

PRESS COUNCIL ADJUDICATIONS

Adjudication No. 1446 (December 2009)

The Australian Press Council has dismissed a complaint by Ken Thomas against The Gold Coast Sun related to his letter published on August 26, 2009. The letter was one of a number of letters related to the war in Iraq published by the newspaper over several weeks. Mr Thomas complained that his letter had been altered unfairly resulting in loss of meaning.

The Council can find no evidence of a breach of its principles. Newspapers have reasonable discretion in modifying language or reducing the word count of letters provided the published letter does not distort the writer's view. In this case, the editing by the newspaper did not substantively alter the main thrust of the original letter or its meaning.

Adjudication No. 1447 (December 2009)

The Press Council has upheld a complaint against the Herald Sun over a July 21 feature article dealing with animal cruelty, which concluded that more than 100,000 dogs and a similar number of cats were euthanased in Victoria every year. The article said that exact figures were "hard to get", but appeared to draw substantially on the advice of an animal rescue and rehabilitation charity in arriving at the 100,000 estimate that was highlighted as a supplement to the headline.

A strong theme of the article was that too many pets are being sold that are either unwanted or are producing unwanted puppies or kittens, and the writer attributed this to "a loophole in Victoria's laws" that allows commercial operators – unlike pounds and shelters – to sell pets that have not been de-sexed.

The complainant, Dr Harry Corbett, a veterinarian, said the article grossly inflated the number of dogs put down each year. He said credible sources for animal welfare statistics were available in Victoria, and that these indicated a figure considerably lower than those given by the feature writer. Dr Corbett also argued the case for compulsory de-sexing was flawed because only 25 per cent of puppies were bought from commercial suppliers and around 90 per cent of Australian pet owners already have their pets desexed. Dr Corbett's attempts to contact the newspaper to have the figures corrected were unsuccessful.

The newspaper said that the journalist had

drawn on "sound and reliable sources" upon which to base her analysis, having interviewed managers from reputable animal shelters and hospitals as well as the animal rescue charity quoted in the article. Dr Corbett said that the journalist's analysis of the figures provided by those sources "demonstrated the triumph of woolly thinking over simple arithmetic".

While the Council is not in a position to arbitrate on the merits of the sources from which the statistics in the article emerged, it believes that a response to those statistics from Victorian animal welfare authorities would have ensured a better balanced article, and reduced the risk of what appear to be very misleading figures being published.

Adjudication No. 1448 (December 2009)

The Australian Press Council has dismissed a complaint made by Trevor Farrant against The Sunday Mail, Adelaide, over publication of an article on July 12, 2009 and a related letter, authored by Dr Ed McAlister, on July 26, 2009.

The article, headed "*Disgust*" after zoo trees felled, concerned the removal of six trees by the Adelaide Botanic Gardens as part of a redevelopment of the Adelaide Zoo.

Mr Farrant complained that the article contained inaccuracies that were left uncorrected once brought to the paper's attention. Much of Mr Farrant's assertion of inaccuracy is connected with his belief that the development approval for tree removal was granted erroneously, if not unlawfully. However, this opinion represents only one perspective of an apparently contentious issue and Mr Farrant was unable to establish that any material point was factually inaccurate. The article was fair and balanced in reporting the various views of the affected parties and the process followed in obtaining development approval, notwithstanding that it failed to address wider issues related to the Zoo redevelopment.

As to Mr Farrant's complaint of inaccuracy regarding the origins of the pine trees, the article states "it has been suggested" that the trees were planted by the Salvation Army and does not convey this detail as a factual certainty. The paper openly disclosed that it had been unable to establish the origins of the trees. The paper published Dr McAlister's letter a fortnight later stating that the pine trees have no connection with the Salvation Army.

In relation to the letter, Mr Farrant complained that the paper erred in failing to disclose that the letter-writer, Dr McAlister, was previously employed by the Adelaide Zoo. The Council agrees that people should be identified where

relevant, and known to the newspaper. In this case, it would have been better had Dr McAlister's previous affiliation been noted, but the Council does not believe that this omission was sufficient to uphold a complaint.

Adjudication No. 1449 (December 2009)

The Press Council has dismissed a complaint about coverage of vandalism attacks on the home of the chairman of Gunns, John Gay. The first was published in The Sunday Examiner, Launceston, on October 11, in a page-one story headed *Gay's home smoke-bombed*, and the second an opinion piece by the former Premier, Paul Lennon, headed *Pulp mill protesters' tactics are despicable*, in The Examiner two days later.

Russell Langfield complained that the coverage implied a direct link between the vandalism and a protest against the controversial pulp mill the previous weekend.

The Press Council finds that the page-one news article did no more than report the facts of the police investigation, and that one of the acts of vandalism had occurred the same weekend as the protest. The fact that police later concluded that the alleged smoke bomb attack was a prank, which the newspaper subsequently reported, does not detract from the newsworthiness of the original report. The article did not say protesters had perpetrated the attacks.

The opinion piece by Mr Lennon was forcefully worded and certainly suggested that the incidents at Mr Gay's house were orchestrated by anti-mill campaigners. However, it was one of a number of stories published about the issue, which covered a broad spectrum of opinion about the proposed pulp mill including condemnation of the attacks by opponents of the pulp mill.

Adjudication No. 1450 (December 2009)

The Press Council has upheld a complaint against the magazine Famous for digitally altering images of the two main stars of the *Twilight* films – then refusing publicly to acknowledge what it had done.

The celebrity magazine, on the cover of its September 21 issue, took separate photographs of actors Robert Pattinson and Kristen Stewart and produced a digitally altered image that purported to show the couple in a close embrace. The

accompanying headline read *You won't keep us apart*.

The editor-in-chief apologised to the complainant for failing adequately to caption, disclose or credit the use of the digitally altered image, saying the omission was an oversight on the part of his team.

He said the image was not intended to deceive readers, but was presented "to illustrative in print purposes only". However the magazine refused to acknowledge that the photos had been digitally altered.

Instead it offered \$3.50 – the cost of a copy of the magazine – to the complainant to compensate "for her hurt and suffering". The complainant, who describes herself as "a big *Twilight* fan", declined to accept the money.

The Press Council believes a publication that uses a significantly altered image that purports to illustrate the news should clearly disclose the fact of that alteration.

The complainant was previously employed by the Press Council, and is now employed by a rival magazine publisher, but complained in her private capacity. The Council does not believe her past or current employment was relevant.

Adjudication No. 1451 (February 2010)

The Press Council has upheld a complaint made by The Right Reverend David Robarts about articles that appeared in The Examiner, Launceston, on June 16, September 22 and October 6, 2009.

The articles reported on armed robbery charges laid against Rev. Robarts' wife and her two sons. Rev. Robarts complained that the first two articles contained errors of fact relating to his standing in the Anglican Church, his wife's involvement in the alleged robbery and whether she had entered a plea that went unreported. He claimed that the reporting was defamatory and prejudicial and he objected to the references, and a photograph, linking him as a clergyman to the accused.

The newspaper countered that the reports were based on court papers and were accurate, fair and balanced. One minor factual error was promptly corrected.

