

Submission No. 6

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5th February, 2001

The Secretary
Finance and Public Administration Legislation Committee
Parliament House
Canberra ACT 2600

Dear Sir,

Please accept this submission in respect of four Bills referred to the Committee as follows:

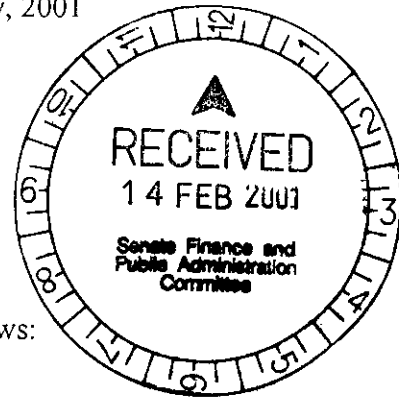
Charter of Political Honesty Bill 2000

Electoral Amendment (Political Honesty) Bill 2000

Government Advertising (Objectivity, Fairness and Accountability) Bill 2000

Auditor of Parliamentary Allowances and Entitlements Bill 2000

The four Bills will be dealt with separately.



It is necessary first to offer a comment or two on the Second Reading Speech by Senator Andrew Murray when introducing Bills to the Senate.

In the first paragraph of his speech he refers to the integrity of politicians and how this is questioned by large numbers of the Electorate generally. He recommends such distrust and electoral cynicism be met with legislative solutions. There is one way this cynicism and distrust is being perpetuated and legislation would be powerless to prevent it.

The only times Parliament merits a segment in the evening news on television is when Members cause an uproar in the House, or when one or two are shouting to Members opposite and the Speaker has great difficulty in restoring order. The recent walk out by Members of the Opposition was an excellent example of the lack of faith by the public.

The daily press is also guilty, however with a lesser impact.

The point here is that if Parliament is to be effective all those actions which tend to denigrate the Institution of Parliament are part and parcel of the every day performance. They must be allowed to continue and must not be curbed under any circumstances.

Members of the public who get to know their Member are well aware he/she is not lacking in integrity and is a hard working individual. Unless Parliament can sell itself to the public as an Institution that can rise above petty aberrations, Members will have to accept the perception as outlined by Senator Murray.

All of this applies equally to Members of the State Parliaments as well as the Federal.

Also in his speech Senator Murray mentioned that South Australia had legislated against dishonest Political Advertising. Unfortunately he didn't elaborate. Has the legislation been successful? Have there been any infringements leading to a conviction? Has the Court encountered difficulty in reaching a decision when considering the line between honest and misleading advertising? Has the phrase 'misleading to a material extent' caused problems at any level?

One major criticism of the Bill is to endeavour to have Political Honesty and Ethics in the same Bill. Political Honesty as discussed in the Bill deals with Government money and the spending thereof in advertising. Ethics as dealt with is to draw up a Code of Conduct for Members in the House. The two subjects are literally poles apart and should be the subject of a separate Bill for each one.

In practice the Bill could be passed as is without amendment and so become law. Parts 1 and 2 would become operative upon receiving Royal Assent. The position with Part 3 would be completely different.

Upon receiving Royal Assent according to Part 3 Division 1 paragraph 12 subparagraph 1 a Committee of six (6) Members made up from both Houses would be appointed. This Committee would then proceed to draw up a Code of Conduct for Members and have it adopted by both Houses of Parliament.

The remainder of this portion of the Bill is largely machinery and procedure.

There are no instructions as to how the Committee will produce a Code of Conduct. Are they expected to produce the Code from their own resources? May they call for comment or suggestions from other Members, or perhaps from the general public. In dealing with such an important issue concerning the way Members conduct themselves and bearing in mind what Senator Murray said about 'perception', it is surely imperative that the public be given an opportunity to have input to the Committee. It would be good political policy to then hold a series of Public Meetings prior to the Code being tabled and debated in both Houses.

To follow this procedure could well take six (6) months or more, which is a very cogent reason for treating Ethics as a separate section altogether. No Code of Conduct could expect to be tabled in both Houses and not be subjected to vigorous and lengthy debate, and quite possibly some amendments.

The experience of Queensland may be of some benefit to the Committee. The appropriate Committee is Members' Ethics and Parliamentary Privileges Committee. In August 1996 an Issues Paper was printed entitled A Code of Conduct for Members of the Legislative Assembly. It called for comment from all interested parties and received considerable assistance from the various submissions,

The Committee met regularly through the balance of 1996, all through 1997 and up until May 1998. It was on 14 May 1998 the Chairman Lyn Warrick M.L.A. presented his report to Parliament. The Committee considered a Code of Conduct for Members (other than Members in their capacity as Ministers). The Deputy Chairman Clem Campbell M.L.A. submitted an attachment addressing this aspect. This was based on the fact that many breaches or alleged improper behaviour involved Ministers.

