene without identifying oneself it can be excused.

Not so much disguise identity as not be completely forthright to gain access to something where journalists might otherwise be excluded.

It would be OK to disguise the fact you are a journalist to gain entry to a nightclub where you believe drug deals are happening, or to some other venue where you thought a crime was being committed. It would never be OK to disguise the fact you're a journalist to get into someone's home, however.

Getting to someone: where secretaries, doorpersons, bureaucrats, spin doctors etc are being obstructive.

To expose possible criminals, to prove or disprove allegations, to get "beyond surface access" or to gain access to restricted areas such as detention centres, jails etc, when you plan to use interviewees as anonymous.

For example gaining access to an immigration detention facility (as happened on Nauru) to expose mistreatment of detainees (after the government had denied legitimate media access).

When governments, powerbrokers, companies want to hide something that the public has a right to know about it is appropriate to disguise yourself to find out that truth.

You are under duress or your life would be in jeopardy if your status was known.

Where you're security as a journalist might be in danger by advertising your profession (especially in overseas conflict zones)

When you believe you may be denied access to interviews or photos if you disclose you are a journalist, and you believe the story is in the public interest... and it is LEGAL to do so.

In some circumstances your position as a journalist may not allow you to get the same treatment as anyone else, for example as a food critic. In a case such as this it may be necessary to not reveal your employment to gain an unbiased view of a situation.

To use hidden microphones, tape-recorders or cameras to secretly record what people say or do

Hidden cameras may be used if the subject is in a public place and the story is deemed to be in the public interest. Hidden cameras may also be used to protect the safety of the journalist e.g. in some dangerous situations overseas.

Hidden recorders etc are OK if it is the only way to get someone you know for a fact is committing a crime to either admit to it or for you to prove it.

I think this would unfortunately be essential with respect to in-depth cases where it is the only way to gain information. It should not be used unless the story is particularly significant.

I think that the case of the police corruption investigations in NSW offered a case for the use of hidden tape recorders and cameras. Where there are cases of people working in official capacities, eg. police, elected officials, who are presenting one face to the public, but are privately acting in a way that's corrupt, it might be necessary to gather information that demonstrates their deceit. How else could corruption be exposed?

When an interviewee has been openly approached for an interview on an important issue and has lied in that interview; when a person has lied in a public forum and through the use of secret sound or pictorial recording the lie can be clearly demonstrated. In ANY circumstance of secret recording, the motivation must only be greater public good. Some of the greatest investigative journalism which has altered the course of public events has had an element of covert investigation. I do not think it is ethical to conduct such investigations for reasons of malice, monetary gain or titillation - including papparazzi and general muck-raking about public figures simply to find a juicy bit of gossip.

To pretend to be sympathetic to a person's situation in order to obtain an interview

If for example I am interviewing a Liberal politician and I am opposed to their policies I am not going to say that to their face as they might not want to talk, so it is OK to not give your views if you know they will put the person off. I wouldn't lie but I would maybe just soften my approach to their views. The same would go for a public figure that I might personally dislike. I'm hardly going to tell them that while interviewing them.

Maybe dealing with a murderer/child molester (ie someone whom I would normally not like or approve of)

There are always cases when it is appropriate to be sympathetic, especially when the interview subject is feeling intense emotions such as loss or grief.

Expressing sympathy for a person to get a story is a well-known tactic. If it does not harm the person (for example, the opportunity for a family to tell their story during an intrude) then I would see it as one of the tools of the reporter so long as it is not overused or misused. It can also be justified in getting a first-person piece from a criminal who is seeking unjustified sympathy.

Sympathy: without going over the top, to persuade someone to talk to you who is hostile or needs reassurance that their side will be put fairly.

There are occasions, when your potential interviewee is very reluctant, to give the impression that you are understanding of their position and stance. There is a significant difference though between that, and constructing your story with that bias, or letting it come through in the interview itself. I also feel that the understanding you express to the interviewee should be expressed with the proviso that you are a journalist, and thus are charged to construct your story in a fair and balanced way and will need to seek both sides of the

argument.

If you were to fail to get the interview then feigning some sympathy is OK.

In terms of pretending to be sympathetic to get an interview, I think there can be circumstances where it is necessary for an interviewee to believe you are sympathetic towards them in order to agree to talk to you. For example, a large number of recent i/v with Taliban/Al Qaida etc have demanded the wearing of head scarves, or burkahs by Western female journalists.

A recent example: The Queensland Conservation Council presented a report on the effects of a dam under construction. Many local landholders disagreed with the report. I told the QCC the interview was an opportunity for them to get their point across etc etc. Also went to landholder groups for a reaction, and told them it was their chance to have their say on the report. I didn't lie to either party, but made it sound it was in their best interests to participate and that I was on their 'side'. (During pre-phone prep of course, not on tape!) Each party felt I was on their 'side' - when in truth I didn't really care either way and I think the finished program was as unbiased as possible.

If you empathise with the talent to obtain an interview. For example, a sensitive interviewee may need some convincing first.

When there has been a death and you need to talk to family members, for instance. And often you actually do feel sympathetic. In fact, I've never done a death knock where I didn't feel a degree of sympathy. On the other hand, I certainly wouldn't pretend to be sympathetic to a political viewpoint in the same way and for the same purpose.