The Council finds that The Examiner was unfair in its failure to report in the article of September 22 that Mrs Robarts and one of her sons had already entered "not guilty" pleas. It was also unfair in failing to report clearly and prominently in the article of October 6 that the charges were dropped against Mrs Robarts and her younger son, in contrast to the prominence with which the newspaper had previously reported the charges (including her status as the "Minister's wife").

Adjudication No. 1452 (February 2010) **The Press Council has upheld a complaint by the media adviser of the Western Australian Police Commissioner against The Sunday Times, Perth, concerning a page 1 headline and introductory paragraph published on August 30, 2009.**

The headline, *Crime Stoppers Slashed*, with an additional heading *Police hotline victim of new budget cuts*, and an introductory paragraph, pointed to a "full story" on page 4. The page 1 material, as well as an editorial in the same edition, presented as fact the allegation that the Crime Stoppers budget was to be "slashed" as a result of state budget cuts.

The newspaper's basis for this was said to be the WA Police Union, which was quoted prominently in the body of the report, and other police sources. Towards the end of the report the police Commander for State Intelligence, Duane Bell, was quoted as saying that, although there had been a three per cent efficiency cut in the unit's budget, this would not impact on Crime Stoppers call-taking ability.

The media adviser complained that The Sunday Times report was inaccurate, and misleading because the front-page report was presented as fact rather than allegations by the Police Union. He also said that a major change in Crime Stoppers staffing, referred to prominently in the article, was not a result of State budget cuts.

The Council finds the headline and the introductory paragraph, which was repeated in the full article on page 4, were erroneous in presenting claims as facts. The Sunday Times was entitled to report claims made by the Police Union and others, but once Commander Bell issued his denials it should have more fairly reflected the disputed nature of the claims in its page 1 material and in the editorial.

Adjudication No. 1453 (February 2010) **The Australian Press Council has upheld a complaint by SANE Australia against a bylined article and two pictures in the weekend edition of The Tweed Daily News of August 22-23, 2009.**

The article and pictures, in which a man's face was clearly identifiable, accompanied a report (about which no complaint was made) on a large-scale search for what was suspected to be a dead, naked body sighted on the banks of the Tweed River on the afternoon of Friday August 21.

Full frontal photos with the man's genitalia obliterated by the word "Censored" were published in large format on page 1 and again in smaller format adjacent to the bylined article on page 2, in which the journalist described her personal reaction to the incident.

The hunt by police, paramedics and an SES boat crew was fruitless until a naked man emerged from bushes near the newspaper's journalist and a female photographer. Having taken

photographs of him, they alerted police to his whereabouts and that he was alive.

The news report said that the man told police he had gone for a swim and couldn't find his clothes when he emerged from the river. It also stated that the man was taken to Tweed Hospital for mental health assessment.

SANE Australia asserted the newspaper was "fully aware" of the man's mental state when it chose to "exploit his vulnerability" by publishing the pictures and the bylined article. The newspaper denied it had any information about the man's mental condition other than that it was to be assessed, "as one would expect in such a situation".

While there was a clear public interest in the publication of the report about a missing man, and the search for him, there was no justification for the publication of the photos in a form that clearly identified the man and did not adequately respect his privacy and sensibilities. Because it knew a mental health assessment was being made, the newspaper should have been more cautious in the way it treated the incident, including publication of the bylined article, which could have been written more sensitively.

Adjudication No. 1454 (March 2010) **The Australian Press Council has upheld two complaints from Alan Pendleton, a Councillor in the Blacktown Council. Cr Pendleton submitted complaints concerning two articles in the Rouse Hill Times published on December 2 and December 9, 2009. He alleged that neither article provided sufficient balance to those who were the subject of strong criticism.**

The December 2 article was based on anonymous sources, who said that there was a lack of financial support from Blacktown Council to celebrate the Riverstone area's bicentennial in 2010. Cr Pendleton was singled out for criticism.

The complainant says the article is based on a number of falsehoods and misrepresentations, the main one being that that Cr Pendleton had "flat out refused" the ideas presented to the bicentenary committee he chaired. When the local council's public relations team was approached for a comment on the article, the "flat out refused" assertion, based on an anonymous source, was not mentioned. No approach for comment on the article was made to Cr Pendleton.

The newspaper stated that it sought and published comment from the Blacktown Council's public relations team, which it said was in line with previous requests from the council. It pointed out that it had offered the complainant a follow-up story or a letter to the editor to put his views, both of which were declined.

The Press Council has upheld this complaint. Despite the newspaper including comment from the Blacktown Council, and the complainant subsequently rejecting the opportunity for his views to be aired in the newspaper, the newspaper has not been fair to Cr Pendleton. As a quoted anonymous source was directly critical of the Councillor, the newspaper should have given the council's public relations team the opportunity to comment on those criticisms, or preferably contacted Cr Pendleton directly for his comments.

The newspaper to its credit has since changed its policy regarding comments from local councillors, instructing its reporters to approach them directly in instances where they are identified or singled out for comment.

The complaint about the December 9 edition related to the newspaper's front page. The main article reported that the NSW State Government had announced the development of a new suburb. Accompanying it was a photo feature detailing the latest developments in an on-going saga involving a local business. The report in the photo feature asserted that the business would be a victim of the announced development and then quoted the business's owner as saying that the local council, which had previously challenged aspects of his operations, was part of a "conspiracy to get rid of me". In this article Cr Pendleton was not mentioned, but he said that the criticism of Blacktown Council reflected on him as a councillor.

The newspaper asserted that the article needed to be read in conjunction with the main article, which it said clearly attributed the decision to the state government and its Planning Department and the reference critical of Blacktown Council in the article was a quote from the owner of the business, which did not require a comment from the council. It pointed out that the newspaper had extensively covered the on-going saga between the Blacktown Council and the local business so that the council's involvement in the matter was well understood.

The Press Council believes that the newspaper should have contacted the council for balancing comment in view of the strong accusation in the article.

Adjudication No. 1455 (March 2010)

The Australian Press Council has upheld a complaint by Douglas Baggaley against The Northern Star, Lismore, over an article arising from the funeral of his mother.

The December 30 article, headed *Baggaleys miss Byron funeral of grandmother*, reported that her two grandsons who were in jail did not attend. Half the article detailed the convictions of the grandsons for crimes

committed in 2007.

Mr Baggaley said that the article belittled his family at a time of deep loss and had outraged and insulted the family, their friends and the community. He demanded an apology from the newspaper.

In response the newspaper said it had privately apologised to Mr Baggaley's 91-year-old father and had published some of the letters to the editor it had received critical of the article. It was the newspaper's policy only to print apologies when it had published material that was incorrect.

The Council's principles state that news and comment should be presented honestly and fairly with respect for the privacy and sensibilities of individuals. This right should not be interpreted to prevent publication of matters of public record or significant public interest.

Mrs Baggaley's grandsons certainly had attracted local and national publicity at the time of their convictions.

However the Council believes the newspaper erred in gratuitously highlighting the grandsons and their criminal records at such length and in such detail that the article was clearly unbalanced and, as a result, unduly offensive to the family, in a time of grief. The newspaper's failure to print any public expression of regret exacerbated the offence.

