

Submission No. 8

56 Eric Street
Cottesloe WA 6011

7th February 2001

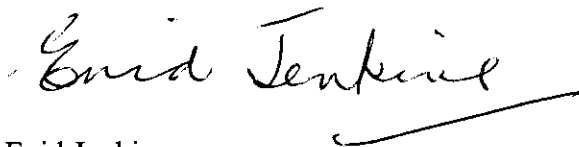
The Senior Clerk of Committees
Finance & Public Administration
Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam,

In response to the announcement of the Inquiry into Bills concerning political honesty and accountability, I submit my comments on the four bills.

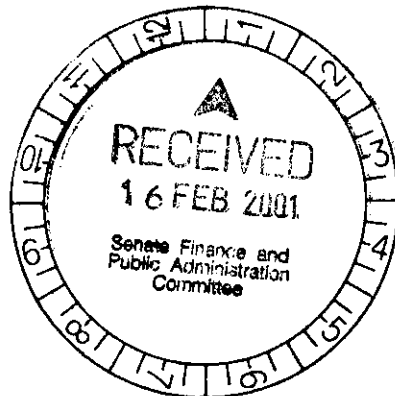
I have clearly set out the changes I consider should be made to each bill. I believe my comments will be easy to follow and I trust that, though minor, will be of assistance to the Inquiry.

Yours faithfully,



Enid Jenkins

Encl.



**GOVERNMENT ADVERTISING/OBJECTIVITY, FAIRNESS AND
ACCOUNTABILITY BILL 2000**

Mr Beazley

While I support the intent of the proposed Bill, I believe the principles and guidelines for use of Government Advertising are too general; and because they are not measurable would be very difficult to enforce.

Schedule 1 Amendment of the Financial Management and Accountability Act 1997.

Schedule 1 Principles and Guidelines for use of Government Advertising

1. Substitute the word "must" for the word "should". In my view should allows a perception that there is an option here.
 - 1.1 As above "the subject matter must" etc.
 - 1.2 Likewise "must" not "should". I think that the information strategy including the maximum expenditure for it should be approved by the Parliament at the time assent to the measure being proposed is given.
 - 1.3 Likewise "must" not should.
I also consider that the information program should be included in the Bill put before the Parliament so that it is clear what is being assented to when the Bill is passed.

Examples of suitable uses of government advertising include to:

- Inform the public of new, existing or proposed programs or services etc is really open slather and does not place any discipline on the government to plan the programs.

Discipline is required in relation to the last point. I think this needs rewording to require the information to be readily verifiable by the public. That is, it should be more than assertion and "spin". The source of the information on which the claims are based should be cited precisely so that they can be verified.

2. Material should be presented in an Objective and Fair Manner

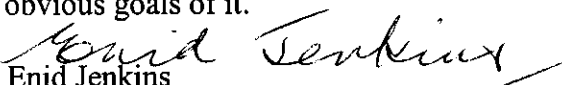
Again, I think this is too broad. It would be extremely difficult to enforce because criteria for determining "objective", "unbiased" and "equitable" are not specified. Interpretations differ widely and agreement is difficult to attain.

- 2.3 The requirement for this to be met is almost impossible to judge because it goes to the recipient of the information's ability to distinguish clearly between facts, opinions and analysis. This cannot be known by those designing the advertisements.

Sections 3 and 4

In my opinion, the use of the word "should" in these sections weakens the Bill and provides numerous opportunities for argument, renders most of the paragraphs immeasurable by any objective means and opens innumerable loopholes.

I believe this Bill requires considerable re-drafting before it could be relied upon to achieve the obvious goals of it.


Enid Jenkins

ELECTORAL AMENDMENT (POLITICAL HONESTY) BILL 2000

Senator Murray

A BILL FOR AN ACT TO AMEND THE COMMONWEALTH ELECTORAL ACT 1918 TO PROVIDE TRUTH IN POLITICAL ADVERTISING, AND RELATED PURPOSES.

