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THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**POLITICAL BROADCASTS AND POLITICAL DISCLOSURES BILL 1991**

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Administrative Services,  
Senator the Honourable Nick Bolkus)

## POLITICAL BROADCASTS AND POLITICAL DISCLOSURES BILL 1991

### OUTLINE

In June 1989 the Joint Standing Committee on Electoral Matters (JSC) presented its Report No. 4 ("Who pays the piper calls the tune - minimising the risks of funding political campaigns"), which flowed from its Inquiry into the Conduct of the 1987 Federal Election and the 1988 Referendums.

This legislation amends the *Broadcasting Act 1942*, the *Radiocommunications Act 1983*, the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to give effect to the decisions made by the Government in response to the Committee's recommendations.

The amendments made by the Bill to the *Broadcasting Act 1942* (the *Broadcasting Act*) prohibit the broadcasting of political advertisements at all times. The ban will apply in respect of all three levels of Government and in respect of the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) as well as licensed broadcasters.

The exceptions to the ban on political advertising will be:

- exempt matter (relating to natural disasters, civil or military disasters, electoral information, advertisements for goods and services, job vacancies, tender applications, promotion of the activities of the ABC and SBS, public hearings or, subject to the regulations, notices or announcements required by law to be broadcast);
- other than during election periods, matter relating to public health (other than promotion of particular public health organisations or programs); and
- one policy launch of up to 30 minutes which may be carried for each political party represented in the relevant legislature before the election, to be carried free of charge on written request by the chief executive officer of the party.

The Bill also bans advertising by Commonwealth departments and authorities during the immediate run up to a Commonwealth election or referendum, and by Territory departments and authorities during the run-up to Territory elections. These bans do not apply to advertising consisting of exempt matter. All governments will be subject to the ban on political advertising. It will also prevent broadcasters showing, on their own initiative, advertisements which contain political matter.

The Bill is not intended to restrict bona fide reporting or commentary on political events by broadcasters.

The Bill will not restrict the rights of individuals with legal standing to seek injunctive or other relief for a breach of the provisions. By virtue of section 129 of the *Broadcasting Act*, the provisions will be conditions of every licence or permit granted under that Act and, by virtue of section 132 of the *Broadcasting Act*, a breach will also constitute an offence. The Australian Broadcasting Tribunal (Tribunal) will consider breaches of conditions in the context of its licensing functions and offences will be evaluated in accordance with the normal arrangements with the Director of Public Prosecutions. However, the Bill will also give the Tribunal the power to seek injunction-like orders from the Federal Court to enforce, or prevent likely breaches of, the proposed new Part IIID of the *Broadcasting Act*.

The Bill also reaffirms the power of the ABC to determine to what extent and in what manner political or controversial matter will be broadcast by the Corporation, subject only to the specific requirements of the *Broadcasting Act* as proposed to be amended.

The Bill (Part 4) also makes it a condition of multipoint distribution station licences under the *Radiocommunications Act 1983* that licensees should comply with the bans on political and government advertising as if they were broadcasters.

The amendments made by the Bill to the *Commonwealth Electoral Act 1918* are designed to:

require the full disclosure of all income, expenditure and debts of registered political parties;

- require the disclosure by third parties (including auxiliaries of political parties) of any gifts made by them to political parties or auxiliaries thereof;

require third parties to disclose income and expenditure which occurs within a disclosure period if it relates to any Commonwealth election, rather than just income and expenditure relating to the election within that disclosure period;

empower the Australian Electoral Commission (AEC) to conduct spot audits of political parties registered under the *Commonwealth Electoral Act 1918* to test the parties' compliance with their obligations under the election funding and financial disclosure provisions of the Act;

require the AEC to publish a list of third parties (ie persons other than political parties, branches or divisions of political parties, candidates or members of Senate groups) who in its view are or may be required to furnish funding and disclosure returns under the Act;

empower the AEC to conduct spot audits upon any third parties so listed;

provide that future AEC reports on the funding and disclosure provisions of the Act must contain a record of all spot audits;

provide that publication by the AEC of details obtained in the course of spot audits of third parties will be restricted to information relevant to the commission of an offence under the Act;

enable the AEC to issue supplementary funding and disclosure reports at any time;

create an offence of hindering or interfering with the free exercise by a person of his or her right to make a gift to a political party;

remove the disparity between public funding entitlements of Senate and House of Representatives campaigns by increasing the Senate entitlement to that of the House of Representatives; and

ensure that the result of an election will not be overturned by the Court of the Disputed Returns by reason of a breach of the *Broadcasting Act 1942* or the *Radiocommunications Act 1983*.