Adjudication No. 1456 (March 2010)

The Australian Press Council has upheld a complaint from Steve Portelli over a bylined article in The Fremantle Herald on September 12, 2009. The article focused mainly on concerns expressed by Mr Portelli, chair of the Atwell Community Association, about plans to include 78 Homeswest apartments in an affordable housing project. The concerns had been expressed in an email to the newspaper and then in a follow-up telephone interview initiated by the newspaper.

The article stated that Mr Portelli "said that many public housing tenants were 'bone lazy' with 'no drive or aspirations to improve themselves or their children's lives'." After publication, Mr Portelli complained to the reporter that the article did not accurately represent his views as expressed in the following passage from his initial email:

It is fact that there are many Homeswest tenants who cannot afford to purchase their own home due to justifiable reasons, there are also some that are bone lazy and have no drive or aspirations to improve themselves or their children's lives. The fact is, somebody who owns or is buying their own home will have a reason to take pride in it and be considerate of their neighbours.

Mr Portelli asked for this passage to be printed in full in the next issue, together with

an apology by the newspaper. Six weeks later, having had no substantive response from the newspaper, he complained to the Council that the article "misquoted" him and thereby "generally denigrated Homeswest tenants and made [him] the author of such defamation".

When contacted by the Council, the newspaper apologised for what it saw as "inexcusable" delay in responding to his complaint but denied misquoting him. It offered, however, to "consider for publication a further short written statement from Mr Portelli in which he clarifies his position, without claiming he was misquoted".

The Council's inquiry as to whether the newspaper was willing to print the full extract from Mr Portelli's initial email and to apologise did not receive a substantive response until almost four months later, less than 48 hours before the Council's scheduled teleconference with it and the complainant. The newspaper then declined to publish any "correction or apology" and stated that the reporter's notes of the telephone interview with Mr Portelli supported its description of his views. In particular, it said that one note read: "You can't have a vast concentration – recipe for disaster – so many in one area lazy and disruptive."

The Council considers that reliance on a note in these terms is not sufficient to justify failure to reflect the degree of balance expressed in the above-quoted passage from Mr Portelli's initial email. If the newspaper had responded more promptly to Mr Portelli's complaint, both initially and after the Council became involved, there might have been a greater prospect of reaching an agreed settlement. It might then have been reasonable, for example, to expect Mr Portelli to be satisfied with a clarification by the newspaper without an accompanying apology. To its credit, the newspaper has now established procedures to avoid delayed responses in future.

Note: The newspaper sought a review of the original draft of this finding. After reconsideration, the adjudication was re-issued, retaining the original finding, but more clearly outlining the events in the complaint.

Adjudication No. 1457 (May 2010)

The Australian Press Council has considered complaints by Jonathan Doig against two articles published by the Sydney afternoon newspaper, MX, on climate change issues.

The first article, dated 18 January, was headed *Glaciers claim melts*. Mr Doig complained that the article relied extensively and uncritically on a single biased source to denigrate the UN's Intergovernmental Panel on Climate Change, while presenting no opposing view.

The newspaper, in response, said that the article was not about climate change but rather about the politics involved. It also stated that it regularly runs stories about climate change and the politics of climate change, and that the climate change debate has far too many sides to enable parties to claim that their side is the only accurate one.

Mr Doig agreed that articles in other issues of the newspaper had given voice to a wide range of views on climate change, though not on the specific claims made in this article regarding the IPCC's reputation.

The second article, on 15 February, was headed *Hotter in days of the knights*. Mr Doig complained that the headline was unsupported by either the source article or the available science. Mr Doig suggested that the article, based on an extensive interview with the BBC by a leading climate scientist, had misquoted the scientist and taken his comments out of context, leading to a false impression that he no longer supported anthropogenic global warming theory.

In responding to this complaint, the newspaper noted that the article was a foreign-sourced report, not produced locally by its reporters. It conceded that the headline might well have benefited from having included a question mark, but said that it still conveyed the same sentiment, namely an ambiguity over whether the Earth was hotter 700 years ago.

In considering the newspaper's assertion that it was merely reprinting foreign-sourced material, the Council emphasised that a newspaper is responsible for what it publishes irrespective of the source of the material.

In relation to the 18 January article, the Press Council dismisses the complaint. The article was an incremental news report contributing to the extensively documented and complex climate change debate.

The second complaint, in relation to the 15 February article, is upheld on the grounds that the headline and the first three paragraphs misrepresented and took out of context comments made by Professor Phil Jones in a BBC interview, on which the article was based. The article said that Prof Jones "suggested the world was warmer in medieval times than now". A transcript of the BBC interview shows that Prof Jones did not make that suggestion but, rather, said that there was insufficient scientific data to form a reliable opinion on the matter. The article also reported that Prof Jones "said that global warming may not be a man-made phenomenon". The transcript, however, demonstrates that Prof Jones remains a supporter of the view that human activity is largely responsible for contemporary global warming.

Adjudication No. 1458 (May 2010)

The Australian Press Council has dismissed a complaint by the Association for Berowra Creek Inc. over a report and an editorial in the Hornsby Advocate on 17 December 2009. Both articles dealt with Hornsby Council's approval in principle of cross-country mountain bike trails in the shire. The in-principle approval opened the way for the council to seek finance for the project and to prepare a draft mountain bike plan with reference to environmental issues.

The association complained that the article quoted only a spokesman for mountain bikers and failed to state the views of six individuals and groups who spoke against the proposal. It also took offence at the editorial's portrayal of opponents of the scheme as "NIMBYs" and "fearful Fredgies".

The newspaper replied that its article stated there were dissenting voices in the debate. The article was about moving forward once the scheme had won in-principle approval, and not about re-presenting the arguments that had failed to sway council. The article quoted one of the pro-bike trail advocates from the council debate whose comments, the newspaper said, presented the contrasting issues in the matter. The editor said he stood by his right to express in the editorial, which was clearly labelled "opinion", his strong support for dedicated mountain bike trails.

The association also complained that the newspaper ignored two emails it sent on 20 December 2009 and 21 January 2010. The first appeared to be in the form of a letter to the editor designed for publication and the second was a re-send of the same letter, with a covering note referring in part to the need for the newspaper to provide "a reasonable and swift opportunity for a balancing response". While the newspaper did not publish correspondence from the association, it did publish a letter from an opponent of the bike trails on 7 January, and posted for-and-against views on its website between 18 December 2009 and 11 January 2010.

The Press Council finds that the article principally concerned a new development in an on-going issue that continued to be reported in the newspaper. Accordingly, the article did not need to cover all sides of the debate. In these circumstances, the published letters on the article in the newspaper and on its website provided sufficient balance and the editorial was within acceptable bounds as a clearly designated expression of the newspaper's opinion.

Although the complainant expected a reply from the newspaper to its submitted letter, it is the general practice for newspapers to do this only when there are particular circumstances. The Press Council can see nothing in this case that would require the newspaper to reply.