Schedule 1 Page 3 Truth in Political Advertising

6.5A Page 4, line 2 ..., the Electoral Commissioner "must" not "may" request the advertiser etc. May be "require" would be a better word than "request" which may be interpreted as allowing an option.

7. 329A Heading to Electoral Advertisements

I consider that the maximum penalty should be a real deterrent. Therefore, I would like to see the maximum penalty stated here to become the minimum penalty and the maximum penalty be increased ten fold to (at least) \$50,000.


Enid Jenkins

CHARTER OF POLITICAL HONESTY BILL 2000

Senator Murray

Part 2 Government Advertising Campaigns

Section 6 Page 4 Membership.

- (6) I believe that if a member contravenes (5) of this section, the appointment should cease immediately.
- (7) I feel that it should be specified who is eligible to be a delegate to this committee.

I would like to see a committee structure which precludes the possibility that only Government appointed members will form this committee. I think the committee should be representative of, and responsible to, the Parliament – not just the Government. I do not consider the membership as set out in this section could, in every circumstance, be sufficiently objective.

Section 9 Powers of the Committee

- (1) Substitute the word “must” for may.
 - (a) add the word immediately
- (2) Substitute the word “must” for the word “may”.
- (3) as (2).

PART 3 (PAGE 9) MINISTERIAL AND PARLIAMENTARY ETHICS

Section 12 Establishment & Membership

(6) (b) Is the Deputy President of the Senate also the Chairman of Committees and therefore excluded by (d) of this para? Is there a Chairman of Committees of the House of Representatives? If so, should he/she be excluded?

Section 14 Functions of the Committee

(a) (ii) Suggest should be “for adoption by resolution of both Houses of the Parliament sitting as one House in a joint sitting.

DIVISION 2 Commission for Ministerial and Parliamentary Ethics

Section 15

- (2) If, as I read this paragraph, this means that the appointment of the Commissioner is the sole responsibility of the Presiding Officers, I think that is not strong enough. Better to require the Presiding Officers to obtain assent from both houses of the Parliament, sitting together for the initial appointment and any subsequent appointments.
- (3) This wording leaves open the possibility that the Leaders of various parties and groups will be consulted, but there is no requirement for the Presiding Officers to pay heed to their views. It probably requires the assent of both Houses of the Parliament also.

- (4) Publish where? To avoid the reasons for selection of a particular candidate being delayed, I believe a time frame should be stated.
- (5) I think which Presiding Officer is responsible to see that the reasons are published should be nominated.

Section 16 Functions of the Commissioner

- (a) What happens if the commissioner finds that the codes need to be reviewed and/or changed before the two year period has elapsed? I think there should be some mechanism for referring the matter back to the Parliamentary Joint Committee on a Code of Conduct for Ministers and other Members of Parliament (the Committee) should be indicated.
- (b) What compulsion will there be for Ministers and members of the Parliament to attend the education program? If it is left to choice, experience shows that it is usually those least in need of the program who attend while those most in need of education ignore the program if given that option.

Will the Commissioner have the power to appoint an educator to run the program? If so this should be stated.

- (c) It seems to me that the wording of this paragraph precludes individual Members of Parliament seeking the Commissioner's advice. Is this intended? I think it would be desirable for any member to have access to this advice if requested.

Section 18 Annual Report

- (1) Should this read " the Commissioner must give a report to each Presiding Officer" etc?

Section 19

DIVISION B Conditions of Employment

Section 24 Resignation

In my view, the length of notice required should be specified.

Section 26 Acting Commissioner

- (1) Appointment of person to act as the Commissioner.

It seems to me that the same requirements as for the appointment of the Commissioner should apply to the appointment of a person to act as the commissioner. Refer to the comments made re Section 15(2).

Section 27 Appointments on Merit

- (1) I do not think the responsibility to determine a code of practice for making of appointments by Ministers should fall to the Commissioner alone. I think the Committee outlined in Part 3, Division 1, Section 12 should share the responsibility. Perhaps the Commissioner could be co-opted to the Committee to work together to determine this code of practice.

