COMMONWEALTH OF AUSTRALIA

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

Second Report

AUGUST 1984

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Members of the Committee:

Chairman:	Dr R.E. Klugman, MP
Deputy Chairman:	Mr R.S. Hall, MP
Members:	Senator the Hon. Sir J. Carrick, KCMG
	Senator M.J. Macklin
	Senator R.P. Ray
	Senator G.F. Richardson
	Mr A.G. Griffiths, MP
	The Hon. I.L. Robinson, MP*
	Mr J.L. Scott, MP

Inquiry Secretary: Mr T. Connolly

*Replaced the Hon. R.J.D. Hunt, MP (resigned) on 26 April 1984

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PREFACE

This second report of the Joint Select Committee on Electoral Reform deals primarily with political advertising. During the course of the inquiry, the Committee became aware of the broad nature of the prohibition of "misleading" political advertising brought about by the amendments made to section 161(2) of the Commonwealth Electoral Act 1918. After much consideration the Committee has concluded that this section could seriously disrupt the orderly process of political campaigning, and has recommended the repeal of the section. Senator Macklin dissents from the Committee on this point. We would urge the Government to effect this repeal before the next general election.

On behalf of the Committee, I thank those who have assisted by presenting oral and/or written submissions. I would particularly like to express our appreciation to Mr Andrejs Cirulis, Deputy Electoral Commissioner of the Australian Electoral Commission, who kept the members of the Committee informed of the progress of the implementation of the major reforms of the Australian electoral system which have resulted from the recommendations contained in our first report. I should add that witnesses from the major political parties have commented to the Committee on the assistance they have received from the Electoral Commission in understanding and adjusting to the new Act.

I specifically thank Mr M. McHugh, Q.C., of the Sydney Bar whose evidence was extremely valuable in assisting the Committee to formulate its views on the legal regulation of political advertising.

I also thank the Committee secretariat, Ms A. Begg, Mrs J. Burgess and Messrs M. Aldons and T. Connolly for their hard work in connection with this report.

The Committee proposes to continue with its work following the presentation of this second report. In response to advertisements submissions have been received on the conduct of ballots and elections by the Australian Electoral Commission under the Conciliation and Arbitration Act 1904, on tax deductibility for political donations, on the provision of "free" radio and telelvision time for political messages during election time, and on the establishment of a fixed formula for the representation of territories in the Parliament.

As Chairman of the Committee, I would like to thank the Committee Members for their excellent co-operation. Attendance at meetings was once again extremely high, showing the keen interest and commitment of Members on matters of electoral reform.

R.E. KLUGMAN
Chairman

RECOMMENDATIONS

The Committee recommends that -

1. section 329(2)(s.161(2) of the Commonwealth Electoral Act 1918 be repealed;

   (Paragraph 2.82)

2. section 122(2) of the Referendum Machinery Provisions Act 1984 be repealed;

   (Paragraph 2.87)

3. the identification requirements for political advertising should be simplified, and contained in the Broadcasting and Television Act 1942. The identification requirements in Commonwealth Electoral Act 1918 should be repealed, however it would be desirable if the Commonwealth Electoral Act 1918 contained reference to the requirements in the Broadcasting and Television Act 1942. An advertisement should be identified by the broadcast of the name and address of the person responsible for placing the advertisement. In the case of a registered political party, the broadcast of the name of the party should be sufficient. This information should only be required following the broadcast of the advertisement;

   (Paragraph 3.10)

4. the Australian Electoral Commission publish a manual of Australian electoral law and practice including relevant obligations not contained in the Commonwealth Electoral Act 1918;

   (Paragraph 3.12)

5. the identification requirements in the Broadcasting and Television Act 1942 only apply to advertising, so as to exclude talk back radio and "man in the street" interviews;

(Paragraph 3.17)

6. section 116(2) of the Broadcasting and Television Act 1942 be repealed;

(Paragraph 3.24)

7. section 117A of the Broadcasting and Television Act 1942 be amended to provide that a person shall be afforded the opportunity to examine any record and to obtain a copy of such record, upon notice and upon payment of such costs as are reasonable to cover the expenses of the broadcaster in providing a copy tape;

(Paragraph 3.26)

8. section 117A of the Broadcasting and Television Act 1942 be amended to provide that television broadcasters maintain a visual as well as an audio record of broadcasts. Public access to such records to be as recommended in the previous recommendation;

(Paragraph 3.31)

9. the Government bring to the attention of State Governments the need for complementary reform to State electoral acts in order to allow silent enrolment procedures to operate;

(Paragraph 4.6)

10. the letters "A", "B", "C" and so on appear on the Senate ballot paper above the box on the top half of the paper, and above the first box immediately below the bold line in the second half of the paper for each group;

(Paragraph 4.15)

CHAPTER I

INTRODUCTION

1.1 The Joint Select Committee on Electoral Reform was appointed following resolutions of the House of Representatives on 4 May 1983 and of the Senate on 11 May 1983. The Committee's terms of reference were as follows -

> To inquire into and report upon all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto, including:
> a) public funding and disclosure of funds;
> b) franchise and registration of voters;
> c) voting systems;
> d) polling procedures;
> e) legislation governing, and the operation of, the Australian Electoral Office;
> f) ballot paper format; and
> g) electoral distribution, procedures and systems.

1.2 The Committee's first report, presented to the Parliament on 13 September 1983, contained 132 principal recommendations. Many of these recommendations were substantially adopted and included in the Commonwealth Electoral Legislation Amendment Bill 1983 which the Government introduced in the House of Representatives on 2 November 1983. The Bill was passed by the House of Representatives on 10 November 1983 and by the Senate with ammendments on 2 December 1983. The amendments were agreed to by the House of Representatives on 6 December 1983. The Commonwealth Electoral Legislation Amendment Act 1983 (No. 144 of 1983) comprises some 156 sections in 172 pages of amendments. The Act was proclaimed and came into force on 21 February 1984.

1.3 Among the Committee's recommendations were requests that it's life be extended and its resolution of appointment be amended to enable it to pursue several specific matters at greater length including statutory provisions concerning broadcasting of political matter and standards governing political advertising.

1.4 The Committee's resolution of appointment was amended by resolution of the House of Representatives on 7 September 1983 and by the Senate on 8 September 1983 to extend the life of the Committee and to give the Committee leave to report from time to time on further enquiries within the terms of reference.

1.5 As a result, advertisements were placed in metropolitan and national newspapers on 22 October 1983 inviting submissions on -

i) radio and television broadcasting of election material including:
   - statutory provisions concerning election broadcasting and televising,and
   - the provision of "free" radio and television time for political messages during election periods,

ii) standards governing political advertising,

iii) provisions of the Commonwealth Electoral Act 1918 concerning the defamation of candidates for election,

iv) the conduct of ballots and elections by the Australian Electoral Office under the Concilation and Arbitration Act 1904, and related matters, and

v) tax deductibility of political donations.

1.6 Further advertisements were placed in metropolitan and national newspapers on 5 May 1984 inviting submissions on the question of the establishment of fixed formulae for determining the number of Senators and Members of the House of Representatives to which the Australian Capital Terrritory, the Northern Territory and other territories are entitled.

1.7 Public hearings were conducted in Canberra on April 26 and 27 on the first two terms of reference, namely broadcasting and political advertising. The Committee sought a submission from the Attorney-General and invited Mr M.McHugh, Q.C., of the Sydney Bar, to give evidence on the question of standards of political advertising. Further public hearings were conducted in Sydney on 25 June to take additional evidence on this inquiry from Mr McHugh and from an officer of the Attorney-General's Department.

1.8 The Committee's second report makes recommendations on the terms of reference on standards governing political advertising and statutory provisions concerning election broadcasting.

1.9 Between the conclusion of hearings on these terms of reference and the presentation of this report the Commonwealth Electoral Legislation Amendment Act 1984 (No.45 of 1984) came into force. One effect of this Act is to re-number the sections of the Commonwealth Electoral Act 1918 so that they bear consecutive numbers. As all submissions and oral evidence presented to the Committee referred to the old numbering of the Act, this report will retain throughout the old reference in brackets following the present reference. Thus the section of the Act dealing with electoral advertising will be cited as s.329(s.161).

CHAPTER II

STANDARDS GOVERNING POLITICAL ADVERTISING

Background

2.1 The first report of the Committee recommended that the question of standards governing political advertising be examined in greater depth. The report noted a submission from Mr G. Lindell (Senior Lecturer in Law, Australian National University) which dealt with misleading electoral advertising, recommended that the existing laws prohibiting misleading electoral advertising be reviewed, and that the Chief Electoral Officer and any affected candidate should be able to seek an injunction to prevent a threatened breach of the prohibition of misleading electoral advertising. The Committee recommended that the Australian Electoral Commission should be obliged to seek injunctive relief against misleading electoral matter, but reserved further comment for the present inquiry.

2.2 The Commonwealth Electoral Legislation Amendment Act 1983, however, has made significant changes to the laws concerning political advertising, some of which were the subject of recommendation by the Committee.

2.3 The 1983 amendments prohibit the publication of "untrue and misleading" election advertising. A candidate may seek an injunction to prevent publication of a misleading advertisement. If prosecuted, a publisher must then show that they could not reasonably have been expected to know that the advertisement was misleading.

2.4 The amendments repealed the then s.161(e) and created a new section 329(161), "misleading or deceptive publications, etc.".The operative part reads:

"(2) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any electoral advertisement containing a statement

a) that is untrue; and

b) that is, or is likely to be, misleading or deceptive"

The old law

2.5 Under the previous Act, the then s.161(e) made it an offence to publish material containing "any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in, or in relation to the casting of his vote.

2.6 This section has received a restrictive interpretation in the Courts. In Re Commonwealth Electoral Act, Evans v. Crichton-Browne (1981)33 A.L.R. 609, the High Court, sitting as the Court of Disputed Returns had to consider advertising authorised by the Liberal Party of Australia. The advertisements contained a statement to the effect that a vote for candidates representing the Australian Democrats could be a vote for the Australian Labor Party and could give that party control of the Senate. In other petitions considered by the Court in this judgment unsuccessful candidates representing the Australian Labor Party complained of advertising authorised by the Liberal Party of Australia which stated that the A.L.P. was committed to the introduction of a wealth tax and that the policies of the A.L.P. would lead to a rate of inflation of 20 per cent.

2.7 The High Court found that the then s.161(e) referred only to a statement which misled an elector in relation to the actual casting of the vote. The phrase "in or in relation to the casting of his vote" from s.161(e) was taken by the Court to suggest "that the Parliament is concerned with misleading or incorrect statements which are intended or likely to affect an elector when he seeks to record and give effect to the judgment

which he has formed as to the candidate for whom he intends to vote, rather than with statements which might affect the formation of that judgment" (33 A.L.R. 609 at 614).

2.8 The Court found that the statements in question were directed to affecting the judgment of electors in making their choice of candidate, rather than to the technical methods of recording that judgment by marking and depositing a ballot paper. It was thus not necessary to consider whether the advertisements complained of were in fact misleading.