Question

Which of these statements comes closer to your view:

Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings, or

Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth

As Table 7 shows, a large majority of journalists said that generally journalists wrote the truth as best they knew it, regardless of the effect on sales or ratings. Print journalists were even more likely than electronic journalists to assert this, as were journalists with more than 10 years' experience. Student journalists were much more likely to be sceptical of this than were practising journalists.

Table C.7: JOURNALISTS' PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Perception	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings	76	76	76	83	74	70	86	81	52
Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth	16	17	15	14	16	20	12	14	26
Don't know	8	7	9	3	11	11	2	5	22

Question

Who, if anyone, deals with complaints from the public about editorial content in the organisation you work for?

Table 8: MECHANISM FOR DEALING WITH COMPLAINTS

Mechanism	Total	Medium	
		Print	Electronic
Base	141	103	38
	%	%	%
A special editorial ombudsman	4	3	3
Some other editorial executive	39	49	13
A formal structure consisting of several people or groups of people	31	15	76
Some other management person	6	7	3
Other	18	23	5
No one	2	3	--

Clearly the commonest system for dealing with complaints from the public about editorial matters is to assign an editorial executive to the task or have a formal structure for doing so. The latter no doubt reflects the fact that most of the electronic journalists in this survey work for the

Australian Broadcasting Corporation, which has an elaborate formal system of executives and panels to deal with complaints. This system is described in detail in Chapter 8.

Question

As you may know, some news organisations have internal “ombudsmen” to investigate complaints from the public about editorial content. Do you think the idea of such an “ombudsman” is or is not a good idea?

Table C.9: JOURNALISTS' ATTITUDES TO INTERNAL OMBUDSMEN

Attitude	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Is a good idea	76	73	79	70	80	78	69	72	93
Is not a good idea	15	20	10	19	14	11	21	18	4
Don't know	9	7	11	11	7	11	9	10	4

Journalists were widely receptive to the idea of news organisations having a special internal “ombudsman” to deal with complaints from the public about editorial content. Student journalists were particularly attracted to this idea. Female, electronic, and less experienced journalists were more likely to be attracted to this idea than males, print and more experienced journalists.

The total sample was asked to rate a number of media accountability mechanisms against stated criteria. Respondents were given the option of saying that they did not know enough about the mechanism in question to rate it.

This in itself was revealing. Just over half (51 per cent) of respondents said they did not know enough about the MEAA’s ethics panel to give it a rating. And of the journalists who said they were members of the MEAA, exactly half said they did not know enough about its ethics panel to give it a rating.

Thirty-eight per cent of respondents said they did not know enough about the Australian Press Council to give it a rating.

Thirty-six per cent of respondents said they did not know enough about the Australian Broadcasting Authority to give it a rating.

By contrast, only two per cent of respondents said they did not know enough about the ABC TV program *Media Watch* to give it a rating.

Table C.10: JOURNALISTS' KNOWLEDGE OF ACCOUNTABILITY MECHANISMS

Accountability mechanism	Proportion of respondents who said they did not know enough about it to give it a rating
Base	168
	%
The ethics panel of the Media Entertainment and Arts Alliance (the journalists' trade union)	51
The Australian Press Council	38
The Australian Broadcasting Authority	36
The ABC TV program <i>Media Watch</i>	2

The five criteria were:

1. How well the mechanism was known among journalists.
2. How well it was known among the general public.
3. How respected it was among journalists.
4. How fair it was.
5. How good a system it was generally.

Each criterion was presented as a bi-polar scale, for example: widely known about among journalists/not widely known about among journalists. Eleven points were provided on this scale from zero to ten, where zero represented the most negative rating and ten represented the most positive rating. The mid-point of this scale is 5. Hence any rating below 5 is on the poor side and any rating above 5 is on the good side.

For the purpose of presenting the results, these ratings are grouped into three categories:

- Low (0 to 3)
- Medium (4 to 6)
- High (7 to 10)

A mean score is then given for each mechanism's rating on each criterion.

In the tables reporting the results of these questions, respondents are broken down into fewer sub-groups than was the case for other questions in this survey. The reason is that the base numbers in some of the sub-groups are too small to be useful. This is a consequence of the fact that large proportions disqualified themselves from answering in respect of three of the four accountability mechanisms on the grounds that they did not know enough about it to give a rating.

Question

As you may know, the Media Entertainment and Arts Alliance has an ethics panel that deals with public complaints against members. Using the scales below, please give this system a rating for the various attributes mentioned.

