

Whither the Australian Press Council?

Its Formation, Function and Future

Deborah A Kirkman

2 - History of the Press Council

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FOREWORD

DOROTHY D ROSS, AM, OBE

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When the first discussions commenced about an appropriate way in which to mark 20 years of Press Council activities, compiling a history was a first thought. By a fortunate coincidence, Deborah Kirkman, the Council's Office Manager, was completing her Master's Degree in History. She chose as the subject of her thesis an historical analysis of the foundation and functions of the Press Council. During her research, she had discussions with members of the Council, in particular with those who had been part of the early days of the Council. Long time members were able to recall many incidents not previously recorded, but which have given flesh and blood to a story which might otherwise have been merely a recital of worthy efforts to preserve press credibility.

The Council has two main purposes:

- to maintain the freedom of the press; and
- to adjudicate on complaints brought to the Council by readers.

From the outset, the Council established a Complaints Committee with procedures to hear complaints. Some time later, a Freedom of the Press Committee was established to monitor any attempts to curtail that freedom. The work of that committee has largely been the special responsibility of the Council's Chairmen and others of the Council with a particular concern with such issues. That committee, unlike the Complaints Committee, has no face-to-face contact with the general public.

In dealing with complaints, Council members and the secretariat become fully aware of the public's expectations of the Council and, through it, their expectations of the Press. Sometimes the Council's decisions on complaints incur a good deal of acrimony from unsuccessful complainants. Very occasionally the Council receives a word of thanks and even a word of praise. These words are most often directed to the Council's office staff who mediate, and otherwise settle, many of the complaints brought to the Council. As the Council attempts to come to conclusions about complaints, the role of the public members in influencing those decisions cannot be underestimated.

The Council is greatly assisted by its Executive Secretary and its Office Manager, who are the first point of contact for aggrieved readers. Many times their judgment leads to an amicable settlement of complaints using goodwill and good sense. No history could entirely reflect the human face of the Council. It is about people who read the papers, those who write the stories, those who make the editorial decisions, and those who have proprietary responsibility.

Deborah Kirkman, uniquely placed by virtue of her role with the Council, and her thorough research of the subject, has given us a valuable insight into people and events which would not have been possible by anyone not involved with the Council on a day-to-day basis. It must be stressed that the essay is primarily an historical analysis of the foundation and development of the Press Council and not an objective analysis of all its activities.

The comments made by individuals in the essay are, of course, their personal opinions and may not necessarily reflect the views of the Press Council.

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INTRODUCTION

In the old black and white movies members of the press were identified by their hats bearing the distinguishing label 'PRESS' and an eager Jimmy Olsen clone clutching a large Kodak camera in both hands. A generation of Australians grew up with weekly episodes of Superman and his alter ego, the mild-mannered reporter Clark Kent. The image of a journalist, forty years ago, was one of decency, honesty and a defender of truth and justice. It is a different story now. In opinion polls today's journalists rate lower in prestige than used car salesmen, and the reading public are critical of the content of their newspapers. There are two factors which explain the altered public perception of the press: changes in the social norms in Australian society and a better educated population which expects a responsible press.

In the 1950s Australian society was largely homogenous and those who came to her shores as immigrants were expected to assimilate and adopt 'the Australian way of life'. Dad went to work, had a few beers with his mates at the end of the day, then went home to Mum who had a hot dinner waiting after which the family sat down to listen to the radio or, later in the decade, watch television. There was a place for everything and everything in its place - including people. It was a simpler time when most people left school at fifteen years of age and walked straight into a job. They had the usual concerns about the mortgage, the boss, the children's illnesses and the big bogey, Communism. What they read in the newspapers they believed. After all, they were used to accepting guidance from two other estates: the Church and the State.

Then a tearing apart of this fabric occurred - more women started to demand equality, they became sexually liberated with the advent of the pill and, as a consequence, many were looking at career choices outside of the home. Their offspring, likewise, rebelled: drug taking became fashionable, boys grew long hair, student power flourished and protests against the Vietnam War gathered momentum. By the 1970s Australia was irrevocably changed from a rigid, stratified structure to one in flux, one that was trying to find where to place its feet in the ebb and flow. As the population became better educated and more involved in the political domain, they began to question the old cleavages. No longer would Australians blindly accept what they were being told by the Church, the State and the press. The old taboos broke down, it was a more relaxed society, where a discussion, over the dinner table, of sex, politics and religion was no longer considered to be in bad taste. And the press reflected that liberalisation. Sometimes topless page three girls were a common feature of the tabloids, probing features on the government began to appear and even the Church was not exempt from critical analysis.

In a free society debate is to be encouraged, freedom of speech being a central tenet of a democracy. But should the press be given total freedom, and who would watch the watcher? It was during the 1970s that the Australian Press Council was finally established to act as the press ombudsman.

Benjamin Franklin, 250 years ago, spoke of the core dilemma for the press: 'If all Printers were determin'd not to print anything till they were sure it would offend nobody, there would be very little printed'. The Australian press walks a tight-rope in its efforts at achieving a balance between informing the public and ethical reporting. The roles of the Australian Press Council are to act as the watchdog of the press and to defend press freedoms associated with a democratic society. The Council has received very little historical treatment. This essay is an attempt at remedying the situation: to fill the gap. The aim of this essay is to detail the background to the formation of the Australian Press Council, to examine the efficacy of its functions and to suggest improvements. It will show that the Council does play an important role as press ombudsman, a role it will continue to fulfil.

PART 1 – THE FORMATION OF THE AUSTRALIAN PRESS COUNCIL

AUSTRALIAN BACKGROUND

In the first half of the twentieth century many attitudes were based on Victorian prudery. Both in Australia and Britain, the mainstream press censored itself in accordance with Church and State concerns that reporting on negative stories (such as drug taking, rape and extra-marital affairs) could lead to a breakdown in public morals. A good example of this was the Edward VIII and Wallis Simpson controversy. The situation was well known by Americans, courtesy of their press. However, in Britain, only those who mixed in elite circles knew of the problem, the press having kept a lid on the story until it was forced to report it a short time before the Abdication. It is unthinkable that such extremes of self-censorship would apply today, and they do not. In fact the reverse applies, especially in Britain where the Royal Family has been subjected to gross invasions of their privacy. This change in press ethics did not happen overnight - it has been a gradual change, helped along by the experience of war and changes in social attitudes.

In 1942, in the middle of WWII, the idea of a press council in Australia was first mooted. It is unclear why the push began during that time. One possible explanation is the belief that a post-war Australia would need to be more equitable and egalitarian, a positive picture when compared with the wartime images of the barbaric Japanese or authoritarian Nazi.¹ The move for a press council came from the NSW branch of the Australian Journalists' Association (AJA). Bearing in mind the push for a more egalitarian society, the move by the AJA can be seen as a battle against press proprietors - between labour and capital. Having drafted a code of conduct enforceable by a disciplinary committee able to levy fines on its members, the AJA then proposed a State Standing Committee on Newspaper Ethics. To consist of nominees from newspaper publishers, the AJA, the union movement and Sydney University, the Committee was to be presided over by a judge. Its sanction was to be the requirement for offending newspapers to publish its decisions.² The idea behind the AJA's move was to make the press proprietors as accountable as the journalists. In effect, an equitable division of blame, or praise, as the case may be.

The AJA was unable to persuade the States of the necessity for such a Committee. It did, however, have success with the Labor Party and union movement. A swing to Labor during the war had placed pressure on press proprietors. They knew with federal Labor backing the AJA would win its battle to make the proprietors accountable, due in part to the Lyons factor. A decade earlier there was no question that Keith Murdoch was the hidden power behind Joe Lyons, who had left the Labor Party to form the United Australia Party. It was the fact that Lyons was elected in part through the backing of the Murdoch press that made the Labor Party suspicious of the power of the press.

For the first time in what was to become a 34 year skirmish, the proprietors saw the need to offer an olive branch (but not the whole tree) to the AJA. In 1944 a dispute between the Chief Censor, Garnet Bonney, and Sydney newspaper proprietors who had defied the censor climaxed. The result was the despatch of police to stop delivery of papers, and the now famous photograph of a policeman pointing a gun at a truck driver. The proprietors postulated it was better to have the AJA on side than to take on the government. In 1945 the Australian Newspaper Publishers Association (ANPA) finally entered into negotiations with the AJA, the outcome of which was the Australian Newspaper Board (ANB).³

This precursor to the Australian Press Council (APC) consisted of two representatives of the AJA and two from press proprietors. Its charter was four-fold: to ensure harmonious relations in the newspaper industry; to promote, preserve and defend the freedom, independent status and integrity of the Australian press; to promote, advance and protect the professional status and welfare of Australian journalists and journalism; and to deal with matters associated with newspaper ethics.⁴

It is interesting to note that whenever the two halves of the press (proprietors and journalists) meet, their association does tend to be adversarial, with only one goal in common - freedom of the press.

Although the first aim of the ANB was smooth industrial relations, its fourth provided for the public to complain about the press.⁵ Unfortunately, the ANB met only once between 1945 and 1953 to consider complaints about the press. This child of the press died through lack of sustenance. The proprietors had won round one. Meanwhile, their colleagues in Britain were having their own battles.

BRITAIN 1946 - 1952

At the end of World War II paper rationing was still in force in Britain resulting in a decline in newspaper numbers and a concentration of press ownership.⁶ Given this concentration, the public held the perception that journalists' independence was being threatened and that it showed in a decline of press standards.

In the House of Commons, on 29 October 1946, a motion was moved, and seconded, that a Royal Commission be held to inquire into the ownership, management, control and finance of the press. Of interest is the fact that the mover and seconder were both former journalists. And it shows a similar battle within the press on the other side of the world.

(BRITISH) ROYAL COMMISSION 1947 - 1949

The foreshadowed Royal Commission (later known as the Ross Commission) was established in April 1947 by Attlee's Labour Government. Part of its terms of reference was 'to enquire into the control, management, and ownership of the newspaper and periodical press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon'.⁷

In June 1949 the Commission's findings were presented to Parliament. It found a concentration of ownership that, it was noted, was far removed from a monopoly. In support, the Commission stated, inter alia, that, even though between 1921 and 1948 the number of dailies published in England, Wales and Scotland fell from 169 to 128, and in the same period, nationals fell from 12 to 9⁸, ownership of the press, particularly the nationals, had been placed in more hands. Ownership concentration at the time did not prejudice freedom of expression nor accuracy of reporting. The Commission did, however, make the proviso that increased concentration could be 'a matter for anxiety'.⁹

Having rejected the idea of state control of the press, the Commission recommended that the press itself 'should establish a General Council of the Press consisting of at least 25 members representing proprietors, editors, and other journalists, and having lay members amounting to about 20 per cent of the total, including the chairman'.¹⁰ The objects of the General Council were to safeguard the freedom of the press and to encourage the growth of the sense of public responsibility and public service among all engaged in the profession of journalism.¹¹ The press was therefore to be its own watchdog.

The report of the Ross Commission was debated on 28 July 1949 by the House of Commons and resolved, without a division, that it would welcome the implementation of the Commission's recommendations. It was envisaged in the recommendations that the General Council's edicts on professional conduct would have the force of rulings similar to, say, the Law Society, albeit not backed by statutory powers.

The press proprietors, not surprisingly, balked at the very idea of a governing body of the press that was not dominated by them. They were, after all, in business in a free enterprise economy and did not appreciate being dictated to by a Labour Government. The press proprietors were able to forestall any fruitful talks for three years. By 1952 the Conservatives were in power under the leadership of Winston Churchill. It was a Private Member's Bill, however, that brought discussions rapidly to a close. Introduced by C J Simmons MP, this bill sought to set up a statutory Press Council. As was to occur in Australia, it was the threat of a statutory body that goaded press proprietors into action. To quote H Phillip Levy, the press 'was quite united in its opposition and resistance to statutory control, the very negation of freedom of the Press. A free Press required freedom of the Press to govern itself. The creation of the Press Council gave it the opportunity to do so'.¹²

AUSTRALIA 1954 - 1966

The political climate in Australia was more favourable to press proprietors. In 1954 the AJA attempted to renew the ANB, partly in response to the formation of the British General Council of the Press and partly in response to a series of local press mergers. This attempt failed. During the next few years various proposals for self-regulatory or statutory bodies were mooted by the AJA and federal and state Labor parties. All to no avail. The stumbling blocks were the unlikelihood of Labor winning federally and the NSW state Labor party losing office in 1965 before it could take any steps towards implementing party policy. Pat O'Malley explains that 'during the ensuing years, the absence of a Labor government federally, or in any major state, ensured that the issue remained on the sidelines, and it was only the prospect of a federal Labor government that was to promote the issue back into the realms of possibility'.¹³ Throughout this decade, proponents of an Australian press council once again watched events in Britain with interest.

