

RIGHT TO PROTEST AND MEDIA REPORTING

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In this paper I shall begin by briefly summarising the history and activities of the Australian Press Council. It is then proposed to indicate the approach adopted by the Press Council to the rights and responsibilities of the press in relation to media reporting, with particular reference to the wide British and comparatively limited Australian Press Council experience in this field. Finally, I shall attempt some brief conclusions.

THE AUSTRALIAN PRESS COUNCIL

The need for a monitor Of press responsibility in Australia was widely felt by a number of communicators over many years. However it proved à "difficult task to bring together a sufficiently large proportion"Of the interests involved.

The Australian Journalists Association was an early and strong advocate of the formation of a Press Council on British lines; and in 1975 after some public controversy the Australian Newspapers Council, representing most of the major newspaper publishing groups in Australia, the Australian Journalists' Association, Regional Dailies of Australia Ltd. (representing 29 daily newspapers with a total circulation of 421,000 in regional centres) and the Australian Provincial Press Association (representing a large number of provincial non-dailies) agreed to form a joint committee to work for the establishment of a Press Council.

After discussions with the Secretary of the British Press Council, the committee decided, in accordance with the British precedent, to appoint a former judge,, Sir Frank Kitto, as the first Chairman of the Australian Press Council. He was succeeded in 1982 by Emeritus Professor Geoffrey Sawer, a distinguished authority on constitutional and press law. The present Council is currently chaired by the Hon. J.H. Wootten, a former judge, professor of law and Chairman of the NSW Law Reform Commission, who is also President of the Australian Conservation Foundation and Chancellor of the New South Wales Institute of Technology.

The constitution of the Australian press,, Council was modelled on that of the British Press Council, providing that three members appointed on the nomination of the Australian Journalists' Association, four members from persons nominated by the Australian Newspapers Council, one member on the nomination of Regional Dailies of Australia Ltd., one member on the

nomination of the Australian Provincial Press Association, and three members of the public unconnected with the Press be appointed on the nomination of the Chairman. In 1982, a leading media group, John Fairfax and Sons Ltd., joined the Council, and was given representation. Public membership was then increased to four members, in addition to the Chairman. The administration of the Council is in the hands of the chairman, aided by the Executive Secretary.

The Press Council offers a means whereby members of the public may complain against the press. These complaints are heard, without great formality, by the Complaints Committee, which makes its recommendations to the full Council. Its adjudications are normally released publicly, and reported widely. There are no legal, only moral sanctions. All media groups pay reasonable respect to the Press Council, including the one major group outside of its membership, News Limited, led by Mr. Rupert Murdoch. This group has major interests in the USA and UK, and has a controlling interest in the London newspaper, **The Times**. In accordance with its constitution, the Press Council, advised by its Freedom of the Press Committee, also maintains a watching brief over press freedom.

The Australian Press Council has adopted a statement of Principles. It is relevant to note the preamble to these:-

- * "The freedom of the Press to publish is the freedom of the people to be informed.
- * This is the justification for upholding Press freedom as an essential feature of a democratic society.

* That freedom is more fundamentally important because of the obligations it entails towards the people, rather than because of the rights it givse to the Press.

Recognising that, the Australian Press Council, in dealing with complaints that newspapers have failed to observe proper standards of journalism, will treat the public interest as the first and dominant consideration."

The Principles guide the Council not only in its determinations or complaints about the press, but in its watchdog role of monitoring press freedom. The Principles are set out in Annexure 'A' to this paper.

The Australian Press Council is not in any way connected with the government. In its view, both the press and the Press Council are democratic institutions which must be at arm's length from the state. This of course means that certain powers and privileges of state institutions, especially those in the judicial or quasi judicial field, are not available to the Press Council - for example, those available in relation to the examination and cross examination of witnesses,

contempt, privilege and course, the power to impose sanctions. The Press Council believes the advantage of independence given by not being a state organisation far outweighs any disadvantages. The ultimate sanction of the Press council is essentially moral, and it seems from our experience, the censure of the Press Council is in the eyes of responsible editors a most serious matter.