Table C.11: JOURNALISTS' RATING OF THE MEAA ETHICS PANEL

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	83	49	34	54	15
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	29	41	12	37	27
Medium (4 to 6)	33	33	32	35	33
High (7 to 10)	39	27	56	28	40
Mean	5.3	4.6	6.3	4.6	5.4
Widely/Not widely known among the public					
Low (0 to 3)	75	88	56	85	73
Medium (4 to 6)	20	10	35	11	27
High (7 to 10)	5	2	9	4	--
Mean	2.5	1.9	3.4	2.1	2.1
Respected by journalists					
Low (0 to 3)	22	29	12	20	40
Medium (4 to 6)	49	43	59	50	47
High (7 to 10)	29	29	29	30	13
Mean	5.3	5.0	5.7	5.4	4.0
Fair/Not fair to both sides					
Low (0 to 3)	7	6	9	4	13
Medium (4 to 6)	53	53	53	52	60
High (7 to 10)	40	41	38	44	27
Mean	6.1	6.0	6.2	6.3	5.1
Generally a good/poor system					
Low (0 to 3)	17	22	9	13	40
Medium (4 to 6)	48	39	62	48	47
High (7 to 10)	35	39	29	39	13
Mean	5.4	5.3	5.6	5.7	4.0

The MEAA ethics panel was rated just above the mid-point (mean 5.4) for being “generally a good/poor system”. It rated best for being “fair to both sides” (mean 6.1). It rated poorly (mean 2.5) for being known to the public. Female journalists rated it more highly than male journalists on every criterion. Members of the union rated it higher than non-union journalists on three of the five criteria.

Table C.12: JOURNALISTS' RATING OF THE AUSTRALIAN PRESS COUNCIL

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	104	60	44	71	18
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	5	5	5	6	--
Medium (4 to 6)	22	20	25	25	11
High (7 to 10)	73	75	70	69	89
Mean	7.5	7.5	7.6	7.4	8.5
Widely/Not widely known among the public					
Low (0 to 3)	23	27	18	24	11
Medium (4 to 6)	48	50	45	51	44
High (7 to 10)	29	23	36	25	44
Mean	5.1	4.9	5.5	5.0	6.1
Respected by journalists					
Low (0 to 3)	21	25	16	24	11
Medium (4 to 6)	42	48	34	44	50
High (7 to 10)	37	27	50	32	39
Mean	5.4	5.0	6.0	5.1	6.1
Fair/Not fair to both sides					
Low (0 to 3)	10	10	9	10	6
Medium (4 to 6)	47	50	43	49	44
High (7 to 10)	43	40	48	41	50
Mean	6.1	6.0	6.3	6.0	6.8
Generally a good/poor system					
Low (0 to 3)	24	32	14	27	17
Medium (4 to 6)	39	35	45	35	56
High (7 to 10)	37	33	41	38	28
Mean	5.2	4.8	5.7	5.1	5.3

The Australian Press Council rated just above the mid-point (mean 5.2) for being “generally a good/poor system”. It rates best (mean 7.5) for being “widely known among journalists”. It rated least well (mean 5.1) for being “widely known among the public”. Female journalists rated it more highly on every criterion than male journalists. Journalists who were not members of the journalists’ union, the MEAA, rated the Press Council more highly on every criterion than did journalists who were members of the union.

This difference between unionised and non-unionised journalists mirrors the results of the corresponding question about the union’s own ethics panel. It might reflect attitudes grounded in long-standing divisions between the union and newspaper management people over the whole issue of accountability and the mechanisms for giving effect to it.

Table C.13: JOURNALISTS' RATING OF THE AUSTRALIAN BROADCASTING AUTHORITY

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	108	63	45	69	22
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	3	2	4	3	5
Medium (4 to 6)	16	19	11	13	32
High (7 to 10)	81	79	84	84	64
Mean	8.1	7.8	8.4	8.3	7.2
Widely/Not widely known among the public					
Low (0 to 3)	10	11	9	7	18
Medium (4 to 6)	41	46	33	42	50
High (7 to 10)	49	43	58	51	32
Mean	6.4	6.1	6.8	6.6	5.5
Respected by journalists					
Low (0 to 3)	48	62	29	61	41
Medium (4 to 6)	31	29	33	25	41
High (7 to 10)	21	10	38	14	18
Mean	3.9	3.2	4.9	3.1	4.5
Fair/Not fair to both sides					
Low (0 to 3)	43	51	31	49	36
Medium (4 to 6)	43	35	53	39	45
High (7 to 10)	15	14	16	12	18
Mean	4.0	3.7	4.3	3.5	4.5
Generally a good/poor system					
Low (0 to 3)	56	70	36	64	45
Medium (4 to 6)	29	21	40	23	45
High (7 to 10)	16	10	24	6	9
Mean	3.3	2.6	4.3	2.8	3.8

The Australian Broadcasting Authority was rated poorly (mean of 3.3) by journalists as “generally a good/poor system”. It was rated highly (mean of 8.1) for being “widely known among journalists”, and reasonably highly (mean 6.4) for being “widely known among the public”. It rated on the poor side (mean 4.0) for being “fair to both sides” and more poorly still (mean 3.9) for being respected by journalists. Female journalists rated it more highly on every criterion than male journalists.

