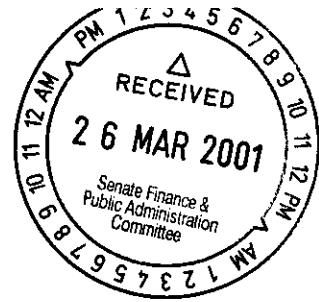


The Secretary
Senate Finance and Public Administration Committee
SG 60
Parliament House
CANBERRA ACT 2600



1 I wish to make a few comments on two Bills currently the subject of an inquiry by your committee. My submission follows.

Government Advertising (Objectivity, Fairness and Accountability) Bill

2. Clause 1 creates a serious crime if an official or minister expends public money on a government information programme unless the programme "is in accordance with the Principles and Guidelines" contained in Schedule 1.

3. The meaning of "in accordance with" is far from clear. The expression may import the notion of substantiality and, if it does, this should be made explicit in the description of the crime. Otherwise someone could be convicted for breaches of the guidelines for conduct falling well short of amounting to a serious criminal offence or an offence at all. There are also more serious issues.

4. Schedule 1 is entitled "Principles & Guidelines for the use of Government Advertising". They amount to much more and are given a status equivalent to a set of rules which, if infringed, would expose a minister or official to criminal liability.

5. It is a fundamental principle of the criminal law that a crime should be clearly defined so that a reasonable person is left in no doubt whether his or her conduct amounts to a crime. Clause 14(2) deserts the principle by defining the crime in terms of the provisions of the schedule.

6. Several of the particular principles and guidelines set out in the schedule depend for their meaning on matters of opinion or assessment eg 1.1,2.2,3.2,3.4,4.5. Different persons could hold quite different opinions as to whether particular official conduct amounts to an infringement of the guidelines applied individually or collectively to that conduct. A Court would be placed in an invidious position if it had to determine the question.

7. Further, to invoke the criminal law to deal with a situation which is essentially political is inimical to the traditions of the Australian criminal law system, in which crimes are created according to levels of conduct not politically motivated.

Charter of Political Honesty Bill

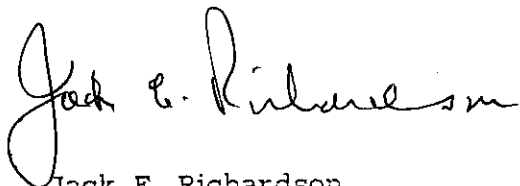
8. In my opinion the Ombudsman should not be a member of the proposed Government Publicity Committee. My reasons are as follows:

(1) The primary function of the Ombudsman is to investigate complaints made by members of the community about the administrative actions of government agencies, most of which fall within the ambit of the Bill. In the event of a finding of defective administration, the Ombudsman may make a recommendation with a view to resolving the complaint. The Ombudsman does not have authority to make a binding decision. As a member of the Committee a finding of contravention of Clause 9 (6) may be enforced by a decision of the Federal Court. In my opinion the procedure detracts from the central role of the Ombudsman and the persuasive nature of that role.

(2) Ministers are specifically excluded from the Ombudsman's jurisdiction under the Ombudsman Act but the Committee could take action against a minister under clause 9 of the Bill. If the Ombudsman is to be a participant in proceedings involving a minister at least he should be an officer of the Parliament, which he is not.

(3) As I see it, the Ombudsman would have to undertake personally the functions vested in him as a member of the Committee and the amount of time involved could be significant. This would be at the expense of the Ombudsman's office where resources are habitually stretched to their limit.

9. Some of the so-called guidelines have a heavy political content eg (7), (8), (9) & (10). In deciding whether to enforce a decision of the Committee under clause 10 of the Bill the Federal Court could thus be called upon to traverse essentially political issues. This it would have to do as a requirement in the exercise of judicial power of the Commonwealth. The Constitution embodies the separation of powers of government and questions of a political nature should not be left to a Court created under Chapter 111 of the Constitution to decide.



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