Adjudication No. 1459 (May 2010)

The Australian Press Council has considered a complaint by Michael Hinton against an article published by The Crookwell Gazette on December 8, 2009 headed *Complaints against Council staff "frivolous"*. The article reported that at a meeting of the Upper Lachlan Shire Council the Mayor, Cr John Shaw, had said that he had dismissed "formal complaints" made by Mr Hinton against two senior officers.

Mr Hinton did not dispute that the Mayor had made the statement and that the newspaper was entitled to report it. But he said that the Mayor's statement was inaccurate because he had merely inquired about the procedures for making a formal complaint. He asked the newspaper to ascertain the facts itself and report that he had not made a formal complaint.

The newspaper drafted an article that complied with Mr Hinton's request and with which he was satisfied. It was subsequently altered simply to report Mr Hinton's assertions, rather than to state that the assertions were correct. He objected to the revised version as "not making sense" and being "watered down".

The newspaper sought legal advice that, it said, was to the effect that the newspaper had no obligation to determine itself whether a formal complaint had been made and, if it did so, could be at risk of proceedings for defamation. The newspaper did not publish either version of the article. It invited Mr Hinton to contribute something for publication in his own name, but its lawyers said a proposed contribution was defamatory.

The Press Council considers that the newspaper was clearly entitled to report the statement made by the Mayor at a council meeting but, when the allegation of inaccuracy was brought to its attention, it was necessary for the newspaper to make a reasonable offer to publish Mr Hinton's assertions. It considers that the second version of the proposed article was sufficient for that purpose.

The Press Council recognises that Mr Hinton wanted the newspaper to report itself that the Mayor's statement was inaccurate, rather than only his assertion to that effect. But, in all the circumstances, it considers that the newspaper's offer of the second version was a reasonable response, as was its decision not to publish that version in the light of Mr Hinton's objection to it. Nevertheless, it is regrettable that the newspaper did not make its readers aware either that the Mayor's statement had been incorrect or, at least, that Mr Hinton disputed its accuracy.

Adjudication No. 1460 (May 2010)

The Australian Press Council has dismissed a complaint against a court report headed *Jail suspended for market pair* published on 30 January 2010 in *The Cairns Post*.

The report related to the plea of guilty by a local couple to a charge of growing cannabis at their farm. The complainants, Narella and Miguel Antequera, objected especially to a photograph (taken some years earlier) showing Mrs Antequera selling produce at her regular stall in a prominent Cairns market place, which had accompanied the court report. They also argued that the text focused inappropriately on their market business and contained some factual errors in references from the hearing to the manner in which they had grown the cannabis.

The Cairns Post replied that the link to the market business was justified because the couple's defence in court had referred to the stall. It also said that the photograph was taken in a public place and that the old photograph was a valid illustration of their continuing role at the market. It denied that there were factual inaccuracies in the report.

The Press Council considers that text and photograph were not unfair in linking the Antequeras with their market stall, especially as their business and stall were mentioned in the court hearing. The use of an old photograph was reasonable in the circumstances and the alleged factual inaccuracies were not of a kind that, even if shown to be incorrect, significantly prejudiced the Antequeras.

Adjudication No. 1461 (July 2010)

The Australian Press Council has considered a complaint about a report in *The Age* on 4 February 2010 of a meeting between Lord Christopher Monckton, a leading "climate change sceptic", and the Opposition Leader, Tony Abbott. In its report, "*Mad Monk*" meets Monckton, the newspaper published a photograph of the upper half of Lord Monckton's face against a plain dark background.

Kathleen O'Connor has complained that the photograph places unnecessary emphasis on Lord Monckton's eyes. According to Ms O'Connor, Lord Monckton "suffers from Graves' disease which can lead to protruding eyes". The complainant suggests the photograph is specifically designed to mock and denigrate Lord Monckton, believing that it was "specifically chosen to form an adverse opinion about the person before the article is read." She wrote a letter to the newspaper for publication in response to the image. Her letter on the matter was not published.

The paper responded to the complaint by rejecting the assertion that that the image

was "specifically designed to mock and denigrate" Lord Monckton. It also stated that a small number of letters criticising the use of the photograph had been received, including Ms O'Connor's, and one of these letters was published on 5 February 2010. The paper maintained that the photograph of Lord Monckton showed "his eyes in stark relief, but it was no more than a photograph of the man's face". The newspaper denied that it would ever "seek to mock or denigrate someone on the basis of their looks or disability".

The Council considers that the photograph was striking but did not place gratuitous emphasis on a symptom of Lord Monckton's medical condition. The headline was acceptable as a tongue-in-cheek headline playing upon the men's nickname and name respectively. Accordingly, the complaint is dismissed.

Adjudication No. 1462 (July 2010)

The Australian Press Council has considered a complaint by the Australian Macedonian Human Rights Committee (AMHRC) against Neos Kosmos (English edition), a newspaper in the Australian-Greek community, arising from an online article published on 27 October 2009 under the heading *Gruevski makes claims in Sydney speech*.

The complaint focused on the opening paragraph that read:

The Prime Minister of the former Yugoslav Republic of Macedonia (FYROM), Nikola Gruevski has made irredentist claims against Greece and Bulgaria during a speech to the Skopjan community in Sydney.

The AMHRC took exception to the word "irredentist", complaining that it was a grotesque manipulation of the truth, and that Mr Gruevski did not make any claims in his speech upon any other nation's territory. Moreover, it complained about the word "Skopjan", describing it as "a pejorative term which indicates that ethnic Macedonians do not exist and that they constitute a community of culturally inferior people". The AMHRC was disappointed that the paper failed to accept responsibility for its actions in publishing the article and it requested appropriate corrections.

The paper responded by noting that the online article was taken directly from a wire service from Greece. It admitted that the article was not edited to meet its own policy on the naming of FYROM and people who come from FYROM or lay claim to that identity. On receipt of a letter from the AMHRC, it made immediate modifications to its online story to address the complaint, deleting the offending first paragraph with its "irredentist" claim and use of the term "Skopjan".

In its 2 November print edition, the paper published a revised and expanded article, starting with a report on a subsequent meeting between Mr Gruevski and the Greek Prime

Minister before its report on the visit to Australian. The revised article referred to a meeting between Mr Gruevski and then Prime Minister Rudd and, like the revised online article, omitted the offending first paragraph of the original story.

The Council's principles require newspapers to have regard to the sensibilities of individuals in their reporting of news and of commentary on that news. In a diverse society like Australia, that includes trying to avoid publication of material that is likely to be grossly and unnecessarily offensive to particular communities.

The Council welcomes the prompt action of the newspaper in immediately removing from its online edition the opening paragraph of the original article and the subsequent omission of that paragraph from the article in the print edition. It also notes that Neos Kosmos (English edition) has taken steps to ensure that the matters raised in the AMHRC complaint are not repeated.

The AMHRC insisted that the paper should also publish a "retraction and apology", which would necessarily have drawn specific attention to the offensive material and its removal. The Council does not censure the paper for refusing this request, partly because the main effect of such an apology might be to inflame the situation on either or both sides of the dispute and also because of the paper's swift correction and action to prevent repetition. Similar publication in future, however, is likely to attract strong criticism from the Council.