Table C.14: JOURNALISTS' RATING OF *MEDIA WATCH*

Rating	Total	Gender		Member of MEAA	
		Male	Female	Yes	No
Base	164	88	76	107	31
	%	%	%	%	%
Widely/Not widely known among journalists					
Low (0 to 3)	1	1	1	1	--
Medium (4 to 6)	1	1	--	1	--
High (7 to 10)	98	98	99	98	100
Mean	9.5	9.5	9.5	9.6	9.6
Widely/Not widely known among the public					
Low (0 to 3)	3	3	3	3	3
Medium (4 to 6)	32	35	29	30	42
High (7 to 10)	65	61	68	67	55
Mean	7.1	6.9	7.3	7.2	6.7
Respected by journalists					
Low (0 to 3)	5	8	1	2	13
Medium (4 to 6)	14	15	13	15	19
High (7 to 10)	81	77	86	83	68
Mean	7.6	7.4	7.8	7.8	6.6
Fair/Not fair to both sides					
Low (0 to 3)	10	13	7	7	19
Medium (4 to 6)	26	22	30	22	39
High (7 to 10)	65	66	63	70	42
Mean	6.8	6.8	6.9	7.0	5.8
Generally a good/poor system					
Low (0 to 3)	7	10	3	6	16
Medium (4 to 6)	20	17	22	19	29
High (7 to 10)	74	73	75	76	55
Mean	7.3	7.2	7.5	7.5	6.4

The ABC TV program Media Watch was rated exceptionally highly (mean 9.5) on being “widely known among journalists”, and highly on all other criteria. With a mean of 7.3 for being “generally a good/poor system” it decisively out-rated the other three accountability mechanisms canvassed in this survey – the MEAA ethics panel, the Australian Press Council, and the Australian Broadcasting Authority.

It also out-rated all the other mechanisms for being “widely known among the public”, “respected by journalists”, and “fair to both sides”.

It was clear from this survey that “Media Watch” is the mechanism of accountability that journalists most respect and which has, in their view, the best public profile.

Question

What does the term “media accountability” mean to you?

Table 15 shows the number of mentions for each entity or interest to whom journalists said the media owed accountability. It should be emphasised that this does not imply a ranking of importance: that was not asked for. It shows the incidence of mentions for each entity or interest. This tells us something about the breadth of acceptance among journalism professionals that they owe accountability to these various entities or interests.

Table C.15: JOURNALISM PROFESSIONALS’ STATEMENTS IDENTIFYING THOSE TO WHOM THE MEDIA OWE ACCOUNTABILITY

Entity or interest to whom accountability is owed	Number of mentions
Unspecified but implies “the public”	55
The public	44
The reader/audience	18
The craft/industry/codes	12
The people reported about	11
The editor/employer/shareholder	8
The law	3
Regulators	2
Sales	1

It can be seen that by far the broadest consensus among journalism professionals is that the media owe accountability to the public in a general sense, followed by a subset of the public, being the reader or audience. Clearly some interpreted the term “media accountability” to mean “journalists’ accountability”, because they differentiated between the media and “the editor/employers/shareholders”. These entities and interests are not widely seen as those to whom the media owe accountability; neither is “the law”, indicating that respondents saw accountability as a concept based largely on ethical rather than legal considerations. This is borne out by the next step in the analysis, which shows the values, behaviours and effects for which journalism professionals said the media should be held accountable. There is absolutely no mention of the law anywhere. It is clear from this that the concept of media accountability, as perceived by media professionals, is grounded in ethics and duties.

Again, Table 16 does not purport to rank the values, behaviours or effect for importance, but to show the breadth of recognition within the profession for these as matters for which the media should be held to account.

Clearly the most widely recognised value was responsibility – being prepared to answer for what is published and for behaviour associated with publication, followed by acting fairly and without conscious bias. Values associated with truth-telling – being factually accurate and conscientious about truthfulness -- were also widely recognised as matters for which the media should be held to account. This implies that the media should be held to account for inaccuracies, distortion, exaggeration, and suppression.

Table C.16: JOURNALISM PROFESSIONALS' STATEMENTS IDENTIFYING THE VALUES, BEHAVIOURS AND EFFECTS FOR WHICH THE MEDIA SHOULD BE HELD ACCOUNTABLE

Value, behaviour or effect	Number of mentions
Taking responsibility for what is published and for behaving ethically	55
Being fair/balanced/impartial	51
Factual accuracy/completeness	39
Being truthful	32
Transparency of behaviour/explaining actions	21
Correcting errors/making amends	20
Generally discharging a public interest function	13
Being independent of improper or irrelevant influences	13
Protecting sources	3

Question

Some people say that when they are accused of doing something wrong in their work, journalists should have to answer to some professional body that was not part of the media industry and not part of government. Others disagree, saying that this would be a threat to the freedom of the press. Would you say the freedom of the press would or would not be threatened if journalists had to answer to some professional body that was not part of the media industry and not part of government when they are accused of doing something wrong in their work?

Table C.17: JOURNALISTS' PERCEPTIONS OF THE EFFECT OF AN INDEPENDENT ACCOUNTABILITY BODY ON FREEDOM OF THE PRESS

Attitude	Total	Gender		Medium		Experience		Status	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years	Practising journalist	Student journalist
Base	168	88	80	103	38	46	95	141	27
	%	%	%	%	%	%	%	%	%
Would be a threat to freedom of the press	44	51	36	45	47	43	46	45	37
Would not be a threat to freedom of the press	45	43	46	43	42	41	43	43	56
Don't know	11	6	18	13	11	15	11	12	7

Journalists were evenly divided over whether an external accountability mechanism – independent of the media and of government – would or would not represent a threat to press freedom. Male journalists were more likely than female journalists to assert that it would be a threat, and practising journalists were more likely than student journalists to assert the same.

Question

Some people say the defamation laws in Australia have a “chilling effect” on the media, meaning that they prevent publication of material that is true and in the public interest. Others disagree, saying the defamation laws do not prevent publication of material that is true and in the public interest. Would you say the defamation laws in Australia do or do not have a “chilling effect” on the media in Australia, in the sense that they prevent publication of material that is true and in the public interest?

