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Supplementary Submission

'AUSTRALIA'S RIGHT TO KNOW' COALITION

**INDEPENDENT AUDIT INTO
THE STATE OF MEDIA FREEDOM
IN AUSTRALIA**

October 2007

Further to our August submission, we have been asked to submit examples to support our assertion that self-regulatory mechanisms are not sufficient to deal with media privacy intrusion.

We note that this criticism was only a minor part of our submission and that we concerned that the review does not focus on this area of disagreement to the exclusion of our general support for the media in its campaign to expose inappropriate use of privacy laws by government to hide inconvenient matters of public interest.

In our submission we said:

“Your audit also needs to take an honest look at existing channels for complaints against the media through the Press Council, Broadcasting Codes and ACMA. These self-regulatory or co-regulatory schemes need to be able to demonstrate credible independence and objectivity in relation to those being regulated. We submit that too many of the rulings of these schemes have displayed a clear bias in favour of media respondents and against the legitimate privacy concerns of complainants. Unless media organisations recognise the inadequacy of these schemes, they will continue to run the risk of more restrictive laws which may ‘over-correct’ and threaten the legitimate public interest role of the media.

If far more of the media’s activities should be subject to the Privacy Act, as we suggest, then the current self-regulatory complaint mechanisms would ultimately be subject to review by a statutory regulator. This would currently be the Privacy Commissioner, although the current ALRC Review may take up suggestions made for alternatives and/or a right of appeal to a tribunal. Wherever this role lies, we do not believe the media have anything to fear from this oversight, provided there are well-crafted public interest exceptions.”

The APF, as an all-volunteer NGO, has not had the resources to routinely record and document examples of unsatisfactory complaint resolution. Our assessment is based on the accumulated experience of members over our twenty-one year history. We have however reviewed a sample of Press Council adjudications (at <http://www.austlii.edu.au/au/other/APC/>), and put the following forward as relevant examples spanning a thirty year period. We have no doubt there are many more and possibly even better examples in the database.

Adjudication No. 7 (January 1977) [1977] APC 2

Collateral damage to person A justified on grounds of association with a public figure B – even if intrusion into B’s privacy can be justified on these grounds should not be an excuse for publication of identifiable details of person A.

Adjudication No. 118 (November 1981) [1981] APC 31

Complaint dismissed on basis that the individual concerned had not complained – irrelevant - case should have been considered on its merits – victims of privacy intrusion may often not be aware or not wish to pursue for various reasons – important to provide for ‘representative complaints’ as tool in achieving systemic compliance with standards.

Adjudication No. 403 (May 1989) [1989] APC 16

The publication of material already in the public arena cannot constitute a breach of privacy without reasoned justification – public interest in report merely asserted as trumping privacy interests

Adjudication No. 736 (July 1994) [1994] APC 45

Complaint dismissed on basis that the publication of material already in the public arena cannot constitute a breach of privacy. This decision adopts a simplistic and long-discredited view of a public-private facts dichotomy – it is now widely accepted (except perhaps by the media) that privacy is contextual and the way in which previously published information is presented can raise new and additional privacy issues.

Adjudication No. 1144 (November 2001) [2001] APC 45

Complaint only partially upheld with insufficient emphasis on need to avoid unnecessary and gratuitous privacy intrusion, particularly in relation to ‘defenceless’ children.

Adjudication No. 1219 (October 2003) [2003] APC 35

Complaint about privacy breach dismissed on grounds that information was on the public record – similar faulty reasoning to No 736 above.

One of the major failings of the Press Council complaints process, in our view, is that even where adjudications find breaches of the Council’s Principles (including privacy breaches), they rarely condemn the actions in particularly strong terms, or suggest any remedial action beyond the ‘standard’ recommendation in the Code to publish the finding. Examples include:

Adjudication No. 1117 (March 2001) [2001] APC 18**Adjudication No. 1193 (May 2003) [2003] APC 9****Adjudication No. 1299 (September 2005) [2005] APC 32****Adjudication No. 1338 (October 2006) [2006] APC 32****Adjudication No. 1327 (September 2006) [2006] APC 21****Adjudication No. 1344 (February 2007) [2007] APC 1**

Unfortunately, the findings of the broadcast media complaint bodies are not published systematically and are not therefore available for analysis. This in itself is a major defect in the self-regulatory mechanisms – we submit that all such complaint bodies follow the Press Council’s lead and make their decision available through the free AustLII database.

However, we draw your attention to the many examples of media privacy intrusion featured on the ABC’s Media Watch programme over the years, which in many cases have commented on the weak or non-existent remedies and sanctions imposed.

In relation to all the media complaint bodies, it is our view that a requirement merely to publish corrections or apologies, even if it were not done (as is usually the case) grudgingly, with negative associated comment and with obscure placement, is a largely ineffective sanction. Media organisations will only take adverse findings seriously if they are accompanied by significant (but not excessive) financial consequences and

major publicity. We believe that most editors and journalists do not see adverse findings by self-regulatory complaint bodies as particularly significant and do not take them seriously, either when directed to them personally or as a 'black mark' in colleagues careers.

We would be pleased to discuss our views with you.

Please note that postal correspondence takes some time due to re-direction – our preferred mode of communication is by email to mail@privacy.org.au, which should be answered without undue delay.