Adjudication No. 1463 (July 2010)

The Australian Press Council has considered a complaint by Jane Mengler concerning an article, *The Audacity of Hate*, in *The Sydney Morning Herald's Good Weekend* magazine on 26 September 2009. The article focused on the life of Dr Jim Saleam, who is a member of the Australia First party that seeks to be registered as a political party for the next federal election.

The article reported that Ms Mengler is Dr Saleam's former wife and that they had two children before she left the marriage after five years. It also reported that she subsequently married a convicted murderer in a prison chapel ceremony in 1993. It quotes an anonymous source referring to her as a "notorious persons' groupie" who had previously been "involved with a figure from the Griffith mafia scene". The article also reported an incident when two people broke into Dr Saleam's home and shot Ms Mengler in the leg.

Ms Mengler's complaint said that the reference to involvement with a mafia figure implied a sexual involvement, which was untrue. She said that the description of

her marriage to Dr Saleam was unfair and offensive to her and their children. She also complained about lack of fairness in the reference to her shooting, which she says was payback for her exposure of a corrupt policeman, and in the use of the "groupie" quotation, which she says came from a demonstrably biased and unreliable source whom she names.

The magazine replied that a thorough profile of Dr Saleam could not reasonably exclude mention of his former wife and mother of his children. It also pointed out that at the time of her subsequent marriage in prison she had cooperated in detailed publicity. It said that the source of the "groupie" and "Griffith mafia" references had proved to be reliable on other, verifiable, matters and it had also made many attempts to contact Ms Mengler for her version of events. The magazine had asked Dr Saleam for her contact details, or to pass a message on to her, but he had declined on the ground that she was now in fragile health and leading a very private life.

The Council considers that it was appropriate for Ms Mengler's two marriages, and the shooting incident, to be mentioned in a detailed profile of this kind. Accordingly, these aspects of her complaint are dismissed. However, the Council upholds the aspect of her complaint concerning anonymous quotations referring to Ms Mengler as a "notorious person's groupie" who had been "involved with a figure from the Griffith mafia scene". They were reasonably capable of being interpreted as offensive references to her and were unsupported by other evidence. They were not of sufficient public interest and relevance to the article to justify publishing, especially in the absence of corroboration.

After being made aware by the Council of Ms Mengler's complaint, the magazine offered to publish a "letter to the editor or clarification" about the Griffith assertion. She declined the offer, stating: "This affair could never have been resolved by a letter to the editor. The damage was too great...". The Council nevertheless welcomes the magazine's offer as a substantial attempt at mitigation.

Adjudication No. 1464 (July 2010)

The Australian Press Council has considered a complaint by Dr James Saleam about an article, *The Audacity of Hate*, in *The Sydney Morning Herald's Good Weekend* magazine on 26 September 2009. The article focused on the life of Dr Saleam, who is a member of the Australia First party that seeks to be registered as a political party for the next federal election.

Dr Saleam said that the article was unbalanced, unfair and suppressed relevant facts. He rejected a large number of claims made in it and the reliability of a number of

its sources, some of whom were not named in the article. He said that, although the journalist had interviewed him twice at length, he was not given the opportunity to respond to these claims and the article bore little relationship to the interviews.

Dr Saleam denied the assertions that he had had an association with Nazism and that the National Action organisation was associated with racism and criminality at the time he was a leading member of it. He disputed instances of that type of behaviour that were alleged in the article and also the impression that was conveyed about his childhood in Maryborough. Dr Saleam complained that the article focussed excessively and inaccurately on his racial background and included offensive and inaccurate claims about his mother and the end of his parents' marriage.

The magazine said that the story was a serious and careful portrayal of a person who was well-known for his views but had not previously been the subject of a detailed profile of this kind. The journalist, Greg Bearup, had researched the story at great length and spoken to about 50 people, some named and some anonymous. It stood by the assertion that Dr Saleam had been associated with the Nazi Party and had led National Action when it was a violent and racist organisation that harassed and bullied people who disagreed with him.

The magazine said that the article included these matters because they were true and pertinent. It pointed out that, as stated in the article, Dr Saleam has several criminal convictions for offences related to behaviour of this kind although he alleges that they are part of a conspiracy against him. It said that the material on his ethnic background was accurate and highly relevant in light of his vigorous support for a White Australia policy. It disputed Dr Saleam's view that the remarks by a named source about his mother were offensive to her and irrelevant to the article.

The Council has considered Dr Saleam's complaints but, with one exception, dismisses them as not establishing a breach of its principles. The article concerned matters of legitimate public interest to which the assertions in it were relevant and supported by a reasonable degree of evidence, including photographs and judicial decisions. The use of anonymous sources was limited and acceptable in the circumstances.

The exception to this conclusion concerns the final sentence of a source's quoted assertion about Dr Saleam's mother. The Council considers that this sentence, which is reasonably capable of being interpreted in a highly offensive manner, was not of such substantial importance to the purpose of the article as to justify its publication, especially as it had not been put explicitly to Dr Saleam or his mother for comment.

Adjudication No. 1465 (July 2010)

The Australian Press Council has considered a complaint from Maxwell Hayes about a cartoon in *The Sunday Age* on 25 April 2009. A complaint was also received from the Victorian division of the RSL.

The cartoon depicted a monument headed "Great War / Roll of Honour" on which were inscribed, at least once each, BURN, DECAPITATE, DISEMBOWEL, DESTROY, HACK, IMPALE, KILL, MAIM, POISON, RAPE, SHATTER, TORTURE and WOUND in an alphabetical list of the same kind as is used on war memorials throughout Australia to commemorate the names of service personnel.

Mr Hayes complained that the cartoon, published on Anzac Day, was a "stain on the honour and integrity of hundreds and thousands of personnel who were killed and served in Australia's battles to preserve ... freedom". The RSL complained in similar terms.

The Sunday Age replied that the cartoon "was a statement about the savagery and terrible human cost of war in general" and that it was not directed at Australian service personnel. It said that the cartoon dealt with issues acknowledged on Anzac Day: "War exacts a terrible toll and its casualties are the price of peace". The newspaper said that the cartoonist, Michael Leunig, had meant no offence to war veterans and none should have been taken. The newspaper published prominently, under the heading, *Leunig's view a distasteful disgrace*, letters from Mr Hayes and others strongly condemning the cartoon.

The Council's principles provide that newspapers have a wide discretion in publishing material but where material could reasonably be expected to cause offence newspapers should balance the public interest with the sensibilities of their readers.

The Council recognises that the cartoon is likely to have caused deep offence to many people who regarded it as a savage slur on the conduct of service personnel. The Council also recognises the right of the cartoonist to express his view about aspects of war. It is appropriate that cartoons and other published material are often provocative, challenge orthodoxies, highlight contradictions and raise awkward questions.

In dealing with complaints of this kind, the Council gives great weight to what it perceives to be in the public interest. The Council regards the public interest in allowing freedom of expression as being of such importance that in this instance, despite the deep and regrettable offence caused to many people, the complaint should not be upheld.

This decision has been arrived at after much deliberation and debate, reflecting the great difficulty of balancing the fundamental principles of freedom and fairness in this context.