When we consider the subject of this paper, it will be evident that the Australia Press Council approaches this question in the light of its Principles, both as regards to **051**

press freedom and press responsibility. Obviously we see little scope in a democracy for press restrictions on the reporting of protest, certainly no more than other restrictions on the press. At this point I propose to spend some time on a brief survey of British experience in this field. This is not done for reasons of colonial nostalgia, but rather for the utility of such a survey which serves I believe, two practical purposes. First, so many of our traditions and laws in this field are inherited and based on those of the UK. Secondly, it is a sad fact that that country has recently seen more civil unrest than ours.

It will be noted that all of the incidents to which I refer involve protest which may not have been wholly peaceful. That of course is an important aspect of the question - that peaceful and violent protest can exist side by side, or that there can be controversy as to whether or not an incident was peaceful.

THE BRITISH EXPERIENCE.

I propose, to briefly refer to three episodes in the experience of the UK; Northern Ireland, the Brixton disorders in 1981, and finally the Deptford March again in 1981.

NORTHERN IRELAND

In 1975, a committee chaired by Lord Gardiner reported on measures to deal with terrorism in Northern Ireland: Report of

Committee to Consider, in the Context of Civil Liberties and Human Rights, Measures to Deal with Terrorism in Northern Ireland, London, HMSO Comnd. 5847, 1975. Although the subject of the Report is not exactly identical to the subject of this paper, there are, I believe, sufficient analogies for the Committee's observations to be relevant. It commented on the role of the news media in these words:-

THE NEWS MEDIA

73. "The view has been expressed to us that the news media must bear a degree of responsibility for encouragement of terrorist activity in Northern Ireland. Interviews with terrorist leaders on television and radio and the practice of some newspapers in accepting advertisements from paramilitary groups may provide propaganda platforms for those whose aim is the violent overthrow of lawful government. There is a tendency, which exists elsewhere, towards sensational reporting of shootings and bombing incidents which lends a spurious glamour both to the activities themselves and to the perpetrators. In addition -there are ill-founded and false allegations against the security forces
74. There can be no question of introducing censorship in a free society in time of peace. But this does not mean that nothing can be done. **We recommend that it be made a summary offence for editors, printers and publishers of newspapers to publish anything which purports to be an**

advertisement for or on behalf of an illegal organisation or part of it.

75. The authority of the Press Council extends to all newspapers and magazines within the United Kingdom, including Northern Ireland. Although it possesses only the powers to censure a publication, newspapers are, in fact, highly sensitive to such action by their peers. It also has the authority to consider general policies about publication with the public interest in mind; it has, for instance, issued a general caveat against newspapers printing and paying for the memoirs of criminals. **In the present situation**, we suggest that the Press Council should closely examine the reconciliation of the reporting of terrorist activities with the public interest..

76. Finally, the Governors of the British Broadcasting Corporation and the Independent Broadcasting Authority should re-examine the guidance they give to programme controllers or companies about contact with terrorist organisations and the reporting of their views and activities.

The British Press Council, replied as follows in its Annual Report, (Chapter 5):-

"It is the duty of reporters on the spot to report facts as they occur. The responsibility of publishing reports so

received lies upon the editors of the newspapers concerned. The Press Council has consulted a number of editors representing different sections of the press and has drawn their attention to the recommendations of the Gardiner Committee.

The Council is confident that in publishing reports about terrorist activities editors will continue to have regard to overriding considerations of the public interest, the dangers of glamorising such incidents in a way which may encourage support for them and of **providing a platform for propaganda in favour of criminal or subversive acts.**"

THE BRIXTON DISORDERS

The Brixton Disorders of 10-12 April 1981 were the subject of an inquiry by Lord Scarman. In his report, The Brixton Disorders 10-12 April 1981, London, HMSO Cmnd 8427, 1981, Lord Scarman observed (pp111,112):-