2.9 It was not possible for an individual to enforce s.161(e). In Beck v. Porter (1980)32 A.L.R. 418 the applicant, a candidate endorsed by the National Party of Australia, sought an injunction to prevent the respondent, a candidate endorsed by the Liberal Party of Australia, from distributing material which stated that a vote for the National Party would, by "splitting the anti-socialist vote", benefit the Australian Labor Party.

2.10 Mr Justice Zelling, of the Supreme Court of South Australia, found that the then s.161(e) created an offence which could be prosecuted only by the Attorney-General, and that consequently there was no right for a candidate to seek an injunction. This decision was in accordance with the general proposition in Australian and English law that an injunction will not issue at the suit of a private citizen to restrain a breach of the criminal law.

2.11 The most striking change from the old s.161(e) is that the requirement that the statement be misleading to the elector "in or in relation to the casting of his vote" is deleted. This formula is retained in subsections (1) and (3) of s.329(s.161). From this it must be taken that s.329(2)(s.161(2)) is not restricted to statements which mislead a voter on the mechanics of casting his or her vote, but rather extends to statements which affect the elector in his or her decision of choice of

candidates. The High Court in Re Electoral Act rejected the view that the then s.161(e) applied to "untrue or incorrect statements which affect the judgment of the elector in making his choice" and continued: "If that had been the intention of the Parliament, it would have been very easy to say so"(33 A.L.R.609 at 615)

2.12 A person who contravenes s.329(2)(s.161(2)) is guilty of an offence punishable, in the case of a body corporate, by a fine not exceeding $5000, and in other cases of a fine not exceeding $1000 or imprisonment for a period not exceeding 6 months s.329(4)(s.164(4)).

2.13 A person charged with a contravention of s.329(2)(s.161(2)) may raise a defence, provided in s.329(4)(s.161(4)), that they "did not know, and could not reasonably have been expected to have known, that the electoral advertisement contained a statement of the kind referred to" (in sub-section (2)) It is not sufficient for the person charged to show that they did not in fact know that the advertisement contravened the act. They must also show that they could not "reasonably be expected" to have known of the misleading character of the advertisement.

2.14 This formula has been criticised by the Media Council of Australia, the Federation of Australian Commercial Television Stations, the Federation of Australian Radio Broadcasters and the Liberal Party of Australia who argue that it would require an advertiser to subject all proposed electoral advertisements to rigorous scrutiny by legal advisers, at considerable expense.

2.15 Further changes to the Electoral Act contained in the 1983 legislation introduced a new s.383(s.209A), "Injunctions", which gives a candidate or the Australian Electoral Commission the right to seek an injunction to prevent a breach of any provision of the Act, including s.329(2)(s.161(2)). It had previously been held that a candidate had no right to an injunction to prevent a breach of the then s.161(e).

2.16 The effect of the new s.383(209A) is to overcome the decision in Beck v. Porter.A candidate who believes that an election advertisement is misleading may thus apply to a prescribed court (a State or Territory Supreme Court) for an injunction to prevent the further publication of such an advertisement. The Court may, if in its opinion "it is desirable to do so", grant an interim injunction before considering the application. An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed Court under this section.

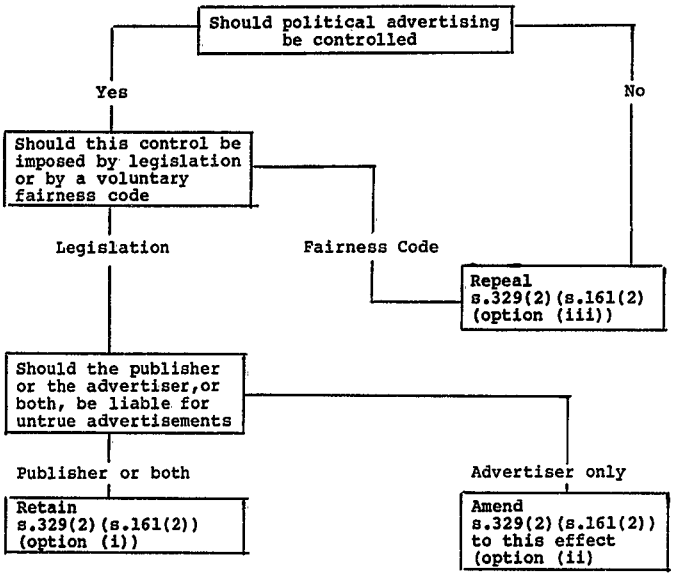
The Committee's task

2.17 These amendments necessarily affected the nature of the Committee's inquiry. Rather than embarking from the threshold question "do we require regulation of political advertising", and considering the various options that would follow, the Committee found itself examining a legislative scheme which imposes a strict control, by way of private injunctions, on political advertising.

2.18 As s.329(2)(s.161(2)) was in place when the Committee began deliberations, there appear to be three options which must be considered. These are -

(i) to retain s.329(2)(s.161(2)) in its present form
(ii) to amend s.329(2)(s.161(2)) to remove the difficulties perceived by publishers, broadcasters, and political parties, and
(iii) to repeal s.329(2)(s.161(2)) altogether.

2.19 The options on the question of s.329(2)(s.161(2)) may be approached by asking the following questions, represented diagrammatically below:



2.20 As s.329(2)(s.161(2)) deals only with the criminal offence of publishing offending advertisements, the civil injunction aspect also requires examination. The options here are to retain s.383(s.209A) in its present form, giving both the Electoral Commission and a candidate a right to seek an injunction, to amend it so that only the Electoral Commission can seek an injunction, or to exclude s.329(2)(s.161(2)) from the operation of the injunctions provisions altogether.

Control of Political Advertising

2.21 The argument for some form of control of political advertising is based on the premise that it is of fundamental importance to the democratic process that every voter is able to cast their vote in an informed way. Sir Isaac Isaacs, Governor-General and High Court Justice, expressed this point well in a judgment in 1912:

> "The vote of every elector is a matter of concern to the whole Commonwealth, and all are interested in endeavouring to secure not merely that the vote shall be formally recorded in accordance with the opinion which the voter actually holds, free from intimidation, coercion and bribery, but that the voter shall not be led by misrepresentation or concealment of any material circumstance into forming and consequently registering a political judgment different from that which he would have formed and registered had he known the real circumstances" Smith v. Oldham (1912)15 C.L.R. at 361.

2.22 Legislators throughout the democracies have recognised *The need to protect the consumer from false or misleading* advertising promoting consumer products. This legislative intervention to control advertising of products is a comparatively recent development, arising from the burgeoning of the consumer movement in the last twenty years. The United Kingdom Government in 1959 appointed a committee to consider measures desirable for the protection of the consuming public, which resulted in the United Kingdom Parliament enacting the Consumer Protection Act 1961 which contained provisions governing advertising. Victoria was the first Australian state to adopt similar measures with the Consumer Protection Act 1964 but by 1973 all Australian states and territories had followed suit.

2.23 The Commonwealth Parliament entered this field in 1974 with the Trade Practices Act. This Act provides (s.52) that

> "(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive".

The then Attorney-General explained the need for this provision as follows:

> "The untrained consumer is no match for the businessman who attempts to persuade the consumer to buy goods and services on terms suitable to the vendor. The consumer needs protection by the law and this Bill will provide such protection (*Senate Hansard* 9 July 1974 p.541)"

2.24 The argument against the control of political advertising maintains that the Australian electorate is itself the best body to decide the truth of political advertising. Political advertising necessarily involves assertions which of their nature cannot be said to be "true" or "false". The public will consider the assertions of all the parties, and will decide what they will believe and which claims they will reject.

2.25 The community may be expected to approach a political advertisement with a degree of scepticism. As The Age noted in an editorial of 14 October 1980 "Electors have to put up with a fair amount of bending of truth during election campaigns. Politicians from all sides tend to gloss over shortcomings on their side and distort those on the other side to try to convince us that grey is black or white."

2.26 Professor Henry Mayer (Professor of Political Theory at the University of Sydney)has considered the problem of political advertising and compared political advertising with trade advertising which is regulated. He concluded that the criteria of truthfulness, which may be applied to other forms of advertising are inapplicable in the political context.

> Political advertising by its very nature in a party system must knock the other side. But, unlike most other comparative advertising, it deals only to a limited extent with hard data. In politics it is not possible to find out "the truth" about what will work as a policy ... . Politics is not, in any sense, a science nor can policies be scientific. The experts may all be wrong and a discredited policy yet prove a winner, while defying analysis as to why that's so. "(H. Mayer, The Morality of Political Advertising, MAC, Summer 1980, p12)

2.27 By world standards Australia imposes comparatively few controls over political advertising. A survey conducted by the American Enterprise Institute of elections in the democracies reveals that it is only in Australia, Canada and the United States that a political party can "buy" time on television.

Legislative control

2.28 If it is accepted that it is desirable to seek to control political advertising, it is necessary to consider whether this control should be extended by legislation, or whether industry self regulation should be encouraged.

2.29 The advertising industry in Australia has for many years supported and encouraged self regulation. The range of measures which the industry has introduced and enforced is described in the Australian Advertising Industry Council publication "Self Regulation in Australian Advertising" (Third edition, May 1982).

2.30 An example of media self regulation is the Commercials Acceptance Division of the Federation of Australian Commercial Television Stations, established in 1974 to preview proposed television advertisements. This body has in the past rejected advertisements from major political parties - one advertisement from the Australian Labor Party in 1975, one from the Liberal Party of Australia in 1980, and two from both the Liberal Party of Australia and the National Party in 1983. The Commercial Acceptance Division checks for compliance with the statutory identification requirements, and the ban on dramatisation contained in s.117(2) of the Broadcasting and Television Act 1942. It requires a certificate by an advertiser as evidence of compliance with the identification requirements (Commercials Acceptance Division Guideline 04 - Election Announcements).

2.31 Beyond ensuring compliance with statutory requirements self regulation, by requiring the media to decide which advertisements will or will not be allowed, will attract charges of partisanship.

2.32 It would be unreasonable to expect the media to decide whether to accept or reject "misleading" political advertisements. During the 1980 Federal election campaign, the Melbourne Age refused to print an advertisement lodged by the Liberal Party of Australia because it was of the opinion that the particular advertisement would have been in breach of s.161(e) of the Act. Many other newspapers accepted the advertisement, which was headed "Mr Hayden 'won't retreat' from Labor's Wealth Taxes that threaten the unwealthy".

2.33 In two editorials on 14 and 15 October 1980, "The Age" attacked this advertisement and another entitled "Can your family afford Labor's 20% inflation" as being dishonest and misleading. However, the Age only refused to accept the former advertisement because they had been advised that it was contrary to the then s161(e). In explaining its decision to run the "20% inflation "advertisement, "The Age" said

> "But should we have refused to publish both advertisements, quite apart from their legality, because in our opinion they are misleading? Unless we are to set ourselves up as censors in our own right of political electioneering methods, we can only go by the law as laid down by the pertinent acts of Parliament. As the law stands political parties have a right to try to mislead voters ..." (Editorial, 15 October 1980)

2.34 The difficulty with self regulation in this area is that it would require the media and advertising industry to decide what amounts to political truth. The Advertising Code of Ethics administered by the Media Council of Australia, provides as its first principle that "Advertisements must be truthful and shall not be misleading or liable to misinterpretation". (Self Regulation in Australian Advertising, p.17)

2.35 Legislatures have found that it has been necessary to supplement industry self regulation with statutory standards in the field of advertising of consumer products. The prohibition of misleading advertising contained in the Trade Practices Act provides a basis for the industry to itself monitor

advertisements, based on the third principle of the Advertising Code of Ethics, "Advertisements must comply with Commonwealth and State Law." In this way industry self regulation complements legislative standards, as the primary incentive to enforcement.