Adjudication No. 1466 (July 2010)

The Australian Press Council has considered a complaint that a report in The Mercury newspaper on 22 January 2010 substantially damaged the Ethics and Sustainability Party's attempt to register for the 2010 Tasmanian election.

The article, which highlighted complaints about the party's recruitment methods, paraphrased the Deputy Electoral Commissioner, Julian Type, as saying that registration required 100 signatures of party members on statutory declaration forms witnessed by a Justice of the Peace.

The party's Interim Secretary, Sven Wiener, complained that the article omitted to mention that the forms could also be witnessed by Commissioners of Declarations, who are much more plentiful in Tasmania than JPs. He said that this omission had "caused substantial damage" to the party's bid for registration because one of the two objections to registration mentioned the need for witnessing by a JP and thus was a direct result of The Mercury's reporting.

In reply, The Mercury acknowledged that Mr Type had told it that Commissioners of Declarations could be witnesses but unfortunately this had been omitted during sub-editing. It noted that the party's application for registration had been unsuccessful for reasons unrelated to the status of witnesses. It pointed out that Mr Type had subsequently told Mr Wiener that he did not attach any great weight to the omission and it also argued that the party had not shown a causal link between the article and the objection.

The Council considers it is clear that the principal complaint in the statement by the people who lodged the objection in question was that they had been asked to sign the declaration on the basis that it was an anti-pulp mill petition, rather than an application to join a new political party. They strongly believed they had been "fraudulently and unknowingly recruited as members". They raised the question of the lack of witnessing of their declaration by a JP only as a subsidiary point.

The Council concludes that, while regrettable, the newspaper's failure to mention the Commissioners of Declaration did not damage the party's registration attempt and was not a significant breach of the Council's principles requiring publications not to deliberately mislead or misinform readers by either omission or commission. Accordingly, the complaint is not upheld.

Adjudication No. 1467 (July 2010)

The Australian Press Council has considered a complaint by Marek Swida about a letter to the editor published in The Age on 2 February 2010. This letter was a response to a letter published the previous day that had stated that "Jews' use of non-violence" led to "the death of millions... in Nazi concentration camps".

The letter of 2 February, headed *Blaming the victim*, said, in part: "It was the complacency and co-operation of the non-Jewish citizens that enabled the Nazi atrocities. Compare the outcome of the Warsaw Ghetto uprising (total annihilation) with the [civil disobedience] which rendered [Nazi] policy unworkable in Denmark".

Mr Swida was born in Poland and his family lived there during the time in question. He was deeply offended by the letter, stating that "Poland was occupied by Germans at this time and any help to Polish citizens of Jewish origin was punishable by death ..." He requested an "unconditional apology to Poles for blaming them of complacency and co-operation with 'Nazis' in their anti-Jewish atrocities." He had previously submitted a letter to the editor on a similar issue, and now reiterated his request for it to be published.

The Age said that the 2 February letter was not inherently offensive and that, while Mr Swida, as a person of Polish origin, might be entitled to object strongly to the viewpoint in the letter, the letter writer was equally entitled to hold that view. It said that his letter had not been published because the 2 February letter did not criticise him personally, it had published a letter by another person that covered the same issues as Mr Swida's letter, and it had to make choices between many letters on many different subjects.

In the circumstances of this case, there were good grounds for publishing a letter disagreeing with the implications of the Polish reference in the 2 February letter. The letter that the newspaper subsequently published from another person did not address that reference. However, Mr Swida's own letter was, both in tone and form, one that the newspaper was reasonably justified in declining to publish.

Accordingly, the Council does not uphold Mr Swida's complaint. In light of earlier disputes between Mr Swida and The Age on similar issues, the Council suggests that consultation about the form of publishable letters from him might help to prevent future complaints.

Adjudication No. 1468 (July 2010)

The Australian Press Council has considered a complaint against The West Australian about a photograph and caption used to illustrate a front-page article on 16 March 2010 about the findings of a Department of Indigenous Affairs report into conditions in the town of Roebourne.

The large photograph showed an Aboriginal man standing in his kitchen and was captioned: "Surrounded by squalor: [the named man] in his filthy kitchen in the area known as 'The Village' in Roebourne. He says no one should have to live in such conditions". The article itself dealt almost solely with the findings of the report but added that the man "who lives among the squalor, said no one should have to live in such conditions".

On the following day, the newspaper published 16 of what it says were about 60 letters received on the issue and it accompanied them with a smaller reproduction of the photograph. Almost all of the published letters focused on strongly criticising the man for not taking responsibility for keeping his kitchen clean and tidy.

In a follow-up "Opinion" article, the writer of the 16 March article referred to the angry letters and then wrote: "Admittedly and disappointingly, the captioning of the photograph on the story probably didn't win [the man] any sympathy. But most frustratingly, once again the substance of the story appeared to be lost as readers vented their anger about Aboriginals not looking after public housing".

The complainants are Assoc Prof Ted Wilkes, who is an Aboriginal elder, and Prof Rob Donovan, who is deputy chairman of the WA Ministerial Council on Suicide Prevention. They contended that the photograph and caption were offensive, exposed the man to personal ridicule and reinforced negative stereotypes about the Indigenous people. They said that the newspaper aggravated the unfairness by publishing so many letters criticising the man. They noted that most letters referred solely to the photograph and caption, which had clearly focused criticism on him individually and overwhelmed the very different tone of the article itself.

The newspaper contended that the man used the words attributed to him in the caption and meant them to refer to the conditions in his kitchen as symptomatic of general living conditions in the community. It said that the man was drawing attention to overcrowding, alcohol and drug abuse that caused the people of Roebourne to live in squalor and that he believed that "if people see pictures of these conditions someone will do something about it".

The newspaper said that it did not agree with the sentiments of the critical letters but did not prohibit readers from expressing their opinion. It pointed to publication in subsequent days of some more sympathetic letters and articles and of an editorial arguing for constructive action to improve conditions in Roebourne. It contended that since the report on 16 March the Department of Indigenous Affairs had prioritised

initiatives to address the town's problems. The newspaper also said that the man and other Aboriginal people in his community and elsewhere were very happy with the article and the attention it had drawn to their problems.

The Council regards the article as a frank and balanced report of concerns about conditions in Roebourne. Unfortunately the picture and its caption allowed the apparent thrust of the article to be distorted by focusing on conditions in one man's kitchen, thereby conveying a misleading impression of the article and the man's concerns. This effect was exacerbated by publication on the following day of an excessively large number of letters focusing on the state of his kitchen and making criticisms of him in very similar terms.

The Council considers that the newspaper erred in allowing these cumulative effects to occur. To that extent the complaint is upheld. On the other hand, the newspaper is to be commended for its decision to publish the article itself, which was a valuable contribution on a matter of great public importance.

Adjudication No. 1469 (July 2010)

The Australian Press Council has considered a complaint by Jennifer Nash about references to her in reports by The Courier-Mail on 17 March 2010 about a *Your Right to Feel Safe Forum*.