BRITAIN 1953 - 1970s

THE GENERAL COUNCIL OF THE PRESS, JULY 1953 - JUNE 1963

The UK General Council of the Press was established by the press industry, on a voluntary basis, in 1953. Its main objectives followed the lines envisaged in the Ross Commission's recommendations.¹⁴ There were, however, hindrances to their implementation.

The first impediment was the membership of the first General Council which did not include the recommended twenty per cent lay members, including the chairman.¹⁵ In their pre-establishment discussions, all proprietorial bodies were opposed to lay members being appointed to the General Council, and in subsequent talks their views were endorsed by the majority of non-proprietorial bodies. The resulting membership of 25 comprised 15 editorial representatives (including 7 journalist representatives) and 10 managerial representatives.¹⁶ As Lord Hewart's dictum states, 'It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'.¹⁷ Justice was not only not seen to be done, it was not done at all.

In the hierarchy of Britain it can only be assumed that the proprietors viewed the masses in the same terms as Edmund Burke had in the late eighteenth century - as the swinish multitude. It is not difficult to postulate their fears. They may well have asked themselves whether the masses were going to sit in judgment on the press? And in answer, they replied, no! we will exclude them. They could, of course, have included the better educated/elite/upper class to their ranks (this was to come later), but for the time being this proposal was rejected, and the General Council of the Press remained an in-house club.

The second impediment was the infrequency of meetings,¹⁸ and the lack of enforcement powers in rebuking the press for infringements of press standards. The Council was, justifiably, seen as 'a tame bulldog with rubber teeth'.¹⁹

In its first annual report, the General Council stressed that it considered its prime duty to be the preservation of the liberty of the press.²⁰ By its fifth annual report, the Council was stressing its ombudsman role.²¹ This role did not necessarily fill some in the industry with fear. The then editor-in-chief of the Sunday Express, for example, showed a total disdain for the General Council when replying to a reader's letter: 'I do not think it is worth while pursuing this long forgotten matter. As for your threat, you can report me to the Press Council, Madame Tussauds, the Society for the Protection of Sputniks, N.A.T.O., U.N.E.S.C.O., or the Dancing Dervishes Association as you wish. May you enjoy yourself'.²²

One of the reasons the Council lacked public acceptance was the total absence of public members. With their inclusion, the Council would have been better balanced as they would have provided the consumer viewpoint. Without them, it appears that this in-house club did it best to avoid offending any of the quality papers of the day.

In its nine years of existence, the Council only once rapped *The Times* over the knuckles, expressing its 'regret' that *The Times* did not correct a faulty report.²³ It could be argued that being a quality paper, *The Times* would not come under examination by the General Council as often as, say, *The Daily Express*. Even granting this argument, the high rate of dismissal of complaints against quality papers has to be open to question. That is not to say the General Council was an apologist for the press. A look at its findings during the term of its operation paints a fairer picture. On average, the General Council upheld 50 per cent of complaints. This figure, though, does not reflect constantly changing statistics. In its first year, it rejected two-thirds of complaints.²⁴ By the last year of its operation, of a total 58 complaints, 35 were upheld, 23 dismissed.²⁵ The General Council could not, therefore, be accused of pandering to the press in its complaints decisions.

Naturally, many of its critics came from those whose complaints were dismissed. Others criticised the Council for its closed proceedings. In response, the Council asserted that, even though it had nothing to hide, while it remained unprotected against legal proceedings, it felt that it could not operate in open session with the freedom and confidence which were necessary if it was to reach what it thought were just and proper conclusions.²⁶

The last major criticism was the Council's lack of punitive powers. The issuing of reprimands was viewed as a joke. The imposition of a stinging punishment, say a fine or expulsion from the profession, was suggested as an alternative. The Council countered these attacks by arguing that its reprimands were neither made nor taken lightly. Any journalist, it argued, must hate being held up to public condemnation. This may well have affected his professional future, and would not have made life easier for his proprietor.²⁷ The Council believed it was not necessary to impose sanctions as sanctions were already provided in law - laws covering areas such as defamation, contempt of court and libel. The Council stated that in order to have statutory powers, it would be necessary to set up a statutory body, an evolution which would develop into censorship with a threat to the freedom of the press. The Council confirmed it did not believe in government censorship and the very fact that some editors it had censured had protested so bitterly in their papers, showed how the Council reprimands had hurt.²⁸

On a lighter note, with the distance of time, many of the General Council's decisions appear quaint, even ironic. The Royal Family of the 1950s was treated with a great deal of respect, reflected in the General Council strongly deprecating 'as contrary to the best traditions of British journalism the holding by *The Daily Mirror* of a public poll in the matter of Princess Margaret and Group-Captain Townsend'.²⁹ How times have changed! And there were a number of amusing complaints, such as the lady who stated she never bought a certain Sunday newspaper herself; that the rag found its way into her home through the

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servants' hall and that she made it her task to read it before it was consigned to the rubbish bin.³⁰ The eventual fate of the General Council of the Press was to be the darkness of the same receptacle.

ROYAL COMMISSION 1961 - 1962

In 1960 five major newspapers closed (including the respected *News Chronicle* and *The Star*). Their combined circulation totalled more than six million copies. Early the next year the Daily Mirror and Odhams groups merged, resulting in the Daily Mirror group becoming the biggest newspaper, periodical and printing group in Britain.³¹ As will be recalled, part of the first Royal Commission's brief was to examine concentration of ownership, and it found increased concentration could be a matter for anxiety. The British parliament of 1961 reflected the anxiety of the 1960s towards the state of the press. Prime Minister Macmillan, in announcing a Royal Commission, explained the concerns: 'The recent closure, through inability to pay its way, of a national daily newspaper with a circulation exceeding a million clearly came as a shock to the public. And the more recent developments are widely taken to suggest that conditions in the industry are such as to lead inevitably towards the concentration of ownership'.³²

The Government, as a result, set up a Royal Commission with the following terms of reference: 'To examine the economic and financial factors affecting the production and sale of newspapers, magazines and other periodicals in the United Kingdom, including (a) manufacturing, printing, distribution and other costs; (b) efficiency of production; and (c) advertising and other revenue, including any revenue derived from interests in television'.³³

The Royal Commission was therefore to be an inquiry into the economics of the press, not an inquiry into the Council of the Press. Nonetheless, the Council's operations came into the focus of the inquiry. Under its Chairman, Lord Shawcross, the Commission began its sittings on 6 April 1961 and presented its findings the following year. It recommended that a Press Amalgamations Court be established, and then turned its attention to the General Council of the Press. It berated the Council, inter alia, for not fulfilling its objectives to study and report on developments in the press: otherwise 'much of our own inquiry might have been unnecessary and public awareness of possible developments might indeed, of itself, have modified the course which in the end those developments actually took'.³⁴ The Council, in reply, complained that lack of funding, low staffing levels and the non-co-operation of some of its constituent bodies impeded its ability to elicit particulars of newspaper finance and other details of press production.³⁵ The Commission, however, pointed out that the Council had done little in pressing for substantial increases of funds and, in any event, if the press was unwilling to invest the Council with the necessary authority and contribute the necessary funds, the case for a statutory body with definite powers and the right to levy the press industry was a clear one.³⁶

In response to the Commission's recommendation that there should be a lay chair and lay membership of twenty per cent (as recommended by the first Royal Commission), the Council's Chair, George Murray, expressed the view that the sole purpose of lay membership was to satisfy public opinion,³⁷ and that even if lay membership was included, such a Council could exert no more authority or power than the existing Council.³⁸ The Commission summed up its recommendations by offering a two-edged solution. It thought the press should be given another opportunity voluntarily to establish an authoritative General Council with a lay element as recommended by the first Royal Commission. A time limit was suggested for this to be done and, failing compliance, a statutory body should be set up.³⁹ The death knell had sounded for the General Council of the Press.

THE [BRITISH] PRESS COUNCIL, ESTABLISHED JULY 1963

The reformed Press Council amended its Constitution to allow for an independent Chair and lay members. Lord Devlin, a retired Lord Justice, took the Chair⁴⁰, and Professor Alexander Haddow, Lord James of Rusholme, Reverend Ronald Lunt, Elaine Kellett (barrister) and Marie Patterson (from the General Council of the T.U.C.) joined Lord Devlin as public members.⁴¹ Not your ordinary run of the mill people! Levies were raised to a total of £13,675 per annum, a sum which was increased annually. And, stung by the criticism of the Shawcross Commission, for the first time real attempts were made to report the changing make-up of the British press, its ownership, circulation figures, launches and closures. Most importantly, however, was the realisation by the press that they had another chance at self regulation.

One of the first challenges to the newly incorporated Press Council was the events surrounding Christine Keeler. The Press Council condemned the glamorisation of prostitution and vice, deplored the publication of personal stories and feature articles of an unsavoury nature where the requirements of public interest were not met⁴², and was particularly scornful of *The News of the World's* £23,000 payment in return for Keeler's confessions.⁴³ The Press Council was, in essence, trying to be seen as a moral watchdog. What the Council should have realised, however, is the change in social norms that had occurred in Britain during the previous decade. As T O Lloyd points out in his history of England during the twentieth century, in 1950 it would have been a foregone conclusion that Profumo would have had to resign if associating with women of ill repute. By 1960 feelings were not so clear as girls (and women) no longer held the rigid views of chastity that prevailed during the earlier part of the century. There was one event which exemplified the decreasing influence of Church and State on public social attitudes. T O Lloyd explains:

So far as any public event could represent this change, it had been the trial in 1960 for obscene publication in which the jury decided that D.H. Lawrence's *Lady Chatterley's Lover* could be published unexpurgated...it was regarded as anachronistic in more ways than one when the prosecuting counsel asked the jury 'Would you want your servants to read this book?'. The verdict that the book was not obscene reflected the advance of a more relaxed attitude.⁴⁴

Still, the Press Council maintained its role of moral watchdog and in 1970 re-iterated its stand against payment for the memoirs of people engaged in notorious misbehaviour or crime, the latter category instanced by the memoirs of Ronald Biggs.⁴⁵

There were, of course, lighter moments as in the case of the letter received from a grocer:

SIR, - My sister-in-law has been eating her fish and chips out of *The People* recently and her back has been giving her a great deal of trouble lately. I told her not to give up the *Sunday Times*...but she was insistent and now of course she is ruining her mistake. My cousin, a well known physicist in the West End, told me that certain newsprinting inks - particularly the black variety - may well have an adverse effect on the formation of uric acids in the body...If the Medical Research Council do not investigate I think the Press Council should.⁴⁶

Those complaints which did make it past the rubbish bin showed a diversity of complexity, the Press Council arguing the reason being a heightened confidence of its complaints facility.⁴⁷ Whether this was the reason - or whether it was because of a decline in press standards is arguable - but it is true that cases did grow in number.

The 1963 Annual Report recorded 65 adjudications (26 upheld, 39 rejected)⁴⁸ the following year the total reached 86 (39 upheld, 47 rejected)⁴⁹ and a peak in 1965 of 103 (49 upheld and 54 rejected).⁵⁰ Thereafter the total number of complaints fell; however, as a proportion, the number reaching adjudication increased.⁵¹ The Press Council appeared to be doing its job and as the public became more aware of the role of the Press Council, fewer silly complaints and more serious ones reached its desk.

However, there remained the problem of lay membership. Reacting to the Younger Committee's recommendation, lay membership was doubled to ten and an appointments commission comprised of people unconnected with the press was established.⁵² As the Younger Committee stated in 1972, it did not see 'how the Council can expect to command public confidence in its ability to take account of the reactions of the public, unless it has at least an equal membership of persons who are qualified to speak for the public at large'.⁵³ Once again, therefore, the Press Council went only half way toward meeting the expectations of the public.