2.36 Legislative prescription of standards of political advertising is supported by the industry itself. In evidence Mr Patrick Auld, Executive Director, Media Council of Australia, told the committee that "The Media Council of Australia supports entirely the intent of (s.161(2)) in terms that it produces or tends to produce honest, decent, truthful and legal advertising" (transcript, p.161). The Advertising Federation of Australia, in its submission of June 1984, states that "The AFA is wholly in agreement with the principles implicit in Section 161". And the Melbourne Age, in an editorial of 8 May 1984 commenting on s.161(2), has said "... the public has the right to expect the truth. The lack of such a provision as is now in force can place the media in the invidious position of having to adopt the role of censor when, as has happened, the accuracy of claims made in a political advertisement is challenged.

2.37 Political advertising represents an expensive and sophisticated attempt to pursuade electors to support a party or candidate. Political parties pay large sums to mount campaigns - from Australian Broadcasting Tribunal figures it appears that parties and candidates purchased 94 hours and 3 minutes of television time at a cost of $3,503,704 in the 1983 campaign compared with 99 hours and 9 minutes at a cost of $2,214,03 in 1980. Expenditure on radio advertising in the 1983 campaign was $748,872 for 257 hours and 36 minutes, compared with $545,379 for 278 hours and 25 minutes in 1980. (ABT Annual Report 1982-3 p.34). The total cost of the 1983 campaign has been estimated by Professor Colin Hughes at $2 million for the Labor Party, and between $3 million and $5 million for the Liberal and National Parties (C.A. Hughes, An Election about Perceptions, H.R.

Perriman, (ed) Australia at the Polls, George Allen & Unwin, Sydney, 1984, 285). Yet despite this reliance on paid advertising, there have been few studies in Australia of the effect of political advertising. Recent United States studies have suggested that the influence of paid political advertising may be overestimated (G.C. Jacobson, The Impact of Broadcast Campaigning on Political Outcomes, Journal of Politics, v.137, August 1975, p.78).

Should the publisher be responsible for untrue statements

2.38 Section 329(2) (s.161(2)) makes it an offence to "print publish or distribute, or cause, permit or authorise to be printed published or distributed" an untrue and misleading electoral advertisement. "Publish" is defined to include broadcasting and televising s.329(7) (s.161(7)). Thus when an offending advertisement is published, the offence is committed by either the publisher (newspaper, radio or television station) or the person who caused the publication (the political party or person authorising the advertisement), or both of them.

2.39 The publishers in these circumstances have a defence available if they can establish that they did not know, and could not reasonably be expected to have known, that the advertisement was untrue and misleading. For publishers to protect themselves it is thus necessary for them to satisfy themselves of the truth of any proposed advertisement.

2.40 Patrick Auld, Executive Director of the Media Council of Australia, told the Committee that the imposition of this criminal liability on a media proprietor will make that media proprietor handle political advertising with very great caution. As he described the process, an advertisement lodged with a publisher would now be referred immediately to the advertising manager or a senior management figure in the proprietor's business. He will look at the advertisement and, if he has any doubts about its compliance with s.161 he would refer it to the editor or to legal advisers. At that stage, the lawyers may

require substantiation of statements or changes to the text of the advertisement. This would mean that the lead time for any political advertisement could be from 48 hours to seven days (transcript, p.162).

2.41 Long lead times would create particular difficulties for a party seeking to reply to an advertisement from another party. The attacking advertisement will have the necessary lead time to go through whatever clearance is required, but an immediate reply would not be possible.

2.42 These problems could probably be minimised by centralised clearance procedures, similar to the procedure now required for television advertisements by the Commercial Acceptance Division of FACTS. Under the present legislation, however, a publisher would have to show that he had reasonable grounds for believing that the statement was not untrue, which does require verification.

2.43 The solution proposed by the Advertising Federation of Australia, and the Media Council is that it should be a defence for a publisher to show that they accepted an advertisement in the ordinary course of business from an advertiser. A similar provision is s.101 of the Companies Act which excuses a publisher from the offence of publishing misleading statements by a company if the publisher has obtained a certificate from the directors to the effect that the statement complies with the Act. An amendment to this effect would confine the criminal liability in s.161(2) to the person or group who caused the advertisement to be published - the political party group or individual who authorised the advertisement for publication.

2.44 Removing the liability on publishers would solve the difficulty of long lead times. A political party would be able to reply quickly to advertised statements by its political opponents. It would be expected, of course, that parties would themselves exercise caution in preparing election advertisements, for fear, not only of the criminal sanctions of s.161(2), but of the political odium that would attach to having an advertisement

found by a court of law to be "untrue". Placing liability on the party or individual authorising the advertisement would leave the parties with the choice of carefully ascertaining the truth of a statement or preparing a rash attack on an opposition party, and having to face the consequences.

2.45 The Attorney-General proposed to the Committee the inclusion of a new subsection in s.161 to provide that, in a prosecution for a breach of s.161(2), "it is a defence if the person proves that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person".

2.46 Such an amendment would require the advertiser to assure the publisher of the truth of the proposed statement. By providing a defence to a publisher it avoids the undesirable situation where a publisher refuses to accept an advertisment during a campaign.

2.47 This refusal, which may be required of a prudent publisher by the present Act, could seriously inhibit the electoral process, and would inevitably be regarded by the group or party whose advertisement is refused as a partisan act. Moreover, a radio or television station which refused to broadcast an advertisement which it feared would constitute a breach of s.329(2)(s.161(2)) could be said to be in breach of the obligation contained in s.116(3) of the Broadcasting and Television Act 1942 to broadcast election matter from all political parties.

2.48 Although placing responsibility for untrue advertising directly on the party or person responsible for the advertisement would be an improvement upon the present s.329(2)(s.161(2)), it is based upon the assumption that it is possible to enforce truthful political advertising by legislation.

2.49 The Committee was particularly concerned to establish the criteria which would be adopted by a Court to determine whether a political advertisement was "true". To assist the

Committee in this task the Attorney-General and Mr Michael McHugh, Q.C. were invited to give evidence to the Committee. Public hearings were conducted in Sydney on 25 June at which Mr McHugh, Q.C. and Mr Marris of the Attorney-General's Department gave evidence.

Defining political truth. Advertisements caught by s.329(2) (s.161(2))

2.50 In order to examine the practicality of s.329(2)(s.161(2)) it is necessary to identify the type of advertisements which the section would prohibit. For this purpose the Committee was referred, both by the submission of the Attorney-General, and by the evidence of Mr Michael McHugh, Q.C., to the experience of the courts in interpreting the prohibition of "misleading or deceptive" conduct in s.52 of the Trade Practices Act.

2.51 The prohibition in s.329(2)(s.161(2)) is of a "statement that is untrue and that is, or is likely to be, misleading or deceptive. It is appropriate to consider each of these concepts in turn.

1) "a statement..."

2.52 It seems that a statement may be one of opinion, belief or intention as well as of fact (submission of Attorney-General). This conclusion is based on the views of the High Court in Re Electoral Act Evans v Crichton-Browne (1981) 147 CLR 196 where the Court considered the identical provision is the former s.161(e). The Court there rejected the argument that statement applied only to statements of fact. The Court said:

> "Counsel for the petitioners recognised that para(e)- which of course refers to incorrect as well as to untrue statements - might have a very drastic effect if it is applied to any statement which is intended or likely to affect the political judgment of electors, and therefore made

> an attempt to read down the words of the section so as to restrict their meaning - in particular an attempt was made to limit them to statements of fact. However, a statement may be one of opinion, belief or intention as well as of fact, and there is nothing in the words of para (e) to limit the provisions of that paragraph to statements of the latter kind" (1981)33 A.L.R. 609 at 616.

2) "..which is untrue..."

2.53 It is important to note that s.161(2) requires a statement to be both untrue and misleading or deceptive. The committee was told that this means that a statement which conveys a meaning that is misleading or deceptive would not be proscribed if the statement was in fact literally true (AG's submission). However Mr McHugh, Q.C. pointed to the views of Mr Justice Brennan in World Series Cricket v Parish (1977) 16 ALR 181 where His Honour said that "a statement which is literally true may nevertheless convey another meaning which is untrue, and be proscribed accordingly".

2.54 It has been said that "false" can be equated to "contrary to fact" or "objectively false" and therefore requires no knowledge on the part of the person making the representation (Given v C.V. Holland (Holdings) Pty Ltd (1977) 29 FLR 212 at 217. However, s.161(5) provides a defence if a person shows that they did not know, and would not have been expected to know, that the statement was untrue.

Predictions

2.55 Particular difficulties are likely to arise when the alleged untrue statement is a statement concerning future events, rather than existing facts. Electoral advertisements will frequently contain statements concerning the benefits that one party's policies will bring to the country or the havoc which will be caused by the policies of an opposing party.

2.56 The Attorney-General's submission argued that a statement "X will introduce a wealth tax" is probably not capable of being untrue, because the statement is a prediction and it is not possible to establish in advance whether the prediction will be fulfilled.

2.57 Mr McHugh, Q.C. in his evidence disagreed with this view, and suggested to the Committee that such a statement may involve an implication as to a present fact. There is, he said, "great difficulty in divorcing statements of fact from statements of opinions (transcript, p.255). He referred the committee to the authorities on this point contained in the judgment of Mr Justice Franki in Thompson v Master Touch T.V. Service Pty Ltd (1977) 29 FLR 270. His Honour there referred to decisions of the English Courts arising under the Trade Descriptions Act 1968 (U.K.) where it has been held that a forecast may contain by implication a statement of present fact if the person making the statement is implying that he now believes that his prediction will come true, or that he has the means of bringing it to pass (transcript, p.258).

2.58 On this view a wide range of electoral advertisements could be capable of being caught within the section and consequently becoming the subject of injunction proceedings.

Opinions

2.59 As well as statements concerning future events, electoral advertisements may and frequently do contain statements in the nature of opinions.

2.60 There seems to be no clear authority on the question of whether a statement of opinion can be said to be untrue. The Attorney-General's submission put the view that the truth of a statement of opinion depends not on the soundness of the opinion but on whether the person to whom it is attributed in fact holds it. The contrary view put by Mr McHugh, Q.C. is based on the law of defamation where, in a plea of justification "the defence that

a matter of opinion or inference is true is not that the defendant truly held that opinion, but is that the opinion and inference are both of them true" (Gatley on Libel and Slander, London, Sweet & Maxwell, 1974, para 358).

3."..and misleading or deceptive".

