

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates 26 May-6 June 2014

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program: 1.1 Prime Minister and Cabinet

Topic: PM's website – Electoral Act

Senator: Senator the Hon John Faulkner

Question reference number: 68

Type of Question: FPA, Tuesday 27 May 2014, page 69

Date set by the committee for the return of answer: 11 July 2014

Number of pages: 2

Question:

Senator FAULKNER: Could I now ask about what I think is the relevant section of the Commonwealth Electoral Act, section 328A Publication of electoral advertisements on the internet. I will briefly read that section so that we know what we are talking about. It says:

(1) A person commits an offence if:

(a) either:

(i) the person publishes an electoral advertisement on the internet; or

(ii) the person causes, permits or authorises an electoral advertisement to be published on the internet; and

(b) the electoral advertisement is intended to affect voting in an election; and

(c) the electoral advertisement is paid for by the person or another person; and

(d) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.

That is why I ask these questions. My understanding—and it is not an understanding I have come to in the last 24 hours, let me assure you—is that there is a need for appropriate authorisation, which means the name and address of a person who authorised an advertisement of such a nature, including an electoral advertisement on the internet, as is clear under section 328A of the Commonwealth Electoral Act. My question is: has that provision of the Commonwealth Electoral Act been brought to the Department of the Prime Minister and Cabinet's attention before now?

Ms Kelly: Not to my knowledge, Senator.

Senator FAULKNER: Is the Department of the Prime Minister and Cabinet aware that the penalty for breach of that provision is 10 penalty points, which is included in 328A(1)?

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates 26 May-6 June 2014

Prime Minister and Cabinet Portfolio

Ms Kelly: I do not profess a familiarity with the Electoral Act. I have heard you read out that relevant provision, so on that basis I am happy to note that.

Senator FAULKNER: Thank you for that. I can assure you that I have read it out accurately. I have just checked in relation to the Crimes Act 1914. Section 4AA has a penalty unit at \$170. But I stand to be corrected because I am going on memory there. I am sure someone will tell me if I am not accurate. Ten penalty units is \$1,700. That would apply to any individual advertisement. But it is because of this situation that I ask these questions. I am really surprised that PM&C would not have checked either the appropriateness, or perhaps the legality, of matters that were being placed on material being placed on a website that it is responsible for administering and maintaining. I do not think these provisions of the Commonwealth Electoral Act are couched in secrecy. They are pretty well known. But no advice of any nature has been sought at any stage by PM&C. That is correct, isn't it?

Ms Kelly: I think I said that I am not aware of any advice. "Advice of any nature at any stage" is broader and it has unbounded parameters. I can certainly say that I am not aware of any and I have undertaken to take it on notice.

Answer:

No advice on section 328A of the *Electoral Act 1918* was sought.