

Truth in Political Advertising

AUSTRALIAN DEMOCRATS ACTION PLAN
TRUTH IN POLITICAL ADVERTISING
ELECTORAL MATTERS & PUBLIC ADMINISTRATION

The need for improved controls on political advertising in Australia is essential because elections are one of the key accountability mechanisms in our system of government. Legislation should be enacted to impose penalties for failure to represent the truth in political advertisements. The enforcement of such legislation would advance political standards, promote fairness, improve accountability and restore trust in politicians and the political system.

“The regulation of honesty in political advertising should not be left to politicians and spin doctors. It is unthinkable that present law permits people to be elected to office on the basis of fraudulent political advertising.”

Senator Andrew Murray
Spokesperson on
Electoral Matters & Public
Administration

Democrats Action Plan

Persist with our campaign to introduce ‘truth in political advertising’ legislation as contained in Schedule 2 of Senator Murray’s Private Senator’s Bill, the *Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007*.

Why Controls are needed for Political Advertising

As elections are one of the key accountability mechanisms in our system of government, it is essential that advertisements purporting to state ‘facts’ are legally required to accurately represent the truth. In this way, politicians can be held accountable for election promises designed to win over the electorate.

The private sector is already required by law not to engage in misleading or deceptive conduct by Section 52 of the *Trade Practices Act*. Why should politicians or political parties be any different?

As honesty is regarded as one of the fundamental bases of our society, the perception of politicians being dishonest is one of the most serious threats to the legitimacy and integrity of our democracy. Suitable controls would go some way to addressing the already widespread cynicism towards politicians.

Controls that are or have been in place

In 1985 the South Australian Parliament enacted the *Electoral Act 1985 (SA)*, of which Section 113 makes it an offence to authorise or publish an advertisement purporting to be a statement of fact, when the statement is inaccurate and misleading to a material extent. Over 20 years later, this law still operates effectively, putting the lie to those who insist truth in political advertising legislation cannot work.



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This legislation has been tested in the Supreme Court of South Australia, where it was held to be constitutionally valid. Further, it was found not to infringe the implied guarantee of free political communication found by the High Court to exist in the Commonwealth Constitution.

The Commonwealth had similar laws to the above for a short period in 1983-84. The Australian Democrats were the only party that fought for their retention, but the major parties ensured they were promptly repealed.

Controls that should be in place

To establish an effective system on truth in political advertising, the Democrats advocate:

- amending the *Commonwealth Electoral Act* to prohibit statements of fact that are inaccurate or misleading to a material extent;
- imposing fines for breaching the truth in political advertising for individuals and corporate bodies, including candidates and political parties; and
- providing for the 'reasonable person' defence and allowing for corrections and retractions.

Nothing in our proposals applies to infringe any doctrine of implied freedom of communication.

Additionally, from the Democrats perspective, ignoring the period leading up to polling day does not go far enough. All inaccurate or misleading statements of fact in political advertising, regardless of proximity to an election day, should be addressed. In recent times, the trend in electoral advertising is towards a continuous campaign that is carried out over the length of an election cycle to support party political goals (see Government Advertising Action Plan).

Private Senator's Bill enshrines principles of political honesty

In March 2003, Senator Murray tabled his private Senator's Bill, the *Electoral Amendment (Political Honesty) Bill 2003*. In March 2007, he replaced this bill with the *Electoral (Greater Fairness of Electoral Processes) Amendment Bill 2007*. Schedule 2 of this bill represents a substantial commitment by the Democrats to ensure that reasonable standards on truthfulness are made a matter of law.

Experience teaches that when the competitive interests of political parties are at play, only the strong arm of the law can ensure honesty. It is long overdue for Australian politicians to support such a Bill.



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