2.61 In determining whether a statement is misleading or deceptive the Courts undertake an examination of the statement and the evidence before the Court. The Attorney-General's submission states that this question is a question of fact to be answered in the context of the evidence as to the alleged statement and as to the relevant surrounding facts and circumstances. Where it is alleged that the deception is of the public, the relevant section of the public must be identified, and must be considered by reference to all members of the public, including the intelligent and the not so intelligent. Evidence that some person has in fact formed an erroneous conclusion is admissible and may be persuasive but is not essential. (Taco Company of Australia v Taco Bell (1982) 42 ALR 17)

2.62 It is in undertaking these determinations that the committee fears that s.329(2)(s.161(2)) may become unworkable. While it is appropriate to entrust to a court which is experienced in the process of examining evidence and adopting conclusions, the task of ascertaining the truth of the claims of commercial advertisers, such objective standards can not be applied to political statements. A decision as to whether a political statement is "true" seems necessarily to involve a political judgment, based upon political premises. The committee is of the view that it is undesirable,both from the point of view of the courts, and the participants of the political process, to require the courts to enter the political arena in this way. The High Court seems to have had these difficulties in mind in rejecting the broad interpretation of the old s.161(e) which was argued by the applicants in Re Electoral Act.

2.63 The Court said that the prohibition of misleading and untrue statements affecting a voters choice of candidate would:

> "require an election campaign to be conducted in anticipation of proceedings brought to test the truth or correctness of any statement made in the campaign. Indeed any person who published an electoral advertisement containing an incorrect statement of fact might be exposed to criminal proceedings. In a campaign ranging over a wide variety of matters, many of the issues canvassed are likely to be unsuited to resolution in legal proceedings...." (1981)33 A.L.R. 609 at 616-617

2.64 The evidence before the Committee convinces it that great difficulties would be encountered by a Court which seeks to define "untrue and misleading" statements. Although concerned at the broad scope of the section as it presently appears, the Committee is unable to recommend the amendments to the section proposed of the Attorney-General to strictly limit the application of the section to "statements of existing fact which are capable of being true". These proposals seem to confront the Committee with the horns of a dilemma.

2.65 If, as the Attorney-General submits, it is possible to restrict the operation of a revised section to statements of present fact only, the section will not be effective to enforce "honest" advertising. Statements such as "X Party will increase taxes" "Y Party is not concerned about unemployment", or "Z Party will introduce a wealth tax" would not offend against the section, even if that party could show that it was committed to the opposite course of action. The only statements which would be covered are statements in the form "X Party's policy contains a commitment to ..." or "M or Y has said that his party will". It is immediatley apparent that a party could embark on an advertising campaign deliberately attributing false policies to an opposing party, and yet not fall within the section. Such a section would penalise not the party with the dishonest intent to deceive the public but the party with poor legal advice.

2.66 It was suggested that the section could be tightly drafted so that the purported statement of fact would need to be capable of being tested by a court for its truth or falsity. Thus it was argued that statements such as "X Party has links with the Mafia" or "Y Party discriminates against women", though purported statements of fact, may be so general and non specific that it would be impracticable for a count to embark upon an inquiry as to their truth or benefit (Attorney-General's submission). A provision which would permit the "big lie" in such a manner seems to the committee to be of little benefit to the community.

2.67 If on the other hand it is impossible to restrict the operation of this section to such readily verifiable statements of fact, as Mr McHugh suggests, the section has such a broad effect as to be unworkable. Many legitimate assertions which may be expected in the cut and thrust of an election campaign could become the subject of injunction proceedings. A statement to the effect that "X party's policies will lead to an increase in taxes", "Y party's policies will weaken Australia's defence", or even "your childrens' future will be more secure under a Z party government" may be the subject of challenge.

Injunctions

2.68 The offence created by s.161(2) must be read in conjunction with s 209A of the Act which provides that an injuction may be granted by a Supreme Court to prevent any breach of the Act. An injunction may be sought by the Electoral Commission, or by a candidate in an election.

2.69 The possibility of candidates seeking injunctions to prevent publication of advertisements from an opposing political party was of concern to many witnesses before the Committee as well as to the members.

2.70 An application for an interim injunction could prove an effective tactic for a candidate to obtain publicity for him or herself and to disrupt the advertising campaign of another party. The Committee received evidence from Mr Michael McHugh, Q.C. that an application for an interim injunction could be brought on at short notice, and that such an application would be likely to succeed. Mr McHugh told the committee that a Court was now likely to grant an injunction if it found that there was a "serious question to be tried" between the parties before the court and that the balance of convenience favoured the issue of the injunction (transcript, p.254).

2.71 The leading Australian authority on the principles of the issue of interim (or interlocutory) injunctions is Beecham Group v Bristol Laboratories (1968) 118 CLR 618, where the High Court held that there were two issues to be determined on the application.

> "The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief. The second inquiry is whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted". ((1968) 118 C.L.R.618 at 622)

2.72 Subsequent cases have established that the requirement to establish a "prime facie case" does not mean that the plaintiff must show on a balance of probabilities that he will win on the trial. The Privy Council in Eng Mee Young v Letchumanan [1980] AC 331 has said that all that is required is for the plaintiff to satisfy its court that there is "a serious question to be tried". This test has been endorsed by McLelland J in the Supreme Court of New South Wales in Appleton v Tomasetti (1984) 50 ALR 528. Applying this test a party would only have to show a serious issue to be tried to obtain an injunction. If an

advertisement said "X" intends to introduce a wealth tax", Mr McHugh told the Committee that if X gave the evidence "I do not intend to introduce a wealth tax" you would have proved the statement false. This would probably be enough to obtain an injunction.(transcript, p.258)

2.73 Mr McHugh told the Committee that an injunction could be obtained quickly. If an offending advertisement appeared, a party's laywers could approach a judge at any time. The judge would probably require some notice to the other side, either a few hours or until the next morning. As it would be unlikely that the judge could conduct a full enquiry so as to come to a final decision, he would be obliged to grant an interim injunction if he thought there was a serious issue to be tried, unless he held on the balance of convenience that he would not do anything. (transcript, p.260)

2.74 An injunction, particulary an interim injunction, while an appropriate remedy in the Trade Practices Act, gives rise to severe difficulties in the area of political advertising. In an election period strict time constraints apply. In the case of the electronic media, advertising must cease on the Wednesday evening preceding election day. All advertising is of course pointless once the polls are closed.

2.75 Thus the grant of an interim injunction to prevent publication of an election advertisement in the final week of a campaign is, in effect, a final remedy. When a party seeks an interim injunction under the Trade Practices Act they will be required to give an undertaking to the Court as to damages. This amounts to an undertaking to pay the person adversely affected by the interim injunction such compensation (if any) as the court thinks just if, on the full hearing, the court decides that the injunction is not warranted. This procedure may be appropriate in trade advertising - a campaign may have been delayed, and some form of monetary payment will compensate for it. Clearly, no amount of money can compensate a political party if it is prevented from publishing advertising material in the final week of a campaign.

2.76 The committee concludes that the injunction remedy could cause grave injustice to political parties or candidates and could disrupt the normal political process, if available at the suit of any candidate.

2.77 A possible modification would be to restrict the right to seek an injunction to the Australian Electoral Commission. The committee however rejects this proposal, as it would require the Commission to enter the political fray in deciding whether to seek such an injunction.

Conclusions

2.78 Fair political advertising is a concept which has been endorsed by all witnesses before the Committee, from media organisations to political parties. While everyone agrees that fair advertising is a desirable objective, the Committee concludes that it is not possible to achieve such "fairness" by legislation.

2.79 Political advertising differs from other forms of advertising in that it promotes intangibles, ideas, policies and images. Moreover, political advertising during an election period may well involve vigorous controversies over the policies of opposing parties.

2.80 In implementing the recommendations contained in the Committee's first report, the Government also amended the then s.161 to prohibit untrue advertising. The Committee has noted the concern expressed by broadcasters and publishers on the inhibiting effect this section would have on political advertising. The Committee notes with some concern the fact that these difficulties were not raised during the debate on the 1983 Bill. This oversight suggests the need for legislation committees to closely examine complex Bills such as this, to ensure that the Parliament is aware of the full implications of every provision.

2.81 Considering the questions presented to the Committee and set out in 3.20, the Committee concludes that even though fair advertising is desirable it is not possible to control political advertising by legislation. As a result, the Committee concludes that section s.329(2)(161(2)) should be repealed. In its present broad scope the section is unworkable and any amendments to it would be either ineffective, or would reduce its scope to such an extent that it would not prevent dishonest advertising. The safest course, which the committee recommends, is to repeal the section effectively leaving the decision as to whether political advertising is true or false to the electors and to the law of defamation.

2.82 The Committee recommends that:

> *section 329(2)(s.161(2)) of the* Commonwealth Electoral Act 1918 be repealed

2.83 The Committee concludes that the injunction remedy in s.383(s.209A) should not apply to the offence created by s.329(2)(s.161(2)), but, as it has recommended the repeal of s.329(2)(s.161(2)) does not make a further recommendation. The availability of an injunction, at the suit of a candidate to prevent other offences under the Act such as an issue of misleading how to vote cards is an appropriate remedy.

2.84 The Referendum (Machinery Provisions Act 1984 was introduced in the House of Representatives on 9 May 1984, and passed both Houses on 7 June 1984. The Act was assented to on 25 June 1984. The main provisions of the Act give effect to the 1977 referendum enabling electors in the Territories to vote at future referendums. The Act also applies many of the reforms effected by the Commonwealth Electoral Legislation Amendment Act 1983 to voting at referendums.

2.85 Section 122(2) of the Referendum (Machinery Provisions) Act provides that it is an offence to publish any advertisement relating to a referendum containing a statement that is untrue and that is, or is likely to be, misleading on terms deceptive. The prohibition is couched in terms almost identical to s.329(2)(s.161(2)) of the Commonwealth Electoral Act 1918.

2.86 The Committee received submissions from the Federation of Australian Commercial Television Stations and from the Media Council of Australia in relation to this section, arguing that this section would present the same difficulties to broadcasters and publishers as would s.329(2)(s.161(2)) of the Commonwealth Electoral Act 1918.

2.87 The Committee accepts this argument, for the reasons set out in this Chapter of this Report. The Committee recommends that:

> section 122(2) of the Referendum (Machinery Provisions) Act be repealed.

CHAPTER III

STATUTORY PROVISIONS CONCERNING ELECTION BROADCASTING

Background

3.1 The Committee has identified three areas of concern arising from evidence and submissions relating to its first additional term of reference, broadcasting of election matter. These are -

- inconsistencies between the provisions governing broadcasting of political matter in the Broadcasting and Television Act 1942 and the provisions governing the broadcasting of election matter in the Commonwealth Electoral Act 1918, and the need for consolidation of these provisions;

- the prohibition of the broadcasting of dramatization of political events, and

- the requirement that broadcasters maintain a record of political broadcasts, and access to the record.

3.2 There is widespread dissatisfaction with the present legislation whereby parallel, and apparently conflicting, provisions regarding political broadcasting exist in the Broadcasting and Television Act 1942 and the Commonwealth Electoral Act 1918. The Committee in its first report recommended consolidation of these provisions, and invited submissions on the matter during its present inquiry.

