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21 February 2001

Senior Clerk
Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

**Submission to the inquiry into bills concerning political honesty and
accountability**

Dear Sir/Madam,

I enclose a submission to the above inquiry.

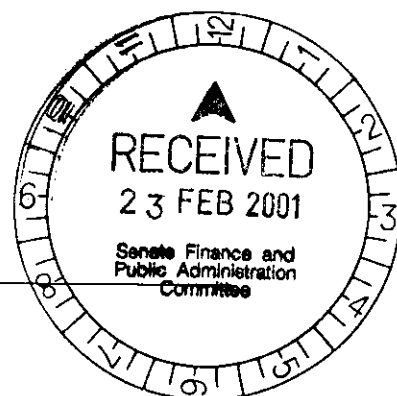
Although I act as a private citizen, I have a long-standing concern for the low esteem in which parliament and parliamentarians are currently held. This was especially brought home to me when, as an elected delegate to the 1998 Constitutional Convention, I heard the Federal Treasurer assert that everyone who had been elected to the Convention was, in effect, a politician.

I am therefore pleased to see that concerns within parliament have led to the setting-up of this committee. I hope that my contribution will in some small way help in raising the standing of parliament and parliamentarians among the general public.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Eric Lockett', written over a horizontal line.

E. J. Lockett



<<< Eric Lockett >>>

A submission to
the Inquiry into Bills concerning
political honesty and accountability

by

E. J. Lockett

February 2001

Summary

Electoral advertising

In general, I support the intentions of the *Electoral Amendment (Political Honesty) Bill 2000* to ensure that electoral material is not misleading. Any extension of constraints beyond the period between the issuing of writs and the close of polling is also welcome. However, a better definition of 'electoral advertisements' is needed.

I also generally agree with the powers proposed to be given to the Electoral Commissioner but, to ensure that justice is seen to be done, feel that provision should be made for an avenue of appeal against a ruling by the Commissioner.

Government advertising campaigns

I support the objective of ensuring that the government is accountable for how it spends public money and does not use it for partisan political purposes. I believe that the approach set down in the *Charter of Political Honesty Bill 2000* is preferable that of the *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*.

I generally agree with the concept of an independent **Government Publicity Committee** as set down in the *Charter of Political Honesty Bill 2000* and with the powers proposed for that committee. However, I believe that, as they stand, some of the proposed guidelines for government advertising campaigns are too subjective for the committee to rule on unless an avenue of appeal is provided.

It is also questionable whether the committee should be given power to rule on whether the objective of a campaign is legitimate or likely to be achieved. These are not essentially matters of political honesty. It seems more appropriate for the Ombudsman or Auditor-General to report on such matters and the government must then weigh up the electoral implications of its response.

The *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000* seems to be badly drafted and its passage as it stands could have unforeseen adverse consequences.

Ministerial and parliamentary ethics

I support the appointment of a **Parliamentary Joint Committee** to draw up a **Code of Conduct** and of a **Commissioner for Ministerial and Parliamentary Ethics**, as proposed in the *Charter of Political Honesty Bill 2000*. It is absolutely crucial that the code has the support of all parties. However, the proposed code of practice for ministerial appointments needs to be very carefully thought out to see that, as well as ensuring fairness to potential appointees, it protects the public interest in who is appointed.

The provisions of the *Auditor of Parliamentary Allowances and Entitlements Bill 2000* are sound in themselves, but as they largely duplicate functions that really fall within the domain of the Auditor-General, I question their necessity. It seems likely that there would be less duplication and conflict if the role set down was allocated to someone within the Auditor-General's office.

Electoral Advertising

Electoral Amendment (Political Honesty) Bill 2000

In the context of this bill, I feel that the statement I recently made in a submission to a review by the Chief Electoral Officer of the Tasmanian *Electoral Act 1985*, to the effect that 'It would be a common view that **most**, if not **all**, electoral material is designed to mislead in some way', deserves repeating. Any move to alleviate this perception by making parliamentarians more accountable for their words as well as their deeds is welcome and ultimately beneficial to the democratic process.

Arguably, the prohibitions contained in the proposed new subsection 329(1A) are already covered by the existing more general S329(1). Nevertheless, the more specific provisions of the proposed new subsection are welcome. However, the new subsection omits the words 'during the relevant period...'. If it is the intention that these prohibitions should not be limited to the time between the issuing of writs and the conclusion of polling, then I commend that change, but question why it should not be also incorporated into subsection 329(1).

