

Miskin, Sarah (REPS)

Joint Standing Committee on Electoral Matters	
Submission No.	117
Date Received	01-04-05
Secretary	Anna

From: avocado [avocadia@gmail.com]  
 Sent: Thursday, 31 March 2005 10:54 PM  
 To: Committee, EM (REPS)  
 Subject: A submission to The Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto

Dear Committee Members,

My submission attempts to address my concerns over statements made by the Special Minister of State Eric Abetz, that websites contravened section 328 of the Electoral Act during the 2004 Commonwealth election.

Mr Abetz's premise is dangerous. Personal websites are just that, overwhelmingly more often than not they are run by a single person with a limited audience. A Tim Blair or a Margo Kingston or a Troppo Armadillo are the exception rather than the rule; most sites are not run by professional journalists (the former two) or as a collective (the latter).

To require a single person to carefully watch what they say on the topic of politics places a onerous responsibility upon them. They must make a decision, "Is this item political or electoral?" If they allow the reader to leave a comment - as most personal websites do - they are required to ensure that each comment can be traced back to an individual. What are the implications of the global nature of their site? Must they ensure that a South African reader must leave an address?

These decisions can only lead to a chilling effect on political speech. With apparently little to differentiate political speech, electoral material, and personal opinion, the very real possibility of a not-insignificant fine or an expensive court case to clear one's name will lead to self-censorship.

Worse, it requires the author to know of this requirement; ignorance of the law is not an excuse in Australia, and yet it is unlikely that every Australian who ever writes a sentence on Australian politics is familiar with section 328 of the Electoral Act. This suggests that extending Section 328 to cover websites will create a class of Australian's unwittingly breaking the law, which will then lead to a malignant lottery - who will be unlucky enough to be caught and made an example of to - so to speak - pour encourager les autres.

The solution to this seems obvious; simply give an address for someone who takes responsibility for the content (Note: This does not solve the issues relating to reader comments). However, I propose that Section 328 of the Electoral Act is unnecessary. The Federalist Papers were anonymous and, by the standard set by Mt Abetz when citing johnhowardlies.com, electoral material - they were clearly attempting to influence the vote of the people of New York. Yet, the Federalist Papers are also a primary source for interpreting the Constitution of the United States of America. It is hard to imagine that they could have been published as they are if the authors had not been able to write as Publius.

Anonymity is recognised as an important quality in our political life in the form of the secret ballot, innovated here in Australia in the 19th century and exported so widely it is seen as fundamental to democracy. Section 328 of the Electoral Act shows every appearance of existing solely to make Section 329 enforceable. This is not sufficient reason, if only because on a global internet with servers located outside of Australia and Australians overseas able to effortlessly publish to Australians living locally via the internet, Section 329 is already largely unenforceable.

To prevent the chilling of political speech and the criminalisation of a whole class of Australians, section 328 must not be extended to the internet. Furthermore, careful thought should be given to its legitimacy in an open democracy.

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