"The question raises difficult issues. On the one hand, there is the need to preserve the independence of the media from political interference and to recognise their important role in informing the public of current events. On the other, the media are under a duty to achieve balance and must be prepared themselves to recognise the possible social effects of their reporting. Is there not a Gresham's law of the press to be feared and resisted - that the bad drives out the good? The media, particularly the broadcasting media, do

in my view bear a responsibility for the escalation of the disorders (including the looting) in Brixton on Saturday 11 April and for their continuation the following day, and for the imitative element in the later disorders elsewhere. I do not propose legislation to curb the freedom of the media to report such events: that would introduce potential evil far greater than the one which has to be remedied. The duty to publish (and "be damned") is real, and never to be forgotten. But I do urge editors and producers to accept that there is also a responsibility: to assess the likely impact on events of their own reporting of them, to ensure balance in the coverage of disorder, and at all times to bear in mind that rioters, and others, in 'their exhibition of violence respond alarmingly to what they see (Wrongly, but understandably) as the encouraging presence of the TV camera and the reporter.

There is one other matter concerning the media which I - would mention: that is, the criticism made frequently to me that the media do not report fairly the problems of areas such as Brixton. I have heard this criticism made both by residents and by others, including police officers. There is feeling that the media always focus on problems and difficulties, and ignore the good. It is believed by many that the bad name which some areas have got is itself a factor in preventing their regeneration and improvement. The criticism of lack of fairness is also made about the reporting of matters involving members of the black community, and the police. I cannot say whether the

criticism is well founded or not. But I hope that over the next few months, it will be considered by those concerned.

To conclude, the matters to which I have referred deserve, **if they have not already received the fullest consideration by the Press Council, the Board of Governors of the BBC, the Independent Broadcasting Authority and newspaper editors.**"

In conclusion Lord Scarman emphasised, inter alia, (p.112):-

"the need for newspaper editors, television and radio producers, and journalists to give continuous attention to the social implications of their awesome power to influence the minds, the attitudes and the behaviour, not only of the reading, viewing and listening, public, but also of those whose unlawful behaviour they report.

These themes must be kept constantly in view if the social context in which the police operate is not to continue to breed the conditions of future disorder."

The Press Council, through its Director, Mr. Kenneth Morgan reacted with these words (Press Release 1376):-

welcome Lord Seaman's comment that to propose legislation to curb the freedom of the media to report such events as the Brixton disorders would introduce a potential evil far greater than the one which has to be remedied.

It is important that events, however disturbing; remain reportable. The danger otherwise is that rumour will exaggerate them, and add to the disorder.

At the same time any reasonable person must support his call to editors and producers. to accept a responsibility to assess the likely impact on events of their own reporting of them, to ensure balance in the coverage .of-disorder, and to bear in mind that rioters, and others, respond alarmingly to what they may wrongly but understandably see as the encouraging presence of the camera and the reporter.

The Press Council will, as - Lord Scarman asks, be considering these points, the concern he reports about the fairness of reporting of Brixton's problems, and his conclusion of the need for editors and journalists to give continuous attention to the social implications of their power to influence attitudes and behaviour."

DEPTFORD MARCH 1981

The British Press Council was asked to rule on a **Sun** report of the March 1981 protest march following the Deptford fire disaster. It held that although the report was not aimed at damaging racial harmony or systematically distorted, it was highly sensationalised, contained inaccuracies and gross exaggerations, and lacked sensitivity. Moreover, the Council condemned "exaggerated and sensational treatment of a difficult

and sensitive matter": British, Press Council Determination
S8335R-1982.

The Sun's front Page headline the day after the march read "Black Day at Blackfriars" with a subsidiary headline "Riots and looting as marchers run wild". It reported a march of 5,000 West Indians ended in rioting and looting, referred to a chanting mob trying to push its way to the House of Commons, and said the demonstrators accused the police of a cover-up over the Deptford party blaze in which 13 black youngsters were killed.

The paper's centre page spread was headed "Mob fury erupts as 5,000 go on the march to protest at party fire massacre" with another main headline "D y the blacks ran riot in London." The main report began, "Race fury erupted in the streets of London yesterday as Black Power militants turned a protest march into a riot For seven hours a frenzied mob took part in an orgy of looting and destruction in the West End" In an editorial comment headed "Sad, black day" **The Sun** said the brutal "Black Action" demo in which twelve policeman were hurt was a tragedy which would serve no useful purpose. Inter-racial harmony had been seriously damaged by a few black hot-heads.

