

ELECTORAL AMENDMENT (POLITICAL HONESTY) BILL 2003: Second Reading

[Senator MURRAY](#) (Western Australia) (9.43 a.m.) —I move:
That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.
Leave granted.

The speech read as follows—

The Electoral Amendment (Political Honesty) Bill 2003 is a revised version of a bill of the same name I introduced in 2000. It was part of a package of measures designed to promote ethical standards in public life.

This bill deals with truth in political advertising. Its effect is to require political advertising to meet similar standards of probity and honesty as commercial advertising must meet under the Trade Practices Act. The bill prohibits political advertising that is inaccurate and misleading to a material extent. There is no plausible justification for permitting political advertising to make statements of fact that are demonstrably false. Such advertising has long been outlawed in South Australia. The Commonwealth should follow suit. The law as it stands permits some people and some political parties to seek to rise to power on the strength of political advertising that can be totally fraudulent. This lax attitude to truthfulness fosters a culture within some political circles that regards deception as simply part of the political game, rather than the serious attack on the integrity of the political system that it is. The Senate Finance and Public Administration Committee conducted an extensive inquiry into this bill, along with three other bills that addressed similar issues of probity in public affairs and public confidence in the institutions of government.

I have always considered the referral of private senators' bills to Senate Committees an important step not only in reviewing the legislation, but also in refining it. I thank the Committee for its excellent work on this legislation. I have taken the committee report, along with the oral and written submissions, and used them as the basis for a revised version of this bill. The revised bill retains the character and purpose of its predecessor, but takes into account the comments and contributions of a number of people over the past three years.

The key changes are as follows.

Firstly, proposed subsection 329(7) has been amended to refer to a statement of fact that is 'inaccurate and misleading to a material extent' rather than 'inaccurate or misleading to a material extent'. Part of the purpose of this is to harmonise this provision with section 113 of the South Australian Electoral Act, which refers to statements of fact which are 'inaccurate and misleading to a material extent'.

Furthermore, this change allays concerns that material that is inaccurate but not misleading in the relevant sense might fall within the scope of the prohibition.

The penalties have been amended with reference to the general rule set out in the Crimes Act 1914 that maximum penalties for corporations should be five times the penalty for an individual, and that the penalty should be

expressed in penalty units rather than dollar amounts. The new penalties of 2000 and 10 000 penalty units for individuals and corporations are the same as the penalties that apply to a number of the misleading and deceptive conduct provisions in the Trade Practices Act. It should be noted that these are maximum penalties.

In accordance with the committee recommendation, the term 'advertiser' has been defined in the legislation. This responds to concerns raised over provisions that give the Electoral Commissioner power to request, and the Federal Court the power to order, an advertiser to publish a retraction in a specified manner and form.

It is now clear in the legislation that an advertiser does not include a person who took no part in determining the content of the electoral advertisement. One of the broader issues that was raised during committee process was the appropriateness of regulating political discussion. The Constitution contains an implied guarantee of freedom of political communication, and the bill is in no way intended to detract from that guarantee.

It is also important to recognise that dishonest political advertising can detract from, rather than advance, democratic standards. A submission from the Key Centre for Ethics, Law, Justice and Governance at Griffith University made the point as follows:

"False or misleading electoral advertisements, timed during the crucial 4 or 5 weeks of an election campaign, may persuade voters to vote in ways they otherwise would not and which they are likely to regret if and when they discover the true facts—such strategies threaten the integrity of the heart of the democratic process—voters are not choosing between the policies on offer but between misrepresentations of those policies. It also threatens trust in government by the electorate."

The revised bill includes a provision indicating that the bill does not apply to the extent (if any) that would infringe any doctrine of implied freedom of political communication. This provision, in combination with the clear focus of the legislation on the regulation of dishonest advertising, strikes an appropriate balance between the complementary objectives of promoting the integrity of our political system and ensuring public debate is robust and free. The bill generated some debate over the proposed role of the Australian Electoral Commissioner.

The bill proposes to give the Commissioner the task of evaluating campaigns for misleading and inaccurate content. The Commissioner may request withdrawal of an advertisement and, if necessary, may refer the matter to the Federal Court. The approach is similar to the approach taken under equivalent South Australian legislation.

The AEC objects to this proposal, essentially because it does not wish to be involved in what it refers to as a 'political bunfight' over the truth of electoral advertisements.

The unfortunate fact is that if Australian politics is to be properly regulated we need a regulator. No election campaign is entirely without controversy or complaint. The AEC presently does a very good job of managing the many difficulties faced by an independent electoral regulator. I have no doubt that

AEC officers would discharge their proposed duties under this legislation with a similar standard of independence and professionalism.

Finally, a few drafting issues have been addressed. The redundant section 329A concerning headings to electoral advertisements has been deleted and the drafting error in paragraph 329(5A)(b) of the original bill has been rectified.

The Senate Finance and Public Administration Committee recommended that this bill, in its original form, not proceed. I have sought to address many of the issues identified by the Committee in the redrafting process.

As the bill retains its fundamental character, there are many who will still oppose its enactment.

Nonetheless, I and the Australian Democrats remain of the view that this measure is important to improve standards in political advertising. When I first introduced the legislation I commented that:

“Public comment and debate consistently reveals a striking level of distrust of Australian politicians. It is a grave matter indeed when people lose faith in their leaders and representatives. When politicians are widely viewed as dishonest and untrustworthy, the perceived legitimacy of the entire political system is compromised. It is not enough for Australian politicians to protest their own integrity. Systemic distrust and electoral cynicism born of experience must be met with legislative solutions. The time has come for Australian politicians to require political honesty to be made a matter of law.” Since making these comments, we have seen an incredibly divisive federal election campaign. Even now, many members of the public feel that they were betrayed and misled during the election campaign. I refer of course to the ‘children overboard’ affair.

These issues are not going to disappear. I remind the Senate that when the prohibition on misleading and deceptive conduct in trade or commerce was introduced through the Trade Practices Act, it received very similar criticisms that have been directed at this legislation. Those provisions are now seen as an important consumer protection measure that has significantly advanced commercial standards in this country.

Ultimately, citizens in a democracy are entitled to expect honesty from their leaders. Experience teaches that when the competitive interests of political parties are at stake, only force of law will ensure that reasonable standards of truthfulness are upheld. This bill is an important step forward in setting and enforcing those standards.

[Senator MURRAY](#) —I seek leave to continue my remarks later.

Leave granted; debate adjourned.