AUSTRALIA IN THE 1960s AND 1970s

Up until the early 1960s there were many things about which the public were kept in the dark. Peter Costigan was asked for his recollection of the period. A past president of the Canberra Press Gallery, foreign correspondent, chief political reporter for the *Herald & Weekly Times* (HWT) and now a freelance journalist member of the Australian Press Council, Costigan possesses strong ideals and philosophy on the responsibility of the press. He recalls that 'In 1961, the year that Menzies nearly lost, *The Sydney Morning Herald* actually swung around for the first time in its history and supported Arthur Calwell. There are reasons for that. Sir Warwick didn't like Sir Robert because he was of the belief that Menzies had an affair with Sir Warwick's first wife'.⁵⁴ The public, of course, were unaware of the reasons behind the *Herald's* backing of Calwell, but it was aware of the change in the paper's political support. Costigan believes that from the 1960s onwards, the public started to become better informed, partly due to radio's increased reporting of current affairs, the advent of television and, with it, programs of the calibre of *Four Corners*, and papers such as *The Nation Review* which actually looked for the stories behind the stories.⁵⁵ It was into this environment that the AJA reactivated its push for a Press Council.

In its March 1969 issue of *The Journalist*, the AJA reported that its General Secretary, Syd Crosland, considered a Press Council should be set up and that the AJA had, in fact, made frequent applications to State and Federal Governments.⁵⁶ This view was supported by Nigel Bowen, the then Attorney-General. Speaking at the Fifth Summer School of Professional Journalism on 7 February 1969 Bowen stated:

If all journalists observed the AJA Code of Ethics there could be few genuine cases of complaint by politicians, or anyone else.

However, I should point out there is a gap. If your work is altered by the proprietors and appears in a form which would breach the code, it seems there is no remedy.

This leads me to suggest that it is worth considering whether we should not follow the United Kingdom and have a Press Council in Australia, with representatives of the proprietors, and a lay chairman.⁵⁷

Whereas the AJA and Bowen (a Liberal Party Minister) were thinking along the lines of the British Press Council, Justice Else-Mitchell of the NSW Supreme Court supported a Council with a statutory basis and judicial powers. Citing the need for a new approach to the law of defamation, and noting the years of waiting before a verdict is obtained, Justice Else-Mitchell admitted that some in the legal profession would call it 'instant justice, but speed of redress was the essence of any just legal system - justice delayed is justice denied'.⁵⁸

As far as can be ascertained, the first revival approach was made in a letter from the AJA to B Osborne, Secretary of the

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Australian Newspapers Council (ANC)⁵⁹ - the ANPA had, by 1958, been incorporated into the ANC.⁶⁰ Written on 24 May 1971 this letter from Syd Crosland requested a meeting between an AJA deputation, the ANC, John Fairfax & Sons Ltd and Regional Dailies Ltd (the latter two not being members of the ANC) to discuss the question of establishing a Council of the Press. In asking for their agreement to set up a Press Council, the AJA were asking for a revival of the Newspaper Board, but with a changed constitution to mirror Britain's Press Council. In reply, the ANC advised that its members were almost unanimously opposed to a Press Council,⁶¹ however, most felt that, as long as no commitment was involved, no harm could be caused by such a meeting.⁶²

The meeting was held in Sydney on 10 February, 1972. Crosland pointed to proposals for a statutory body and stated it was because of that possibility that the AJA had brought the suggestion for a Press Council. Reg Leonard - a legendary journalist - representing the ANC, pointed out in return that his Council represented only part of the press and assured the AJA that they would hear from them within, say, three months.⁶³ David McNicoll recalls events as follows: 'The feeling at the February meeting was mixed. Ranald [Macdonald from David Syme & Co., publisher of *The Age*] had always felt the need for a press council. I think the *Melbourne Herald* was the least enthusiastic. We were all starting to feel it was inevitable'.⁶⁴

Reinforcing its stance, the AJA asserted no ulterior motive. Its single aim was to protect the highest standards of newspaper performance and practice. Probably closer to the truth were two paragraphs tucked away in the front page article of the March 1972 issue of *The Journalist*:

The AJA directed the attention of Press proprietors to the provisions of the AJA Code of Ethics, and the machinery for investigation by the AJA of complaints of code breaches.

No comparable machinery exists for investigation of complaints by the public against the newspapers, without recourse to the law courts.⁶⁵

The AJA was in effect arguing the workers are accountable, why not the bosses.

Then the stalemate settled in. The proprietors still stood firm against a council. The only individuals who stood out of the shadows were Ranald Macdonald and Graham Perkin from David Syme & Co. Macdonald could see the sense of a Press Council and openly spoke in its favour. Perkin, editor of *The Age*, was correct when he stated: 'My great fear is that unless the newspaper industry establishes some form of self-surveillance...then we will one day, perhaps soon, have surveillance forced upon us by Government'.⁶⁶

In the opposing corner was Rupert Murdoch. That he was against an Australian Press Council is not a surprise given that two of his British papers had paid for and published the memoirs of Keller and Biggs - only to be openly admonished by their Press Council. Murdoch claimed the press in Australia already regulated itself, and stated there was no correlation between the two countries as conditions which led to the creation of the Press Council in post World War II Britain did not exist in Australia in 1972. He rounded off his view by expressing: 'The Press Council was invented as a fig leaf by a frightened British press establishment at a time of genuine concern. Surely we do not need such hypocrisy in Australia?'.⁶⁷ And the voices of the fellow proprietors were heard to echo "Amen!"

Two years were to pass before the AJA tried again. By 1974 Ranald Macdonald had taken over the Presidency of the ANC. In writing to the ANC, Syd Crosland noted that Macdonald was in favour of a Press Council and that Graham Perkin was like-minded. Adding that more than ever the press was coming in for undeserved criticism,⁶⁸ the AJA pleaded that action be taken immediately to set up a Press Council.⁶⁹ Once again, nothing came of the suggestion.

Devoting its April 1975 issue of *The Journalist* to the push for a Press Council, the paper opened the debate by stating: 'The AJA hopes the industry will not be held back by those few who may cling to the shibboleth that the Press should not be accountable to the public'.⁷⁰ An old fashioned doctrine indeed! Demands were being made for press accountability and in response the majority of press owners were turning off their hearing aids. However, they were soon to sit up and take notice. Enter Dr Moss Cass, the Minister for the Media.

Following up an earlier discussion paper on the idea of establishing a press council in Australia, Cass issued a media release on 8 August 1975 setting out options for press reform. The paper concluded that the establishment of an Australian Press Council 'is desirable and practicable'.⁷¹ For debate only and not part of the formal recommendation, Cass suggested the following five options be open for discussion:

1. Establish an Australian Newspaper Commission, similar to the ABC.
2. Establish a research unit at university level to investigate, monitor, and report on press performance.
3. Establish a Royal Commission into the Media.
4. Refuse to grant and renew TV and radio licences to an organisation or individual who owns or controls...daily, regional non-daily, or suburban newspapers in Australia.
5. Institute a system of newspaper licences...which can be granted, suspended, or withdrawn on the basis of community satisfaction with performance.⁷²

Two days later, the Minister issued another media release which reflects the response of many media proprietors:

Events in the past 48 hours have convinced me that there is an urgent need for media reform in Australia.

In the past two days my proposal for an Australian Press Council has been subjected to bizarre distortion and hysterical

over-reaction.

I can't quite believe it.

I proposed a voluntary press council, with no government involvement of any kind, at any level.

When I released this document...I expressly stated that I had not yet considered or looked at the five options...they are listed simply to demonstrate the range of ideas which are worth considering.

If some proprietors...are incapable of reading or understanding that, then press freedom really is in danger.⁷³

Obviously the proprietors had picked up on the restrictive aspects of some of the options and started to panic. David McNicoll reinforces this belief:

There is no doubt that the thought of any government interference in papers stirred the proprietors. The fear was that a system of licensing could be introduced. I think Cass was strongly anti-press. I think the proprietors, at this stage, saw the inevitability of establishing a press council.⁷⁴

The proprietors really had no-one to blame but themselves if they were to find themselves under governmental regulation⁷⁵ given their continual refusal to establish a press council. They had, in fact, managed to panic themselves into a corner, the result being, in their view, the lesser of two evils. Finally, after three decades of being pushed, the press release came.

Issued on 6 November 1975 by Ranald Macdonald on behalf of the ANC, it said: 'The Australian Newspapers Council has begun moves to establish a National Press Council. The ANC believes that the maintenance of a free Press is essential for Australia. The public must be seen to be fairly treated by the Press'.⁷⁶

PART TWO - THE AUSTRALIAN PRESS COUNCIL, ESTABLISHED 1976

THE ESTABLISHMENT

A sub-committee of the ANC, comprising Lyle Turnbull of HWT, David McNicoll of Australian Consolidated Press (ACP) and Randal Macdonald, was set up to consider the choice of the first Chair of the Australian Press Council (APC). Much emphasis was placed on the selection as the Chair was seen as crucially important in establishing the standing and acceptance of a Press Council within both the newspaper profession and the community.⁷⁷ Looking at the British experience, a short list of eminent lawyers was presented and a final choice made of Sir Frank Kitto, a former High Court judge and the then Chancellor of the University of New England. 'He would be recognised for his independence, an essential ingredient sought by those responsible for the council's formation,' said Mr Macdonald.⁷⁸ David McNicoll has 'the feeling Frank Kitto may have been my suggestion (his brother was ACP's company secretary), but I'm not sure. His name was seized on at once, and the concept of a lawyer/judge seemed great for the public profile of the Press Council. Frank Kitto was a fine and dedicated Chairman. He had been involved in court cases about media matters, and he had great interest. His input was thoughtful and very useful. He was an excellent Chairman'.⁷⁹

It was also thought important that the (Executive) Secretary be a former journalist, someone who understood the print media. David McNicoll's attitude on this stance has changed over time: 'Looking back, I no longer think editorial experience was necessary for a secretary. We had one disastrous experience.⁸⁰ Today, I don't think it necessary in a secretary'.⁸¹

The Council was to be financed by contributions from its constituent bodies: the ANC, AJA, Regional Dailies of Australia and the Australian Provincial Press Association. Despite the legend that it was Sir Warwick Fairfax's dislike of Sir Frank Kitto that kept Fairfax from being a formation member of the Press Council, Sir Warwick's letter declining to join paints a clearer picture: 'We believe that the very existence of a Press Council will do harm rather than good through giving the impression that it would be able to exercise a degree of supervision and influence which in fact it cannot achieve'.⁸² And, of course, there was the perception that Fairfax & Sons had a strong sense of its own professional integrity.

The inaugural Australian Press Council comprised an independent Chair, three public members, three AJA representatives and six industry members. Two foundation members, Dorothy Ross (public) and David McNicoll (industry) have been on the Council for its first twenty years. They are an interesting pair. McNicoll, son of Brigadier-General Sir Walter McNicoll, bears all the hallmarks of an elder statesman. Tall, distinguished, educated at Scotch College Melbourne, McNicoll is not afraid to express his conservative views. He has brought to the APC his experiences as, *inter alia*, a war correspondent and editor-in-chief of ACP from 1953 to 1972. Ross, grazier, is also conservative, and has similar political opinions to McNicoll. Educated at PLC (NSW), Frensham (Mittagong) and Bedford Physical Training College (UK), Ross is a past National President of the Country Women's Association of Australia. She is down to earth and possesses a no-nonsense, straight down the middle, egalitarian approach to life. Together, David McNicoll and Dorothy Ross form the core of today's conservative element of the APC.

THE FIRST MEETING

The first meeting of the Australian Press Council was held in Sydney on 22 July 1976. Controversy quickly raised its head. Problems arose on two fronts. First, there was the question as to whether or not to process complaints received prior to the formal establishment of the Council. Discussed at the inaugural meeting were, *inter alia*, Gough Whitlam's complaint concerning a doctored photograph of himself published in *The Daily Telegraph*, and one from Bob Hawke regarding *The Australian*. This discussion led to the second problem: the leaking to the press the Council's deliberations. Published in *The Nation Review* under the by-line of C M Evans (a pseudonym of a journalist "fed" by a Council member or of a member him/herself) and headlined 'Press barons guard their dirty linen', the article set out in full who voted along which line, the arguments used and included direct quotes.⁸³ It can reasonably be suspected that one of the AJA members wrote the piece, especially given the conclusion: 'Council is firmly of the view that freedom of the press in Australia can only be safeguarded adequately while all sections of the press are prepared to hold themselves publicly accountable...which, some might agree, is a monumental piece of hypocrisy considering the council's decision on the 16 complaints it refused to even hear'.⁸⁴ It was not a fortuitous beginning for the Australian Press Council. Another early (and continuing) problem arose from an apparent conflict in the Council's objectives.

