



The Right To Know

Openness, accountability, transparency and the public interest are essential principles and protections in a democracy



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VICTIMS OF BAD LAWS

July 2007

The verdict of guilty against the Customs Officer Allan Kessing for blowing the whistle on dangerous airport security was inevitable given the Howard laws that say secrecy should prevail over the public interest. The sentencing of Sun Herald journalists Michael Harvey and Gerard McManus for contempt of court for refusing to name the source of their story on the federal government's proposal to cut veterans' benefits is a further reminder of the need for major reform of federal freedom of information (FOI) and whistle blowing laws.

The Harvey/McManus sentence came hard on the heels of the Kessing sentence. It is no good condemning these sentences, - as judges have no option but to enforce the law. What is wrong is not the sentence but the crime. Free speech needs protection in Australia, as do disclosures in the public interest.

Australia's federal whistleblower and FOI laws just don't work. Public sector whistleblowers perform an essential public service in combating maladministration, corruption and misconduct in the workplace. If they make a disclosure in good conscience and in the public interest then they should be applauded, not vilified.

Journalists who report such things should be protected. The proposed new journalist shield laws help but only go so far. They will only work effectively in tandem with strong FOI and whistleblower legislation.

It is time to properly protect free speech. In 2003 I introduced the *FOI Amendment (Open Government) Bill* and that should be passed. Labor has indicated that it is considering supporting its provisions. They need an unequivocal position on this to put to the people.

I recently introduced the *Public Interest Disclosures Bill 2007* to protect public servants who disclose genuine concerns.

It is a next generation bill that draws on the drafting and implementation successes and shortcomings of previous federal state and territory legislative frameworks dealing with the disclosure of information in the public interest.

The bill has three principal objectives. First, it creates a framework to facilitate the disclosure of information in the public interest.

Second, it creates a framework that ensures such disclosures are properly dealt with. Third, it provides - including relief from legal liability and workplace victimisation - practical protection for people who disclose information in the public interest.

These two bills provide essential protections for whistleblowers. They provide mechanisms for journalists to keep the public fully informed about the workings of government. In the interests of transparency, freedom of speech and open and accountable government, it is essential they are passed.

Unfortunately, with the Coalition in power, they won't be.

You will find details of my Private Senator's bills and my second reading speeches on my website :

www.andrewmurray.org.au

Go to :

Legislation and then Private Senator's Bills

ANTI-CORRUPTION COMMISSION

On 22 March this year I asked the Minister for Justice and Customs, Senator Johnston, why the federal government was not interested in setting up a federal anti-corruption commission with a similar charter and similar powers to those of state commissions such as the Corruption and Crime Commission in WA, Queensland's Crime and Misconduct Commission and the New South Wales Independent Commission Against Corruption.

The Minister's response never really addressed the underlying issue, which was how better to combat corruption, but he ruled out a federal corruption and crime commission.

Fortunately, there is no reason to believe that there is endemic corruption at the federal level, but, when past and present corruption or serious misconduct is identified in Queensland, New South Wales and Western Australia by their state corruption and crime commissions, you would be foolish and naive to imagine there is none federally.

The Fitzgerald inquiry in Queensland celebrated its 20th anniversary recently.

As the Fitzgerald report said, it is important to recognise that you need much more than just a crime commission. It states: "A Government can deliberately obscure the processes of public administration and hide or disguise its motives..... A Government can use its control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it. ...Secrecy and propaganda are major impediments to

accountability, which is a prerequisite for the proper functioning of the political process. Worse, they are the hallmarks of a diversion of power from the Parliament."

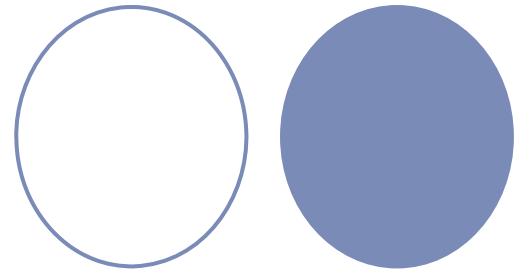
To their credit, at least Queensland, like New South Wales and Western Australia, does recognise that there needs to be a standing commission with the remit to investigate allegations of corruption at all levels of government. Judging by the whiffs coming from that state, Victoria could very much do with the same.

The Federal Coalition Government seems to take the view that, at the federal level, things are just fine and that everyone at every level of federal government is beyond question. That has been shown to be patently untrue at the state level and it is very likely to be untrue at the federal level. I am sure that, if there were a CCC body at the federal level, we would be surprised at what comes to the surface.

