

The Australian Press Council

Answers to written questions taken on notice from Senator Hanson-Young

Committee: Environment and Communications References Committee

Inquiry: Media Diversity in Australia

Question: What are the consequences of adverse findings made against a member? How must acknowledgements of adjudications be recognised in print or on websites? Must content be amended or taken down when it is found to be erroneous?

Answer: Under the Constitution of the Australian Press Council Inc, each constituent body is required to comply with the requirements relating to the publication of Council adjudications, as specified in any designated resolution. The requirements apply to all adjudications irrespective of whether they uphold, partially uphold or not uphold a complaint. That is, the requirements apply equally to adverse and positive findings from a publication's perspective. The requirements, which are set out below, address publications of adjudications in print and on websites.

Publication of Adjudications

- (1) Each publisher must ensure that any Council adjudication relating to a publication which it controls is published in that publication.
- (2) The adjudication must be published in full and headed "Press Council Adjudication" or "Press Council Ruling", together with the Council's logo. It must not be accompanied by editorial comment, and any subsequent reporting of or comment upon, the adjudication must comply with the Council's Standards of Practice.
- (3) In the case of daily publications, the adjudication must be published within seven days of the final adjudication being notified to them. In the case of other publications, it must be published no later than the first issue after the seven day period.
- (4) The adjudication must be published with due prominence in a position in the publication which the Executive Director has approved as likely to be seen by those who saw the material on which the complaint was based.
- (5) Where the adjudication relates to online material, a brief summary note providing a link to the full adjudication must be published for at least 24 hours on the home page of the website. The content of the summary note and its position on the home page must be approved by the Executive Director.
- (6) An annotation in terms approved by the Executive Director must also be added to the publisher's online versions (whether archived or publicly available) of the material to which it relates, together with a link to the full adjudication.
- (7) A publisher or complainant may request the Executive Director to relax the above requirements in relation to a particular adjudication. Both the publisher and the complainant should usually be consulted before any substantial relaxation is approved.
- (8) The request may be granted if the Executive Director considers that the requested relaxation:

(a) will enhance, or at least not reduce, the likelihood of the adjudication being seen by people who saw the original material; or

(b) is necessary to avoid an unreasonable burden on the publisher (especially where the complaint was wholly or partially dismissed by the Council); or

(c) is in the interests of the complainant.

(9) At the request of the publisher or complainant, a decision by the Executive Director under paragraph (8) is subject to review by a three-person Review Committee. The Review Committee will be appointed by the Chair and include at least one publisher member and one public member.

The Telfer adjudication complied with the Press Council's publication requirements. The adjudication was prominently published in print and online in The Australian. Also, the online articles which were the subject of the adjudication carry an 'archive note' which states that it was the subject of a Press Council Adjudication and includes a URL to the adjudication published on the Press Council's website.

The Council has no power to order compensation, fines or other financial sanctions. Where a complaint is upheld, the adjudication may also include a reprimand or censure, and may explicitly call for (but not require) apologies, retractions, corrections or other specified remedial action by the publisher. The Council may also call for specific measures to prevent recurrence of the type of breach in question. (<https://www.presscouncil.org.au/handling-of-complaints/>)

Question: Does the Australian's response contesting the findings, including the opinion that they are 'wrongheaded' and a 'dangerous precedent', indicate that Press Council's adjudication carries little weight with its members? Does the Press Council consider that its powers are sufficient to enforce its own standards, if members are able to contest and/or reject findings in a public forum, such as an editorial?

Answer: The Press Council does not accept that its adjudications carry little weight with its members. As stated above, its adjudications must be published by publications (in a prominent position within their publications) and adverse findings are not enjoyed by either journalists or the publication. The value of a published adjudication that upholds or partially upholds a complaint cannot be overstated from a Complainant's perspective. A combination of published adjudications and comprehensive Standards of Practice and Advisory Guidelines drive higher journalistic standards.

Publications are not constrained from publishing criticisms of an adjudication provided that: they do not misrepresent what was found in the adjudication; and the Council's Standards of Practice are complied with.

The Press Council submits that public criticism of Press Council adjudications demonstrates that publications do take findings by the Council seriously. If an adjudication carried little weight, it would seem odd that a publication would publish material to defend itself from a Council finding.