A FREE AND RESPONSIBLE PRESS?

Professor David Flint is currently Chair of the APC. He is self-educated in the operation of the press and the questions that surround its ethical conduct. As Dean of Law at the University of Technology, Sydney, Flint brings a judicial and conciliatory

style to his Chairmanship of the APC. Educated at Sydney Boys High School, the Universities of Sydney and London and Université de Droit Paris, Flint is urbane, well-spoken, strictly apolitical, pro-Monarchist and elitist.

In his foreword to the 1994 Annual Report, Professor Flint explained that the Council was established to 'maintain the character of the Australian Press in accordance with the highest journalistic standards and to preserve its established freedom'.⁸⁵ There is a good argument that these two objects are at cross purposes. One need not look further than the tabloid press in England and its highly sensational, intrusive and offensive reporting - all in the name of freedom of the press and the public's right to know. It is sometimes difficult to equate this freedom with a responsible press. Hence the dilemma for the APC. While the Australian press as a whole still maintains a fair degree of integrity it occasionally needs to be reminded of the great responsibility it possesses.⁸⁶ In two recent decisions the High Court found the Australian Constitution contained an implied guarantee of freedom of speech.⁸⁷ It is not hard to visualise the press, hand on heart, bleating that freedom of speech equates with a free press. Flint has expanded on this duality:

The two duties are mutually interdependent. A high standard press informs the public and evaluates issues. To do this the press needs to be free. Each individual issue, and the proper consideration of each complaint, must necessarily involve a consideration of freedom of the press.

It would be possible for a Council not to have an express duty to preserve press freedom but a consideration of press freedom would still be implied. This could mean, for example, that the Council would not have a wide brief in actively preserving press freedom. Calcutt⁸⁸ argued along these lines, saying that other bodies were and could perform this role. The Calcutt reports were, I believe, flawed.

Part of this flowed from their basic failure to see that an imposed state system of ethical accountability would seriously undermine the traditional freedom of the British press. Such a proposal runs counter to the wisdom of centuries which shows that the separation between the executive and the press is of equal importance to that between the judiciary and the legislature.

I could envisage an Australian Press Council without a broad brief to preserve freedom. But apart from the Committee of Free Speech who else, outside the press itself, would undertake this role?⁸⁹

Geoff Hussey, News Ltd's representative on the Council, agrees with Flint: 'One freedom carries with it the corresponding responsibility'.⁹⁰ Hussey argues that freedom of the press carries with it a responsibility to respect that freedom and to behave responsibly towards the public.⁹¹ On a more basic level, Jennifer Treleaven, a former executive secretary of the APC, believes 'the safe-guarding of the freedom of the press ensures the Council gets the support of the publishers'.⁹² A valid point. Yet, Dorothy Ross sees a problem with the APC's freedom of the press (FOP) committee. She believes 'it has become too autonomous and takes upon itself independent action which Council would never give to the Complaints Committee. The FOP committee is haphazardly constituted and issues statements in the name of the Council without the Council having any input into the discussion'.⁹³

A possible alternative could be for the AJA to make submissions to inquiries and defend free speech. As the official union and professional body of journalists it could be seen as being a better alternative as a lobby group than the APC. As matters stand, it must seem strange to the general public that the body which accepts complaints about the ethical conduct of the print media has an additional role in defending the unfettered freedom of that media.

Since day one, the APC has adopted the line that the press can only be free if it is not subject to control by government agencies or by restrictive legislation. In extending the argument, the APC views any outside controls not only as a threat to the freedom of journalists and publishers but also as a threat to the freedom of citizens to be informed about what is happening in Australia and in the world.⁹⁴ In fact, the APC has been vigilant in its defence of freedom of the press, making many submissions to inquiries and committees on the subject.⁹⁵ Professor Flint maintains this line of thinking, arguing that the role of the press is that of a watchdog, an essential ingredient in a modern society. In playing that role properly, the press must be free and, hand-in-hand with that freedom comes responsibility to the public.⁹⁶ When press responsibility has been allegedly breached, it is the role of the APC to process complaints against publications. This role has not been an easy one for the APC, especially when dramatic events - some of its own making - are taken into consideration.

THE DRAMAS

The composition of the APC has changed since its inception. The first major upheaval was in 1980 when Rupert Murdoch withdrew News Ltd from the Council. Although no reason was given at the time, it was later established that Murdoch was angry with the Council's unfavourable adjudication (No. 75) against News Ltd's Adelaide papers⁹⁷ for biased reporting of the 1979 South Australian election. As Murdoch was never a fan of the idea of a press council, the removal of his papers was not a surprise. It did hurt, however - financially as News Ltd's subscription to the Council had to be absorbed by the remaining members, and it hurt the public standing of the Council as a major Australian publisher was no longer a member. Jennifer Treleaven recalls how she reacted with 'horror of horrors. It left the APC, to say the least as appearing to be unrepresentative of the major Australian press'.⁹⁸ Good news was to follow two years later.

In 1982 the APC was bolstered with the admission of John Fairfax Ltd. The Fairfax papers had always co-operated with the APC, publishing not only adjudications concerning itself, but those of other publications. It could have been co-incidental but, as soon as Sir Frank Kitto relinquished the Chair (in June 1982), Professor Geoffrey Sawer became his replacement and

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welcomed Fairfax into the APC fold. He spoke of 'the calibre of the consequent addition to the council's deliberative bodies'.⁹⁹ Four years later, however, the APC nearly fell apart.

On 3 December 1986 Rupert Murdoch launched a takeover bid for HWT. The APC had earlier washed its hands of the ownership topic. Although ably represented by Dorothy Ross, the Vice-Chair of the APC, who gave oral evidence to the 1981 Norris Inquiry into Ownership & Control of Victorian newspapers¹⁰⁰, the Press Council was let down by the conclusion to its written submission: 'Given the diverse nature of the interests represented on the Press Council...it is perhaps unreasonable to expect unanimity in offering recommendations'.¹⁰¹ Ross explains: 'there was no way the Press Council could have put any other view on press concentration because of the composition of the Council - at that time I think there were only four public members'.¹⁰² In effect the APC had placed the whole issue in the too hard basket. Now it had to sit up and pay attention.

At the time of the takeover bid, the Hon Hal Wootten QC was in the Chair. Mr Wootten convened a meeting of the APC on 11 December 1986 to consider the implications of the Murdoch bid. 'I have called a meeting of the Council to discuss this matter because of requests by members and because of my own deep conviction that this Council cannot retain any credibility as a watchdog of the public interest in the Press if it ignores or dodges the issues raised,' explained Wootten.¹⁰³

Armed with a draft statement advocating the Norris Inquiry's recommendation that a tribunal be established to prevent further concentration of press ownership, the Chair later wrote:

What happened can be understood in the light of the constitution of the council, which consists of 14 members and the chairman. Of the 14, four are public members unconnected with the press. They all strongly supported me. Three members came from the AJA. Two of them supported me; the third, who works for the HWT, did not, [and of the seven publishers' representatives, one abstained the rest] all opposed. The vote was seven all, and as I did not think it proper to use [my] vote to launch the council on a course strongly opposed by half the council, the draft was rejected.¹⁰⁴

Peter Costigan, the AJA representative who voted against the statement, believes there was a hidden agenda:

When I read [the statement], I had grave doubts on the basis that it was a foot in the door for government regulation and could not support a motion which had the APC calling for it. During the lively debate I and several others (I think David Flint was one) moved a compromise, a declaration which would voice grave concern over the Murdoch bid and concentration of media power and which would urge public consideration of a series of alternatives, including a reference to the Trade Practices Commission, without the APC officially endorsing any particular one. [Wootten] said that because it was a special meeting to discuss only the motion before it, he would not permit any alternatives being put to a vote.¹⁰⁵

From things that have been said to me since, including by participants at the meeting, I believe that some members, including Hal Wootten and John Lawrence [another AJA representative on the Council] believed the APC's proposed stand could have led to the Federal Government appointing a statutory body to control press ownership.

At least some APC members were willing to be members of such a body.¹⁰⁶

Both sides of the argument for and against Wootten's proposal were based on freedom of the press. To reiterate, the APC had always maintained that it was anathema for a free press to have any restrictions (except laws such as defamation) placed upon it. In the opposing corner was the argument that the public interest was paramount and that the statement should have been issued. Yet, the final outcome was a wasted piece of paper in the form of General Press Release (GPR) No. 86 in which the APC noted the Council's concern with the situation and its intention closely to monitor events.¹⁰⁷ Admittedly, while the Council was so closely divided it could not have issued a statement that was fully for or against the establishment of a Tribunal - the result probably would have been the destruction of the Council due to the fact that its members were so split. In retrospect, the option suggested by Costigan and others would have demonstrated the Council's displeasure, settled a few ruffled feathers within the Council and, at the same time, the Council would have been seen by the public to be fulfilling one of its objects: 'To report publicly on developments in Press ownership and control'.¹⁰⁸ Instead, it followed up with GPR No. 87, pointing out that the 11 December meeting 'was the only significant occasion when the Council divided between public members and publishers' representatives. The Australian Journalists' Association members themselves were divided'.¹⁰⁹ The operative word here is "significant". Does this imply that there were other occasions on which voting took these lines? There must have been. The only difference this time was the importance of the vote in the eyes of the public.

The result of the events of December 1986 included the resignation of Wootten (he was replaced by Professor David Flint), the withdrawal of the AJA, the reaffiliation of News Ltd and a restructure of the Council. Professor Flint explains the background:

After Hal resigned and I became Chairman, I went to see Michael Duffy, the then Minister for Communications. Mr Duffy was apparently grave when I came into his office. I took this demeanour to mean one of two things: either that the Minister believed I had come to tell him that the Press Council was about to be folded up or that we were looking for government funding. On hearing that the Council did not intend either, but was going to restructure, relief appeared on Michael Duffy's face. He was most amiable and supportive.¹¹⁰

Professor Flint also had discussions with the Trade Practices Commission which advised that it required News Ltd to divest itself of certain interests before a takeover would be approved.

Flint believes the Council's survival was also the work of David McNicoll, and possibly Max Suich and Chris Anderson¹¹¹,

whose lobbying behind the scenes assisted News Ltd's return to the Press Council family.¹¹² An interesting vignette is Dorothy Ross' recollection that 'During the Norris inquiry I was asked why News Ltd had left. I was able to tell them I didn't know because they didn't tell us. News Ltd were very pleased with this answer and spent some time with me after and said they were very grateful. I found out later, of course, that News Ltd had left the Council because of Adjudication No. 75.'¹¹³

The 1987 restructure resulted in a Council consisting of an independent Chair, 7 public members, 1 editorial member, 2 journalist members (freelance or retired, not formally associated with a newspaper group) and 10 publishers' representatives. It retains that structure.

By examining inquiries conducted in Britain, and in Australia, it will be seen that the watchdogs of the press on both sides of the world had become, by 1994, the focus of increasing attention.

PART THREE – THE INQUIRIES AND THE COUNCIL'S COMPOSITION

ROYAL COMMISSION, 1977

The third Royal Commission into the British press (the McGregor Commission) reported its findings in 1977. Having found that the Press Council 'had so far failed to persuade the knowledgeable public that it deals satisfactorily with the complaints against newspapers'¹¹⁴, the Commission made it clear that as the press had hitherto not unanimously conformed with the ruling of the Press Council, the introduction of a statutory authority was probable. In response, the composition of the Press Council was changed from 31 to 37 to give parity between lay and professional members under a public Chair, and a conciliation procedure was introduced. But the Press Council did not introduce the suggested code of conduct, nor gain more funding from its members, nor insist on front page publication of its adjudications, nor increase its public profile through publicity.¹¹⁵

THE FIRST CALCUTT INQUIRY, 1990

By 1990 a new inquiry, this time into privacy and related matters, was initiated into the British press. David Calcutt QC, the Chair, presented his report¹¹⁶ to parliament in June of that year. The inquiry found the Press Council to be, inter alia, ineffective as an adjudicating body, took too long in processing complaints, lacked effective sanctions and was not widely recognised as independent.¹¹⁷ The inquiry recommended that the press be given one last chance to prove the viability of self-regulation. The Press Council was to be superseded by an authoritative, independent, adequately funded and impartial body, to be called The Press Complaints Commission (PCC).¹¹⁸ The aim was for the PCC to concentrate on handling complaints and issuing guidance.¹¹⁹ The threat? A statutory authority. The PCC was established in 1991.