"Australia needs more effective measures to promote integrity and to combat corruption."



LOW STANDARDS NEED SOLUTION : Ministerial Codes of Conduct



Accountability is Mr Howard's achilles heel, and it threatens his re-election. After eleven years in office the challenge is to name anything at all that he has done to permanently lift political standards and political accountability. It is possible low standards will trip him up at the election.

Senator Santoro had to resign for failing to disclose all his myriad share dealings. While that failure reflected on him, it reflected more on a system where ministerial accountability is neither monitored or enforced by the Prime Minister.

The Santoro matter illustrates two lasting problems - Prime Ministers are just too busy to oversight ministerial codes of conduct, and worse, they shouldn't have oversight at all, because it always represents a conflict of interest.

The Democrats believe that a Committee of both Houses of Parliament should be established as a matter of urgency to develop a comprehensive code of conduct for Ministers and other Members of Parliament that includes rules as to the avoidance of conflicts of interest, and strong penalties for transgressions.

The Democrats' Charter of Political Honesty Bill 2000 dealt with these matters. When the Bill was referred to the Senate Finance and Public Administration Legislation Committee for inquiry the Committee fully endorsed the broader objective of the Bill that the Commonwealth Parliament should take responsibility for establishing its own standards of conduct and adopt an ethics regime for Members and Ministers that would have as its cornerstone a workable and enforceable code of conduct. The Prime Minister just ignored the Bill and the Committee.

Mr Howard needs to understand that the questions that will dog his legacy will be moral not economic ones - his failures on accountability and standards will be writ large.

Private Senator's Bill: The Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007

My Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007 is inspired by Democrat disquiet at the significant level of public distrust in politicians and yearning for much better political standards.

If it is ever passed, the Bill will require political parties to meet similar standards of accountability demanded of corporations and unions. For instance, to gain registration they will require a written constitution that meets minimal standards. They will also be subject to scrutiny by the Australian Electoral Commission should a complaint be lodged for non-compliance with material matters in a party constitution.

The Bill provides for the establishment of a fully regulated and transparent regime of political donations and disclosure, including reduced donation thresholds and banning foreign and strings-attached donations.

The lynchpin of our democracy is the holding of free and fair elections. However, there is now more than ever the likelihood of them being bank-rolled by those outlaying tens of thousands of dollars to purchase access and policy outcomes. Politics is for sale.

In sum, the reform measures in this Bill are desperately required to restore public confidence in political parties and parliamentarians, and to advance political governance and standards.



Tabling of the Finance & Public Administration Report : Transparency & Accountability of Commonwealth Public Funding and Expenditure”

The Senate Finance and Public Administration Committee’s unanimous report *Transparency and Accountability of Commonwealth Public Funding and Expenditure* is a brilliant report. It goes to the heart of problems with current federal accounting and reporting of expenditure.

There are 19 recommendations which if accepted and implemented by the Government, will stiffen the spine and strengthen the arm of Senators doing battle in Estimates. The recommendations reflect expert evidence. It is not in the interest of good government for the Coalition Government to reject them.

The budget framework has been a major concern, especially the broad appropriation of funds at the outcomes level. The Committee’s remedies are for much better specification of outcomes and appropriations according to programmes.

The Committee has attacked bad practices that have crept in: the loose application of standing appropriations; poor accounting for under-expended monies; unclear budget documents; poorly expressed appropriations bills; and the need for Parliament to reassert rigorous requirements in transparent and accurate reporting to it.

Money and its reporting to and approval by the Parliament have been at the heart

of some great federal parliamentary dramas of our time, including the Senate Compact with the House of Representatives and the blocking of supply in 1975.

Coalition at last responds to Cole Bribery Report

The positive Australian Government response to Mr Cole’s 2006 bribery and corruption inquiry recommendations is welcome but is yet another example of a slow response to issues of integrity and accountability.

The official response comes 6 months after Mr Cole tabled his report, and with respect to their proposed changes to foreign bribery and tax deductions comes a full 16 months after the OECD review of Australia’s implementation of the Anti-Bribery Convention that recommended such changes. It will be more months before the law is finally changed.

This is a Government that can write legislation curtailing civil liberties in 24 hours, and which recalled Parliament solely for the farcical purpose of changing ‘a’ to ‘the’, but when it comes to these bribery and corruption matters, it just seems to meander along.