

# An Update on the Activities of the Australian Press Council

**Antonia Rosen, a media lawyer at Banki Haddock Fiora, sits down with Professor David Weisbrot, Chair of the Australian Press Council, to discuss developments in the regulation of Australian media.**

**ANTONIA ROSEN:** David, on behalf of the readers of the Communications Law Bulletin, and CAMLA, thank you for this contribution. Can you tell us a little bit about the role the Australian Press Council plays in regulating Australian media, and the role you play in particular?

**DAVID WEISBROT:** The Press Council was set up 40 years ago in order to provide some level of commitment to the public that there was scrutiny of the media but to avoid the problem of government intervening in free speech and press freedom. ACMA covers anything for which you need a licence (Radio and TV). We do print and online, so we cover almost all the newspapers in Australia. We have 900 mastheads that are part of the Press Council and they cover about 95% of circulation. The *West Australian* for example is one of the few major newspapers that isn't part of the Press Council. It has its own set up. We do all the magazines and then we cover online only news services such as *Crikey*, *Mumbrella*, *Huffington Post* and so on.

We are not strictly speaking a regulator. Although we are involved in regulation, we are not a public regulator and we are not established under statute. It's self-regulation or co-regulation.

We do three things basically: we set standards that the press adheres to, we receive complaints and we advocate for free speech and press freedom. We try to feed the complaints back into the standards setting, so if we know we are getting complaints about a lot of similar things in a year we think well maybe we need a new standard to address it, or some industry education or an advisory guideline.

The bulk of what we do day-to-day is handle complaints. We get

about 500 to 600 complaints a year from members of the public and that covers about several thousand complainants, because some of the high profile complaints can each get many hundreds of complainants attached to it. We have a process for analysing them in house and then we try to get remedies for the complainants wherever possible.

The Council has a majority of non-media people on it. I am an independent chair and there are currently 10 slots that are for the major media contributors and then there are 10 corresponding public members. The public members are people like former Chief Justice of South Australia, John Doyle, as well as a retired head master, a veterinarian, a psychiatric social worker, a retired finance industry executive, a community legal centre director, and others.

**ROSEN:** The online aspect must be growing. Do new members approach the Press Council directly?

**WEISBROT:** Well it's a mix. Some come to us. *Huffington Post* came to us very early on and said we are thinking of setting up in Australia, we are in a joint venture with Fairfax, and Fairfax and our lawyers say it is a great idea. Otherwise, we seek publications that are not members but who we think should be, and then we approach them about membership.

**ROSEN:** March 2015 does not seem like a long time ago in the scheme of things, but have you observed significant changes in the media, and its regulation, since you commenced as Chair?

**WEISBROT:** Not so much in respect of regulation, but we are continually refining our processes, we are expanding membership, and we are developing new standards to try to

accommodate public concerns. Last year we focussed primarily on family violence. This year we are focussing on reporting on children because we received a lot of complaints, especially about children's privacy. We have cases about children being interviewed without an adult present or material being taken from children's Facebook pages on public settings and published, or children being shown in a photo illustrating a story that is not about them, such as where a parent is charged with a crime.

We pick up on those kinds of issues. We have talked about doing something on LGBTI reporting, particularly in relation to transgender people. It seems that as a society we have gotten much better, thankfully, in reporting respectfully on gay and lesbian issues – so we receive far fewer complaints in that respect. But there seems to be a lot more work that can be done in respect of reporting on transgender and intersex issues.

We are also working with Griffith University, which has a major grant from the federal government on 'Reporting Islam'. We are represented on the board of that project, and we may feed some of the results of that project back into our standards and educational materials.

**ROSEN:** Having served as the President of the Australian Law Reform Commission for ten years, it would come as little surprise that your role also involves advocacy, on behalf of the media industry, for reform in the way law restricts the freedom of the press. Among many other inquiries, you presided over the inquiries into privacy and sedition. But you have also been outspoken about the state of defamation law, diminishing FOI rights, and metadata retention.

Could you tell us a little more about your role as an advocate for a free press, and which laws most urgently warrant reform?