THE LEE INQUIRY, 1992

In 1992 the first far-reaching inquiry into the Australian print media took place.¹²⁰ Focused primarily on newspaper ownership concentration, the inquiry devoted some of its attention to the APC. Anecdotally, Kerry Packer said of the APC 'I think it is a complete and absolute piece of window dressing',¹²¹ though the inquiry found that the most telling criticism of the APC was the fact the AJA was no longer involved. The AJA asked for the APC to be composed of equal numbers of representatives from the public, publishers and the AJA, a suggestion which was adopted by the inquiry in its findings.¹²² On paper this proposal made sense - it had a nice triangular balance to it. On closer inspection, one quickly realises that it would have meant a slight reduction in the proportion of public members.

PUBLIC MEMBERSHIP - THE VIEWS OF TWO PUBLIC MEMBERS

As previously mentioned, the Council has always had a public membership component. The first public members were nominated by the Chairman from applicants who responded to advertisements placed in the Australian print media. In the ensuing twenty years most public members have been found in this way. On a few occasions, however, a Chairman has approached individuals he believed would benefit the Council.

Sometimes public members have first been appointed to the panel of alternate members and later appointed full members when a vacancy in the public membership occurred. And periodically, for reasons of geographical balance, full members are appointed after advertisements are placed only in certain states.

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Two public members of the Council, both of whom have approached their task with diligence and intelligence, have relayed their thoughts on the role of the public member.

Lange Powell, a public member of the APC since 1985, put the case of public members in an interview given in 1993: 'In dealing with complaints, we try to represent reasonable readers of newspapers. So we ask ourselves whether such readers would endorse such a complaint, or whether they'd feel it had gone over the top. [I] believe that such non-industry viewpoint is essential to the Council's work'.¹²³ Dorothy Ross, public member, has a similar opinion:

As a public member, I have tried to look at things from just a lay reader's view. I don't initially consider whether its legally right or legally wrong. I look at how it effects me - as if I have just picked up a paper and read it. There are times when I have tried to get a complaint upheld, when I have personally felt that the complaint might just as well be dismissed, because I could see how the article affected the complainant. When they come to the Complaints Committee you see how affected some of them are and how hurt or disadvantaged they have been. I always take into account how the article has had an effect on their life, privacy or their business and I always think we should try to help complainants. I suppose this is why I am unhappy with the tone of adjudications because they don't give complainants any hope that they can expect justice. I suppose that makes me a sympathetic member.¹²⁴

OTHER VIEWS ON THE COUNCIL'S COMPOSITION

As a recent survey conducted by the APC of past complainants has shown, many believe that the number of public members should be increased, not decreased, the median indicating that the APC should consist of 10 public, 5 publisher and 5 journalist members.¹²⁵ However, some publisher representatives, Geoff Hussey for example, believe membership should retain its current composition: an independent Chair, 50% publishers' representatives and the remaining 50% being made up of public and editorial/journalist members.¹²⁶ Hussey believes public members learn from their involvement with the Press Council:

Time on the Council gives them an opportunity to gain an insight into the operation of the press - the day to day responsibilities, how papers respond to fast happening events, how quickly they are able to correct mistakes.

News Ltd takes every opportunity to arrange for public members to attend news or editorial conferences at *The Daily Telegraph* and *The Australian*. We view it as part of our service to the Press Council.

It is through this learning experience that public members can communicate with others and spread the word into the public.¹²⁷

To reiterate, the APC is presently comprised of 10 members representing constituent bodies and 11 non-aligned members. In defending the Council, Professor Flint states it has a majority of non-publisher representatives.¹²⁸ This is misleading. The cited 11 members are comprised of an independent Chair, 7 public members, 2 journalist and 1 editorial member. Only 8 of them, therefore, can truly be termed as non-industry members - 8 out of 21. It is suggested that the APC look at the composition of the Advertising Standards Council¹²⁹ which is able to state that 'Because of its majority public membership, the Council regards itself as a co-regulatory body rather than a self-regulatory body in the normal sense'.¹³⁰ It would be advisable for the APC to increase its public membership to a majority. Only then will the public truly view it as a body which is not top heavy with industry members.

By the early 1990s, public readership in Britain had become increasingly belligerent against the press. The perception was held that the press was getting out of hand as newspapers were going to extremes in their reporting of the affairs of the Royals and those of certain politicians.

THE SECOND CALCUTT INQUIRY, 1993

In his 1993 review of British press self-regulation,¹³¹ Sir David Calcutt QC concluded the PCC had not proved itself to be an effective regulator and recommended that the government should now introduce a statutory regime that would have the power to fine publications, award costs and compensation to complainants and order the publication of corrections.¹³² As the PCC pointed out (with some reason) in its own review, the Calcutt Report 'failed to examine the Commission's procedures or performance. It did not take into account the considerable change in press behaviour during the period of the Commission's existence; it was preoccupied with the press reporting of the private lives of public figures and it neglected to scrutinise what the PCC had achieved for people not in the public eye'.¹³³

The facts that the PCC now had a majority of independent members (8 lay members, plus an independent Chair, with 7 senior editorial members), had strengthened its Code of Practice, had appointed a Privacy Commissioner to tighten self-regulation in that area, and insisted that all adverse adjudications be published in full and with due prominence by the publications involved were not taken into account by the Calcutt review. Yet, as the perception was that the press was infringing individual liberty, there was the possibility that a statutory authority would indeed be established. However, it eventuated that the rationale behind the Calcutt review was flawed, based as it was on the intrusion into the lives of politicians and, in particular, the marriage of the Prince and Princess of Wales. It took the leaking of a letter from the Chair of the PCC to David Calcutt to put the situation into perspective. The letter had been sent before the Calcutt review had been compiled and offered grounds for the belief that either the Prince and/or the Princess and their respective friends had been feeding the press to gain the upper

hand in their battle for supremacy.¹³⁴ The Tory government rejected Calcutt's proposal for a statutory authority. The PCC was to stay.

OFF THE RECORD, 1994

In Australia during the same period a new Senate inquiry had been initiated, this time into the rights and obligations of the media.²¹³⁵ In October 1994, the inquiry issued its initial report, making a recommendation that judicial discretion be enacted to excuse a journalist from answering questions about the identity of a confidential source.¹³⁶ The case for shield laws had been building momentum in the early 1990s as there were a rash of cases where journalists had been punished for protecting their sources: in 1990 Tony Barass - gaoled and fined; in 1992 Joe Budd - gaoled; and in 1993 Chris Nicholls - gaoled, David Hellaby - fined, John Synott faced contempt proceedings and Deborah Cornwall was found guilty of contempt. The APC welcomed this aspect of the report, and the section on the MEAA (a "super union" which included the AJA) and APC.¹³⁷

The inquiry noted the APC dealt with the print media only, that is with publications, and not with the ethical behaviour of individual journalists (this was left to the AJA's judiciary committee).

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As a result, the inquiry recommended that steps be taken to establish closer links between the MEAA and the APC, 'Cooperation between these two bodies would surely provide greater opportunity to enhance accountability in the print media'.¹³⁸ The APC has, in fact, been making moves to establish closer ties with the MEAA but, as yet, has been unsuccessful. Professor Flint believes the re-incorporation of the MEAA would be beneficial:

When the AJA left, we lost the benefit of people like John Lawrence (but we kept Pat Burgess, Peter Costigan and gained others later, for example Margaret Jones and Ken Randall). The departure did neither press freedom nor self regulation any good. The AJA is, after all, the only professional association of journalists. We can present a consensus to the public that we are of the same view on basic principles and good and close relations will permit us to co-operate on specific projects such as the confidentiality of sources. The judiciary committee would continue to exist, because we hear complaints against newspapers, not journalists. Of course we could handle both if this were the wish of our constituent bodies and the AJA.¹³⁹

Dorothy Ross is opposed to the return of the MEAA:

I have no interest in them coming back. When they left it was assumed by the AJA that we would fold up. They were prepared to destroy us. In any case, they are an industrial relations body and in their time on the Council, AJA members had many an argument with the proprietors. I can't see that we have been diminished by having lost the AJA. Its role on the Council was adversarial.¹⁴⁰

Peter Costigan, who represented the AJA on the council and stayed as a Journalist Member after the union's withdrawal, is of the opinion:

That saving money from the AJA's Press Council contribution was [a] major factor in the parting of the ways, and has been a continuing factor in their keeping their distance since. In so many of our complaints a core issue is the ethics of the journalists and editors involved. The Press Council hasn't the power to examine ethics. The union has traditionally had that control over journalistic ethics and it is partly an industrial question. Many many years ago they took upon themselves as a protective device the role of being the adjudicators of ethics. They set up a procedure where papers said alright, there is an accusation this journalist has been unethical so therefore the union will make that judgment, and it was usually behind closed doors with no proprietor or editor participation and very few ethics committee hearings have been adjudicated. The public perception is that journalists are not as ethical as they claim to be because there is no proof that they are because there is no evidence their ethics are ever tested. The Lee Inquiry, I think, was a diversion because you have to remember also that inquiry was a Labor government committee which is much more inclined to say, in fact very emphatically at the moment, inclined to say the union represents the people who work. However, membership of the AJA, now part of the MEAA, is declining. So, making the AJA the formal journalistic representatives of the Press Council in a lot of quarters would raise the question of the real credibility of the Press Council.¹⁴¹

The APC has been extending the olive branch and it appears that it is up to the MEAA whether or not to accept. Whatever the reason, the MEAA's recalcitrance is at odds with its stated recommendation that the APC should be comprised of equal numbers of representatives from the public, publishers and the union.

PART FOUR – THE COMPLAINTS FACILITY

THE COMPLAINTS FACILITY OF THE APC

The second recommendation of the Senate inquiry in respect of the APC was one connected with the second main area of criticism of the Council: its complaints facility. Aggrieved readers of publications have three options open to them. First, they can initiate legal proceedings against the newspaper or magazine, an option that is realistically only viable for the rich or the very poor. Second, they can approach the publication and try and obtain a correction, clarification or opportunity to reply. Or, third, they can make a complaint to the APC. It is the latter option that people turn to when they rule out option one and fail in their attempt at option two.¹⁴²

The inquiry, like most observers of the Council, appeared to assume that the only outcome of the complaints procedure was an adjudication. Yet nearly twice as many complainants have their complaints mediated or are prepared to withdraw them after receiving the newspaper's response than refer their complaints to the Council.

The inquiry found that the APC should 'be given power to impose and enforce sanctions on the print media. This should be done by legislation if necessary'.¹⁴³ The Chair of the Committee, Senator Barney Cooney, explained that the sanctions may include fines and even suspending publication for a short time.¹⁴⁴ Professor Flint immediately attacked the idea of a statutory authority:

It's a draconian power. My immediate reaction is that I don't think in a democratic society that any authority should be vested with the power. If the council can be given that power, who else may be given the same power? Giving us the power to impose fines would turn us into a court. It wouldn't work. It would mean complainants and media organisations turning up with QCs and arguing for days over such fines, making Council's work longer and more expensive.¹⁴⁵

Or, as Geoff Hussey put it, 'a statutory authority is contradictory to the whole concept of freedom of the press. A statutory authority would leave the government which imposes the authority with the power to influence the freedom of the press'.¹⁴⁶ It is difficult to disagree with this argument, especially when consideration is given to the way courts operate in Australia. Involvement in the court system means a great deal of money and long delays often resulting in anxiety. The original concept of the APC was for an alternative to the court system, one which was accessible to all.

This is a good place to put in a word about the role of the Press Council's secretariat. As noted above, it is not commonly known that, as the first people to touch base with complainants, the secretariat's aim is to try and mediate between publications and the public. Where possible, an amicable solution is found ... either by way of a letter to the editor being published, a follow-up article being printed, a clarification made etc. Other complaints are outside the Council's remit, such as those regarding television or radio, and the remainder are either not followed up by the complainant or the file is closed once the publication has responded and the complainant is happy to let the complaint rest. It is only when mediation by the secretariat is unsuccessful or the newspaper fails to satisfy the complainant's concern that a complaint is considered by the Council which issues an adjudication on the matter.