It is strongly recommended that the Committee, when formed, obtain copies of the report from the Queensland Government. The report generally, the conclusions, and the recommendations could be of major assistance to the Committee in its deliberations. The references used cover a wide cross section of views.

Details of the report are:-

Report No 21 Part A. Report on a draft Code of Conduct for Members of the Queensland Legislative Assembly.

Report No 21 Part B. Draft Code of Ethical Conduct for Members of the Queensland Legislative Assembly.

To study these two reports is to highlight the major difficulties facing the Committee in its endeavours to produce a Code of Conduct in simple language and at the same time assume a measure of responsibility that can and will bind the Members of Parliament to observe the Code in the heat of healthy vigorous debate.

This first recommendation deals solely with that part of the Bill dealing with Ethics.

RECOMMENDATION

1. The whole of Part 3 and Part 4 be deleted and used to form the basis of a new and separate Bill for an Act.
2. In Part 1 paragraph 3 (Objects) subparagraphs (b) (c) and (d) be deleted and included in a new Bill as proposed in Recommendation 1.

3. In Part 3 Division 2 Subdivision A Section 15 paragraph 2 be amended. This Committee of six (6) Members be instructed to conduct a proper enquiry into the actual composition of a suitable code. An Issues paper to be composed, printed and advertised calling for submissions from interested persons and organisations.
4. This committee to be given full Research and Administrative staff and facilities.
5. A time limit of three (3) months be allowed for submissions, plus one month for the Committee to prepare and table its report in the Senate.

The rest of Part 3 dealing with Ethics is mainly machinery and Members of Parliament will accept or amend this section as they consider necessary.

There is a reasonable parallel with the Charter of Political Honesty Bill 2000.

On 2 May 1996 the Legal, Constitutional and Administrative Review Committee of the Parliament of Queensland caused advertisements to be inserted into various newspapers in the State advising details of a proposed enquiry. The subject was Truth in Political Advertising. Submissions would be received up till 19 July 1996. The Committee's report became available in Parliament in December 1996.

The Committee was of the opinion that it is possible to legislate in respect of truth in political advertising. It considered that matters containing political advertising are not too vague to be the subject of legislation. It recommended that truth in political advertising be introduced in Queensland.

The report then goes on to include all those aspects which could be included in legislation and in the actual words that could express those aspects.

This is far superior to just having 'Guidelines for Government Advertising Campaigns'.

If there is to be truth in Government Advertising Campaigns then surely Members must also be subject to the same standards of truth. In section 10, Enforcement, the word person is used more than once. It does not state that Members, although being persons are exempt from these provisions.

It is strongly recommended that copies of this report be obtained from the Queensland Government. The full title is:

Legal, Constitutional and Administrative Review Committee Report No 4 Truth in Political Advertising December 1996.

ELECTORAL AMENDMENT (POLITICAL HONESTY) BILL 2000

This Bill is contingent on the success or failure of the Charter of Political Honesty Bill 2000.

It is purely a machinery Bill and as such does not attract comment.

AUDITOR OF PARLIAMENTARY ALLOWANCES AND ENTITLEMENTS BILL 2000

This is a new Bill dealing with a completely new concept. If passed it will be one of the most important pieces of legislation passed during the term of the current Parliament. It should receive wide acclaim in all areas of the media. It remedies probably the main area that caused the perception of Politicians making improper use of their entitlements, resulting in the low opinion held by members of the public to politicians generally. It could help to remedy this perception.

As it is so new and dealing with an area where there may be grey areas as well as black and white, it places considerable responsibility on members and the Auditor to ensure it works in the spirit in which it has been created.

Part 3 Division 1 subparagraph (g)

In making recommendations to the Minister re changes to the system would this not be the province of the Remuneration Tribunal.

Alternatively should not the recommendations be submitted first to the Remuneration Tribunal and then to the Minister by the Tribunal.

Subdivision C paragraph 25 (Reports) subparagraph 1

It is recommended that the word 'either' be deleted and the word 'each' be inserted in its place.

This also applies to Division 2 paragraph 32 subparagraph (b)

Also to Division 4 paragraph 36 subparagraph 2 (b)

GOVERNMENT ADVERTISING (OBJECTIVITY FAIRNESS AND ACCOUNTABILITY) BILL 2000

No comment is offered in respect of this Bill

REPORTS

It would be much appreciated if a copy of the Code of Conduct, when finalised, could be sent to the writer.

Also copies of any report or anything else produced by any of the Committees or Sub Committees that may be formed as a result of the submissions received.

CONCLUSION

The writer would be glad to answer any query raised by this submission, and very best wishes are extended to those Members who are responsible for drawing up the Code of Conduct and seeing it safely through both Houses and into the law.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'A Sandell', written in a cursive style.

ARNOLD SANDELL