Identification of Political Broadcasts

3.3 Section 117 of the Broadcasting and Television Act 1942 requires the name of every speaker, together with the author, to be announced after an address or statement "relating to a political subject or current affairs". If the address is made on

behalf of a party the party's name must also be announced, and if the statement exceeds 100 words, the announcements must be made both before and after the statement. This provision applies to broadcasting at all times.

3.4 Section 333(164A) of the Commonwealth Electoral Act 1918 requires the true name and address of every author to be announced in the use of any announcement during the period from the issue of the writs to the close of the poll in any election. The address of the author cannot be a post office box.

3.5 To comply with both provisions during an election period, an advertisement for a political party which features a number of speakers and was written by more than one author, and which is of more than 100 words, would need to comply with the following format:

+ The name of the authors
+ the name of the political party
+ the name of speaker No. 1
+ the name of speaker No. 2
+ the name of speaker No. 3

the advertisement

\+ *the name of the authors
++ *the addresses of the authors
\+ the name of the political party
\+ the name of speaker No. 1
\+ the name of speaker No. 2
\+ the name of speaker No. 3
+++ the name of the person authorising the advertisement
+++ the address of the person authorising the advertisement

Notes:

+ : required by Section 117 Broadcasting and Television Act 1942

++ : required by Section 333 (s.164A) Commonwealth Electoral Act 1918

+++ : required by Section 328(s.160) Commonwealth Electoral Act 1918

3.6 The rationale for these sections is to allow a voter to know who is behind an advertisement. It would be sufficient to achieve this if an advertisement were identified by the name and address of the individual responsible for placing the advertisement. In the case of a registered political party, the requirement should be for the name of the registered political party. It seems unnecessary to broadcast this information both before and after a short statement.

3.7 Witnesses from the Australian Broadcasting Tribunal, the Australian Electoral Office and the Department of Communications agreed that the consolidated identification provision should be contained in the Broadcasting and Television Act 1942. (transcript pp.68, 84-90) The administration of the provision would thus fall to the Australian Broadcasting Tribunal, which is the appropriate body with experience in administering broadcasting law and policy. This form would apply at all times, and would cover material broadcast in relation to State as well as Federal elections, as does the Broadcasting and Television Act 1942 at present.

3.8 Removal of s.333 (164A) of the Commonwealth Electoral Act 1918 could however lead to some confusion. The Commonwealth Electoral Act 1918 in s.332 (164) addresses itself to identification requirements in printed material. Section 333 (s.164A) sits logically next to it by extending this requirement to broadcast material.

COMPARISON OF SECTION 117 BROADCASTING AND TELEVISION ACT AND SECTION 333(164A) COMMONWEALTH ELECTORAL ACT

COMPARISON OF SECTION 117 AND SECTION 333(164A)

ASPECT	SECTION 117	SECTION 333(164A)
Times of Application	At all times	After date of issue of any writ and before the close of polls for a Federal election or referendum.
Matter Requiring Identifying Statement	An address or statement relating to a political subject or current affairs.	An announcement, statement or other matter commenting upon any candidate, political party or the issues being presented to the electors.
Details which must be Identified	Name of speaker and author (if author is not speaker).	True name and address of author(s).
Form of Identification	Announcement after address or statement of 100 words or less, and before and after longer address or statement.	Identification not subject to any form; it need only be "included".
Person Responsible for Compliance	ABC, SBS or licensee.	Person broadcasting or televising, or causing, permitting or authorising to be broadcast or televised, and the person supplying the matter to the station.
Penalty for Non-Non-Compliance	For a natural person: up to $5,000 (on indictment), or up to $1,000 (summary); for a body corporate: up to $10,000 (on indictment), or up to $2,000 (summary). See section 132 of the B&T Act.	$100.
Matter Exempted from Section	None	News summary of a report of a meeting which contains no relevant matter other than that made by a speaker at the meeting.
Other Requirements	ABC, SBS or licensee must keep record of name, address and occupation of each author, and supply them to Australian Broadcasting Tribunal on demand.	None.

3.9 The Committee considered whether it would be appropriate to retain a provision in the Electoral Act governing identification of political advertisements in the same terms as the provision in the Broadcasting and Television Act 1942. A difficulty with this approach would be the possibility of conflicting enforcement. While it could be made clear in the administrative arrangements orders that responsibility lay with the Broadcasting Tribunal, s.383 (s.209A) of the Electoral Act allows for injunctive restraint against any breach of the Electoral Act. If the section were to be duplicated in the Electoral Act injunctive relief would be available to enforce compliance. The Committee believes however that it would be desirable to include a reference to the identification requirements in the Commonwealth Electoral Act 1918 so that a person who examines the Act could be made aware of all their obligations relating to electoral advertising.

3.10 The Committee recommends that:

> the identification requirements for political advertising should be simplified, and contained in the Broadcasting and Television Act 1942.The identification requirements in the Commonwealth Electoral Act 1918 should be repealed, however it would be desirable if the Commonwealth Electoral Act 1918 contained reference to the requirements in the Broadcasting and Television Act 1942. An advertisement should be identified by the broadcast of the name and address of the person responsible for placing the advertisement. In the case of a registered political party, the broadcast of the name of the party should be sufficient. This information should only be required following the broadcast of the advertisement.

3.11 The National Secretary of the Australian Labor Party, Mr R.F. McMullen suggested that much of the confusion which may presently exist due to obligations being found in different Acts could be resolved by the publication of a manual of Australian Electoral law and practice (transcript, p.106). This document could be produced by the Australian Electoral Commission and published in a form which could be regularly updated. The Committee endorses this suggestion, which would be of benefit to parties, broadcasters, publishers and any citizens interested in the electoral process.

3.12 The Committee recommends that:

> the Australian Electoral Commission publish a manual of Australian electoral law and practice including relevant obligations not contained in the Commonwealth Electoral Act 1918.

3.13 The requirement to identify speakers causes particular difficulty with "talk back" radio programmes. Mr A.W. Wyndham from the Australian Broadcasting Corporation explained the difficulties involved in ensuring that "talk back" radio complied with the present law (transcript, p.159). Stations take down the full name and address of callers, which is recorded, but only broadcast the name and suburb. When "sensitive issues" are being discussed, the ABC might ask for a callers number, and ring back. The ABC acknowledged that, unless this procedure is followed, there is no way of knowing whether the identification provided by the caller is truthful.

3.14 Similar problems arise when a television or radio station wishes to conduct "in the street" interviews to obtain the perceptions of members of the public on election issues. The Australian Broadcasting Tribunal expressed the view that, while identification is appropriate for political advertisements or statements, it is not appropriate in these circumstances. The

former Government announced in 1977 that talkback radio would be exempted from the Electoral Act provisions about identification of speakers, but no action was taken to implement this policy. The Australian Broadcasting Tribunal witness, Mr L. Grey conceded that s.117 of the Broadcasting and Television Act 1942 is unworkable in the context of talk back radio (transcript, p.72).

3.15 Mr Grey suggested that, if the identification requirement for talk back radio were dropped, it would be desirable to include a new provision outlawing unauthorised impersonation in broadcasts, to prevent a person ringing in and claiming to be a public figure, during a talk back program. There would however seem to be problems in enforcing this (transcript p.75).

3.16 The abolition of identification requirements in talk back radio raises a further legal difficulty for radio stations. A radio station will be liable for a defamatory statement broadcast during a talk back program. It would be in the stations interest to maintain an accurate record of its callers, so as to bring the author of the statement into the action as co-defendant.

3.17 The Committee recommends that:

> the identification requirements in the Broadcasting and Television Act 1942 only apply to advertising, so as to exclude talk back radio and "man in the street" interviews.

Dramatization of Political Matter

3.18 The Broadcasting and Television Act 1942 (s.116(2)) prohibits the dramatization of "any political matter which is then current or was current at any time during the last 5 preceding years".

3.19 This section was opposed by witnesses representing media organisations, and by the Liberal Party. Mr C.J. Puplick, a member of the Federal Council of the Liberal Party of Australia, told the Committee that the ban on dramatisation was now outdated and unsupportable (transcript, p.41). The argument for repeal of this provision is that it is an unwarranted interference with the public's right to information and views. The success and public interest in the recent television series "The Dismissal" demonstrates this. A series such as this could not have been shown within the 5 year period of 116(2).

3.20 The term "dramatization" is vague and subject to differing interpretations. Mr Grey was asked whether the use of puppets which are caricatures of public figures, would breach this section. The Australian Broadcasting Tribunal feels that they do not, but noted that this opinion was "without a great deal of confidence". Mr Grey acknowledged that if the section were applied literally, situations such as the puppets would be caught, and suggested that the ban could be removed (trasnscript, p.58). If problems of misrepresentation of persons in public life occurred, this could best be tackled by fairness standards in broadcasting.

3.21 The problem which s.116(2) was directed at occurred some 40 years ago, when the "John Henry Austral" radio advertisements used actors whose voices mimicked Labor Party figures. A similar provision which existed in Canadian law has since been repealed, with no apparent difficulties, although the Canadian Radio-Television and Telecommunications Commission retains a power to make regulations about the use of dramatization in political broadcasts.

3.22 Mr McMullen said there was no great demand for change to s.116(2), and that its repeal would not lead to any identifiable benefit. In his view there is an opportunity for injustice to occur when candidates are represented in

dramatizations in a way which may be politically unfair (transcript, p.107). The Queensland and Victorian branches of the National Party of Australia also support the present ban, and submitted that the depiction of actual political events in advertising could cause severe problems.

3.23 No evidence was given to propose that the ban be restricted to political advertisements, or to the election period. Such a solultion would allow the broadcast of a series such as "The Dismissal", within five years of the events depicted, but would retain the protection against misrepresentation during a campaign.

3.24 The Committee believes that there is no justification for retaining the ban on dramatization, even for political advertising and recommends that:

> section 116(2) of the Broadcasting and Television Act 1942 be repealed.

Records of Political Broadcasts

3.25 Section 117A of the Broadcasting and Television Act 1942 requires all broadcasters to maintain a record, in writing or by sound recording, of all "matter relating to a political subject or current affairs being matter that is in the form of news, an address, a statement, a commentary or a discussion". These records are to be kept for a period of six weeks. This section applies to all current affairs programmes, and is not restricted to political or electoral broadcasts.

3.26 Although the objective of s.117A is to ensure that likely plantiffs in defamation actions will be able to discover the exact content of the offending broadcast, the Committee was concerned at the apparent lack of any right of access to these

records. At present, candidates who believes that they may have been defamed by a broadcast can only gain access to the record through the normal process of discovery, after litigation has commenced. This means that the potential plantiff would have to commence legal proceedings before they would be able to obtain access to the record of the broadcast maintained by the broadcaster. This is not only costly and time consuming - it may appear that the statement was not defamatory upon examination, and the exercise is wasteful. Or there may be circumstances where, although a defamatory statement was made, the person does not know enough of what was said to commence an action.