If the powers of the Council were increased to include the imposition of fines, what would be the scale of the fines, who would be the trustee of the money, would it be spent and, if so, by whom and on what? If the fines were to be in the form of compensation to a complainant, would not the APC be inundated with complainants who were after monetary compensation as opposed to the concept of upholding an ethical press? The idea behind the imposition of fines is to give teeth to the "toothless tiger". The problem with the idea is that a fully equipped tiger might bite off the hand that feeds it! Even in the most litigious country in the world - America - opponents of Press Councils with punitive powers are to be found. In their article "Press Councils: the answer to our First Amendment Dilemma?", John Ritter and Matthew Leibowitz make the point that the power of a press council to publicise its decisions gives the "toothless" watchdog something which is noticed - a loud bark. It is from this loud bark that press councils derive their real power 'developing public awareness of problems in the free press-fair press area'.¹⁴⁷ Even the customers of the APC are in two minds on the issue. While a majority of respondents to the APC's survey of complainants strongly indicated that the APC should be able to impose a fine if the decision goes against the publication,¹⁴⁸ 59% were not primarily concerned with monetary compensation.¹⁴⁹

APC detractors have pointed out that the Council does not even have the power to enforce publication of its adverse adjudications.¹⁵⁰ The APC counters that, in the period 1988-1993, for example, an average 91% of adverse adjudications were published in the newspaper or magazine concerned, or not published by agreement. Of the remainder, the publications refused to publish or there were specific reasons for non-publication such as legal advice not to do so.¹⁵¹ The public, it is suspected, would have a higher regard for the APC if it had the ability to enforce publication of adverse adjudications. When this idea was suggested to Geoff Hussey, he was very firm in his antagonism to such a move. 'To make publication mandatory,' he argued, 'would move it away from being a self-regulatory body. It would necessitate government regulation, a statutory authority, one that is able to levy fines'.¹⁵² What is being suggested in this essay is not the levying of fines, but a simple amendment to the APC's principles that requires the publication of all adverse adjudications. As most publications already co-operate, making mandatory the publication of adverse adjudications should not prove to be a problem.

It would, likewise, increase the APC's prestige if a similar rule was enacted that required the entire adjudication be published (not an edited version) and in a prominent position. It is not surprising that only 4% of past complainants were very satisfied with the publicity the Council's decision received compared with 30% who were very dissatisfied.¹⁵³ Yet, if a situation arose again in which they had a similar complaint, 52% would take it to the APC.¹⁵⁴ The picture is therefore not all bad for the Council. In fact, the complaints procedure itself is simple and very well explained.¹⁵⁵ The inability to enforce publication of adverse adjudications is one area that could be bettered.

PROMOTION OF THE APC

Another shortcoming is how very few people know of the existence of the APC. The largest group of respondents to the APC survey answered that they heard of the Press Council through the news media.¹⁵⁶ The Council publicises itself: it encourages papers to insert filler ads in their publications to inform the public of the Council's existence and functions; it meets interstate at least twice a year, at which time public meetings are held on topics germane to its functions; it holds case studies seminars in schools, universities and other venues where it is appropriate for such an exercise to be undertaken; it awards an annual prize for the best essay on a topic related to the media; its doors are always open to young journalists who want to learn about the APC; it produces a quarterly newsletter that is free to anyone wishing to be placed on the mailing list; and, the current Chair, Professor Flint, is tireless in speaking about the APC and promoting its image. Yet, all this does not seem to be enough.

A working party should be established to set out publicity methods for the APC. To this end a profile-raising committee has been suggested by Geoff Hussey who, at the same time, rules out advertising as being demeaning, crass and commercial. Hussey believes the Council has too often been reactive in its press releases and should be publicising its efforts in maintaining and enhancing freedom of the press on the one hand and its efforts at ensuring, on the other hand, that it is acting as a 'careful self-regulatory body'.¹⁵⁷ While I consider the dual role of the Press Council to be contradictory, I concur with Hussey's assessment of the reactive nature of the Council. More attention should be paid to changing pressures in Australia and the concerns of its citizens. The Super League versus the Australian Rugby League fight - or Murdoch versus Packer - with the concerns expressed over biased reporting is typical of the instances that the APC should have declared its stand. Instead it placed the issue into the increasingly full too-hard basket.

On a more basic level, an increased public awareness of the APC could be achieved by the preparation of a kit which included the guidelines established by the APC and the AJA. The kits would be distributed in schools where media studies are taught and pupils would be given a scenario and asked about the ethics of the journalists involved and how, if at all, they would have approached the same situation. The difference between this approach and the existing case studies seminar is that the former would not require Council member participation whereas the latter does. And there is always the give-away. Quite often students write in asking for such souvenirs. It would not be an expensive exercise to purchase pencils inscribed with the APC logo, name, address and telephone numbers. The same applies to fridge magnets and stickers and, if it did wish to sell an item, APC coasters would be an ideal promotion.

CRITICS OF APC ADJUDICATIONS

As it stands, the only time the Council gains increased public attention is through criticism, particularly of its adjudications.¹⁵⁸ Stuart Littlemore is a constant critic of Press Council adjudications. In one way he is helping to increase the public's awareness of the APC. It can be argued that any publicity is good publicity. Part of the role of a critic is to encourage those criticised to open their minds to re-examination. On the 13 February 1995 broadcast of *Media-Watch*, Littlemore pointed out just how inconsistent APC adjudications can be when he took the Council to task concerning three decisions on complaints lodged by Geoffrey Reading. Littlemore explained:

The indomitable Geoff Reading has been locked in a struggle with the print watchdog, sorry lapdog, for years. Reading, a former press secretary to Bob Askin when he was Premier of New South Wales, takes on the Fairfax press everytime they assert that Askin was a crook.¹⁵⁹

Littlemore then gave a chronology of Mr Reading's complaints and the findings of the APC. The first point to make, in defence of the Fairfax press, is that Reading, a Sydney resident, has targeted the only newspaper he reads - the *Herald*. That being said, in defence of the APC, it must also be noted that, although Reading's complaints are taken very seriously by him, they are sometimes based on throw-away lines that could not possibly be taken as a serious blight on the memory of Sir Robert Askin.

The three adjudications referred to by Stuart Littlemore are Nos 630, 683 and 764. Adjudication 630 upheld, in part, Reading's complaint for failing to distinguish the allegation of Sir Robert Askin's corruption from any proved fact.¹⁶⁰ The last two words were to prove embarrassing for the Council. Reading complained next about a throw-away line which read: 'It was a great, cheap service, even if you did end up with more illegal connections than Robert Askin'.¹⁶¹ The Council, in adjudication No. 683, bowed its head and regretted the tautology, stating that the term proved fact 'may have suggested to some readers that the Council has ruled that claims of criminal behaviour could only be recorded as fact if they were so found by a court of law. It was never the Council's intention'.¹⁶² It then dismissed the complaint. Littlemore was correct when he termed this adjudication as 'new think'.¹⁶³ It must, however, be admitted that the article in question was of a humorous nature, lending a different tone than would otherwise have lent more weight to an allegation of criminality by the late Sir Robert

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Askin. The point is, however, the Council had previously upheld Reading's complaint on the "proved fact" test. The last adjudication in question, No. 764, concerned Mike Carlton's suggestion for a pantheon of Australian criminals. There would be 'the Laurie Connell Pavilion, the Terence Lewis Gallery, the Robert Trimbole Garden, the George Freeman Plaza and the political wing honouring such luminaries as Sir Robert Askin, Russell Hinze and Brian Burke'.¹⁶⁴ The Council, once again, dismissed the complaint. The adjudication read, in part: 'If the *Herald* believes, as it has shown, that its writers are justified in describing Sir Robert as having engaged in corrupt activities, even without proof in a legal sense, then it is justified in printing those stories'.¹⁶⁵ Littlemore's response was: 'Good God. If a newspaper believes someone's a crook, that's good enough...Still, it may have been a useful exercise, demonstrating quite conclusively that the Press Council has abdicated any authority it may ever have claimed. I mean, haven't they even read their so-called Statement of Principles? Principle 3¹⁶⁶ (reads) "rumour and unconfirmed reports, if published at all, should be identified as such"!' ¹⁶⁷ While Littlemore went overboard in his statement that the Press Council had abdicated any authority it may ever have claimed, he pointed out the difficulties faced by the Council in determining the outcome of complaints.

Sometimes the Council has simply adjudicated incorrectly. This statement is made using the reasonable reader test. A good example of when the Council was wrong was the case of Adjudication No. 723. The background to the complaint filed by Christopher Duncan was a column written by Richard Wright of the NSW Farmers Association. The column appeared in the 14 March 1994 issue of *The Country Leader* and dealt with what Mr Wright saw as the media's neglect of country issues. He stated that: 'Because of the media, Sydney was now known as the 'poof' capital of the world.' He claimed that AIDS was 'God's myxo', and hoped it would work 'without hurting too many innocent victims', and would 'correct people's mind-set and morals'.¹⁶⁸

What Wright was advocating was the death of all "non-innocent victims" of AIDS. An incredibly biased judgment. In any event, who is to say who is and who is not innocent? It is contended that any reasonable reader would have been appalled at such a statement. Yet, the APC dismissed the complaint, arguing that 'the views expressed are clearly those of a by-lined columnist...[and] Mr Duncan should have taken up the offer of the right of reply'.¹⁶⁹

In defending the adjudication, Professor Flint argued that 'unless speech incites immediate violence, it should be free. Controlling opinions, even foolish or extreme opinions, has no place in a democratic society'.¹²⁰ Not surprisingly, not only *Media-Watch* but the AIDS Council of NSW attacked the adjudication. David Salter, Executive Producer of *Media-Watch*, pointed out that the concept of a "right of reply":

defies any test of rationality. In what way would such a reply, voiced by an individual, have diminished the general offence of the original article?...Our contention in the 'God's myxo' matter was that publication of an unreasonable opinion expressed in a deliberately offensive manner deserved condemnation from the Council.¹⁷¹

Peter Grogan, President of the NSW AIDS Council, was appalled by the ruling:

The Press Council is a great example of the failure of self-regulation in this country - it is toothless...I would have fallen over backwards if the Press Council had found the newspaper actually had a case to answer.¹⁷²

Even a cursory glance at the APC's Statement of Principles will confirm that the Wright article breached number 7: 'A newspaper has a wide discretion in matters of taste, but this does not justify lapses of taste so repugnant as to bring the freedom of the press into disrepute or be extremely offensive to the public'.¹⁷³

The *cause celebre* of all Council adjudications was No. 591 - the *People* adjudication. The case involved the 4 March 1992 front page cover of *People* magazine, the article and pictures relating to the cover and the poster promoting the issue. The cover (and poster) featured an apparently naked woman on her hands and knees, wearing a collar attached to a chain of beads, with a headline reading 'WOOF! MORE WILD ANIMALS INSIDE'. Another picture of the model, inside the issue, was accompanied by the headline 'HEEL, SPIKE...'.¹⁷⁴

In not upholding the complaint, the Press Council's adjudication explained:

In reaching its decision, the Press Council makes two points. First, the material complained of had already been dealt with by...the Office of Film and Literature Classification, which gave the issue a 'Restricted' classification. Second, the Press Council's principles were drawn up to provide guidance to the readers and editors of newspapers and other journals whose primary function is to provide information in the form of news, features and comment, although they also seek to entertain. It is not always easy or sensible to apply these principles to publications whose primary function is entertainment. What might be acceptable in a magazine like *People* might well be unacceptable in a newspaper. Publications have to be considered in the context of their readership.¹⁷⁵

In response, Dr Marlene Goldsmith MLC reasons that the first of the points:

Ignores the fact that the publication was produced, displayed and sold without any restriction. It was marketed as a mainstream publication, and, by the time public complaints had led to its reclassification, had virtually sold out. [In respect of the second point, it] totally ignores the fact that it was the cover of the magazine which was at issue: a cover which was openly displayed on newsstands and large posters not only within newsagents but in their windows and on public thoroughfares.¹⁷⁶

After these cases had been chosen, Dorothy Ross cited the identical three as her examples of when the Council has let itself down. She argues:

In recent times I believe we have made three very bad decisions.