The amendment made by the Bill to the *Referendum (Machinery Provisions) Act 1984* is designed to ensure that the result of a referendum will not be overturned by the Court of the Disputed Returns by reason of a breach of the *Broadcasting Act 1942* or the *Radiocommunications Act 1983*.

## FINANCIAL IMPACT STATEMENT

The Bill is expected to have no significant impact on Commonwealth expenditure or revenue, in so far as it relates to the bans on broadcasting political or government advertising or carriage of that material on multipoint distribution station licences under the *Radiocommunications Act 1983*.

It is estimated that the conduct of spot audits by the Australian Electoral Commission will lead to an increase in salary and administrative costs of around \$200 000 per annum in a non-election year, and around \$300 000 per annum in an election year. It is estimated that the increase in the rate of Senate election funding will lead to increased costs of \$4.2 million in an election year.

## NOTES ON CLAUSES

### PART 1 – INTRODUCTORY

#### Clause 1 – Short Title

1. This clause provides for the Act to be cited as the *Political Broadcasts and Political Disclosures Act 1991*.

#### Clause 2 – Commencement

2. This clause provides that the Act will commence on the day on which it receives the Royal Assent.

### PART 2 – AMENDMENTS OF THE BROADCASTING ACT 1942

#### Clause 3 – Principal Act

3. Formal

#### Clause 4 – Interpretation

4. This clause amends section 4 of the Principal Act by:
  - replacing the definition of "Parliament" with one of identical effect, but designed, in conjunction with the new definition of "legislature of a Territory", to enable separate provision to be made for Territory legislatures; and
  - inserting new definitions as follows.
    - "broadcaster" is defined to include the ABC, SBS, licensees under the Principal Act and the holders of temporary transmission or multichannel service permits under that Act.
    - "election" is defined to include by-elections.
    - "election period": The different types of elections covered by the Bill require separate definitions of "election period". For elections to the Legislative Council of the State of Tasmania and ordinary elections to the Legislative Assembly for the Australian Capital Territory the election period is defined as the period commencing 33 days prior to the voting day and ending at the close of polling on that day. The same period applies for a Commonwealth referendum other than one held on the same day as a Commonwealth election, and for elections for local government authorities.

The election period for all other elections (Commonwealth, State and the Northern Territory), and for Commonwealth referendums held at the same time as Commonwealth elections, is defined to commence either upon the date of issue of the writs for the election or the date of the formal announcement of the election, whichever is the first to occur.
    - "exempt matter": a number of different types of matter, which may be broadcast notwithstanding the proposed bans, are defined.
    - "government authority" is defined to mean a Department, a local government authority or a body established for public purposes by a government.

- ~~"legislature of a Territory" is defined to mean the legislatures of the Australian Capital Territory and Northern Territory, and such other legislatures as are specified by regulation.~~
- "licensee" includes MCS – multichannel service – and temporary transmission service permit holders.
- "ordinary election" has, in relation to the ACT Legislative Assembly, the same meaning as in the *Australian Capital Territory (Electoral) Act 1988*.
- "policy launch" is defined as a statement of policy by a political party, spoken or written, with incidental additional material allowed.
- "political reference" defines matter which if included in an advertisement for goods and services provided by governments or government authorities will prevent the advertisement from falling within the definition of "exempt matter".
- "public health matter" is defined as matter relating to public health, but not promoting a particular public health system.
- "referendum" is defined as a referendum relating to an alteration of the Constitution.

#### Clause 5 – Functions and Powers of Tribunal

5. This clause makes it a function of the Tribunal to determine guide-lines in respect of the timing and presentation of broadcast policy launches. Those guide-lines will be made by order under section 17 of the Broadcasting Act, which requires that orders must be tabled in both Houses of the Parliament in the same manner as regulations and are subject to disallowance.

#### Clause 6 – Insertion of new Part

6. This clause inserts in the Principal Act a new Part IIID – POLITICAL BROADCASTS.

New section 95 provides that the Part applies to licences or permits (multichannel or temporary transmission permits) granted under the Broadcasting Act before or after commencement of the Part. New subsection 95(2) affirms the Parliament's intention that sections 95A to 95E (inclusive) should operate to the greatest extent validly possible.

- New section 95A is intended to prohibit broadcasters carrying political advertisements as defined by the section whether on their own behalf or on behalf of or at the request of another person. The ban is intended to operate at all times.

The expression "political advertisement" occurs throughout the remaining ban provisions in the new sections 95B, 95C and 95D. While the Bill defines "political advertisement", it does not define the concept of "advertisement" itself. "Advertisement" is intended to be given the widest possible interpretation, consistent with what is ordinarily understood to be an advertisement.

It is intended that "advertisement" will not include for example bona fide reports of news or current affairs, including documentaries, talk back programmes or editorial comment by broadcasters.