**WEISBROT:** It's a bit sad at the moment. You would have thought it was going to get better, but I think since we live in fraught and difficult times, it has definitely gotten more repressive. Defamation is the biggest problem because it presents a hugely expensive problem, whereby a newspaper can be litigated into oblivion or editors forced into self-censorship. The newspaper may think it has an important story to tell, and it's sure the facts are true, but nevertheless it just can't risk or afford expensive and lengthy defamation proceedings. The Press Council plays an important role in helping complainants resolve their complaints without proceeding to litigation, in many cases. So that assists, somewhat. We won't be used as a de facto discovery mechanism, so if complainants say they are not contemplating litigation, then we will handle the matter for free and we will determine whether they were or were not treated appropriately by the media, that the story that was written was or wasn't factual, balanced, fair and so on. The problem with Australian defamation law is solvable. If you look at the UK *Defamation Act 2014*, it's a huge improvement on what we have in Australia. It's modern, it takes into account electronic communications and the use of the internet. The only impediment to reform, really, is the lack of political will. And the fact is the average person does not sue in defamation. The average person might come to us, they might even be too timid or unaware to do that. But really, powerful people are the ones by and large who use defamation, whether it's big business people or government officials or celebrities and so on, and that's why we can't get a change: because there are powerful lobbies to keep the present regime in place. But we will keep fighting for that because I think it is definitely a high priority for free speech advocates. If you ask any newspaper editor what the number one problem is, they will say defamation law is stifling free speech

and investigative reporting of the sort that we really want newspapers to do. That is their key role in society.

There are other problem areas that arise in respect of the new statutory framework for national security, such as Section 35P of the ASIO Act, which prohibits reporting on 'protected operations'. The metadata retention laws are terrible in that we are seeing mission creep already. It was only supposed to be about national security, but now it is already spreading into the activities of 60 agencies, including a large number that have nothing whatsoever to do with national security. This creates a situation where it puts fear into the hearts of whistle-blowers and journalists to think that almost any communication is traceable. The *New York Times'* David Barstow, whom we hosted at a press freedom conference last year and is probably the leading investigative journalist in America, said when the US metadata retention laws came in he had to begin to 'think like a drug dealer' – never carry a mobile, never use electronic communications, if you want to talk to someone don't phone them, go to their door and knock on the door. Never use a credit card, but pay cash for everything. So it's really back to a pre-industrial form of reporting. We generally need much better whistle-blower protections in Australia and maybe even rewards for people who come forward with information that is very clearly in the public interest.

With regard to FOI, Government keeps talking the right talk on these things but then we don't have an FOI commissioner anymore, it has basically been defunded at the federal level. Money has decreased, governments challenge everything and the Attorney General won't release his diary and has resorted to endless court challenges, which he has lost. We don't have a genuine commitment to the culture of FOI and that's clearly a problem. Most of that information should be out there anyway. We should have information in real time on a website about political donations. We should have access to details about the politicians whom lobbyists are meeting with in real time. It



Professor David Weisbrot

shouldn't even require an FOI request. The FOI and the privacy commissioners have had a very hard time getting funding from the federal government in recent years, so there is a real lack of commitment there which I would like to see remedied. We don't necessarily need much different legislation or even any different legislation, so long as there is a change in culture and a real commitment.

**ROSEN:** Even noting what you said earlier about certain online-only publications volunteering to be regulated under the Press Council's framework, with voters increasingly being informed by material available online that is not regulated, including through social media and blogs, do you fear that the Press Council's role is diminishing in importance and impact?

**WEISBROT:** There is the potential for the importance and impact of the Press Council's role to erode if we don't continue to bring in the major online players. There is a question about how far we go and I'm interested in exploring this at the moment. The Council is currently more or less mainstream – even if it is a new mainstream. So we regulate the *Daily Mail Online*, the *New Daily*, *Crikey* and *Huffington Post* and so on, but they have a mainstream mentality even if they are online only. One of the things we are thinking about is whether we should offer membership to