Some time frame should be set for completion of this code: and, the mechanism by which the Commissioner will gain acceptance and adoption of the Code should be indicated. Unless this is done, there is potential for much delay and obstruction to the development of a Code which could be seen to limit a Minister's autonomy.

Section 28 Additional Functions

- (b) The remarks regarding the education program made concerning Section 16 (b), Page 12 apply equally to this section.

PART 4 MISCELLANEOUS

Section 29 Review of Operation of Act

- (1) I agree that there should be a review of the operation of this Act. I consider the initial review should occur earlier than five years so that any glitches can be identified easily and ironed out.

I seem to have missed the point somewhere. Which Minister is referred to here? Should it be that the Commissioner should cause this review to be carried out? After the initial review, if all is proceeding satisfactorily, five yearly reviews could be enough. However, I think the Commissioner should have discretion to call a review whenever he/she considers it necessary.

- (2) Who is it envisaged will carry out the review? I suggest it should be an independent review and that terms of reference should have been drawn up well prior to the instigation of the review so that they provide objective, measurable criteria.

Again in (2) and (3) I do not understand which Minister this is. I feel it should be the responsibility of the Commissioner.

Section 31 Determinations

- (1) I suggest that the Presiding Officer should be required to consult the Commissioner and probably the Committee in deciding to make any determination(s). It is well known and accepted that the wider and more frank the consultation is the easier it is for people to accept change and embrace it. The measures being set up by this Bill will require wide acceptance by Ministers and Members if it is to be acted on. It has considerable scope to ensure accountability and may be resented by those who feel their autonomy is being curtailed.

Schedule 1 Guidelines for Government Advertising Campaigns

(1) – (5) and (7) – (12) inclusive, I consider the word “must” should be replace the word “should” throughout these sections.

12. It is my view that no expenditure for the services listed in this paragraph should be undertaken unless the amount intended to be spent has been approved at the same time as the Government has obtained assent to the legislation giving it authority to implement the measures. Attached to the Bill at the time it comes before the Houses of Parliament should be details of the expenditure proposed.

Given minor amendments this Bill could be very effective in improving accountability and providing explicit criteria for judging the performance of Ministers and Members of Parliament. It should achieve the objectives set out by Senator Murray. I commend him for the Bill and compliment him on the way he has drafted the Bill.


Enid Jenkins

AUDITOR OF PARLIAMENTARY ALLOWANCES AND ENTITLEMENTS
BILL 2000

Senator Faulkner

A BILL FOR AN ACT TO ESTABLISH THE OFFICE OF AUDITOR OF PARLIAMENTARY ALLOWANCES AND ENTITLEMENTS AND RELATED PURPOSES.

Part 2 The Auditor of Parliamentary Allowances and Entitlements

Section 8 Appointment of Auditor

- (1) I am uncomfortable with the notion that this is to be an appointment on the sole recommendation of the Minister.

I am attracted to the proposal contained in the Bill prepared by Senator Murray in Charter of Political Honesty Bill 2000, Division 3, Section 27 1-4. Perhaps similar requirements should be set for the appointment of the Auditor. I am not aware of criteria used by the Joint Committee of Public Accounts and Audit so may be my remarks are redundant.

12 Resignation

I consider that the length of time required between giving notice to the Governor General of intention to resign and the date that it is to take effect should be specified.

14 Acting Appointments

Acting appointments should be subject to the same scrutiny as the appointment of the Auditor. It is not clear to me if this is so. If not, this section should be strengthened.

PART 3

DIVISION 1 Functions and Powers of the Auditor

16 Functions

(g) In my view, any recommendations should be made to the Minister and both Houses of Parliament. It is not sufficient to make recommendations to the Minister alone. He/she may decline the act.