I also note that I could find no definition of 'electoral advertisement' in this section, although it is defined for the purposes of S328. Could this provide a loophole for claims that particular misleading statements are not 'electoral advertisements' and therefore are not prohibited by the Act.

I concur with the new fines proposed under the amendments to S329(4a,b).

I also concur with the proposed amendments to S329(5).

I am in general agreement with the powers given to the Electoral Commissioner under the proposed new S329(5A), but note that there seems to be a drafting error in that S329(5A)(b) refers to the now non-existent subsection (2). However, I have some reservations about the fact that, whereas the Commissioner may voluntarily refer a matter to the Federal Court, there seems to be no provision for the party concerned to appeal against a ruling made by the Commissioner. Unless we are prepared to regard the Electoral Commissioner as infallible then perhaps, to ensure that justice is seen to be done, there should be such an avenue of appeal.

The proposed S329A(1) provision for the word 'advertisement' to be placed over electoral matter is commendable and in line with provisions elsewhere. However, I feel that the restriction of this provision to 'electoral matter for the publication of which payment or other consideration has been, or is to be, given' in the proposed S329(A)(3) will provide an undesirable loophole.

I was recently involved in a case where material that was, by any reasonable definition, clearly electoral advertising was inserted in a free local paper during a campaign without the heading 'advertisement', as required by the Tasmanian *Electoral Act 1985*. But because no payment was received for that specific material the Electoral Commissioner held that it was not an advertisement and was therefore exempt. In these days where the line between comment and advertising is becoming ever more blurred and practices such as the provision of 'advertorials' or granting of free advertisements to those who have advertised previously are common, I do not believe that payment is the appropriate criterion to define electoral advertising and doubt whether the 'other consideration' phrase is sufficient to cover all circumstances.

Surely the purpose of requirements for electoral advertising to be labelled as such and its author identified is to ensure that electors are not misled into mistaking partisan promotional material for objective reporting. This requires a definition that is based not on whether payment has been received but on the nature and origins of the material. Material provided by candidates or their agents for promotional purposes, and which has had little or no input from the publisher or broadcaster beyond editing, should require authorisation and be identified as an advertisement. Only comment or reporting that is essentially independent of the candidate, even though it may draw on material supplied by the candidate, should escape these requirements.

Government Advertising Campaigns

The objective of ensuring that the government is accountable for how it spends public money and does not use it for partisan political purposes is a worthy one.

Charter of Political Honesty Bill 2000

The idea of an independent **Government Publicity Committee** to ensure adherence to guidelines for government spending, as proposed under the *Charter of Political Honesty Bill 2000*, is a good one. I concur with the view expressed by Senator Murray that this approach is likely to be more effective than relying on the courts to rule on the merits of governmental decisions, as proposed in the *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*, which takes the form of an amendment to the *Financial Management and Accountability Act 1997*.

However, I do have some reservations about this bill as it stands. It gives the committee powers to issue directions enforceable by the Federal Court without there being any avenue of appeal against those directions. It seems that the only role of the court will be to rule on whether the agency or person concerned has in fact complied with the direction, not on whether the direction was just.

This is likely to be a particular problem in the case of directions relating to such subjective matters as 'unbiased language' and 'partisan promotion' (Schedule 1 (8)), attacks on the policies of others (Schedule 1 (9)) and 'party political slogans or images' (Schedule 1 (10)). If the committee is to have the unchallengeable powers proposed then I believe that guidelines (8) to (10) and perhaps also (7) in Schedule 1 need to be made less subjective or removed from its ambit.

Perhaps the distinction between legitimate publicising of government policies and 'partisan promotion' is ultimately too fine a one to be authoritatively resolved other than through the electoral process. Another alternative would be to make the directions of the committee appealable, but the effectiveness of such a measure would be hampered by the reluctance of courts to rule on the merits of governmental decisions.

I also have some reservations about the appropriateness of the provisions in S9(2&3). I appreciate the intention to ensure that governments don't waste money on self-promotion disguised as a public information campaign. Nevertheless, the question of whether the objective of a campaign is a legitimate one is essentially a political judgment and whether or not the campaign is likely to achieve that objective is a management decision that ultimately reflects on the competence of the government. Neither is essentially a matter of political honesty. While it may be appropriate for the Auditor-General or the Ombudsman to report on such matters and the government must then weigh up the electoral implications of its response, I do not believe it is appropriate for the committee to dictate how the government should act in these regards.

Government Advertising (Objectivity, Fairness and Accountability) Bill 2000

I believe that this bill would need substantial amendment to become acceptable. It appears, for example that, as it stands, it would become a crime for government money to be used for an information program that had not been preceded by 'appropriate market research' (Schedule 1 S1.3). Yet some of the examples quoted in the same section would clearly not require any market research to establish an information need.