The forum was attended by about 300 people, including Ms Nash, and was addressed by community leaders, including the Attorney-General, Cameron Dick, on issues of policing, justice and sentencing. At one stage Ms Nash put on a sandwich board reading "Bullied schoolboy wants independent investigation on judicial corruption" and moved towards the podium to make a point to Mr Dick. She later spoke directly with him.

The Courier-Mail's brief online report stated in the last paragraph: "During the forum, one man was ejected for storming the podium and a woman was walking around wearing a sandwich board opposing bullying". The longer print report referred to her as follows: "another woman stood by the Minister silently, decked in a sandwich board that called for an independent investigation into her bullied son's plight". It was accompanied by a photograph that included, in the background, Ms Nash wearing the board, although many of the words were wholly or partly obscured.

Ms Nash complained that the reporting was dishonest and misleading and ridiculed her, including by making it appear that she was walking around "like a pizza seller". The second article was wrong, she says, in stating that she "stood ... silently" as she

clearly spoke to the Minister. She accused the newspaper of failing to investigate and report her allegations of judicial abuse and corruption in relation to her complaints about bullying of her son at school some years earlier. She hoped to use her attendance at the forum to draw attention to these concerns.

The newspaper argued that it fairly and accurately reported the events at the forum. It said that Ms Nash's complaints could be highly defamatory and would require substantive investigation before publication could be contemplated and that "Ms Nash would prefer we report her unproven claims". It invited her to submit a letter to the editor for consideration in the usual way.

The Council does not find anything significantly inaccurate or objectionable in the reports of Ms Nash's activities at the forum. As the forum was about community safety, it was reasonable to mention the bullying aspect of the sandwich board without referring also to allegations of judicial corruption. Accordingly, the complaint is dismissed.

Adjudication No. 1470 (July 2010)

The Australian Press Council has considered a complaint by Helen Orpin about an article in the News-Mail, Bundaberg, on 13 February 2010. The front-page article headed *NEIGHBOURS FROM HELL* was accompanied by a photograph taken from the street of Ms Orpin standing at her front door.

The story continued to the second page with another photo of Ms Orpin, this time standing in her front yard with the street sign in the foreground. The article dealt with a neighbourhood dispute and a 20-signature petition to evict Ms Orpin and her family from a privately rented property.

Ms Orpin complained that her privacy had been invaded by the article. She said that, having been drawn to her front door by the journalist's visit, she repeatedly asked that no photographs be taken and was promised that her name would not be published. Her complaint denied a number of the assertions made in the article about her and said that she gave no permission for her name or photo to be used. The complaint suggested that the petition was generated by a relative with a personal grudge and that the police had attended several other addresses in the street, not just her own.

The News-Mail stated that it had wanted to write a "name-and-shame" story about anti-social behaviour of considerable community concern and to show that they had "confronted" Ms Orpin. It said that photographs taken in public about a matter of public interest can generally be published, even against the objections of the persons portrayed, and it claimed that Ms Orpin was not promised anonymity.

The newspaper argued that the story was

justified by complaints from a number of neighbours about behaviour in the house, confirmation by police that they had attended several addresses in the street, and comment from the real estate agent who let the house to Ms Orpin. It claimed that she had been given ample opportunity to respond to her neighbours' complaints and to give her side of the story, both during the visit and subsequently. The newspaper acknowledged that since publication it has become aware that the situation may not be as clear-cut as it assumed at the time but it has not reported to that effect.

The Council considers that reporting allegations of anti-social behaviour affecting neighbours is often in the public interest, especially in regional and community newspapers. However, the News-Mail had not made sufficiently thorough investigations to justify publishing photographs taken of Ms Orpin at her front door, in these circumstances against her wishes, and accompanied by a headline and text presenting serious allegations as if statements of fact. Accordingly, the complaint is upheld on these grounds.

This does not mean, of course, that credible allegations of anti-social behaviour cannot be vigorously investigated and reported, including the use of photographs taken of people in circumstances where they have no reasonable expectation of protection in this respect.

Adjudication No. 1471 (July 2010)

The Australian Press Council has considered a complaint by Cr Heather Wehl alleging inaccuracy and unfairness in reports published by The Fassifern Guardian about local council business.

On 16 December 2009, the newspaper reported that a proposed childcare centre development was in jeopardy and that Cr Wehl had moved in council to substantially reduce the roadworks charges on the centre. It reported that Cr Swanborough supported the reduction. Cr Wehl then wrote a letter to the editor stating that, while Cr Swanborough had formally seconded her motion to allow debate to proceed, he had voted against it and was generally an advocate of higher development-related fees.

Instead of publishing the letter in its next edition on 23 December, the newspaper quoted almost all of it in a news story that also included comments by Cr Swanborough. He said that Cr Wehl's statements were "partly true and partly false" because although he had not voted for her motion some of his remarks on a later motion about broader issues could indirectly support reductions in charges of this kind. The same edition included a ratepayer's letter commending Crs Swanborough and Wehl for trying to reduce the centre's charges.

Cr Wehl complained that the newspaper should have published her letter as such, rather than put it into a news story including remarks by Cr Swanborough about which she had no chance to comment. She said the article on 23 December, and the ratepayer's letter, had reinforced the misperception that Cr Swanborough had supported her efforts to reduce the centre's charges.

The newspaper said that its story gave a full account of Cr Wehl's position and it had balanced these with Cr Swanborough's response. It said that if Cr Wehl had written to the editor setting out her concerns the letter would have been published. Cr Wehl said, however, that past experience led her to believe that the newspaper was unlikely to publish such a letter from her.

The Council considers that the newspaper was entitled to use the material in Cr Wehl's letter to the editor in a news story and to add a response from Cr Swanborough. Its reporting of his response, however, left open the misperception of which Cr Wehl complained. It would have been appropriate to seek her comment on the response but her concerns could also have been addressed by a further letter to the editor. The Council is not persuaded that such a letter would have been rejected. In these circumstances, the complaint against the newspaper is not upheld.

During the process of dealing with this complaint, the Council became aware that the editor of the *Fassifern Guardian* stood against Cr Wehl in a previous council election. The editor denies any bias but the Council observes that circumstances of this kind can involve risks of conflicts of interest that may not always be adequately addressed by disclosure.

Adjudication No. 1472 (July 2010)

The Australian Press Council has considered a complaint about an article in *The Age* on 15 October 2008, which described in detail a series of allegations by an unnamed woman against former Victorian Minister Theo Theophanous, including that he had "raped" her inside Parliament House. The matter was then under police investigation and the article claimed that the allegations were the reason why Mr Theophanous had stood down as a Minister a few days earlier. The lengthy article consisted largely of quotations and paraphrases from an "exclusive interview" with the woman, especially about the impact on her subsequent well-being.

The *Sunday Age* published a feature article on Mr Theophanous four days later. It included a number of unfavourable assertions about Mr Theophanous and his political career. The *Sunday Age* published a

second feature article in January 2009 that gave Mr Theophanous an extensive opportunity to provide his own views about the woman's allegations and his political career.

Mr Theophanous was charged with rape on 24 December 2008 but seven months later, after a committal hearing, the charges were dismissed. The magistrate held that the prosecution's case was "... not sustainable on the evidence at any level. It is inherently weak; it lacks credibility, reliability and truthfulness ...". The dismissal and the tenor of the magistrate's findings were reported on page one by *The Age* the next day.