DIVISION 2 Subdivision A Members of Parliament and their Staff

Section 17

- (3) I feel this should be strengthened. If the answers to questions are given orally, then I think there should be some requirement that a recording be made. That recording should be put into safekeeping. Possibly the procedure set out in the DFAT Investigations Manual (1999), Part 4 Investigation Methodologies, could form a basis for safe handling of records of interview, record management and document handling. It is important that there is no opportunity for such records to be misplaced, destroyed or otherwise unavailable for review.

- (4) What happens if the Member of Parliament refuses to allow the actions set out at 4(a), (b) and (c)? Should not actions taken under this section be under a properly executed warrant?
- (7) Substitute the word “may” in line 2 with the word “must”.

Section 20 Power of the Auditor to Obtain Information

- (3) I understand one penalty unit currently equals \$110.00. Ten penalty units as the maximum penalty for non-compliance is hardly likely to act as a deterrent. We are dealing here with a suspected case of attempting to defraud the Commonwealth and the penalty should reflect the seriousness of that charge. I would prefer to see what is specified as the maximum penalty become the minimum penalty and the maximum penalty be at least 10 times the new minimum.
- (4) Again, I believe the amount set out as the maximum penalty should become the minimum penalty and the maximum penalty be at least 10 times the new minimum.
- (21) Access to Premises etc

Since the investigations to be undertaken under Part 2 of the Bill would constitute suspected attempts to defraud the Commonwealth, it is my view that where access to premises is required it should be under properly executed warrant. Again, I believe the maximum penalty should become the minimum penalty and the maximum penalty should be at least 10 times the new minimum.

- (22) False Statements

(1) and (2) The maximum penalty should be the minimum penalty and the maximum should be 10 times the new minimum.

Subdivision C Other Powers

- 24 Auditing Standards

Substitute the word “must” for the word “may”.

- 25 Reports to Parliament

Should not the Auditor table any report in both Houses of Parliament? Should there be an option to table it in either house?

- 26 Reports to Ministers

I do not consider it sufficient that these matters are brought only to the attention of the Minister. The Minister may decline to take any action and the matter may not be dealt with at all. I think some other body should also be informed. Perhaps it is the Presiding Officer of each House of the Parliament.

Could it be to the Chairman of the Joint Committee or Public Accounts and Audit? If Senator Murray’s proposed Bill – Charter of Political Honesty – is successful, perhaps it could be the proposed Commissioner for Ministerial and Parliamentary Ethics.

PART 4 PERFORMANCE OF CERTAIN FUNCTIONS

31 Offence of making a false complaint

Again, I consider that should be the minimum penalty etc.

DIVISION 3 Sample Audits

34 (1) Although I agree the Auditor should have power to conduct an audit at any time, I feel he/she should be required to conduct a set number of audits each year.

36 Recommendations

(2) I believe this should be “both” not “either” House of Parliament.

Then it should read (2) a copy of the recommendations made under (1) “must” not “may” be:

- (a) given to the Minister; and
- (b) tabled in both Houses of Parliament.

PART 5 MISCELLANEOUS

40 Officers to Observe Secrecy

(2) Again, this penalty should be the minimum penalty if it is to act as a deterrent.

I commend Senator Faulkner for his work in preparing this Bill and I support the intent of it.

I am aware of public criticisms made by Senator Murray relating to the fact that the Bill calls upon sections of Crimes Act 1914 as amended. I think this criticism will have currency with some sections of the population. Nevertheless, as misuse of Parliamentary Entitlements is clearly an attempt to defraud the Commonwealth, I do not accept Senator Murray’s criticisms. It is essential that the greatest care should be taken in conducting any enquiry under this Act and therefore, any legislation should be specific and unambiguous. Every precaution should be taken to see that the rights of the individual or individuals under investigation are fully respected. This should be no occasion for a “botched” enquiry which needlessly damages a reputation or flounders because proper procedures have not been followed. Therefore, I am keen to see some requirement that auditors are competent and appropriately qualified to undertake investigations under Part 4 Section 29 and 32 of this Bill.



Enid Jenkins