3.27 The Committee recommends that:

> section 117A of the Broadcasting and Television Act 1942 be amended to provide that a person shall be afforded the opportunity to examine any record and to obtain a copy of such record, upon notice and upon payment of such costs as are reasonable to cover the expenses of the broadcaster in providing a copy tape.

3.28 A related question concerning s.117A is whether television broadcasters should be required to maintain a video as well as an audio record of such broadcasts. The Committee is of the view that, given the ready access and comparatively low cost of modern video equipment, such an obligation would be desirable. Moreover, a sound recording may not faithfully record an event. Defamation may occur through the broadcast of printed words or images, or indeed gestures.

3.29 The Department of Communications has advised the Committee that, on information supplied by the Federation of Australian Commercial Television Stations, the requirement that broadcasters maintain video records of political material would place an onerous burden on licencees. Witnesses for the Australian Broadcasting Corporation told the Committee that the requirement to maintain such records for six weeks after the date of broadcast would create storage difficulties.

3.30 The Committee however believes that such a requirement is reasonable. The present s.117A does not provide a sufficient record for television broadcasts. Recent advances in video recording technology should mean that the compilation of such a record should not put an unreasonable strain on the resources of television licencees and the public television broadcasters.

3.31 The Committee recommends that:

> section 117A of the Broadcasting and Television Act 1942 be amended to provide that television broadcasters maintain a visual as well as an audio record of broadcasts. Public access to such records to be as recommended in the previous recommendation.

CHAPTER IV

OTHER MATTERS

Silent Rolls

4.1 In addition to the specific matters identified by the Committee for further inquiry, the Committee has monitored the implementation of the recommendations contained in its First Report. This Report affords an opportunity for the Committee to highlight a difficulty which has been encountered in implementing the Committee's recommendations concerning silent electoral rolls, and to comment on the design of the new Senate ballot paper.

4.2 In its First Report the Committee recommended (at 5.49) that people in certain occupational groups such as police, judges and magistrates, and people in danger of violence, should be able to request that their residential address not be published in the electoral roll. This recommendation was implemented in s.104 (s.46A) of the Act.

4.3 For this change to be effective, however, it is necessary for complementary amendments to be made to State electoral legislation. The Commonwealth/State joint roll arrangements provide for one roll to be maintained and one enrolment to be effected consistently with Commonwealth and State laws. State laws presently do not provide for silent enrolment and so the joint roll must show the electors address. In States where a separate state roll is maintained, silent Commonwealth enrolment is pointless if the information can be obtained from the State roll.

4.4 Joint Commonwealth/State electoral rolls are compiled and published in New South Wales, Victoria, South Australia, Tasmania and the Northern Territory. Separate rolls are published, from the same enrolment information, in Western Australia. Queensland maintains separate enrolment procedures, and publishes separate rolls.

4.5 The Committee is concerned that the personal safety of persons such as judges may be at risk if their addresses are divulged in electoral rolls and brings this matter to the attention of State Governments, with the request that state electoral legislation be amended urgently so as to complement s.104(s.46A).

4.6 The Committee recommends that:

the Government bring to the attention of State Governments the need for complementary reform to State electoral acts in order to allow silent enrolment procedures to operate.

Senate Ballot Paper

4.6 The Committee's recommendation in its First Report that a "list" system of voting be introduced for the Senate, while retaining the existing system as an option for those who wished to allocate their own preferences, was adopted by the Parliament. During the Senate debate on the Commonwealth Electoral Legislation Amendment Bill 1984, however, Senator Macklin drew the Senate's attention to difficulties which may arise with the new form of ballot paper.

4.7 Under the Commonwealth Electoral Act as it presently stands, a voter who marks a "list" vote has cast a valid Senate vote. If the elector goes on to fill out the full ballot paper, marking their preferences in a valid way, that shall be taken as the electors vote, rather than the "list" vote. (s.269(3) (s.133A(3)))

4.8 Senator Macklin was concerned that voters who wish to allocate their preferences in a manner other than that set down in the registered party list might mark their paper with a "1" in the list box, and continue down the paper with "2" in the box opposite the first candidate in that group, "3" in the next box, and so on. Under the present legislation this would be a valid

list vote, even though the elector may have intended to distribute their preferences in a different manner. A voter might attempt to cast a full preferential vote by beginning in the list box, continuing down the candidates of that party and then continuing in the list box of his second preference party, and so on. Such a ballot paper would not contain consecutive numbering in the lower part of the paper as the voter will also have filled in every box on the top half of the ballot paper. Nevertheless, such voters would have indicated the manner in which they wished to distribute their preferences.

4.9 A proposed amendment by Senator Macklin would have avoided this by providing that a voter who marks his preferences with sequential numbers, starting with a lowest number will have cast a valid vote which would have effect over the "list" vote. In the course of the debate on 7 June 1984 Senator Macklin agreed to withdraw his amendment on receipt of an assurance by the Attorney-General that the question would be referred to the Committee. The Special Minister of State wrote to the Chairman on 16 July 1984 requesting the Committee to report on the proposed amendment.

4.10 The objectives of the Committee throughout its review of the electoral system has been to encourage a system which combines simplicity with the maximum reflection of a voters intention. The combination list/exhaustive preference system allows a voter to either cast a simple vote in favour of a party ticket, or to cast an exhaustive preferential vote.

4.11 The present Act allows a voter to cast a simple list vote, or to cast an exhaustive preferential vote. The Committee believes that the marking of the number "1" by a voter must be taken to indicate the voters primary choice, and that an apparent preferential vote beginning with a number other than "1" should not override the formal list vote. The Committee therefore does not recommend any further amendments to the Act to cover the difficulties which Senator Macklin has raised.

4.12 A further question relating to the form of the Senate Ballot paper has been referred to the Committee for recommendation. The form of the Senate ballot paper is that set out in form E of Schedule 1 of the Act. Where Senate candidates appeared by mutual consent as a group, usually as a party group, the old ballot paper identified the fact that the candidates were so grouped by the inclusion of the letter "A", "B" or "C" and so on before the square to the left of the candidate's surname. Each member of the "group" had the same identifying letter.

4.13 This was the only way of identifying party allegiance on the ballot paper. One of the recommendations in the Committee's First Report which has been implemented is the inclusion of the name of a registered political party beneath the name of each candidate who belongs to such party. Voters can thus readily identify the party allegiance, if any, of a candidate.

4.14 Although the primary purpose of the inclusion of an identification letter has been achieved by inclusion of the party name, the Committee feels that it is still beneficial to identity the party groups in sequence across the ballot paper.

4.15 The Committee recommends that:

the letters "A", "B", "C" and so on appear on the Senate ballot paper above the box on the top half of the paper, and above the first box immediately below the bold line in the second half of the paper for each party group.

17 August 1984

A.E. KLUGMAN
Chairman

DISSENTING REPORT

SUBMITTED BY

SENATOR M.J. MACKLIN

TO THE

JOINT SELECT COMMITTEE

ON ELECTORAL REFORM

22 August 1984

After reviewing the evidence presented to the Committee, I can find no support for the recommendation of the majority of the Committee that the Parliament abandon any attempt to regulate political advertising.

However, I believe that a compelling case has been made out that the Act needs to be amended to remove the onus presently placed on the publisher of political advertisements. I accept that it is not reasonable to hold the publisher responsible for the content of such advertisements.

I support the proposed solution put forward by the Media Council that the Act should be amended so that it is a defence that the publisher had accepted the advertisement in the ordinary course of business. The effect of such an amendment would be to confine the liability under the Act to the political party or person who authorised the advertisement for publication. This is precisely where the liability should be placed.

The Majority Committee goes beyond this position to recommend total repeal. It does so with a series of arguments which, I suggest, do not support the conclusion.

There is a solid ground for there to be some controls on political advertising. Information is the lifeblood of a democracy and a citizen must rely to a large extent on the media for such information. A large amount of this information available during election periods comes from political parties and candidates by way of political advertisements. It is not a private matter, therefore, but rather a matter of community concern that a voter may be misled into forming a political judgment by an advertisement which is untrue and misleading or deceptive.

It would be a denial of essential elements of democracy if all restraints on political advertising were removed. It will bring politics and politicians into further disrepute if Parliaments pass laws requiring others in the community to be truthful in their advertisements but to exempt its own. "Do what I say, not what I do" is hardly a reasonable proposition when we are dealing with the most important decisions that a citizen is called upon to make.

It is of interest that the Media Council of Australia in evidence before the Committee supported the intent of the current legislation on the grounds that it "produces or tends to produce honest, decent, truthful and legal advertising". This should be the goal of any electoral reform undertaken by Parliament. Surely the commercial world is entitled to accuse politicians of hypocrisy if politicians show themselves willing to put on business a burden which they are unwilling to have placed on their activities.

The Majority Report also argues that the electorate will reward or punish political parties for the truth or falsity of their advertising. It is interesting that this same argument was presented during the passage of the Trade Practices Act through Parliament. It was suggested that advertisers ought not be compelled to be truthful in their claims about their products because the market place would suffice. Parliament finally accepted that advertisements ought be regulated on the grounds that the public was often unable to ascertain the truthfulness or otherwise of such advertisements because of the privileged nature of much of the information surrounding these products. The majority of citizens do not have access to sufficient documentation to enable them to arrive at a reasonable judgment concerning whether or not the advertisement is false or misleading.

I believe that this argument holds true with regard to political advertising as much as it holds true for product advertising. It is surely a small price to pay for a better informed democracy that politicians are required to tell the truth regardless of whether or not they will be rewarded or suffer in election campaigns.

Much moment is made in the Majority Report of the point that it is often difficult in politics to divorce statements of fact from statements of opinion. Why this should surprise anyone is beyond me. It is a well-known aspect of statements and the courts have been required to deal with such matters on a daily basis. I do not believe that any evidence was presented to the Committee to show that it is inheritantly more difficult to separate fact from opinion in the political area than it is, for example, in the areas of criminal law, defamation, libel, custody or intellectual property cases. There were assertions after assertions of the special character of political knowledge but no evidence. Indeed in the Majority Report the Committee relies one one quotation only from Prof. Henry Mayer. This quotation, however, merely describes the end product of the way politics is acted out in Australia. It does not purport to be an epistemology of political thought and ought not have been used for such in the Majority Report.

In 2.65 the Majority Report points to substantive differences between the statement (a) that a party will increase taxes, and the statement (b) that a party's policy says that it will increase taxes. I accept that the first will not come under the Act but I cannot follow the logic that says that since we cannot stop all dishonest intent therefore we will not try to stop any. There is a substantive difference between statements (a) and (b), such that in the minds of ordinary citizens the first would be seen as a claim which could, and probably would, be disputed by other parties, but that the second statement (b) could not be disputed but merely said to be false. Again in 2.66

the argument presented can be reduced to the proposition that because it is not possible to completely reform the world no attempt should be made to change the small section which is susceptible to change.

The evidence provided to the Committee by Mr McHugh was extremely useful in pointing out the complex legal implications of the section under question. I am sure however that he would have been as adept at doing so to any section of the Trade Practices Act governing advertising - or for that matter almost any part of any other Act. I believe that it is an erroneous inference to draw from his evidence that the Parliament should not continue to insist on political advertising being truthful. I understood his evidence to suggest that extreme caution would have to be exercised by any candidate who sought to use this section during an election campaign.