Mr. David Hutchinson, then secretary of Goldsmiths' College branch of NATFHE, complained that **The Sun's** coverage made no attempt to specify accurately the scale or nature of incidents on the march but discredited it and systematically depicted it as a rampaging black riot. He said that the time span in which incidents took place between Blackfriars Bridge and Hyde Park was

-much less than seven hours, and at no time were large numbers of police "engulfed" by angry marchers. Moreover the police had never lost control of the main body of the march which continued in an orderly fashion although **The Sun** reported "the rampage began as thousands of blacks stormed up Fleet street". The emphasis on a massive riot controlled by black Militants had a clear racist context, Mr. Hutchinson complained, saying the headline and editorial clearly used the word "black" in a pejorative sense.'

The Press Council did not find that the **Sun** systematically distorted its report of this protest march or that the report was aimed by the newspaper at damaging racial harmony, but it held that the report did contain inaccuracies, gross exaggerations and other grounds for serious criticism. Most importantly, in the Press Council's view, it was a highly sensationalised account markedly lacking in sensitivity. The introduction to the report was so exaggerated as to be insupportable, but the Press Council regarded the repeated play on the word "black" in headlines as merely an unfortunate attempt at brightness rather than malicious or pejorative.

In its determination the Press Council recalled that When Lord Scarman's report on the Brixton Riots was published, the Press Council had said it supported his call to editors to accept responsibility for assessing the likely impact on events of their reporting, and to ensure balance in the Coverage of disorder, and his conclusion that editors and journalists should pay continuous

attention to the social implications of their power to influence attitudes.

In the view of the Council, such understanding was lacking in this case, and the Press Council condemned the report's exaggerated and sensational treatment of a difficult and sensitive matter. The picture it painted of a day of major violence was untrue, but there was certainly fringe violence and disorder which probably did more damage to good race relations than **The Sun's** report did. To the extent set out in this adjudication the complaints against the **Sun** were upheld.

These incidents will serve to illustrate the British Press Council approach on this issue. I turn even to the more limited experience of the Australian Press Council.

THE AUSTRALIAN PRESS COUNCIL

In 1985 the Australian Press Council received four complaints relating to the reporting of a demonstration at Queensland University on May 10, 1985. On that evening a graduation ceremony was to be held, at which it was intended to confer the honorary degree of Doctor of Laws on the Premier, Sir Joh Bjelke-Petersen.

The decision of the University's Senate to award the degree to the Premier had aroused great controversy within the University, many staff and students being strongly opposed to the decision. This opposition was widely expressed and reported in the media in

the period leading up to May 10, and on that day there appeared several large advertisements expressing the opposition of staff. On that morning it was announced that the Premier was indisposed and would not attend the ceremony, but various protests organised for that day continued. It appeared that there were several different groups wishing to protest -- staff, student groups, International Socialists, and trade unionists who wished to use the occasion to protest against the Premier's industrial policies.

The ceremony was due to start at 6.00 p.m. From 4.00 p.m. some 3,000 people gathered to listen to speeches about the academic implications of awarding the degree to the Premier, display placards, watch street theatre and otherwise engage in non-violent protest. proposals to take action that would interfere with the ceremony were rejected. This group included leading academics, one of them a Professor Byrne who lodged a complaint with the Council.

A much smaller number of people behaved very differently. When the Governor arrived he was jostled, and, it is alleged but disputed, spat at, and the ceremony itself was made difficult by chanting, banging and the breaking of glass wall panels. Exactly who did this is not clear, but it was conduct disapproved of by the complainants. There were three separate determinations, and I shall quote from these:

QASA and The Courier-Mail

"The University of Queensland Academic Staff Association, complains of the report which appeared in the Courier-Mail the next, .day. The front page headlines were "Thousands in wild protest Uni rioters jeer, spit at Governor", and the opening paragraph read "Thousands of angry protesters chanted and spat at the Governor, Sir James Ramsay, as he arrived to receive an honorary doctorate of law at Queensland University last night". The rest of the front page dealt with the disorderly demonstration and was illustrated with a picture of broken glass.