There also appear to be some drafting errors in this bill. The words 'and be' seem to have been omitted after the first occurrence of 'facts' in Schedule 1 S2.2. Also, the heading on S3 of Schedule 1 currently reads 'Material Should Not Be Liable To Misrepresentation As Party-

Political'. But anything may be liable to misrepresentation as party-political. Surely what is intended is that the material cannot be reasonably perceived or accurately represented as party-political.

My comments on guidelines (7) to (10) in the *Charter of Political Honesty Bill* also apply to S3 of Schedule 1 in this bill, which essentially duplicates them.

S4 of Schedule 1 is a grab-bag of provisions which range from probably completely redundant (e.g. S4.3) to simply commonsense (e.g. S4.4) or to incomprehensible (S4.1). The last-mentioned seems to put politically sensitive or controversial material into a 'plain wrapper, under-the-counter' category available only on request. Political sensitivity is surely no justification for restricting the availability of information.

Finally, I emphasise that my lack of enthusiasm for legislative restraints on partisan advertising by government in no way reflects support for such activity. In fact, I have taken a strong public stand against partisan, adversarial politics. It's just that I believe that in this respect the relevant sections of the proposed guidelines simply state what everyone already knows (i.e. it is wrong to use government funds for partisan purposes) but would probably be largely ineffective in achieving their objective and because of their subjective nature would probably create more disputes than they resolve. In the long run the propriety of a government's activities depends on the integrity of its members – and that will ultimately be judged by the people.

Ministerial and Parliamentary Ethics

Charter of Political Honesty Bill 2000

I enthusiastically support the establishment of a **Parliamentary Joint Committee on a Code of Conduct** as proposed in the *Charter of Political Honesty Bill 2000*. There needs to be an agreed code of conduct to achieve consistency and ensure that issues relating to the propriety of particular actions are resolved independently of party political considerations.

In expressing my support, I fervently hope that if the committee is established its members will show more objectivity and consideration for the public interest than has been the case with the **Joint Standing Committee on Electoral Matters**. That committee has a consistent record of splitting exactly along party lines so that its members put forward dissenting reports each favouring their own party. The **Code of Conduct** can only have real credibility if it has the support of all committee members and all parties.

I also support the establishment of a **Commissioner for Ministerial and Parliamentary Ethics** as proposed in this bill. My only reservations relate to Division 3 – Appointments on merit.

I fully support the objective of this provision to eliminate the use of ministerial appointments as rewards for services rendered to the party. Nevertheless, I believe that attempts to codify procedures to ensure appointments on merit are fraught with risks that, rather than ensuring fair play, they will only create further injustices and produce nonsensical outcomes. This is especially so in the case of ministerial appointments, where compatibility of the political views of the appointee and the minister would seem to be essential to an effective working relationship. Very careful drafting of the code of practice and associated guidelines would be required to protect not only the interests of potential appointees but, more importantly, the public interest.

Auditor of Parliamentary Allowances and Entitlements Bill 2000

With respect to the *Auditor of Parliamentary Allowances and Entitlements Bill 2000*, I again support its objectives and the general provisions of the bill, but in this case I wonder about its necessity.

I have not looked up the legislation relating to the role of the Auditor-General, but it seems to me that the functions set down within this bill should rightly fall within his/her domain. Why the need to set up a separate office with the associated risk of duplication or conflict with the functions of the Auditor-General? Why can't an appropriate person within the Auditor General's office be given specific responsibility for parliamentary allowances and entitlements?. If the existing legislation is inadequate why can't it be amended as necessary?

Conclusion

It is universally acknowledged that there is a problem with lack of trust in politicians and political processes within Australia. I suppose that it is natural for legislators, when they see a problem, to try to legislate it away. The proposals under consideration by this committee are an example of such an approach.

But the best that legislation can achieve is to exercise some restraint on the worst excesses that have led to the present state of mistrust. The perception that politicians will do whatever they can get away with will still persist. That can only be removed over a long period by parliamentarians demonstrating a higher standard of personal integrity than could ever be enforced by law. This means being prepared to put principle and the public interest above the interests of themselves, their friends, their parties and their party benefactors.

Hence, while I welcome the concern with political honesty indicated by this inquiry, I am under no illusions that more legislation is the final answer. The final answer is in the hands of each and every parliamentarian. For the sake of democracy and trust in parliamentary processes I hope that they rise to the challenge.