Table C.18: JOURNALISTS' VIEWS OF THE “CHILLING EFFECT” OF DEFAMATION LAWS

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Do have a chilling effect	45	60	28	48	39	30	53
Do not have a chilling effect	41	31	53	40	45	46	39
Don't know	13	9	19	13	16	24	8

Journalists were divided over whether the defamation laws in Australia have a “chilling effect” in the sense that they prevent the publication of material that is true and in the public interest. Male, print and more experienced journalists were much more likely than female, electronic and less experienced journalists to say the defamation laws have a “chilling effect”.

Question

If it turns out that a defamatory media report is untrue, but the media organisation took all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to publish a correction putting the record straight; pay the person compensation; do both of these things; do neither of these things?

Table C.19a: JOURNALISTS' VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE TAKEN DUE CARE

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Publish a correction	67	70	64	62	82	74	64
Pay compensation	2	--	3	3	--	2	2
Do both	28	29	27	33	13	22	31
Do neither	1	1	2	2	--	--	2
Don't know	1	--	3	--	5	2	1

A clear majority of journalists said that the publication of a correction ought to be sufficient to compensate someone about whom an unintentionally defamatory report had been published, although nearly one-third said that the aggrieved person should receive some monetary compensation. More experienced journalists were more likely than less experienced journalists to say monetary compensation should be paid as well as a correction published.

Question

If it turns out that a defamatory media report is untrue, but the media organisation did NOT take all reasonable care to avoid publishing anything untrue, do you think the media organisation should be made to publish a correction putting the record straight; pay the person compensation; do both of these things; do neither of these things?

Table C.19b: JOURNALISTS' VIEWS OF COMPENSATION FOR DEFAMATION WHEN MEDIA HAVE NOT TAKEN DUE CARE

Attitude	Total	Gender		Medium		Experience	
		Male	Female	Print	Electronic	Up to 10 years	More than 10 years
Base	141	77	64	103	38	46	95
	%	%	%	%	%	%	%
Publish a correction	19	21	17	19	18	13	22
Pay compensation	4	5	2	2	8	4	3
Do both	77	74	80	79	71	83	74
Don't know	1	--	2	--	3	--	1

A large majority of journalists said that when a person had been defamed by careless publication, the aggrieved person should be compensated by both a published correction and the payment of monetary compensation.

APPENDIX D

DETAILED RESULTS OF VOTER SURVEY

In these results, the percentages may not add to 100 because of rounding.

Question

Where do you *mainly* get your news?

Table D.1: MAIN SOURCE OF NEWS

Source	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Television	46	46	45	46	45	100	--	--
Newspaper	30	36	24	26	40	--	--	100
Radio	22	15	28	24	14	--	100	--
The Internet	2	3	2	3	--	--	--	--
Don't use news media	1	--	1	1	1	--	--	--

Ninety-nine per cent of voters in Victoria turn to the media for their news. Only one per cent said they did not use the media as their main source of news.

More people turn to television as their main source of news than to any other medium, followed by newspapers and radio.

A very small proportion – two per cent – used the Internet as their main source of news.

Men are more likely than women to use newspapers; women are more likely than men to use radio as their main source of news.

People in rural areas (outside of Melbourne) are more likely to use newspapers than people in the city, but less likely to use the radio.

No respondent in rural areas used the Internet as their main source of news.

Question

*I'm going to read out some statements that some people might make about **journalists as a whole in Australia**. As I read each one, I would like you to tell me how you would apply it to **journalists as a whole in Australia**. For each statement, I would like you to give me a number between zero and ten.*

Table D2: VOTERS' PERCEPTIONS OF JOURNALISTS

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Honest or dishonest, where zero means always dishonest and 10 means always honest									
0 – 3	6	8	5	7	4	8	5	6	
4 – 6	56	55	57	54	61	56	53	59	
7 – 10	37	36	39	38	35	35	42	36	
Don't know	*	1	--	*	--	1	--	--	
Mean	5.9	5.8	6.1	6.0	5.8	5.9	6.0	5.9	0.11*
Try to get the story right or don't try to get it right, where zero means they never try and 10 means they always try to get the story right									
0 – 3	5	6	5	6	4	5	8	3	
4 – 6	44	45	44	45	44	46	47	43	
7 – 10	50	49	50	49	51	48	45	54	
Don't know	*	--	1	1	--	1	--	--	
Mean	6.3	6.2	6.4	6.3	6.4	6.4	6.0	6.5	0.09
Biased or unbiased, where zero means they are always biased and 10 means they are never biased in the way they present their stories.									
0 – 3	22	25	19	24	17	21	25	21	
4 – 6	53	51	54	52	56	47	56	59	
7 – 10	25	23	26	24	27	32	18	21	
Don't know	*	--	1	*	--	--	1	--	
Mean	4.9	4.8	5.0	4.8	5.2	5.2	4.5	4.9	0.09
Trustworthy or untrustworthy, where zero means they are never trustworthy and 10 means they are always trustworthy									
0 – 3	14	17	11	14	13	15	11	14	
4 – 6	52	46	58	54	47	50	59	49	
7 – 10	34	37	31	32	40	35	30	37	
Don't know	--	--	--	--	--	--	--	--	
Mean	5.5	5.4	5.5	5.3	5.8	5.5	5.4	5.6	0.09
Respect or do not respect the people they deal with in getting their stories, where zero means they never treat these people with respect and 10 means they always treat these people with respect.									
0 – 3	21	23	18	23	16	24	21	15	
4 – 6	53	53	53	51	58	43	60	60	
7 – 10	25	24	25	24	26	31	16	23	
Don't know	2	--	4	3	--	2	3	1	
Mean	5.2	5.0	5.3	5.1	5.3	5.3	5.0	5.1	0.05

0. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

Voters give journalists a mediocre ranking on all five of these tests of professional ethics, credibility and behaviour. They give journalists their highest ranking – a mean of 6.3 – for “trying to get the story right”. They give journalists their lowest ranking – a mean of 4.9 – on the question of bias. It happens that allegations of bias form a very large proportion of the

Table D3 continued: VOTERS' ATTITUDES TO CERTAIN ETHICAL ISSUES

To obtain access to a place or person by pretending to be someone other than a journalist									
Always all right	2	3	2	3	--	3	--	2	
Never all right	85	83	86	82	91	85	85	84	
All right in some cases	13	15	12	15	9	12	15	14	
Don't know	--	--	--	--	--	--	--	--	
									0.12**
To use hidden microphones, tape-recorders or cameras to secretly record what people say or do									
Always all right	2	2	2	2	2	3	--	3	
Never all right	76	75	77	73	84	75	74	76	
All right in some cases	22	23	21	25	14	22	26	21	
Don't know	--	--	--	--	--	--	--	--	
									0.18**
To pretend to be sympathetic to a person's situation in order to obtain an interview									
Always all right	3	6	1	3	2	3	2	4	
Never all right	70	66	73	66	78	72	61	69	
All right in some cases	26	27	25	29	18	24	34	27	
Don't know	1	1	1	1	1	1	3	--	
									0.03

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

An overwhelming majority of voters say it is “never all right” for journalists to:

- Take a picture of someone in their backyard, from outside the property, without their knowledge and consent;
- Interview a person without disclosing the fact that they are a journalist, or
- Obtain access to a place or a person by pretending to be someone other than a journalist.

Large majorities say it is “never all right” for journalists to:

- Use hidden microphones, tape-recorders or cameras to secretly record what people say or do, or
- Pretend to be sympathetic to a person's situation in order to obtain an interview.

Spearman correlations reported in the table reveal that older people are more likely than younger people to disapprove of journalists' obtaining access by deception and of their using hidden recording devices. Older women disapprove particularly strongly of these practices.

Small minorities of voters said that these measures might be all right in some circumstances. Those who did were asked if they could imagine what these circumstances might be. The question to these respondents was:

Question

Can you briefly outline the circumstances where it might be all right, or can you not imagine what those circumstances might be?

Table D.4: CIRCUMSTANCES IN WHICH CERTAIN ACTIVITIES ARE JUSTIFIED

To take a picture without consent etc		To interview but not disclose etc		To obtain access by pretending etc		To secretly record people etc		To pretend to be sympathetic etc	
Base 24		Base 31		Base 40		Base 66		Base 78	
Circumstance	%	Circumstance	%	Circumstance	%	Circumstance	%	Circumstance	%
Where there is criminality	44	To gain better insights/depth	22	Where there is criminality	23	Where there is criminality	29	To gain better insights/depth	40
To expose fraud/rip-offs	25	Where there is criminality	20	To expose fraud/rip-offs	14	To expose fraud/rip-offs	23	Where there is criminality	12
To expose paedophiles	10	Where there is dishonesty	9	Matters in the public interest	9	Matters in the public interest	22	Matters in the public interest	7
Can't imagine	12	Can't imagine	21	Can't imagine	24	Can't imagine	5	Can't imagine	27

It is clear that the small minorities of voters who concede there might be circumstances in which these measures might be all right are of a limited and, on the whole, exceptional nature. Most have to do with journalistic investigation of criminal conduct, fraud, consumer rip-offs and matters that are of substantial public interest.

One exception to this concerns interviewing without disclosing that the interviewer is a journalist, and pretending to be sympathetic to a person's situation in order to obtain an interview. A small minority of voters are prepared to countenance those if it is necessary to gain better insights or greater depth of information.

Question

How well would you say journalists in Australia **in general** perform the following functions. Would you say that, **in general**, they performed them very well, quite well, not very well or not at all well:

Table D5: VOTERS' ASSESSMENT OF JOURNALISTS' PERFORMANCE

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Sifting out truth from propoganda or public relations "spin"									
Very well	4	3	5	4	3	5	4	4	
Quite well	46	45	46	43	53	43	49	50	
Not very well	37	35	38	40	28	38	35	33	
Not at all well	9	14	5	8	12	9	7	11	
Don't know	4	3	5	4	4	5	5	2	
Mean	0.0	-0.1	0.1	-0.1	0.1	-0.1	0.1	0.0	-0.03

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-24, 25-34, 35-44, 45-54, 55-64, 65+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