The Age article

Mr Theophanous complained to the Council that the article, written by Carolyn Webb, seriously damaged his reputation and put the authorities under pressure to charge him. He said that the court proceedings, in which Ms Webb was a witness, revealed that the allegations reported by her differed in key respects (including the date and place of the alleged rape) from an earlier version given to her by the woman. These differences were not mentioned in her article.

Mr Theophanous said that Ms Webb had a pre-existing friendship with the woman and had visited her in Greece and stayed in her house. He said that Ms Webb had failed to check the allegations with two women, at least one of whom was a friend of hers, who the woman told her were able to support elements of the allegations. During the committal process it emerged that the two women did not support the allegations. He also complained that Ms Webb had not asked him for comment, although his solicitor had approached her and been quoted as refuting the allegations on his behalf.

The *Age* argued that the article by Ms Webb accurately reported the woman's story as allegations, not as established facts, and reflected the information available at the time of publication. It pointed to its publication of the generally sympathetic article in *The Sunday Age* in January 2009, its full reporting of the magistrate's dismissal of the charges, and its publication of an article that it invited Mr Theophanous' legal counsel to contribute. It did not dispute the assertions by Mr Theophanous about Ms Webb's friendship with the woman, her prior knowledge of an earlier inconsistent version of the allegations and her failure to approach the two people known to her who the woman said were supporters of the allegations.

On the basis of the material before it, the Council has found that Ms Webb clearly had a potential conflict of interest through her friendship with the woman making the allegations. In the course of the lengthy preparation of the article for publication, this relationship became known to the newspaper itself and, it appears, so did the woman's previous inconsistent version. The article was concerned with very grave matters and focused

heavily on highly personal allegations in an exclusive interview with Ms Webb. In these circumstances, the newspaper should have assigned overall responsibility for the story to another journalist instead of, or at least in addition to, Ms Webb. Alternatively, the relationship should have been disclosed in the article. On these grounds the complaint by Mr Theophanous is upheld.

This decision does not mean, of course, that detailed publication of allegations is necessarily inappropriate if the allegations do not lead to charges or, as in this case, the charges are emphatically dismissed by a court. Indeed, publication may often be a highly responsible course of action even if these eventualities occur.

The first Sunday Age article

Mr Theophanous claimed that this article was a "hatchet job", factually incorrect and falsely alleged lack of integrity and improper financial dealings. He complained that he had been given no opportunity to comment prior to publication and that the article did not mention that the writer, Michael Bachelard, had been "criticised" by the Ombudsman in 2007 for making baseless allegations of impropriety against Mr Theophanous. The newspaper responded that Mr Theophanous had been given an opportunity to comment and that the Ombudsman's findings did not refute Mr Bachelard's earlier report.

In the Council's view, this article trod close to the line of fairness and balance through its degree of reliance on unattributed quotations and assertions as the basis for very severe criticism. The Council also believes that it is often unwise, and sometimes clearly unacceptable, for a newspaper to publish an article by a journalist who may be vulnerable to perceptions of a conflict of interest in favour of or against a person referred to in the article, at least if the relevant facts are not disclosed. However, the Council is not persuaded that the content and authorship of this article transgressed its principles in these respects. Accordingly, the complaint about this article is dismissed.

The second Sunday Age article

This article, by Melissa Fyfe, was acknowledged by Mr Theophanous as broadly sympathetic but he complained about a particular paragraph, especially the assertion that he "admits to using dirty grubby tactics he knew would hurt opponents". He claimed that this paragraph was inserted at the editorial level, not by Ms Fyfe, after a rival newspaper had reported that Mr Theophanous was suing his accuser in Greece. He also said that the paragraph had been quoted by the prosecutor in the committal hearing as an adverse indication of his character.

The newspaper argued that the paragraph was "in part a paraphrasing of a direct quote"

elsewhere in the article. It agreed with Mr Theophanous about the authorship and timing of its insertion.

The Council considers that the paragraph is unacceptable because it is not an accurate or fair paraphrasing of Mr Theophanous' quoted remarks. Accordingly, this aspect of the complaint about the article is upheld.

The website archives

Mr Theophanous complained that The Age had rejected his request to remove Ms Webb's article from its website archives. The newspaper argued that it would be impossible to remove references to all allegations that are subsequently dismissed in court and that it had fully reported the dismissal in articles, which are also in the archives. It was also concerned about dangers of what might be seen as altering history.

The Council agrees with the newspaper's philosophical and practical concerns about removing all references to allegations that are subsequently dismissed by a court. It considers, however, that at least in some circumstances it is reasonable to expect the dismissal to be annotated on the archived earlier story, even if it cannot be guaranteed that the alteration will be made to copies held on third parties' websites. The Council considers that such an annotation should be made in this case, especially because of the seriousness of the allegations and the unequivocal nature of their dismissal by the magistrate. This could be done by a simple cross-reference to the newspaper's own report of the dismissal.

ABOUT THE PRESS COUNCIL

The Australian Press Council was established in 1976 with the responsibility of preserving the freedom of the press within Australia and ensuring the maintenance of the highest journalistic standards, while at the same time serving as a forum to which anyone may take a complaint concerning the press.

It is funded by the newspaper industry, and its authority rests on the willingness of publishers and editors to respect the Council's views, to adhere voluntarily to ethical standards and to admit mistakes publicly.

As of November 2009, the Council consists of 15 members. Apart from the chairman (who must have no association with the press), there are 5 publishers' nominees, eight public members (6 attend each meeting), an independent journalist, a journalist representing the MEAA and a retired editor. The publishers' representatives are nominated by metropolitan, suburban, and country newspapers and by magazines and AAP. The public is represented by people with no previous connection with the press.

The Press Council is able to amend its Constitution with the approval of its Constituent Bodies. Significantly, great importance is placed on members acting as individuals rather than as the representatives of their appointing organisations.

Complaints Procedure

If you have a complaint against a newspaper or periodical (not about advertising), you should first take it up with the editor or other representative of the publication concerned.

If the complaint is not resolved to your satisfaction, you may refer it to the Australian Press Council. A complaint must be specific, in writing, and accompanied by a cutting, clear photostat or hardcopy print of the matter complained of, with supporting documents or evidence, if any. Complaints must be lodged within 60 days of publication.

The Council will not hear a complaint subject to legal action, or possible legal action, unless the complainant signs a waiver of the right to such action.

Address complaints or inquiries to:

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Suite 10.02, 117 York Street
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Phone: (02) 9261 1930 or (1800) 02 5712

Fax: (02) 9267 6826

Email: info@presscouncil.org.au

A booklet setting out the aims, practices and procedures of the Council is available free from the above address.

It, together with other relevant material, is available from the Council website: <http://www.presscouncil.org.au/>

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As the *News* and all adjudications are now published direct to the Internet, if you would prefer to access it that way and therefore want your name removed from the mailing list for the printed version, please so advise the Council's office. The Council's URL is <http://www.presscouncil.org.au/>

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