

## THE AUSTRALIAN PRESS COUNCIL

THE HON. J.H. WOOTTEN Q.C.\*

### I. THE ESTABLISHMENT OF THE COUNCIL

The Australian Press Council was established in July 1976 by agreement between the Australian Journalists Association and five newspaper organizations — the Australian Newspapers Council, the Regional Dailies of Australia Ltd, the Australian Provincial Press Association, and News Ltd. In June 1980 News Ltd withdrew from the Council but has continued to co-operate with the Council in relation to complaints made against its papers. In 1982 John Fairfax Ltd became a member and the Australian Suburban Newspapers Association Pty Ltd has also joined.

The Council is financed by its constituent members. The part-time chairman receives an honorarium, and an executive secretary and a stenographer typist make up the staff.

The Council has a constitution which it may amend by a two-thirds majority, provided twenty-eight days' notice has been given to members and constituent bodies. The government of the organization is in the hands of a Council consisting of seven members nominated by constituent newspaper organizations, three nominated by the Australian Journalists Association, four public members and a chairman. The chairman is appointed by the Council from persons who have not had any previous connection with the Press. Public members are appointed on the nomination of the chairman, after public advertisement, from persons not otherwise connected with the Press. They receive no remuneration, but, as with other members, their expenses of attending meetings are paid. An alternate is appointed for each public member. The Council appoints one of the public members as vice-chairman.

The first chairman was a retired High Court judge, the second a retired professor of law and the third a retired Supreme Court judge. The present

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\*The Hon. J.H. Wootten, Q.C. has been Chairman of the Australian Press Council since August 1984.

public members are a grazier, currently National President of the Country Women's Association of Australia, an aboriginal, currently Deputy Principal of the Australian Institute of Aboriginal Studies, the Associate Head of the Law School of the NSW Institute of Technology, and the former executive officer of the South Australian Council of Social Service, now a Regional Director of the South Australian Department for Community Welfare.

The chairman's appointment is for a term and on conditions agreed between the chairman and the Council. The current appointment is for three years. The chairman is *ex officio* a member of all committees and chairs the Complaints Committee and the Council, and on the Council has a casting as well as a deliberative vote.

## II. OBJECTS OF THE COUNCIL

The objects of the Council, as set out in its constitution, are:

- (i) To maintain the character of the Australian Press in accordance with the highest journalistic standards and to preserve its established freedom.
- (ii) To consider, investigate, and deal with complaints about the conduct of the Press and the conduct of persons and organisations towards the Press.
- (iii) To keep under review developments likely to restrict the supply by and to the Press of information of public interest and importance.
- (iv) To report publicly on developments in Press ownership and control and to publish statistical information about them.
- (v) To make representations concerning the freedom of the Press on appropriate occasions to governments, public inquiries, and other organisations in Australia and abroad.
- (vi) To publish reports recording the council's work; to review from time to time developments in the Press and factors affecting them; and to exchange information with other similar bodies.<sup>1</sup>

In practice, it has seen its two main roles as being a forum to which anyone may bring complaints against the Press, and a guardian of the freedom of the Press. To assist in carrying out these two functions it has established a Complaints Committee and a Freedom of the Press Committee. On the Complaints Committee, which hears complaints, public members are in a majority. However the Committee's function is to make a recommendation to Council.

## III. COMPLAINTS AGAINST THE PRESS

The range of complaints which the Press Council will entertain is both narrower and wider than some expect. It concerns itself only with complaints against the editorial content of papers, that is, news reporting, feature stories,

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<sup>1</sup> Australian Press Council Booklet No.3 *Aims, Principles and Constitution* Sydney, undated, 8.

leaders, letters, headlines, cartoons, photographs, *etc.*, but not advertising. There is a special body, the Advertising Standards Council, which deals with the content of advertisements. However the Press Council will entertain a complaint that what is really advertising has been presented as editorial material, or not sufficiently distinguished from it. It will also entertain complaints about failure to publish editorial material, *e.g.* non-reporting of news or refusal to publish letters.

It does not concern itself with complaints against newspapers arising otherwise than from editorial content, *e.g.* the commercial conduct of newspapers, disputes with contributors, *etc.*

On the other hand it will entertain a complaint against any newspaper or magazine published in Australia, whether or not the publisher is a member of the Council or of one of its constituent bodies. In practice such publications usually co-operate with the Council by responding to complaints and reporting adverse adjudications. Usually, complaints will not be entertained unless they reach the Council within four months of the date of publication.