"Political advertisement" is defined as an advertisement containing "political matter", which is in turn defined to mean matter intended or likely to affect voting at an election or matter containing "prescribed material". "Prescribed material" includes material that is or is likely to be an issue in respect of an election. Separate provision is made for elections for all levels of government.

- New section 95B relates to Commonwealth election or referendum election periods as defined. New sections 95C and 95D operate during Territory, State and local government election periods as defined. These provisions therefore differ from new section 95A in that their operation is limited to election periods.

Under new section 95B broadcasters are prohibited from carrying certain advertisements.

- Subsection (1) prohibits a broadcaster carrying any matter (other than "exempt matter" as defined) on behalf of the Commonwealth or its authorities.
- Subsections (2), (3) and (4) prohibit a broadcaster from carrying political advertisements on behalf of any other Government, authority (including local government) or other person.
- Subsection (4) also prohibits broadcasters from carrying political advertisements on their own behalf.

The prohibition on broadcasters carrying political advertisements in sections 95B, 95C and 95D during relevant election periods differs from the similar prohibition in section 95A. The election period prohibition applies to advertisements which are intended or likely to affect voting at the particular election to which the period relates or which includes "prescribed material". "Prescribed material" includes material that is or is likely to be an issue in respect of that election.

Subsection 95B(5) restricts the operation of the ban during the election period for a by-election for the House of Representatives to broadcasting covering part of the relevant electoral Division.

- New section 95C relates to election periods for Territory or Territory local government elections. The section prohibits broadcasters from carrying:
  - advertisements (other than "exempt matter" as defined) on behalf of a Territory government or its authorities;
  - any political advertisement on behalf of any other government, authority (including local government) or other person; and
  - political advertisements on the broadcaster's own behalf.
- New section 95D relates to election periods for State or State local government elections. The section prohibits broadcasters from carrying:
  - any political advertisement on behalf of any government, authority (including local government) or other person; and
  - political advertisements on the broadcaster's own behalf.

New section 95E permits broadcasters to carry "policy launches" as defined, on a free of charge basis and at the request of the chief executive officer of a party represented in the relevant Parliament before the election. If broadcasters decide to carry policy launches, they will be required to give "reasonable opportunities" to broadcast policy

launches to other parties similarly represented in that Parliament. Policy launches ~~may be carried only once and must be confined to a spoken or written presentation of all or any of the party's policies. Incidental material may be included.~~

New section 95F requires the Tribunal to take all reasonable steps to consider and deal immediately with complaints or information about alleged contraventions of the preceding provisions of the Part. This provision recognises the need for the Tribunal to deal with complaints etc. on this topic as swiftly as possible.

- New section 95G gives the Tribunal the right to seek injunction like orders from the Federal Court to prevent, or prevent the continuation, of a contravention of the Part. The provision clarifies the standing of the Tribunal to seek those orders but is not intended to interfere with the right of any other person to seek similar orders under any other enactment or under the general law.

#### **Clause 7 – Broadcasting or televising of political matter or controversial matter**

7. This clause amends section 116 of the Principal Act to clarify that broadcasters can only carry material not otherwise prohibited in new Part IIID of the Broadcasting Act.

#### **Clause 8 – Identification etc. in relation to political matter**

8. This clause amends section 117 of the Principal Act to cater for changes in definitions referred to above.

### **PART 3 – AMENDMENTS OF THE COMMONWEALTH ELECTORAL ACT 1918**

#### **Clause 9 – Principal Act**

9. Formal

#### **Clause 10 – Reports by Commission**

10. This clause amends section 17 of the Principal Act to make special provision for the reporting by the AEC of matters which arise under the election funding and financial disclosure provisions of the Act.

11. Paragraph (a) of the clause inserts new subsections 17(2A), (2B) and (2C).

- New subsection 17(2A) will require the AEC to include in the report which it is required to produce after each general election and half-Senate election a list of the names of all persons who in the AEC's opinion are or may be required to furnish under subsection 305(1) of the Act a return of gifts received, or under subsection 309(4) of the Act a return of electoral expenditure.

New subsection 17(2B) will enable the the AEC to produce supplementary reports relating to the election funding and financial disclosure provisions of the Act.

New subsection 17(2C) will require the AEC to include in its reports relating to the election funding and financial disclosure provisions of the Act details of spot audits which it has conducted under new subsection 316(2A) of persons which it has listed under new subsection 17(2A), and registered political parties.

12. Paragraph (b) amends subsection 17(4) of the Principal Act to require the Minister to table supplementary reports produced by the AEC under new subsection 17(2B).