Table D5 continued: VOTERS' ASSESSMENT OF JOURNALISTS' PERFORMANCE

Rating	Total	Gender		Place of residence		Main source of news			Age ^a
		Male	Female	Melb	Other Vic.	TV	Radio	Paper	
Base	300	146	154	218	82	137	65	90	
	%	%	%	%	%	%	%	%	
Reporting on the really important things that are going on									
Very well	21	19	22	22	18	23	18	19	
Quite well	52	52	52	50	59	52	47	55	
Not very well	20	22	19	22	16	18	23	23	
Not at all well	6	6	6	6	7	7	8	2	
Don't know	1	1	1	2	--	--	3	1	
Mean	0.6	0.6	0.7	0.6	0.6	0.7	0.5	0.7	-0.10*
Reporting on what powerful people like politicians and big business people are doing									
Very well	24	25	23	25	21	27	26	19	
Quite well	46	46	46	43	53	47	33	53	
Not very well	23	25	22	25	19	19	31	24	
Not at all well	3	2	3	2	3	2	5	2	
Don't know	4	2	6	4	4	5	6	2	
Mean	0.7	0.7	0.7	0.7	0.7	0.8	0.5	0.6	-0.11*
Keeping you entertained									
Very well	22	17	27	23	19	25	21	17	
Quite well	48	51	46	45	57	48	49	48	
Not very well	20	21	19	21	16	18	19	23	
Not at all well	6	8	5	6	7	6	10	5	
Don't know	4	4	4	5	1	3	1	6	
Mean	0.6	0.5	0.7	0.6	0.7	0.7	0.5	0.5	-0.08
Informing you in a way that helps you to decide how to vote at elections									
Very well	12	12	11	12	10	15	6	10	
Quite well	41	40	43	42	39	37	46	46	
Not very well	31	30	32	32	30	28	32	34	
Not at all well	11	14	9	10	14	12	15	9	
Don't know	4	5	4	3	7	8	1	2	
Mean	0.1	0.1	0.1	0.1	0.0	0.2	0.0	0.2	-0.06
Being independent of rich and powerful forces in society									
Very well	7	6	7	8	2	11	--	5	
Quite well	37	39	34	34	44	38	34	34	
Not very well	41	38	43	41	39	36	46	45	
Not at all well	11	14	9	12	10	10	16	10	
Don't know	5	4	6	5	4	5	3	6	
Mean	-0.1	-0.1	-0.1	-0.2	-0.1	0.0	-0.4	-0.2	-0.12**

a. Spearman rank order correlations are given between 'age groups' and the attitudes listed in the table. The age groups were 18-19, 20-24, 25-29.... 80-84, 85+. Correlations marked * are significant at the 90% confidence level. Correlations marked ** are significant at the 95% confidence level.

The means are derived by assigning values of +2 for "very well", +1 for "quite well", -1 for "not very well" and -2 for "not at all well". It follows that any positive mean indicates a view that journalists perform a particular function well, and any negative mean indicates a view that journalists do not perform a particular function well.

Journalists are rated as doing 'well' (scores above the mid-point) for:

- ❑ reporting on the really important things that are going on;
- ❑ reporting on what powerful people are doing, and
- ❑ keeping people entertained.

They are scored just above the mid-point for:

- ❑ informing people in a way that helps them decide how to vote at elections;

They are scored at the mid-point for:

- ❑ Sifting out truth from propaganda and public relations "spin".

They are scored below the mid-point for:

- ❑ being independent of rich and powerful forces in society.

These scores are quite consistent across gender and geographic variables, and across the various audience types – those who mainly get their news from different media. Spearman rank order correlations indicate that women rate journalists' performance in penetrating spin and in entertaining people as more satisfactory than men do. Older people are slightly more satisfied with journalists for reporting on what powerful people are doing, and being independent of the rich and powerful.

Question

Can you tell me the name of any organisation that you could go to if you wanted to complain about the way a journalist had carried out his or her professional duties? (Unprompted.)

As is shown in Table D.6 overleaf, more than half the people in this survey – 55 per cent – did not know or could not guess where they could go if they wanted to complain about the way a journalist had carried out his or her professional duties.

One-fifth of voters said they could go to the journalist's employer, and a further 14 per cent assumed they could go to the Ombudsman (who actually exists to receive complaints about public sector authorities).

Beyond that, a small number of respondents hazarded a large number of guesses about where they could go.

The public clearly has little awareness of the roles of the Australian Broadcasting Authority, the Australian Press Council and the ethics panels of the Media, Entertainment and Arts Alliance (the journalists' trade union) as mechanisms of journalistic accountability.

Only 8 per cent nominated the broadcasting authority, 4 per cent the press council, and 3 per cent the ethics panel of the union.

Thus, in total, only 15 per cent of people nominated a professional organization connected with journalism as a place where they could go to complain about a journalist's professional conduct.