The handling of complaints may be looked at from two points of view: maintaining the standards of the Press, and providing remedies for persons aggrieved by publication. Ideally a Press Council might do both of these things, but there are practical limitations on both and sometimes the two aims may conflict. The rest of this article will explore some of the issues which arise.

#### IV. WHAT THE PRESS COUNCIL CANNOT DO

What standards should a Press Council seek to impose on the Press? Everyone has their own ideas of what is wrong with the Press. Amongst intellectuals and small "L" liberals in particular there is great dissatisfaction with the intellectual standards of the Press, its superficial treatment of what they regard as the important issues, the adoption of policy stances which they regard as reactionary or misconceived, the pandering to uncultured tastes, the failure to provide continuous coverage of important issues, the definition of news in a way that emphasises the trivial, the violent, the sensational, and the sentimental at the expense of the well thought out statement or the peaceful protest, and so on. The extent to which this indictment is justified varies greatly from paper to paper, but as a broad expression of frustration with the Press it would receive considerable support.

But is it the function of the Press Council to seek to change this, to try to uplift the Press and remake it closer to someone's view of an ideal enlightened Press? This would mean imposing a whole set of values on the Press. Is this consistent with freedom of the Press? Whose values should be imposed? Those of the person who happens to be Chairman of the Press Council? Obviously not; or at least it will be obvious to those who do not share those values. The community's or the public's values? This could be a very dangerous standard. At one time the public believed that the Earth was flat and that piece of orthodoxy seemed to be so much part of the view of the

world on which religion, morality and other values were built that any denial of it was profoundly disturbing to the public. The same was true of the theory of evolution, of tolerance of homosexuality, of equality for women, or racial equality, of free scientific inquiry and most of the values that many liberal thinkers would like to see reflected more prominently in the Press to-day. Is it not just as dangerous to impose today's orthodoxies on the Press?

In any event how would one determine the public's values? By opinion poll? The market does something very like this now, particularly where, as not infrequently happens, newspapers are locked in a life and death battle for circulation. A case can be made that many of the objectionable features of the Press come precisely from giving the public what it wants.

I come to chairmanship of the Press Council with a fairly strong swag of liberal if not radical attitudes, although some no doubt find them a bit dated. As President of the Australian Conservation Foundation, for example, I may deplore the way the Press as a whole deals with conservation, giving little space to long term issues or reasoned argument, but responding immediately to a blockade or hint of confrontation, or other sensational aspect. But as Chairman of the Press Council I find myself coming back to two propositions. One is the Voltairean assertion that although I might violently disagree with what a paper says, I should fight to the death for its right to say it. The other is that newspapers are not public benevolent institutions for the uplifting of society, but are businesses which in the long run must make a profit or perish, and which do so by producing papers that a significant number of readers think worth buying.

The situation that results would be more acceptable to many if there was a greater variety of newspapers, and if the ownership was less concentrated and newspapers were less dependent on advertising, and some were not dependent on it at all. But the sort of social engineering that would be involved in altering that situation is not within the province of the Press Council. It has to deal with the Press that the market has produced in this country, and accept the economic determinants of that Press.

## V. WHAT THE PRESS COUNCIL CAN DO

For those who are satisfied with nothing less than the reshaping of society, and the Press in particular, the Press Council is irrelevant. There is however a role, limited and modest as it may seem from more Utopian perspectives, which is both valuable and to some degree achievable. It is concerned more with procedure than with content, with the basic professional standards of journalism rather than social improvement. "The Council seeks the maintenance of the ethical standards of the Press, as set out in the [Council's] Statement of Principles and the Australian Journalists' Association Code of Ethics".<sup>2</sup>

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<sup>2</sup> *Id.*, 2.

The Statement of Principles adopted by the Council shortly after its inception is so fundamental to its work as to be worth quoting in full.