Those readers who read only the front page would conclude that the 3,000 who gathered did so for the purpose of "wild protest" and "riot" and were associated with the disorderly behaviour and the mis-treatment of the Governor. The Courier-Mail 'concedes that the headline and opening sentence were inappropriate, saying that this was the result of deadline pressure and is not typical of the paper's normal standards.

The incorrect headline and opening paragraph, coupled with the lack of any reference to the peaceful demonstration, had the effect of tarring all the demonstrators with the same brush. They provided a context for the continuation of the story on page 3. On that page there is reference to the large gathering starting earlier in the afternoon, but the impression created on page one was reinforced by the heading "Protesters spit at Governor", their description as "angry' protesters" and a large picture across the top of the page

dramatically showing a lecturer being forcibly restrained by security guards.

The Press Council upholds the complaint of WASA on the basis that the combination of the admittedly faulty headline and opening sentence on page one, together with the photographs on page three and the failure, to draw any distinction between those involved in the disorderly demonstration and those who conducted a peaceful protest over some hours, created the wrong impression that all the protesters were involved in the disorder, The right of peaceful protest is an important feature of a democracy, and to lump those who practise it in with violent protesters is not only unfair but against the public interest It. would also be against the public interest if people came to believe that violent protest is the only form which will attract the attention of the media.

The reporting of demonstrations, particularly when they embrace groups with different objectives and methods, and when they develop over a period, sometimes in unexpected and unplanned ways, presents great difficulties for newspapers,

The Press Council does not suggest that the Courier-Mail deliberately confused the two types of protest. It acknowledges the difficulty of preparing a fully balanced report of such an event against publishing It also appreciates the paper's frankness conceding the deficiency in its headline and opening sentence, and commends

the paper for the way in which it opened its columns to criticism of its report.

UQASA also complains about the brief front-page editorial in the Courier-Mail. This editorial expressed in strong terms the paper's disapproval of the violent aspects of the demonstration. The newspaper is entitled to express this viewpoint on a matter that was of obvious public interest. This aspect of the complaint is dismissed."

Sweeney and the Daily Sun: Sherman and the Daily Sun

There are two complaints against the Daily Sun. One is from Julianne Sweeney, a postgraduate student who attended the peaceful demonstration from 4.30 to 7.30 p.m. and was distressed to see the paper refer the next day only to a "wild demonstration" and say that an estimated 3,000 demonstrators laid siege to Mayne Hall as they chanted and pounded on the glass wall panels, smashing three of them. On the following Monday it said that about 3,000 chanting demonstrators jostled the Governor. Similar statements were carried on May 17. The complaint from Mr. Paul Sherman relates to the same reporting of the demonstration by the Daily Sun.

Consistently with the decision in relation to the Courier-Mail, and with the same comments on the difficulties confronting papers, these complaints are upheld.

Byrne and the Courier-Mail

Professor Eileen Byrne of the University's Education Department was one of those who took part in the peaceful meeting and had nothing to do with the subsequent violence. During the meeting it was decided to burn some Nazi flags which one group had brought along, the burning being intended as a symbolic expression of disapproval of what the flags stood for and of their presence on the campus. Unfortunately Professor Byrne allowed herself to be photographed holding up the burning flags. We say unfortunately because the burning of the flags could well be interpreted differently from the way Professor Byrne intended, particularly by those who were not present and saw only the photograph. This is what happened.

The photograph was published on page 3 below the picture of the lecturer being restrained by security guards. As there was no material in the caption or elsewhere to set the material in a separate context, many readers concluded that Professor Byrne was acting in the course of a wild and violent protest by some 3,000 people. This was unfair to Professor Byrne, but it was the result not of any deliberate act on the part of the paper, but of the unfortunate context created by the material dealt with in the UQASA complaint. The repercussions were very distressing to Professor Byrne, and the Press Council wishes to place on record that it is quite satisfied that Professor Byrne intended only a symbolic

protest and was not in any way involved in the violence that broke out some hours later."

