

ALP MINORITY REPORT

**ADDITIONAL COMMENTS AND POINTS OF DISSENT BY
SENATOR THE HON JOHN FAULKNER AND
SENATOR MICHAEL FORSHAW**

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The minority Senators support most of this report and many of its recommendations. The report is thorough and constitutes a valuable contribution to the continuing debate about ethical standards in public life and public confidence in the institutions of government. We consider, however, that there are some important points of disagreement and some additional comments that need to be recorded.

Labor strongly supports a code of conduct for ministers and has committed itself to introducing such a code if elected to government. The Labor Party Platform (16.28) provides that:

“Labor Ministers will be required to adhere to a formal code of conduct which sets out the action to be taken when conflicts of interest, or perceived conflicts of interest, arise and which prohibits behaviour likely to bring discredit to the government.”

In February 2002 the Leader of the Opposition, Simon Crean, stated that he would be releasing a new ministerial code of conduct for public discussion and comment. He also indicated that the code would include a requirement that former ministers not take employment in the area of their portfolio responsibility for a period of twelve months after leaving office. This would prevent former ministers using the contacts and knowledge they had gained as ministers to secure lucrative employment immediately after leaving office, as has been the case with Mr Reith, Dr Wooldridge and Mr Fahey.

We consider it is a matter for the Prime Minister to set the standards to be adhered to by ministers. Those standards should be rigorous and transparent and the Prime Minister should be accountable for enforcing them. Prime Minister Howard’s release in April 1996 of the “Guide on Key Elements of Ministerial Responsibility” was potentially a positive step. Unfortunately, Mr Howard’s ‘code of conduct’ has been discredited by his lack of will in enforcing it and that, regrettably, has further undermined public trust in the elected government.

Labor is not persuaded of the merits of the Committee’s recommendation to establish a Parliamentary Joint Committee on a Code of Conduct for Ministers and Other Members of Parliament. As noted above we consider a code of conduct for ministers is a matter for the Prime

Minister. As for a code for parliamentarians, the previous attempts by the Bowen Committee (1978-79) and the 1995 Working Group provide little cause for optimism that a third attempt will be any more successful. Given the many other competing demands on the limited resources of Parliament, we do not support the establishment of such a committee at this stage.

Labor considers increased transparency is a more effective way to lift standards of conduct among members of parliament. It was Labor, in government, which introduced the parliamentary systems of registration of interests by members of parliament. These have been effective in reducing the potential for conflicts between private interests and public duty.

The Howard Government has introduced, with Labor's full support, the six monthly tabling of expenditure details, for all Senators and Members, of the costs of air and car transport and related travelling allowances. This followed the 'travel rorts' affair in 1997. Since the introduction of this system there have been no known incidences of misuse of travel allowance.

Labor believes this system should be extended to include publication of the expenditure on all parliamentary entitlements. Transparency and public scrutiny are powerful incentives to do the right thing. Further, we remain of the view that an independent Auditor of Parliamentary Allowances and Entitlements with the necessary powers to investigate allegations of misuse, is needed.

We agree with the Committee that the inquiry has identified flaws in the *Auditor of Parliamentary Allowances and Entitlements Bill 2000* as introduced. But we do not agree these flaws are incapable of being remedied. In relation to the serious reservations the Committee has expressed about the proposed Auditor having both an advisory and investigative function, we note that this is a feature of the ethics regimes in the United States of America, Canada and the United Kingdom. In the US both the House of Representatives Committee on Standards of Official Conduct and the Senate Select Committee on Ethics have an advisory and investigative function; in Canada the Ethics Counsellor advises and investigates; and in the United Kingdom the Parliamentary Commissioner for Standards – to quote this report (2.20) – “was created to keep the Register of Members' Interests, advise members of parliament on their conduct and to investigate complaints.” In fact our own Australian National Audit Office combines an important advisory and educational role with its audit responsibilities. In New South Wales, the

Independent Commission Against Corruption also has an advisory as well as an investigative function.

Accordingly, it is our intention to re-examine the *Auditor of Parliamentary Allowances and Entitlements Bill 2000* and draw on these models to find a way of better combining these two equally important functions.

We will also attempt to address the other issues identified by the Committee: the potential impact of the entry and search provisions on personal rights and liberties; the adequacy of the review provisions; defining the boundaries of the Auditor's function; and the appropriateness of the suggested penalties. We believe it is important that the Auditor have a sound and workable statutory basis and will continue to work towards achieving this.

In relation to the *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000* we remain convinced of the need for strict guidelines to prevent the misuse of government advertising for political purposes. The current *Guidelines for Australian Government Information Activities* are essentially administrative and, as the Committee notes, do not address the issue of party political content, have no legal status and are not reviewable.

We appreciate, however, the serious difficulties, to which the Committee has drawn attention, of creating a criminal offence by reference to guidelines which necessarily lack precision and involve a large element of subjective assessment. We therefore accept the Committee's finding that the Bill in this form should not proceed.

We continue to endorse the set of guidelines proposed by the Auditor-General in his Audit Report No 12, *Taxation Reform: Community Education Information Programme*, of October 1998 and further refined by the Joint Committee of Public Accounts and Audit in its Report No 377, *Guidelines for Government Advertising*, of September 2000. We commend these guidelines to the Government and urge that they be adopted.

Senator the Hon John Faulkner

Senator Michael Forshaw