- The freedom of the Press to publish is the freedom of the people to be informed.
- This is the justification for upholding Press freedom as an essential feature of a democratic society.
- That freedom is more fundamentally important because of the obligations it entails towards the people, rather than because of the rights it gives to the Press.
- Recognising that, the Australian Press Council, in dealing with complaints that newspapers have failed to observe proper standards of journalism, will treat the public interest as the first and dominant consideration.
- With no wish to attempt the task of reducing to a precise and exhaustive formula the principles by which newspapers must govern themselves if they are faithfully to discharge their responsibilities to the people, the Council states that its consideration of complaints will take into account the following general propositions:
  1. Readers of a newspaper are entitled to have both news and comment presented to them with complete good faith, and therefore
    - with scrupulous honesty and fairness in both statement and omission; and
    - with due respect for private rights sensibilities.
  2. Accordingly, a newspaper is under a strong obligation to take all steps reasonably available to it to ensure the truth and exactness of its statements.
  3. Rumour and unconfirmed reports, if published at all, should be identified as such, and they should not be published if it is unfair to do so.
  4. News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published.
  5. A newspaper is justified in strongly advocating its own views on controversial topics provided that in doing so it treats its readers fairly by ...
    - making fact and opinion clearly distinguishable;
    - not mis-stating or suppressing facts relevant to conclusions it encourages readers to accept;
    - not distorting or unfairly colouring news, either in text or headlines; and
    - making clear whose are any opinions expressed.
  6. Billboards and posters advertising a newspaper must not mislead the public.

7. A newspaper has a wide discretion in matters of taste, but that does not justify lapses of taste so gross as to bring the freedom of the Press into disrepute.

8. The publication in a newspaper of matter disparaging or belittling persons or groups in the community by reference to their sex, race, nationality, religion, colour or country of origin is a serious breach of ethical standards.

9. A newspaper should not, in headlines or otherwise state the race, nationality or religious or political views of a person suspected of a crime, or arrested, charged or convicted, unless the fact is relevant.

10. If matter detrimental to the reputation or interests of an individual, corporation, organisation or group or class of people is published, opportunity for prompt and appropriately prominent reply at reasonable length should be given by the newspaper concerned, wherever fairness so requires.

11. Published information which is found to be harmfully inaccurate should be made the subject of such prompt and appropriately prominent retraction, correction or explanation (and in proper cases apology) as will neutralise so far as possible the impression created by the inaccurate matter.

12. The council approves and draws special attention to the Code of Ethics of the Australian Journalists' Association.

- the council will try to ensure its adjudications reflect both the conscience of the Press and the legitimate expectations of the public. It relies on every newspaper to give prominence to the council's adjudications on complaints, whether for or against the paper itself or another paper. The candour and courage thus displayed should enhance public regard for the freedom of the Press.
- apart from freely published criticism there are no sanctions the council can impose, or that it considers it should have the power to impose. Its only authority is the moral authority which its pronouncements should carry by their intrinsic merits and because of the Council's representative character. Its only resource is its appeal to the whole Press so to co-operate with it that the freedom of the Press will become highly prized by the public as the safeguard it is of Australian democracy.<sup>3</sup>

Like any such statement, this one leaves many difficult problems of application to be resolved in the concrete cases that arise, and time reveals gaps in its coverage. The Council gives reasons for its decisions, and although it is not bound by precedent, the adjudications provide a useful body of "case law" for anyone wishing to study the Council. They are made public when

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<sup>3</sup> *Id.*, 4-5.

given, and are collected in the Council's Annual Report, back numbers of which are available at the Council's office in Sydney.

## VI. FAIRNESS AND THE RIGHT OF REPLY

The Press Council accepts the right of a publication to have policies and to reflect its policies in its columns. In this sense a paper is free to be partisan. It does not have to be neutral, or even-handed, but it does have to be honest and fair. Obviously there is much room for subjective judgment in drawing the line between partisanship and unfairness. In *People Against the Press*,<sup>4</sup> Geoffrey Robertson contrasts decisions of the British and Australian Press Councils on similar complaints, namely that a newspaper had refused to allow a reply by a homosexual organisation to an attack on homosexuals. The British Press Council dismissed the complaint, saying:

... the Editor was entitled to express the strong view he held. It was a matter for discretion for him to decide whether, having regard to what he considered the moral issues involved, he should provide a platform for those taking a different view.<sup>5</sup>

In the same year the Australian Press Council upheld a similar complaint, saying:

The Australian Press Council, while re-affirming that a newspaper which purports to serve the general public has the right to advocate any point of view it thinks proper on a question of public controversy, emphasizes the duty of such a paper, when it has published arguments favouring one point of view on such a question, to give reasonable publicity to countervailing arguments.