On this same point, if we refer to other arguments presented in the Majority Report I suggest that separate sections tend to pose contradictory positions. Hence in 2.37 it is suggested that political advertisements may not have much effect but in 2.75 it is suggested that no amount of money can compensate a political party if it is prevented from publishing advertising material in the final week of the campaign. This latter claim suggests that the courts would be unmindful of the effects of any injunctions to prevent advertising that they were asked to grant. I do not believe that this would be so. The courts would be aware of the context of politics. They have shown themselves able to adapt to an extraordinary number of areas of more technical and complex nature than politics. Many of which rest, as does politics, upon community standards and perceptions. It seems reasonable to me that damages would be able to be awarded to political parties and/or candidates. In some cases such damages I believe could be very high. If I may take an example from another area - a politican currently who takes action regarding a defamation or libel may be able to argue that his or her reputation has been so damaged that he or she could lose an election because of it. If this is accepted damages

that the community does not have to accept that we promote double standards or that the Parliament is indifferent to the truth. A repeal of these sections surely will be seen in the community as a licence to lie. This cannot enhance the democratic process in any way.

APPENDIX 1

LIST OF SUBMISSIONS

Submission No.	Persons/Organisation
1.	Submission from the Australian Electoral Office, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 4 November 1983.
2.	Submission from the Hon. Mr Justice M.D. Kirby, CMG, Chairman, Australian Law Reform Commission, Box 3780, GPO, Sydney, NSW, dated 7 November 1983.
3.	Submission from Mr J.D. Hickey, 4/13 Arnold Court, Pascoe Vale, Vic, dated 16 November 1983.
4.	Submission from the Australian Electoral Office, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 30 November 1983.
5.	Submission from Mr P.D. Cusack, 70 Gordon Terrace, Indroopilly, Qld, dated 1 December 1983.
6.	Submission from Mr T. Eggleton, Federal Director, the Liberal Party of Australia, P.O. Box E13, Queen Victoria Terrace, ACT, dated 14 December 1983.
7.	Submission from Mr J. Akister, MP, Suite 3, 105 Mondro Street, Queanbeyan, NSW, dated 19 December 1983.
8.	Submission from the Public Broadcasting Association of Australia, 80 George Street, Sydney, NSW, dated 25 January 1984.
9.	Submission from the Australian Council of Trade Unions, 393-379 Swanston Street, Melbourne, Vic, dated 31 January 1984.
10.	Submission from the Media Council of Australia, St Andrew's House, Sydney, NSW, dated 13 February 1984.
11.	Submission from the Australian Provincial Press Association, 54 Oxford Street, Darlinghurst, NSW, dated 17 February 1984.
12.	Submission from the Hon. D. Everingham, MP, Cinema Centre Building, Rockhampton, Qld, dated 13 February 1984.

13. Submission from Senator the Hon. G. Evans, Parliament House, Canberra, ACT, dated 20 February 1984.

14. Submission from J. Doyle, GPO Box 737, Adelaide, SA, dated 24 February 1984.

15. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 1 March 1984.

16. Submission from Mr S. Coppock, 76 Cremorne Road, Cremorne, NSW, dated 29 February 1984.

17. Submission from the National Party of Australia, Victorian Branch, 24 Collins Street, Melbourne, Vic, dated 5 March 1984.

18. Submission from Mr B.J. Ross, P.O. Box 65, Kingston, ACT, dated 25 February 1984.

19. Submission from the National Party of Australia, Queensland Branch, 6 St Pauls Terrace, Spring Hill, Qld, dated 7 March 1984.

20. Submission from the Federation of Australian Radio Broadcasters, 8 Glen Street, Milsons Point, NSW, dated 8 March 1984.

21. Submission from the Department of Communications, Benjamin Offices, Belconnen, ACT, dated 8 March 1984.

22. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, 2600, dated 12 March 1984

23. Submission from the Amalgamated Metals Foundry and Shipwrights Union, 136-140 Chalmers Street, Sydney, NSW, dated 12 March 1984.

24. Submission from the Federation of Australian Commercial Television Stations, 447 Kent Street, Sydney, NSW, dated 10 April 1984.

25. Submission from Mr R.F. McMullan, National Secretary, Australian Labor Party, GPO Box 1, Canberra, ACT, dated 13 April 1984.

26. Submission from the Australian Broadcasting Corporation, 145-153 Elizabeth Street, Sydney, NSW, received 18 April 1984.

27. Submission from the Australian Broadcasting Tribunal, 153 Walker Street, North Sydney, NSW, dated 24 April 1984.

28. Submission from the Treasury, Canberra, ACT, dated 1 May 1984.

29. Submission from John Fairfax and Sons Ltd, GPO Box 506, Sydney, NSW, dated 2 May 1980.

30. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 9 May 1984.

31. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 18 May 1984.

32. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 31 May 1984.

33. Submission from the Department of Communications, Benjamin Offices, Belconnen, ACT, dated 31 May 1984.

34. Submission from the Federation of Australian Commercial Television Stations, 447 Kent Street, Sydney, NSW, received 8 June 1984.

35. Submission from the Hon. Ian Wilson, MP, Parliament House, Canberra, ACT, received 8 June 1984.

36. Submission from Mr N.G. Ellis, 1 Hilltop Avenue, Glen Iris, Vic, received 12 June 1984.

37. Submission from the Hon. Paul Everingham, Chief Minister, Darwin, NT, date received 12 June 1984.

38. Submission from the Media Council of Australia, St Andrew's House, Sydney, NSW, received 14 June 1984.

39. Submission from the Australian Broadcasting Corporation, 145-153 Elizabeth Street, NSW, dated 13 June 1984.

40. Submission from Senator the Hon. G. Evans, QC, Attorney-General, Parliament House, Canberra, ACT, dated 14 June 1984.

41. Submission from the Advertising Federation of Australia, 140 Arthur Street, North Sydney, NSW, received 19 June 1984.

42. Submission from the Liberal Party of Australia, P.O. Box E13, Queen Victoria Terrace, Parkes, ACT, dated received 21 June 1984.

43. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 21 June 1984.

44. Submission from the Hon. M.J. Young, MP, Special Minister of State, Parliament House, Canberra, ACT, dated 16 July 1984.

45. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 16 July 1984.

46. Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 23 July 1984.

APPENDIX 2

LIST OF WITNESSES

Mr Patrick Auld, Executive Director, Media Council of Australia, Sydney, New South Wales.

Mr Andreys Cirulis, Deputy Electoral Commissioner, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr Leo Terence Grey, Principal Executive Officer, Legislation, Australian Broadcasting Tribunal, Sydney, New South Wales.

Mr Michael Hudson McHugh, QC, Sydney, New South Wales.

Mr Robert Francis McMullan, National Secretary, Australian Labor Party, Canberra, Australian Capital Territory.

Mr Michael Charles Maley, Principal Reserach Officer, Australian Electoral Office, Canberra, Australian Capital Territory.

Mr Frank Sidney Marris, Senior Assistant Secretary, General Counsel Division, Attorney-General's Department, Canberra, Australian Capital Territory.

Mr Adrian George Holywell Morris, Solicitor, Media Council of Australia, Sydney, New South Wales.

Mr John Morgan Muldoon, Acting Director, Corporate Affairs, Australian Broadcasting Corporation, Sydney, New South Wales.

Mr Ian Henry Phillips, Acting Assistant Secretary, Broadcasting Division, Department of Communications, Canberra, Australian Capital Territory.

Mr Christopher John Puplick, Federal Council Member, Liberal Party of Australia, Canberra, Australian Capital Territory.

Mr Jeffrey Milton Ruston, Deputy Federal Director, Federation of Australian Radio Broadcasters, Sydney, New South Wales.

Mr Roger Neil Smith, Acting First Assistant Secretary, Broadcasting Division, Department of Communications, Canberra, Australian Capital Territory.

Mr Allan Walton Thompson, Director, Member Services, Federation of Australian Commercial Television Stations, Sydney, New South Wales.

Mr Brian White, Federal President, Federation of Australian Broadcasters, Sydney, New South Wales.

Mr Arthur Winchester Wyndham, Controller, Radio 1, Australian Broadcasting Corporation, Sydney, New South Wales.

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 18

WEDNESDAY 16 NOVEMBER 1983

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick, KCMG
Senator Macklin
Mr Hall
Mr Scott

1. The Committee met at 1.30 p.m.

2. PUBLICATION OF SUBMISSIONS:

The Committee deliberated.

3. ADJOURNMENT:

At 1.55 p.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E.J. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL 72 1211

THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 19

WEDNESDAY 30 NOVEMBER 1983

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick, KCMG
Senator R. Ray
Mr Hunt
Mr Scott
Mr Griffiths
Mr Hall

1. The Committee met at 8.35 a.m.

2. PUBLICATION OF SUBMISSIONS:

The Committee deliberated.

Resolved - On the motion of Mr Hunt -

That pursuant to the power conferred by paragraph 13 of its resolution of appointment this committee authorises publication of the Draft Rules for the conduct of trade union elections (Attachment C of the 4 November 1983 submission of the Australian Electoral Office).

3. THE INQUIRY:

The Committee deliberated.

4. ADJOURNMENT:

At 9.20 a.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 20

WEDNESDAY 28 MARCH 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick, KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Hall
Mr Scott

1. The Committee met at 1.20 p.m.

2. ELECTORAL REDISTRIBUTION:

The Committee deliberated.

Resolved - On the motion of Senator Sir John Carrick -

That officers of the Australian Electoral Commission be invited to appear before the Committee on Thursday 29 March at 8.15 a.m. to explain the electoral redistribution proposals.

3. PUBLICATION OF SUBMISSIONS:

The Committee deliberated.

Resolved - On the motion of Senator Macklin -

That pursuant to the power conferred by paragraph 13 of its resolution of appointment this committee authorises publication of the following documents -

Submission No.	Person/Organisation
1.	Submission from the Australian Electoral Commission, P.O. Box E201, Queen Victoria Terrace, Parkes, ACT, dated 4 November 1983.

