Queensland Nationals

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State President - David Russell Q.C.

09.08

The Research Director Legal, Constitutional and Administrative Review Committee Parliament House BRISBANE QLD 4000

Dear Sir

TRUTH IN POLITICAL ADVERTISING

The National Party welcomes the opportunity to make a submission to your Committee's inquiry into the above issue.

It has not been possible for the Party to prepare as detailed a submission as it would wish to your inquiry and I apologise for that. However your Committee's Issues Paper makes it plain that it has had recourse to materials submitted to other inquiries in relation to the above matter. In particular, the Party made submissions on this topic to the review of the *Elections Act* conducted by the Electoral and Administrative Review Commission, and to the review of the *Commonwealth Electoral Act* conducted by the Joint Parliamentary Committee for Electoral Matters following on the 1990 Federal election. As the position of the Party has not changed, the reasoning for the submissions which follow may be found in those materials.

As requested, the issues raised in the Issues Paper are dealt with in question and answer format.

Question 1

Is it possible to legislate against false or misleading political advertising?

Answer

It is both possible and desirable to do so.

No public interest can possibly be served by the use of false or deceptive materials as part of the political process. Nor can the political process attain high repute when those who engage in it are

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not subject to the limitations which apply to other citizens, such as those who engage in trade and commerce.

Question 2

Does political advertising deal with concepts too vague and controversial to be determinable?

Answer

No. Whilst the nature of political campaigning is such that a great deal of the material published is argumentative or consists of predictions, these attributes apply to other areas of conduct which are regulated by requirements of truth and honesty, such as company prospectuses.

Question 3

Should there be legislation restricting false or misleading political advertising?

Answer

Yes, for the reasons set out above.

The need for such provisions is even greater if Moynihan J. was correct in the suggestion made by him in his reasons for judgment in proceedings brought by Mrs. Sheldon in the context of the last State election that a plaintiff would need to prove not only falsity but knowledge of the falsity before it would be possible to restrain publication of material which was untrue and related to the character or personal conduct of a candidate.

Question 4

What distinction, if any, is there between advertising which deals with political activities, and advertising which deals with commercial activities?

Answer

There is no relevant distinction.

Question 5

To what extent should legislation governing political advertising impede free speech?

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Answer

It is not considered that a regime which provides for inaccurate publications to be challenged would relevantly impede free speech. There has never been an absolute right to publish material irrespective of its truth or impact on others, as the law of defamation and deceit establishes.

The decision of the High Court in *Theophanous v. Herald and Weekly Times Limited* that there is a defence of comment in relation to political affairs which is wider than the common law defences of fair comment and qualified privilege arising from the democratic framework of the Australian *Constitution* is not relevant here, where what is at stake is the right of persons to have untrue material challenged and, if found to be untrue, suppressed.

Even if there are areas in which the requirements of truthful speech and the right of free speech come into conflict, the Parliament ought to legislate to the greatest extent possible to require truth in political advertising.

Question 6

What should be the form of any truth in political advertising legislation?

Answer

The National Party supports amendment of the *Elections Act* to incorporate a prohibition on the publication of material which is misleading or deceptive broadly modelled on the former section 329(2) of the *Commonwealth Electoral Act*.

Question 7

What remedies should be available or penalties imposed by the legislation?

Answer

Injunctions, declarations of falsity, and in cases where the false publication may have affected the election result power to declare the result of the election void.

Question 8

What defences should be provided within the legislation?



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Answer

In view of the fact that the remedies are not punitive, it is not appropriate that there should be any defences.

Question 9

What should be the position of third-party publishers?

Answer

Except in the case of a third-party publisher who is aware of the falsity of the material published, or of the existence of an injunction restraining publication, third-party publishers should not be subject to any penalty for publication. Nor should such publishers be under any obligation themselves to ascertain the correctness of material republished by them.

Question 10

Who should determine whether there has been a breach of the legislation and what the appropriate penalty should be?

Answer

The Supreme Court of Queensland

Question 11

Are there sufficient controls upon the use of how-to-vote cards?

Answer

No.

Question 12

What additional controls, if any, are required in relation to how-to-vote cards?

Answer

The issue of how-to-vote cards needs to be regulated so as to prevent the issue of unlawful

material in a manner which is practically effective. One difficulty at present is that if access to proposed material is not readily available, the realities of making application to a Court on the day of an election are such that an order can be resisted on the grounds that by the time the Court has determined the matter, a significant proportion of the electorate has already voted.

The National Party supports the adoption of a regime similar to that adopted by the Victorian Parliament, which is contained in that State's Constitution Act.

The Party would welcome the opportunity to expand further on its submissions at any public hearing which the Committee may convene, or to otherwise assist the Committee.

Yours faithfully

D G Russell

16 July, 1996