Antonia Rosen, Banki Haddock Fiora

anyone who writes a blog regularly. I would personally be in favour of that. If the blogger joins the Press Council then they are contractually bound by the standards of practice set by the Council and are willing for the Press Council to handle and adjudicate complaints against them if they arguably fall short of those standards. In New Zealand, there was a court case about whether a blog is a 'publication'. The NZ Supreme Court found in the affirmative so long as they publish regularly and it's not just somebody telling jokes or not publishing anything for a year. If they look like a media outlet and they act like a media outlet, then they are a media outlet. Accordingly, the New Zealand Press Council has begun to admit blogger members. I would like to see us get more active in exploring that area. Also, we've become increasingly active in trying to reach out to the non-English speaking communities in Australia. We just signed up the *Koori Mail*, but we're now totally committed to doing more in that area. We have a Filipino paper, we're talking with the Chinese community press, I'd love to bring in the Arabic language press and others – the Hindi press, Korean press, Vietnamese press, Italian, Greek and so on. I think we must diversify in that way to reflect the whole community and the diverse press outlets that serve it.

The next issue is the distinction between what is news and what is public relations. When I went to

meet the editors at one publication for the first time, they said "sorry if we seem a bit disorganised and if we're looking a bit depressed, it is because we have just farewelled our 200<sup>th</sup> employee recently, who was made redundant." Not long thereafter we went to visit with AFL Media and they said "sorry it's all so disorganised and there is construction everywhere, but we have just hired 200 people." It's going in that direction. Is BlueNotes, an excellent online newsletter published by ANZ Bank, journalism or PR? It's run by a very respected journalist, who takes his role as editor very seriously. What about Cricket Australia's extensive media publications, which are now run by Andrew Holden, formerly the editor in chief of *The Age*? So of all of the young journalists we are producing from J Schools, some will get jobs at *The Sydney Morning Herald*, *The Australian*, *Huffington Post* online, and so on - but a lot of them are going into PR or "proprietary journalism", where they will use all their journalistic skills. The question for us is do these entities have the appropriate journalistic culture and independence? If it's a PR operation, then we don't want them to be members and they probably don't want to be members of the Press Council. However, if they are really doing journalism but in a slightly different way, then maybe they should be members and it would be good for society in general if they are bound by our Standards of Practice. And maybe it is also in the interests of the AFL Media, which competes with *The Age* and the *Herald Sun* and others for the heart and soul of AFL football fans, maybe it is worth it to them to say "look we respect journalism, we respect our readers, we don't dictate what our journalists write, we don't tell them what *not* to write and it is a real journalistic operation." If that is the case, then people may be more likely to subscribe to it than if it is seen as just a PR mouthpiece.

**ROSEN:** Looking forward 20 years, what is your gravest concern about the media in Australia, and what is your biggest hope?

**WEISBROT:** It's hard to look ahead 20 years! The generational change in media these days is more like two years. For example, twenty years ago there was no Google or Facebook or internet news services. My hope is we will still get high quality independent investigative journalism and that we will not lapse into becoming a surveillance state. I hope we will still have serious journalism in 20 years. Technology may increase diversity. Previously, it would have been near to impossible for an individual to start a newspaper. It is now pretty easy for someone to start a blog or another serious news operation. So I hope that will continue to play out. I am worried in the short term and medium term about the financial side of it, about newsrooms being hollowed out, about advertising going to Facebook and Google, about the dominance of Facebook and Google to the extent that a changed algorithm can decimate readership and put a newspaper out of business.

I think that the media organisations, including the big and sophisticated ones, have been slow to anticipate the change and to react creatively. I think they are starting to now. It has been a rough ten years. We have seen that with our members reporting losses and declines in advertising revenues, and we have seen it evidenced by much smaller newsrooms. I hope that it will right itself.

I was very heartened when we had David Barstow from the *New York Times* here last May; they now have over a million paid subscribers to their newspaper, including me. His view is that this proves there is a hunger for quality journalism and people are willing to pay for it. They pay for Foxtel, Stan, Netflix and other content. Barstow argues – and I agree with him – that the media should take the high road and not become the "Kardashian Weekly" in an attempt to hunt for subscribers; they should go high and produce the high quality, value-added kind of investigative journalism and the sophisticated analysis that people will pay for.