2. Submission from the Hon. Mr Justice M.D. Kirby, CMG, Chairman, Australian Law Reform Commission, 7 November 1983.

3. Submission from J.D. Hickey, 4/13 Arnold Court, Pascoe Vale, Vic, dated 16 November 1983.

4. Submission from the Australian Electoral Office on Defamation of Candidates and Tax Deductibility of Political Donations. dated 30 november 1983

5. Submission from Mr P.D. Cusack, 70 Gordon Terrace, Indroopilly, Qld, dated 1 December 1983.

6. Submission from the Liberal Party of Australia, dated 14 December 1983.

7. Submission from Mr J. Akister, MP, Suite 3, 105 Mondro Street, Queanbeyan, NSW, dated 19 December 1983.

8. Submission from the Public Broadcasting Association of Australia, dated 25 January 1984.

9. Submission from the Australian Council of Trade Unions, dated 31 January 1984.

10. Submission from the Media Council of Australia, dated 13 February 1984.

11. Submission from the Australian Provincial Press Association, dated 17 February 1984.

12. Submission from the Hon. D. Everingham, MP, Cinema Centre Building, Rockhampton, Qld, 13 February 1984.

13. Submission from the Attorney-General, Senator the Hon. G. Evans, dated 20 February 1984.

14. Submission from J. Doyle, GPO Box 737, Adelaide, SA, date 24 February 1984.

15. Submission from the Australian Electoral Commission on statutory provisions concerning election broadcasting and televising and the provision of 'free' radio and television time for political messages during election periods. received 1 March 1984

16. Submission from Mr S. Coppock, 76 Cremorne Road, Cremorne, NSW, dated 29 February 1984.

17. Submission from the National Party of Australia, Victorian Branch, received 5 March 1984.

18. Submission from Mr B.J. Ross, P.O. Box 65 Kingston, ACT, dated 25 February 1984.

19. Submission from the National Party of Australia, Queensland Branch, received 7 March 1984.

20. Submission from the Federation of Australian Radio Broadcasters, dated 2 March 1984.

21. Submission from the Department of Communications, dated 8 March 1984.

4 INQUIRY INTO TERRITORIAL REPRESENTATION:

The Committee deliberated.

Resolved - On the motion of Senator R. Ray -

That the Committee inquire into the establishment of fixed formulae for determining the number of Senators and Members of the House of Representatives to which the Australian Capital Territory and the Northern Territory are to be entitled.

Resolved - on the motion of Senator Sir John Carrick

That the terms of reference of the territorial representation inquiry be advertised in the national daily newspapers.

5. ADJOURNMENT:

At 2.00 p.m. the Committee adjourned until 8.15 a.m. Thursday 29 March 1984.

Confirmed

R.E. [illegible]
Chairman

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

PARLIAMENT HOUSE
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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 21

THURSDAY 29 MARCH 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick, KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Hall
Mr Scott

1. The Committee met at 8.15 a.m.

2. ELECTORAL REDISTRIBUTION:

The Committee had informal discussions on electoral redistribution with Dr C. Hughes, Electoral Commissioner and Mr A. Cirulis, Deputy Electoral Commissioner, of the Australian Electoral Commission.

3. ADJOURNMENT:

At 8.55 a.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 22

THURSDAY 26 APRIL 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Hall
Mr Robinson
Mr Scott

1. The Committee met at 10.05 a.m.

2. PUBLICATION OF SUBMISSIONS:

The Committee deliberated.

Resolved - On the motion of Senator Sir John Carrick -

That pursuant to the power conferred by paragraph 13 of its resolution of appointment this Committee authorises publication of the following documents -

Submission No.	Person/Organisation
22.	Submission from the Australian Electoral Commission, dated 12 March 1984.
23.	Submission from the Amalgamated Metals Foundry and Shipwrights Union dated 12 March 1984.
24.	Submission from the Federation of Australian Commercial Television Stations dated 10 April 1984.
25.	Submission from Mr R.F. McMullan, National Secretary, Australian Labor Party dated 13 April 1984.

26. Submission from the Australian Broadcasting Corporation received 18 April 1984.

27. Submission from the Australian Broadcasting Tribunal dated 24 April 1984.

3. THE INQUIRY:

The Committee deliberated.

4. PUBLIC HEARING:

Press and public admitted.

The Chairman opened the hearing and made a short statement.

The following witnesses representing the Australian Electoral Commission were called and examined together.

Mr Andrejs Cirulis
Deputy Electoral Commissioner

Mr Michael Charles Maley
Principal Research Officer
Research, Legislation and Projects Section.

The witnesses withdrew.

Mr Christopher John Puplick, Federal Council Member, New South Wales State Executive, Liberal Party of Australia was called and examined.

Mr Puplick withdrew.

Mr Leo Terence Grey, Principal Executive Officer, Legislation, Australian Broadcasting Tribunal was called and examianed.

Mr Grey withdrew.

The following witnesses representing the Department of Communications were called and examined together -

Mr Roger Neil Smith
Acting First Assistant Secretary
Broadcasting Division

Mr Ian Henry Phillips
Acting Assistant Secretary
Broadcasting Division

The witnesses withdrew.

Mr A. Cirulis and Mr L. Grey were recalled and examined together.

Mr Cirulis and Mr Grey withdrew.

Mr Robert Francis McMullan, National Secretary of the Australian Labor Party was called and examined.

Mr McMullan withdrew.

5. PUBLICATION OF EVIDENCE:

Resolved - On the motion of Mr Hall -

That pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this Committee authorises publication of the evidence given before it at public hearing this day.

6. ADJOURNMENT:

At 5.10 p.m. the Committee adjourned to 9.00 a.m. Friday 27 April 1984.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 23

FRIDAY 27 APRIL 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Hall
Mr Scott

1. The Committee met at 9.05 a.m.

2. PUBLIC HEARING:

Press and public admitted.

The following witnesses representing the Australian Broadcasting Commission were called and examined together:

Mr Arthur Winchester Wyndham
Controller Radio 1.

Mr John Morgan Muldoon
Acting Director
Corporate Affairs

The witnesses withdrew.

The following witnesses representing the Media Council of Australia were called and examined together:

Mr Patrick Auld
Executive Director

Mr Adrian George Holywell Morris
Solicitor

The witnesses withdrew.

The following witnesses representing the Federation of Radio Broadcasters were called and examined:

Mr Brian White

Mr Jeffrey Miltom Rushton
Deputy Federal Director

The witnesses withdrew.

Mr Allan Walton Thompson, Director, Member Services Federation of Australian Commercial Television Stations was called and examined.

Mr Thompson withdrew.

3. PUBLICATION OF EVIDENCE:

Resolved - On the motion of Mr Hall -

That pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this Committee authorises publication of the evidence given before it at the public hearing this day.

4. ADJOURNMENT:

At 12.30 p.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 25

WEDNESDAY 6 JUNE 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Hall
Mr Robertson

1. The Committee met at 8.30 a.m.

2. THE INQUIRY:

The Committee deliberated.

3. ADJOURNMENT:

At 9.35 a.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 24

THURSDAY 3 MAY 1984

AT CANBERRA

Present: Dr Klugman (Chairman)
Senator Sir John Carrick KCMG
Senator R. Ray
Mr Griffith
Mr Hall
Mr Robertson
Mr Scott

1. The Committee met at 8.35 a.m.

2. THE INQUIRY:

The Committee deliberated.

3. ADJOURNMENT:

At 9.30 a.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. KLUGMAN
Chairman

PARLIAMENT OF AUSTRALIA
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THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 26

MONDAY 25 JUNE 1984

AT SYDNEY

Present: Dr Klugman (Chairman)
Senator Sir John Carrick, KCMG
Senator Macklin
Senator R. Ray
Senator Richardson
Mr Griffith
Mr Scott

1. The Committee met at 10.00 a.m.

2. *PUBLICATION OF SUBMISSIONS:*

The Committee deliberated.

Resolved - On the motion of Senator Sir John Carrick -

That pursuant to the power conferred by paragraph 13 of its resolution of appointment this committee authorises publication of the following documents -

Submission No.	*Persons/Organisation*
28.	Submission from the Treasury, dated 1 May 1984.
29.	Submission from John Fairfax and Sons Ltd dated 2 May 1984.
30.	Submission from the Australian Electoral Commission, on conduct of amalgamation and secret strike ballots, received 9 May 1984.
31.	Submission from Australian Electoral Commission, dated 8 May 1984.
32.	Submission from the Australian Electoral Commission, received 31 May 1984.

33. Submission from the Department of Communications, dated 31 May 1984.

34. Submission from the Federation of Australian Commercial Television Stations, received 8 June 1984.

35. Submission from the Hon. Ian Wilson, MP, Parliament House, Canberra, ACT, received 8 June 1984.

36. Submission from Mr N.G. Ellis, 1 Hilltop Avenue, Glen Iris, Vic, received 12 June 1984.

37. Submission from the Hon. Paul Everingham, Chief Minister, Darwin, NT, date received 12 June 1984.

38. Submission from the Media Council of Australia, dated 12 June 1984.

39. Submission from the Australian Broadcasting Corporation, dated 13 June 1984.

40. Submission from The Attorney-General Senator the Hon. G. Evans, QC, dated 14 June 1984.

41. Submission from the Advertising Federation of Australia, received 19 June 1984.

42. Further submission from the Liberal Party of Australia, received 21 June 1984.

43. Submission from the Australian Electoral Commission on fixed formulae for the parliamentary representation of territories received 28 March 1984.

44. Submission from the Hon. M.J. Young, MP, Special Minister of State, dated 16 July 1984.

45. Submission from the Australian Electoral Commission dated 16 July 1984.

46. Submission from the Australian Electoral Commission dated 23 July 1984.

3. PUBLIC HEARING:

Press and public admitted.

Mr Frank Sidney Marris, Senior Assistant Secretary, General Counsel Division, Attorney-General's Department and Mr Andrejs Cirulis, Deputy Electoral Commissioner, Australian Electoral Commission were called and examined.

Mr Marris and Mr Cirulis withdrew.

Mr Michael Hudson McHugh, QC, 174 Phillip Street, Sydney, New South Wales was called and examined.

Mr McHugh withdrew.

4. PUBLICATION OF EVIDENCE:

Resolved - On the motion of Senator Sir John Carrick -

5. THE INQUIRY:

The Committee deliberated.

6. ADJOURNMENT:

At 1.35 p.m. the Committee adjourned to a date and hour to be fixed by the Chairman.

Confirmed

R.E. Klugman
Chairman

PARLIAMENT OF AUSTRALIA
JOINT SELECT COMMITTEE ON ELECTORAL REFORM

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL. 72 1211

THIRTY-THIRD PARLIAMENT

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

MINUTES OF PROCEEDINGS

NO. 27

FRIDAY 17 AUGUST 1984

AT SYDNEY

Present: Dr Klugman (Chairman)
Senator Richardson
Mr Hall
Mr Scott
Mr Griffith

1. The Committee met at 10.05 a.m.

2. DRAFT REPORT:

The Chairman brought up for consideration his draft report.

The Committee deliberated.

Paragraph	1.1	agreed to
Paragraph	1.2	amended and agreed to
Paragraphs 1.3 to	1.6,	by leave, taken together and agreed to
Paragraph	1.7	amended and agreed to
Paragraph	1.8	agreed to
Paragraph	1.9	amended and agreed to
Paragraphs 2.1 to	2.5,	by leave, taken together and agreed to
Paragraph	2.6	amended and agreed to
Paragraphs 2.8 &	2.9,	by leave, taken together and agreed to
Chart		agreed to
Paragraph	2.10	amended and agreed to
Paragraphs 2.16 &	2.17,	by leave, inserted after paragraph 2.10 and agreed to
Paragraphs 2.11 to	2.15,	by leave, taken together and agreed to
Paragraphs 2.18 to	2.23,	by leave, taken together and agreed to
Paragraph	2.23	amended and agreed to
Paragraphs 2.24 &	2.25,	by leave, taken together and agreed to