The first that comes to mind is the *People* adjudication. This is where we showed the weakness of the composition of the Council, even though the public members didn't vote together. We considered the matter over six months because there was more or less a bare majority when put to the vote the first time. This was the beginning of the problem. After the vote was taken, there was a lot of discussion and people wanting to change their minds. Subsequently, every time the voting was always close. And, because the composition of the Council changed each month with absentee members being replaced by their alternates, there weren't the same people voting at each meeting. I think that was a real low point in the judgment of the Council. It seemed that if they upheld the complaint, the Council would be bound to receive a number of complaints regarding borderline publications. We could have dealt with that on a case-by-case basis. It did not have to be a problem.

The second are the Reading adjudications, our inconsistency and our failure to hold to our principle no. 3. I think they have become personalised by the Council. There are members of the Council who had met Sir Robert and seemed to be prepared to believe rumours. I also think there is a dangerous tendency in the Council to regard complaints by politicians very cynically. I think the Council has an unfortunate attitude to vexatious complainants. It should not make any difference how often a person complains. A complaint is never trivial to the complainant. Very seldom do the public members treat it as a trivial complaint.

The last bad decision that stands out in my mind is the "God's myxo" adjudication. It was so clearly in bad taste and offensive to the public. I could never understand how members of the Council failed to uphold the complaint.

On a broader sense, I believe Council adjudications are too legalistic, too journalistic. They are not sufficiently simple for the average reasonable reader.¹⁷⁷

It is always easy with hindsight to criticise a judgment. However, in the three cases cited, the Council must have been aware that its decision would cause controversy. Often, critics of the Council are to be found among complainants whose complaints are dismissed. That is human nature. What is interesting is the lack of criticism of the APC principles. Devised nearly two decades ago, the principles have largely remained unchanged. It could be argued that these are motherhood principles, hard to attack. It could also be argued that the APC has existed in a vacuum since its inception. These were my first thoughts. On reconsideration, it is suggested that the basis of ethical behaviour is the same today as it was 20 years ago. The principles adopted were specifically drawn up to be generalist - broad enough to cover the many pitfalls that publications can, and do, fall into. And, it must be noted that in the past 20 years the only major laws which have been enacted, and which are of particular relevance to the press, are based on discrimination, an area covered back in 1976, under principle 8 which read 'the publication in a newspaper of matters 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'.¹⁷⁸ This, and the other principles were drawn up before the hearing of the first complaint. There are now a number of adjudications that have set precedents for the ethical conduct of newspapers.

Jack Herman is the current Executive Secretary of the APC. President of Sydney University's SRC in his student days, Herman has had a varied work history ranging from school teacher, to conference organiser and reader at a press clipping service. He possesses an encyclopedic memory and has brought to the Council a fresh, unjaded, perspective on the press. (Only time will tell if this perspective will change). I asked Herman to pinpoint what he considers to be some of the precedent setting adjudications. It is pertinent to note that his first choices were those which recognise the licence given for the expression of views: by by-lined columnists - No. 470; by cartoonists - No. 372; and in the letters-to-the-editor pages - No. 287.¹⁷⁹ The same thread of defence of freedom of speech that the APC has woven through its submissions to inquiries has therefore been stitched into its adjudications. Yet, as Herman points out, this license to express a range of opinions is balanced by several adjudications - Nos 246 and 472 for example - which argue against stereotyping and which call for balance.¹⁸⁰ Perhaps the most significant adjudications are those relating to invasion of privacy. One in particular has been chosen here, an early adjudication (No. 35), which concerned the publication of the names, ages and photographs of two children whose lives had been threatened by their mother. The Press Council upheld the complaint, noting that it was of the opinion:

that in the present case the dramatic events which were the main subject of the report could have been reported quite sufficiently without identifying the children, and particularly without publishing their photographs, and that what the paper did amounted to an unjustified entry into the sensitive area of family relationships so as to attach to the children the stigma of their mother's irrational behaviour. To carry the freedom of the Press to such an extent in the Council's opinion should be recognised as an infringement of the privacy of the individual and as tending to alienate public support for the freedom itself.¹⁸¹

That, therefore, is the core role of the Australian Press Council - to be the watchdog of the press, to reprimand it when it errs and to ensure that the freedom of the press is not taken for granted. The press should never abuse its freedom. If it does, the public will begin to question the freedom itself.

CONCLUSION

The aim of this essay is to answer the question ‘Whither the Australian Press Council?’. Will it survive and, if so, on what basis? In answering these questions the essay was divided into four parts. The first dealt with the background to the formation of the APC with particular reference to similar moves in Britain. The second reviewed the early days of the APC, its composition, its objectives and the dramas with which it involved itself. The third part examined the inquiries into the press held both in Britain and in Australia, the findings of the inquiries and their recommendations. Finally, it looked in detail at the operation of the Council’s complaints facility.

It has been 50 years since the first moves were made to form a press council in Australia. The birth of the APC was not an easy one, born out of an uneasy alliance between journalists and press proprietors. Lessons were learnt from mistakes made by The General Council of the Press and The Press Council in Britain: when the APC was formed it had public representation, it asked that adverse adjudications be published in the publication concerned and the publications themselves were more amenable to a watchdog than were their British counterparts. The reason? Self-preservation and non-interference from government.

Now that the Australian Press Council is nearing its twentieth anniversary, it is a good time for self-analysis. There are numerous areas that it could review. It could ask itself, for example, whether it would be preferable to place defence of freedom of the press in the hands of the MEAA? Shouldn’t it rethink its invitation to the MEAA to rejoin the Council, past experiences having been largely based on the MEAA’s antagonism to press proprietors? Would not the public’s perception of the Council be enhanced if the public membership of the Council were increased to a majority? Shouldn’t it do more to promote itself? Shouldn’t it insist on publication, in full and in a prominent position, of all (adverse) adjudications? Shouldn’t it try to be more consistent in its adjudications? I submit that an affirmative answer to each of these questions, and the implementation of the suggested changes, would result in an improvement in the efficacy of many aspects of the Council.

Whither the Australian Press Council? The bottom line for press proprietors is that self-regulation is preferable to a statutory authority. This fact alone will ensure the continued existence of the APC, its funding and the co-operation of publications. What remains to be seen is how seriously the APC takes its role. The Australian Press Council will survive. It is up to itself if it also grows.

FOOTNOTES

- 1 Richard White, *Inventing Australia*. George Allen & Unwin, Sydney, 1985, 153
- 2 Pat O’Malley, ‘Regulating Contradictions: The Australian Press Council and the “Dispersal of Social Control”’, *Law & Society Review*, vol 21, no 1, 1987, 89-90
- 3 O’Malley, *op. cit.*, 90
- 4 *AJA proposal for Australian Council of the Press* (AJA proposal), undated, 2
- 5 *Ibid.*
- 6 The same situation applied in Australia. The Fairfax group surmounted this problem by acquiring and then closing *Smith’s Weekly* (founded 1919) solely for the acquisition of its 897 tons of newsprint. Paul Chadwick, *Media Mates: Carving up Australia’s Media*, Macmillan Australia, South Melbourne, 1989, xxvi
- 7 General Council of the Press, *Annual Report* No 1, 30
- 8 Phillip H Levy, *The Press Council: History, Procedure and Cases*, Macmillan, London, 1967, 4, 5
- 9 House of Representatives Select Committee on the Print Media, *News & Fair Facts: The Australian Print Media Industry* (Lee Inquiry), Australian Government Publishing Service, Canberra, 1992, 16
- 10 General Council of the Press, *Annual Report* No 1, 30
- 11 *Ibid.*
- 12 Levy, *op. cit.*, 10
- 13 O’Malley, *op. cit.*, 91
- 14 See Appendix 1 for the list of objects. The objects, however, excluded recommendations for an examination of the practicability of a pension scheme, the establishment of such common services as may from time to time appear desirable, and the role of representing the press in its relations with the government, the United Nations, etc. General Council of the Press, *Annual Report* No 1, 31
- 15 Both the Australian Press Council and its British equivalents refer to a “Chairman” in their constitutions. From herein, the word “Chair” will be used.
- 16 General Council of the Press, *Annual Report* No 1, 33-34
- 17 *Rex v Sussex Justices*, 9 Nov. 1923 King’s Bench Reports, 1924, vol. i, 259
- 18 Only every quarter after which a statement was released for publication. General Council of the Press, *Annual Report* No. 1, 18
- 19 Henry Mayer, *The Press in Australia*, Lansdowne Press, Melbourne, 1968, 245
- 20 General Council of the Press, *Annual Report* No. 1, 4
- 21 General Council of the Press, *Annual Report* No. 5, 1
- 22 General Council of the Press, *Annual Report* No 5, 25

- 23 General Council of the Press, *Annual Report* No 7, 30-31. Incidentally, the first chair of the General Council, Colonel JJ Astor, was also chair of *The Times*
- 24 General Council of the Press, *Annual Report* No. 1, 21-29
- 25 General Council of the Press, *Annual Report* No 9, 20
- 26 General Council of the Press, *Annual Report* No 1, 18
- 27 Throughout the annual reports, when referring to journalists ‘his’ is always used, never ‘her’.
- 28 General Council of the Press, *Annual Report* No 3, 6. These arguments are reiterated by the APC when suggestions for punitive powers are made.
- 29 General Council of the Press, *Annual Report* No 1, 22
- 30 General Council of the Press, *Annual Report* No 5, 19
- 31 General Council of the Press, *Annual Report* No 8, 13-14
- 32 General Council of the Press, *Annual Report* No 8, 18
- 33 General Council of the Press, *Annual Report* No 8, 18
- 34 General Council of the Press, *Annual Report* No 9, 4
- 35 General Council of the Press, *Annual Report* No 8, 6
- 36 Levy, op. cit., 17
- 37 Surely a valid purpose in itself!
- 38 General Council of the Press, *Annual Report* No 9, 1
- 39 General Council of the Press, *Annual Report* No 9, 5-6
- 40 He was, however, appointed by the press.
- 41 The Press Council, *Annual Report* No. 11, 4-5. The Press Council’s *Annual Reports* start at number 10, presumably seeing itself as a continuation, although reformed version, of The General Council of the Press.
- 42 Surely the public was interested. The Council’s argument would have had more force if it argued along the public benefit line.
- 43 The Press Council, *Annual Report* No 11, 19
- 44 T O Lloyd, *Empire, Welfare State, Europe: English History 1906-1992*, 4th ed., Oxford University Press, Oxford, 1993, 387
- 45 The Press Council, *Annual Report* No 17, 73-74
- 46 The Press Council, *Annual Report* No 11, 82
- 47 The Press Council, *Annual Report* No 10, 25
- 48 Ibid., 26
- 49 The Press Council, *Annual Report* No 11, 28
- 50 The Press Council, *Annual Report* No 12, 28
- 51 The Press Council, *Annual Report* No 14, 45
- 52 The Press Council, *Annual Report* No 19, 80
- 53 The Press Council, *Annual Report* No 19, 80
- 54 Peter Costigan, response to author’s question.
- 55 Costigan, op. cit..
- 56 *The Journalist*, March 1969, 1
- 57 Ibid., 3
- 58 The Mercury (Hobart), 2 December 1969, 2
- 59 AJA to ANC, 24 May 1971
- 60 O’Malley, op. cit., 92
- 61 Sir Frank Packer pointed out the failure of the Newspaper Board and termed any meeting as “unnecessary” - Sir Frank Packer to ANC, 20 December 1971
- 62 ANC to AJA, 29 June 1971
- 63 ANC memorandum of discussion, 10 February 1972
- 64 David McNicoll, response to author’s questions.
- 65 *The Journalist*, March 1972, 1
- 66 O’Malley, op. cit., 92
- 67 *The Sydney Morning Herald*, 16 November 1972
- 68 “undeserved criticism” is debatable. Political bias of some newspapers was just one area where the press deserved criticism.
- 69 AJA to ANC, 17 December 1974
- 70 *The Journalist*, April 1975, 1
- 71 Dr M Cass, media release, 8 August 1975, 5
- 72 Ibid.
- 73 Dr M Cass, media release, 10 August 1975, 2
- 74 McNicoll, op. cit.
- 75 This was not the intention of Moss Cass, but was the belief incorrectly held
- 76 ANC, press release, 6 November 1975, 1
- 77 ANC, internal memorandum, December 1975, 1
- 78 *The Sun*, 19 January 1976, 1
- 79 McNicoll, op. cit.
- 80 The reference to “disastrous experience” relates to conflicts between the Council and one of its Executive Secretaries, including the shredding of an *Annual Report* which contained comments made by the then Secretary and printed without the approval of the Council.
- 81 McNicoll, op. cit.