Table D.6: VOTERS' AWARENESS OF WHERE TO GO TO COMPLAIN ABOUT A JOURNALIST'S PERFORMANCE

Where to go	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
The journalist's employer	19	13	25	20	14	15	27	16
The Ombudsman (General)	14	14	14	12	20	15	15	14
Aust. Broadcasting Authority	8	10	6	8	9	5	13	6
Aust. Press Council	4	7	2	5	4	4	6	5
Media Watch/the ABC	4	3	4	5	--	3	3	5
Ethics committee of MEAA	3	4	2	4	--	1	7	3
Consumer Affairs Department	2	1	3	3	--	3	2	--
Special media ombudsman	2	3	1	1	3	2	2	2
Police	1	2	1	2	--	2	--	2
Federation of Commercial TV Stations	1	1	1	2	--	1	3	--
Lawyer	1	2	*	1	2	1	2	1
Local MP	1	1	1	1	1	1	--	2
A Current Affair	1	1	1	1	--	2	--	--
Other	4	2	5	5	1	3	6	2
Could not name anywhere to go	11	8	14	14	4	13	10	7
Don't know	44	49	39	40	55	45	35	53

Question

Can you tell me the name of any organisation that you could go to if you wanted to complain about the way a lawyer had carried out his or her professional duties? (Unprompted.)

Table D.7: VOTERS' AWARENESS OF WHERE TO GO TO
COMPLAIN ABOUT A LAWYER'S PERFORMANCE

Where	Total
Base	300
	%
Law Council/Institute	20
Ombudsman (General)	9
Bar Council/Association	7
Another lawyer	3
Legal ombudsman	3
Legal practitioners' board/Law board	2
MP/Politician	2
Legal Aid	2
Consumer Affairs	1
Police	1
The media	1
Other	3
Could not name anywhere to go	17
Don't know	40

As a control on the previous question, respondents were then asked to say where they could go to complain about the professional conduct of a lawyer.

The pattern was not dissimilar: 57 per cent did not know or could not guess – and a small minority of respondents had a large number of guesses.

The difference was that 29 per cent were able to nominate some professional body connected with lawyers as a place they could go to complain – the Law Council or Institute, Bar Council or Association, Legal Practitioners' Board/Law Board.

Thus the level of awareness about the existence of some professional accountability mechanism was nearly twice as high for the law as for journalism.

Question

Which of these statements comes closer to your view:

Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings, or

Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth

Table D.8: VOTERS' PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Perception	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melb	Other Vic.	TV	Radio	News-paper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Generally speaking, journalists write stories that tell the truth as best they know it, without regard for sales or ratings	24	24	24	24	23	26	18	25
Generally speaking, journalists write stories they think will be best for sales and ratings, even if it means exaggerating the truth	73	73	72	72	75	72	76	72
Don't know	3	3	4	4	2	3	6	3

Perhaps not surprisingly in the light of the mediocre assessments they gave journalists for credibility, behaviour and performance, a large majority of voters in Victoria saw journalists as placing sales and ratings ahead of the truth.

This perception was consistently held across all demographic variables and across different audience types.

Question

Some people say that when they are accused of doing something wrong in their work, journalists should have to answer to some outside professional body. Others disagree, saying this would be a threat to the freedom of the press.

Would you say the freedom of the press would or would not be threatened if journalists had to answer to some outside professional body when they are accused of doing something wrong in their work?

Table D.9: VOTERS' PERCEPTIONS OF JOURNALISTS AS TRUTH-TELLERS

Attitude	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melb	Other Vic.	TV	Radio	News-paper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
Freedom of the press would be threatened	31	29	33	29	35	34	30	27
Freedom of the press would not be threatened	61	64	59	63	57	59	58	66
Don't know	8	7	8	8	8	7	12	7

A clear majority – and by a margin of two to one – voters say the freedom of the press would not be threatened by making journalists answerable to some outside professional body when they are accused of doing something wrong in their work.

Again, this view is held consistently across all demographic variables and types of audience.

Question

I would like you to tell me whether you agree or disagree with the following statements:

I like the way journalists tell me about what other people are doing

Whenever I see a journalist's report on something I know about, it's wrong in some way

I would not like to be someone about whom a journalist did a story

Table D.10: VOTERS' ATTITUDES TO NEWS AND BEING THE SUBJECT OF NEWS

Rating	Total	Gender		Place of residence		Main source of news		
		Male	Female	Melbourne	Other Vic.	Television	Radio	Newspaper
Base	300	146	154	218	82	137	65	90
	%	%	%	%	%	%	%	%
I like the way journalists tell me about what other people are doing								
Agree	64	61	67	61	71	67	56	64
Disagree	30	35	25	31	25	28	27	33
Don't know	6	4	8	7	4	5	16	2
Whenever I see a journalist's report on something I know about, it's wrong in some way								
Agree	48	54	43	44	61	53	41	47
Disagree	47	41	53	51	38	41	54	49
Don't know	4	5	4	5	2	5	5	3
I would not like to be someone about whom a journalist did a story								
Agree	75	77	73	74	79	74	72	79
Disagree	22	22	22	23	19	24	22	19
Don't know	3	1	5	3	2	2	6	2

It appears that there is an element of schadenfreude, not to say hypocrisy, in the public's view of news and their feelings about being the subject of news themselves.

A clear majority say they like the way journalists tell them about what other people are doing, but even more say they themselves would not like to be someone about whom a journalist did a story.

More positively for the profession of journalism, the public are evenly divided over the statement about accuracy, although men and women differ on this, as do city and country people.

People who rely mainly on television for their news are more inclined to agree that there is usually something wrong with a story they know about than do people who rely mainly on the radio or the newspapers.

APPENDIX E
CODES OF ETHICS AND PRACTICE

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