The *Townsville Daily Bulletin* is a paper of general news coverage. The Council is clearly of the opinion that such a paper, while within its rights in condemning in the terms of the editorial the proponents of reform of the law on the relevant topic, is under a strong obligation as a matter of ordinary fairness to hold its columns open to a reasonable reply.

The *Bulletin's* refusal to do this was not only an act of oppression and intolerance, it was a rejection of the duty, which must be accepted if freedom of the Press is to retain the support of the public, to respect the right of the general reader to be informed of the arguments on each side of a public debate upon which a paper has expressed its own views in favour of one point of view.<sup>6</sup>

It is important to note that this adjudication went beyond affirming a right of reply by a person whose reputation or interests had been detrimentally affected, and asserted the right of the general reader of the paper to be informed of the arguments on both sides of a debate on which the paper had expressed one view. This adjudication is in line with a number of recent adjudications where the Press Council has reacted to complaints about views and comments published in a paper by upholding the right of the newspaper to publish one sided treatment of issues, but at the same time affirming its obligation to provide reasonable opportunity for the expression of other points of view in its columns. For example, in dealing with a complaint by homosexuals about a country newspaper's discussion of AIDS, the Council said:

4 Geoffrey Robertson, *People Against the Press* (1983) 83-84.

5 British Press Council, *The Press and the People* Annual Report (1978) 85.

6 Australian Press Council Adjudication No. 30 (*Annual Report* No. 2 Sydney (1978) 24).

In areas where there are genuine differences of opinion, or facts are not known with certainty or are difficult to establish, the Council upholds the right of newspapers to express opinions in good faith, provided that they distinguish matters of fact and opinion and allow reasonable opportunities for the expression of other points of view in their columns.<sup>7</sup>

In a case involving a complaint by a number of women's organisations about an editorial on International Women's Day, the Council said:

The editorial of a newspaper is recognised as the place where those controlling it express their opinions. Those opinions may in some cases be ill-informed, they may be illogical, they may be prejudiced. Many will think it a matter for regret that not all papers live up to the standards of the quality Press, but the fact is that different papers cater for different readerships. A free society depends on a free Press reflecting a variety of opinions, and inevitably the quality of those opinions will differ. The Press Council has to walk a very narrow line in seeking on the one hand to maintain the standards of the Press, and on the other hand to respect the freedom of the Press. On balance it does not think that it should seek to restrict by its pronouncements editorial assertions of opinion such as those in this case. Although it may be less satisfactory to complainants, a better response is to insist on the paper's duty to hold its columns reasonably open to reply by those who wish to contest its views.<sup>8</sup>

In acknowledging the place of polemical writing in public debate, the Council distinguished it from the news and comment which are the material on which readers rely for their knowledge of events, and said:

Even within avowedly polemical articles questions may arise as to accuracy and fairness but they are not to be judged by the same strict standards as news and comment presented as the normal professional work of journalists. They invite reply rather than trust in the professional responsibility of the writer. ...The most important requirements when a newspaper publishes polemical material are that it should be presented in a way that alerts readers to its character, and that reasonable opportunity should be given for reply and the expression of opposing views.<sup>9</sup>

## VII. COMPLAINT TO THE PRESS COUNCIL AS AN INDIVIDUAL REMEDY

So far I have concentrated on the role of the Council's complaints procedure as a way of maintaining Press standards. In ruling on allegations of breaches of standards and publishing its reasons, the Council builds up a body of principles and examples in which the duties of the Press are expounded and at the same time applies peer group pressure for their observance.

But what of the other function of providing a remedy to a person who has a grievance against the Press? If that person is satisfied to have his or her complaint upheld, and the principles vindicated by a Press Council adjudication which is normally published by the paper concerned, the Press Council provides adequate machinery. However people are often seeking more personal redress. They may want damages, an apology, the punishment

<sup>7</sup> Australian Press Council Adjudication No. 224 (*Annual Report*No. 9 Sydney (1985) 52).

<sup>8</sup> Australian Press Council Adjudication No. 214 (*Annual Report*No. 9 Sydney (1985) 40).

<sup>9</sup> Australian Press Council Adjudication No. 231 (*Annual Report*No. 9 Sydney (1985) 59).



of the paper, or a finding that what the paper has said is untrue, and they may want it quickly.

There are three limitations on what the Council can do that affect the likelihood of such a complainant getting satisfaction. In the first place the Council has no legal power to require a paper to do anything.