Question: Could you please respond to the following comments from the editorial, which suggest that the APC may have been 'swayed unduly', made an adjudication that is 'wrongheaded and dangerous precedent', has found in favour of a case that may have been part of 'cancel culture tactics used to stifle debate'?

- 'Just as media practitioners must be alive to capture by social advocates wishing to stifle alternative points of view, regulatory bodies must do likewise and guard against putting undue limits on freedoms that define a free society'

Answer: All complaints about articles are assessed impartially against the Council's Standards of Practice on case-by-case basis. The Standards are applied to the article complained about and not the person who, or group, company or association that, submitted the complaint.

- 'The question is whether the council's stance will further constrain legitimate scrutiny of gender clinics and stand in the way of good journalistic practice and free speech. It can be argued the APC has been swayed unduly by a concerted campaign by activists not interested in this issue receiving the public scrutiny it deserves. We contend that closing debate in this way will have a chilling effect on free speech'

Freedom of speech and freedom of the media are essential to democracy and central to keeping the community well informed and able to deal with complex social issues. With these freedoms come important responsibilities for the media. The Press Council's General Principles, with which all publisher members are obliged to comply, reflect an appropriate balance, acknowledging the importance of reporting and expression of opinion in the public interest.

The Council notes that, in relation to this particular adjudication, it explicitly stated that "even the medical profession is open to examination and criticism and the difficult issues connected with treatment of gender dysphoria need to be debated to allow society to move forward" and that there is "public interest" in reporting on such issues that outweighs any potential offence or distress to gender diverse people and their families.

- '[the adjudication] said public interest did not justify the extent of references to the complainant in so many of the articles or implying that the healthcare practised at the Royal Children's Hospital Gender Service was out of step with mainstream medical opinion. We believe this part of the ruling is wrongheaded and sets a dangerous precedent. As we argued before the APC, most of the references to the complainant were not critical but involved statements made to media outlets and forums sympathetic to the cause across several years'

The adjudication provides reasoned arguments underpinning the decision. The publication disagrees with the finding.

- 'The APC adjudication is the first real test of its new guide for journalists covering LGBT issues. That 2019 guide mirrors the "affirmative" world view of the gender clinics. Like the RCH treatment guidelines, the council's document states children are "assigned female or male at birth", as if biological sex is easily mixed up in the maternity ward. The council's guide encourages journalists to use activist lists of language taboos. For example, we are told it's "Problematic" to refer to a woman as "biologically female"'

All complaints are assessed against the Council's Standards of Practice, which are binding.

The Press Council has several advisory guidelines, which are not binding on constituent members, including the Advisory Guideline for reporting on persons with diverse sexual orientation, gender identity, and sex characteristics. All have been developed following community consultation and adopted by full Council, including publisher members.

The Editorial refers to 'the 2019 guide'. For abundant clarity, the Press Council's Advisory Guideline on Reporting on Persons with diverse sexual orientation, gender identity, and sex characteristics can be found here:

<https://www.presscouncil.org.au/uploads/52321/ufiles/APC-Advisory-Guideline-2019-final.pdf>

Its contents are self-explanatory. The Advisory Guideline was informed by consultations with editors, journalists, peak community and health organisations, mental health specialists, persons with lived experience, police and academics.

The Advisory Guideline notes, among other things, that:

- Specified terms have been defined in several international and local guidelines, the links to which are provided.
- Terminology in this area has continued to evolve over recent decades; certain words are under linguistic scrutiny and new nomenclature (and research) is emerging. Certain terms may be offensive to some individuals with lived experience but not offensive to others. And this can change with time.
- Despite the evolution of terminology, and the difficulties this may pose for editors and journalists, the Guidelines aim to assist better reporting by signalling, among other things, that sexual orientation, gender identity and sex characteristics are distinct concepts.

Question: 'It is possible to conclude that the complaint made to the APC is another example of the cancel culture tactics used to stifle debate'

As noted above, the Council explicitly stated in the adjudication that "even the medical profession is open to examination and criticism and the difficult issues connected with treatment of gender dysphoria need to be debated to allow society to move forward" and that there is "public interest" in reporting on such issues that outweighs any potential offence or distress to gender diverse people and their families.

Kind regards

Yvette Lamont | Chief Executive Officer