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- 82 Gavin Souter, *Company of Heralds*, Melbourne University Press, Melbourne, 1981, 642
- 83 *The Nation Review*, 30 July 1976
- 84 Ibid.
- 85 Australian Press Council, *Annual Report* No 18, 11. See Appendix 2 for the objects and Statement of Principles of the Australian Press Council.
- 86 For a good overview of the problems faced by journalists in maintaining a responsible approach to their profession, see John Henningham (ed), *Issues in Australian Journalism*, cited in bibliography.
- 87 *Nationwide News v Wills* (1992) 108 ALR 681 and *Australian Capital Television Pty Ltd v The Commonwealth No 2* (1992) 109 ALR 577
- 88 See bibliography for references to the two Calcutt enquiries.
- 89 Professor David Flint, response to author's question.
- 90 Geoff Hussey, response to author's question.
- 91 Ibid.
- 92 Jennifer Treleaven, response to author's question.
- 93 Dorothy Ross, response to author's questions.
- 94 Australian Press Council, *Aims & Practices*, Booklet No 1, 1
- 95 A full list of the submissions made between July 1988 and August 1996 is available from the Council.
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- 98 Treleaven, op. cit.
- 99 Australian Press Council, *Annual Report* No 7, 5
- 100 Les Carolyn, *Paper Chase: The Press Under Examination*, The Herald and Weekly Times Limited, Victoria, 1982, 213 - Miss Ross is described as 'a good advocate'
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- 102 Ross, op. cit.
- 103 Hal Wootten memo to APC members, 11 December 1986
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- 107 Australian Press Council, *Annual Report* No 11, 18-19
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- 110 Professor Flint, op. cit.
- 111 Suich and Anderson were executives of Fairfax at the time.
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- 114 Quoted by David Calcutt, *Home Office: Report of the Committee on Privacy and Related Matters*, (Calcutt 1) HMSO, London, 1990, 60
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- 137 Australian Press Council, *Australian Press Council News*, November 1994, 5
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- 148 Survey, op. cit., 2
- 149 *Ibid.*, 4
- 150 See Appendix 3, Complaints Procedure, point 14
- 151 *Review of Complaints, 1 July 1988-30 June 1993*, supplement to *APC News*, Vol. 6, No. 2, May 1994, 8
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- 155 See Appendix 3
- 156 31%, Survey, op. cit., Question 1
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APPENDIX 1

OBJECTS OF THE GENERAL COUNCIL OF THE PRESS

1. to preserve the established freedom of the British Press.
2. to maintain the character of the British Press in accordance with the highest professional and commercial standards.
3. to keep under review any developments likely to restrict the supply of information of public interest and importance.
4. to promote and encourage methods of recruitment, education and training of journalists.
5. to promote a proper functional relation among all sections of the profession.
6. to promote technical and other research.
7. to study developments in the Press which may tend towards greater concentration or monopoly.
8. to publish periodical reports recording its own work and reviewing from time to time the various developments in the Press and the factors affecting them.

Source: General Council of the Press, Annual Report No 1, 32-33

APPENDIX 2

1. OBJECTS OF THE AUSTRALIAN PRESS COUNCIL

- (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.

The council is a non-profit organisation. Its incomings and assets shall be applied solely to carrying out the purposes mentioned in this Constitution and at no time shall there be any distribution, whether in money, property or otherwise from its income or assets to its members as such or to any relative, trustee or representative of or for a member, provided that this sub-clause shall not prevent the payment to a member of reasonable salary and expenses, or expenses only, as are approved by council in respect of specific services rendered to the council. In the event of dissolution of the council from any cause, its net assets after payment of its just debts shall be distributed to such charitable or educational purposes as council specifies, or in default of such specification as is authorised by the Attorney-General of the State of New South Wales.

2. STATEMENT OF PRINCIPLES OF THE AUSTRALIAN PRESS COUNCIL

To help the public and the press, the Australian Press Council has laid down the broad principles to which it is committed. First, 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. This freedom, won in centuries of struggle against political and commercial interests, includes the right of a newspaper to publish what it reasonably considers to be news, without fear or favour, and the right to comment fairly upon it.

Second, freedom of the press is important more because of the obligations it entails towards the people than because of the rights it gives to the press. Liberty does not mean licence. Thus, in dealing with complaints, the Council will give first and dominant consideration to what it perceives to be the public interest.

Recognising that these are matters of subjective judgment, the Council does not attempt to reduce to a precise and exhaustive formula the principles by which newspapers must govern themselves.

However, in considering complaints, the Council will be guided by the following general propositions:

1. Newspaper readers are entitled to have news and comment presented to them honestly and fairly, and with respect for the privacy and sensibilities of individuals.
2. A newspaper has an obligation to take all reasonable steps to ensure the truth of its statements.
3. Rumour and unconfirmed reports, if published at all, should be identified as such.
4. News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless there is an over-riding public interest.
5. A newspaper is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by
 - making fact and opinion clearly distinguishable;
 - not misrepresenting or suppressing relevant facts;
 - not distorting the facts in text or headlines.
6. Billboards and posters advertising a newspaper should not mislead the public.
7. A newspaper has a wide discretion in matters of taste, but this does not justify lapses of taste so repugnant as to bring the freedom of the press into disrepute or be extremely offensive to the public.
8. A newspaper should not place gratuitous emphasis on the race, nationality, religion, colour, country of origin, gender, sexual preference, marital status, or intellectual or physical disability of either individuals or groups. Nevertheless, where it is in the public interest, newspapers may report and express opinions upon events and comments in which such matters are raised.
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 material damaging to the reputation or interests of an individual, corporation, organisation or specific group 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. A newspaper should make amends for publishing information that is found to be harmfully inaccurate by printing, promptly and with appropriate prominence, such retraction, correction, explanation or apology as will neutralise the damage so far as possible.
12. When the Council issues an adjudication which wholly or partly upholds a complaint, the newspaper concerned should give appropriate prominence to the adjudication.

The Council strives to ensure that its adjudications on complaints reflect both the conscience of the press and the legitimate expectations of the public.

APPENDIX 3

THE COMPLAINTS PROCEDURES OF THE AUSTRALIAN PRESS COUNCIL

The Press Council deals primarily with complaints about the mainstream print media. The Council is concerned with news reports, articles, editorials, letters and cartoons in newspapers and magazines and complaints arising out of their publication. (Complaints about advertising, the electronic media and individual journalists should be directed to the bodies established to deal with them.) Complaints to the Press Council are treated as being against the publication, not any individual.

The Council can vary its procedures at any time, either generally or in relation to a particular case. The Council is guided by a desire to provide all parties with an adequate opportunity to make a complaint or respond to it. The Executive Secretary is available to answer inquiries by mail, fax or telephone at the address or on the numbers given on the first page of this booklet.

Generally, complaints must be lodged within three months of publication of the material complained of, though the Council may waive this requirement in rare special cases. Complainants will be kept informed by the Secretariat of the progress of a complaint. The normal procedure is as follows:

1. If you have a complaint against a newspaper or periodical, you should first contact the editor or a senior executive. A courteous approach can often bring a quicker and more satisfactory solution than a formal complaint, perhaps by way of explanation, publication of a letter to the editor, or a correction. If you cannot obtain satisfaction in this way, you may complain to the Press Council.
2. Take a cutting or clear photocopy of the material to which you object. You should name the journal, state the date of publication, page number and, in the case of major metropolitan newspapers, the edition. (Errors in one edition are sometimes corrected in subsequent editions).
3. Explain the reasons for your complaint in a letter. (Complainants are encouraged to complete the Council's complaint form

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as well - so that the Council has a better idea of the principles which the complainant sees as having been breached.) Send the letter, cutting or photocopy and additional material necessary to support your complaint to the Executive Secretary at the address shown on the first page of this booklet. If you are making the complaint more than three months after publication, explain the delay.

4. In many cases, the Press Council is able to mediate a complaint. If the Executive Secretary considers that a settlement may be possible, the complaint will immediately be referred to the editor before it is formally processed. You are strongly urged to respond if the editor seeks to discuss the complaint with you. Many complaints are amicably resolved during this preliminary stage.

5. If the Executive Secretary considers the complaint could be the basis for a legal action against the publication, you will be requested to sign a document waiving your legal rights before the Council will proceed further. You will be sent the necessary document and it is advisable to think carefully and, if possible, seek legal advice before completing it. (The Council seeks a waiver because it sees itself as an alternative to the courts. There are two other reasons for seeking a waiver: because in processing the complaint or publishing an adjudication the Council may deal with matters that are *sub judice*; and because parties cannot be expected to provide information and co-operation if this might prejudice their position in legal proceedings.)

6. The Executive Secretary may inform you that your complaint does not come within the Council's principles, and will explain why. If you provide further convincing information, the Executive Secretary may take the complaint further or, after consulting the Complaints Committee, notify you that it has not been accepted.

7. Complaints are sometimes lodged by lawyers acting on behalf of clients. Except in extenuating circumstances, lawyers should not be involved in the complaints procedure which is designed to be an inexpensive and efficient, non-legal redress for readers of newspapers and magazines. After the receipt of a complaint lodged by a lawyer acting for a client, the secretariat will request that the lawyer ensure that the correspondence is passed on to the complainant and that the latter be responsible for dealing with the matter.

8. If the Executive Secretary accepts the complaint, it will be sent to the publication for response. Copies of ALL communications received from the complainant are sent to the publication, and *vice versa*. No communication may be kept confidential from the other party. The Council also asks that publications keep bylined writers or sourced news services informed of the progress of complaints arising from their material.

9. Parties should respond promptly to requests from the Council and comply with any time limits set by the Executive Secretary. If letters or calls are not answered within two months at the maximum, the Council will normally treat the complaint or defence as abandoned, depending on the party in default.

10. If no settlement occurs, at the complainant's request, the Executive Secretary arranges for the complaint to be considered by the Council and informs the parties of the date and place of the meeting of the Complaints Committee which will consider the matter. The Committee is a sub-committee of the Council on which the public members must be in a majority. (The Chairman may refer the hearing of a complaint to an assessment panel - an *ad hoc* panel of members which meets with the parties to the complaint.)

11. Once a date for a hearing has been notified, the Council cannot accept any further written material from either party without the approval of the Chairman. This is because complete documentation on all complaints has to be copied and distributed to all Council members well in advance of the meeting. Parties are asked to ensure that all correspondence is as succinct as possible.

12. It is not necessary for parties to be present at the Complaints Committee hearing, but they are welcome to attend. (Generally, the date and place of the meeting will not be changed to enable either party to attend.) Many complainants do attend in person and may be accompanied by a friend or associate. Companies and associations may be represented by an executive officer and publications by an editorial executive, sometimes accompanied by the bylined writer concerned. Legal counsel may NOT appear as a representative of either party.

13. If one or both parties do appear at a Complaints Committee meeting, the result is a round-table discussion, not a trial. There is no formal taking of evidence. ***No new material may be introduced at the hearing.*** The purpose of the hearing is to clarify the written submissions for the Council.

14. The Complaints Committee then drafts a recommendation which goes to the next meeting of the Council which considers the matter and issues a written adjudication. Adjudications are sent to the parties in writing and distributed to the press. It is the Council's practice to embargo publication to enable the newspaper or magazine concerned to publish first. The Council reserves the right to restrict communication and reporting of adjudications in special circumstances.

15. The Council may uphold or dismiss a complaint, or simply express an opinion on the matter. It has no power to penalise a publication, or to order it to do anything, but the publication is expected to publish an adverse adjudication.

16. If either party believes that the Council has made an error of fact in its adjudication, that party can request that the matter be reconsidered by the submission of a request for a rehearing. Such appeals are referred to the next meeting of the Council which determines whether a rehearing is warranted. The Council may decide to amend and reissue the adjudication. In rare, special cases, the Chairman may direct that the adjudication not be issued until the Council has considered the appeal.

A final point. The Council will deal with complaints against newspapers, magazines or periodicals printed or published in Australia, whether or not the publisher belongs to an organisation affiliated with the Council. (The Council may not deal with a complaint about a publication which is limited to a small, private circulation.) If a publication ignores communications from the Council concerning a complaint, the Council proceeds as best it can in the circumstances.