The Australian Press Council's authority rests solely on the willingness of publishers and editors to respect the Council's views, to adhere voluntarily to ethical standards, and to admit mistakes publicly. The Council seeks no other authority.<sup>10</sup>

The Council makes its adjudication and usually the paper, and often other papers, publish it. It is entirely up to the paper whether it adds any apology or retraction of its own. There can be no fine, no damages, no enforced apology or retraction. However many complainants are satisfied to see a vindication of their complaint by the Press Council published in the paper concerned.

In the second place, the Council is limited in its capacity to resolve disputed questions of fact. It is not a court: it has no power to call or cross-examine witnesses or to require the production of documents. Its proceedings do not have the privilege that attaches to court proceedings. Nor does it have the resources to carry out its own investigations. The result is that sometimes it is simply unable to resolve disputes of fact, *e.g.* who was responsible for a scuffle during the course of a demonstration.

This does not mean that the Council cannot deal with such complaints. From one point of view it is irrelevant whether a report is right or wrong. A paper does not have a duty to be infallible, but to observe proper professional standards in collecting and publishing news. It may have acted wrongly even if what it actually publishes turns out to be correct, and conversely it may have acted quite properly and nevertheless ended up with a report which subsequently turns out to be wrong. If the Council cannot determine whether what was published was true or not, it will still examine the conduct of the paper to the extent that it is able.<sup>11</sup>

Often the Council can determine the facts. Usually they are not disputed. If they are disputed but they are such that the Council can be comfortably satisfied as to where the truth lies, the Council will determine them. Even though the paper may not have acted wrongly in publishing the material, it will usually come under a duty to correct it if it is subsequently shown to be wrong, and the Council's determination will enable the dispute between the reader and the paper to be resolved.

A particular difficulty arises when the paper says that a report came from a confidential source which it is not at liberty to disclose. The Press Council respects the right of journalists to protect confidential sources, but it is alert to the possibility of abuse. In a case in which a reporter relied on a confidential source in relation to a statement attributed to an unnamed steward in Parliament House the Council said that the fact that statements attributed to

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<sup>10</sup> Note 1 *supra*, 2.

<sup>11</sup> See *e.g.* Australian Press Council Adjudication No. 215 (*Annual Report* No. 9 Sydney (1985) 42) and Adjudication No. 259 (November 1985).

a confidential source are sometimes difficult to test in a complaint to the Council adds to the responsibility of those who write and publish them.<sup>12</sup> It referred to an adjudication in which the Council had said:

The Press Council recognises that there are circumstances in which a newspaper's duty to bring the news to the public justifies it in publishing material from a confidential source and refusing to disclose that source. However it is not a step to be taken lightly. It does not justify the publication of every rumour that someone is prepared to spread but not to stand by.<sup>13</sup>

#### The Council went on —

In the present case the Council can see no justification for the publication of the paragraph complained of. The quoted statement is so vague that it provides no useful information, and, if it is to be given any meaning, serves only to smear politicians generally with an allegation of criminality and to taint the stewards generally with responsibility for the smear. This is unfair to both groups.

A third problem is the lapse of time between complaint and adjudication. This may sometimes largely destroy the benefit to the complainant of a favourable adjudication. A number of matters work to cause delay. When the complaint is accepted the paper must have an opportunity to reply to it. It is surprising how often key people involved are away on leave or work, with the result that a paper's reply is delayed. Even if a reply is received promptly, it must then go to the complainant to see whether the paper's explanation is acceptable, and if not, for the complainant's reply. A mutually convenient time must then be fixed for a hearing by the Complaints Committee, which usually meets once a month, but sometimes does not meet for two months.

Recently the Council decided to place greater emphasis on immediate conciliation when a complaint arises. An aggrieved reader is encouraged to take the grievance to the editor before complaining to the Council, and the editor is encouraged to discuss the matter with the reader. Before a formal decision is made to accept a complaint, it is brought to the notice of the editor, so that any chance of conciliation is explored before formalities commence. It is hoped that this will increase the number of cases where an immediate solution is found, the reader obtains quick satisfaction, and reader, editor and the Council are spared the burden of formal proceedings. The Council will continue to work to improve its procedures, and to refine the principles appropriate to current conditions in Australian society.

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<sup>12</sup> Australian Press Council Adjudication No. 248 (September 1985).

<sup>13</sup> Australian Press Council Adjudication No. 241 (July 1985).