The Courier-Mail does not contend otherwise, and indeed as soon as Professor Byrne's concern became known to it, it endeavoured to redress the situation. When Professor Byrne called. at the Courier-Mail on Sunday (the report had appeared on Saturday) the paper offered to publish a follow-up story from her point of view. Professor Byrne declined and sought instead the publication of a letter to the editor. The letter page had been made up on Friday, but in deference to Professor Byrne's concern the page was remade so that her letter could appear prominently and in full on the Monday, under the heading "Let's get the facts straight on that University demo". This is strong evidence of the paper's desire to be fair to Professor Byrne.

Professor Byrne points out that material in a letter may not, command the same credibility with many readers as what appears in the news columns. It is therefore the more -unfortunate that she did not accept the paper's offer of a news story in Monday's paper. We can understand that Professor Byrne was very upset, and as a result distrustful, but we have no doubt that the paper's offer was made in complete good faith with the object of correcting any wrong -impression about Professor Byrne's actions flowing from what appeared on Saturday."

CONCLUSIONS

These examples will show the difficulties in judging the role of media reporting of protest. Press freedom must mean that there should be no censorship of reporting of facts, even if these are unpalatable. Nor is there a role for education in the news columns, although in the editorial column, and in its commentaries opinions may be presented and contrary views ought to be published. The right to publish does not exist in a vacuum, and intrinsically involves heavy responsibilities. The surveillance of those responsibilities, in a democracy, should not of course be undertaken by government, for that would be inherently bad. The best surveillance has to be by a body, such as the Press Council, for its independence of the state ensures that it will not be used by the state to censor freedom of speech.

I think that one of the very best rationales for press freedom, and freedom from state censorship was expressed by an eminent American judge. I shall close with his observations in the Pentagon Papers case, where the right of the press to

"In the first amendment the Founding Fathers gave the free press the protection it must have to fulfil its essential role in our democracy. The press was to serve the governed, not the governors. The government's power to censure the press was abolished so that the press would remain forever free to censure the government. The press was protected so that it could publish the secrets of government and inform the people. Only a free and unrestrained press can

effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers' and foreign shot and shell" (Justice Black, New York Times v U.S. 1971.)

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'ANNEXURE A'

STATEMENT OF PRINCIPLES

To help both public and Press, the council decided shortly after its inception to outline the principles to which it would adhere...

* With no wish to attempt the task of reducing to a precise and exhaustive formula the principles by which newspapers must govern themselves if they are faithfully to discharge their responsibilities to the people, the council states that its consideration of complaints will take into account the following general propositions:

1. Readers of a newspaper are entitled to have both news and comment presented to them with complete good faith, and therefore - * with scrupulous honesty and fairness in both statement and omission; and with due respect for private rights and sensibilities.

2. Accordingly, a newspaper is under a strong obligation to take all steps reasonably available to it to ensure the truth and exactness of its statements.

3. Rumour and unconfirmed reports, if published at all, should be identified as such, and they should not be published if it is unfair to do so.

4. News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published.

5. A newspaper is justified in strongly advocating its own views on controversial topics provided that in doing so it treats its readers fairly by . ..

- * making fact and opinion clearly distinguishable;

- * not mis-stating or suppressing facts relevant to conclusions it encourages readers to accept;

- * not distorting or unfairly colouring news, either in text or headlines; and

- * making clear whose are any opinions expressed.

6. Billboards and posters advertising a newspaper must not mislead the public.

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

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

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

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

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

12. The council approves and draws special attention to the Code of Ethics of the Australian Journalists! Association (printed on page 7).

* the council will try to ensure its adjudications reflect both the conscience of the Press and the legitimate expectations

Of the public. It relies on every newspaper to give prominence to the Council's adjudications on complaints, whether for or against the paper itself or another paper. The candour and courage thus displayed should enhance public regard for the freedom of the Press.

- Apart from freely published criticism there are no sanctions the Council can impose or that it considers it should have the power to impose. Its only authority is the moral authority which its pronouncements should carry by their intrinsic merits and because of the Council's representative character. Its only resource is its appeal to the whole Press so to co-operate with it that the freedom of the Press will become highly prized by the public as the safeguard it is of Australian democracy.