13. Paragraph (c) inserts a new subsection 17(5) in the Principal Act, which provides that particulars of matters required to be reported under section 17 need not be included in more than one report.

#### **Clause 11 – Insertion of new section**

14. This clause inserts a new section 17A in the Principal Act, prohibiting the AEC from including in reports it produces under section 17 of the Act particulars of information it has obtained in a spot audit under new subsection 316(2A) of persons which it has listed under new subsection 17(2A), unless in the AEC's view the information relates to an offence which has or may have been committed against the election funding and financial disclosure provisions of the Act.

#### **Clause 12 – General entitlement to funds**

15. This clause amends section 294 of the Principal Act so as to bring the basic funding rate for Senate elections into line with that applying at House of Representatives elections: 60 cents per first preference vote.

#### **Clause 13 – Expenditure incurred for political purposes**

16. Subclause (1) amends section 305 of the Principal Act to require third parties to disclose gifts received within a disclosure period which were used to fund expenditure for a political purpose in relation to any Commonwealth election, rather than just expenditure relating to the election within that disclosure period.

17. Subclause (2) is a transitional provision which ensures that section 305 as amended will not apply retrospectively to gifts which were received prior to the commencement of the amendments of section 305, and which were not at that time disclosable.

#### **Clause 14 – Interpretation**

18. Subclause (1) amends section 308 of the Principal Act to include in the definition of "electoral expenditure" the incurring of expenditure on the making of gifts to political parties, candidates, members of Senate groups, or any other person or body specified by the AEC by notice in the Gazette. The effect of this is that such expenditure will be required to be disclosed under section 309 of the Act, unless the total of all electoral expenditure incurred in relation to an election by the person or body to whom or to which section 309 applies does not exceed \$200.

19. Subclause (2) is a transitional provision which ensures that section 309 will not by reason of the amendments to section 308 apply retrospectively to expenditure incurred prior to the commencement of the amendments of section 308, and which was not at that time disclosable.

#### **Clause 15 – Insertion of new Division**

20. This clause inserts in Part XX of the Principal Act a new Division 5A, consisting of a new section 314AA.

- The effect of new subsection 314AA(1) is to require the full disclosure, at the end of each financial year, of all income, expenditure and debts of registered political parties.

New subsection 314AA(2) makes it clear that nothing in new subsection 314AA(1) requires particulars of a person or organization who made a gift or gifts to a registered political party to be included in a return if the value of the gift or the total value of all the gifts, whichever the case may be, was less than \$1 000.

New subsection 314AA(3) is a transitional provision which ensures that the first return to be lodged under new subsection 314AA(1) need only include particulars relating to the period after the commencement of the section.



#### **Clause 16 – Offences**

21. This clause amends section 315 of the Principal Act to make it an offence to:
- fail to lodge a return under new section 314AA;
  - lodge an incomplete return under that section;
  - knowingly lodge a false return under that section; or
  - knowingly provide false information relating to a return under that section to a person who is required to furnish such a return.
22. It also amends subsection 315(8) of the Principal Act to provide that where a person is convicted for failing to furnish a return under section 314AA on the due date, a separate offence will arise in respect of each day after his or her conviction on which he or she fails to furnish the return.

#### **Clause 17 – Investigation etc.**

23. This clause amends section 316 of the Principal Act to empower the AEC to conduct spot audits of registered political parties, or persons it has listed under new subsection 17(2A), in order to find out whether the registered parties or listed persons have complied with their obligations under the election funding and financial disclosure provisions of the Act. The powers conferred on the AEC – to require the production of documents or things, and/or the giving of evidence on oath – will be similar to those already conferred by subsection 316(3), but will be able to be exercised even where there are no grounds for believing that a contravention of the Act may have occurred.

#### **Clause 18 – Insertion of new section**

24. This clause inserts a new section 318A in the Principal Act.
- New subsection 318A(1) provides that a person's obligations to furnish returns are not diminished simply because the person does not appear on the list produced by the AEC under new subsection 17(2A).
  - New subsection 318A(2) provides that the fact that a person appears on the list produced by the AEC under new subsection 17(2A) does not by itself place obligations on the person to furnish returns.

#### **Clause 19 – Inspection and supply of copies of claims and returns**

25. This clause amends section 320 of the Principal Act to provide that the returns of income, expenditure and debts lodged by a registered party under new section 314AA will be made publicly available at the end of August in the year in which the returns are lodged.

#### **Clause 20 – Indexation**

26. This clause amends section 321 of the Principal Act to provide that the base Senate election funding rate of 60 cents per first preference vote will in future be indexed in accordance with the CPI as if it had been applicable since 21 February 1984 and had been indexed in accordance with the CPI ever since.

#### **Clause 21 – Interference with political liberty etc.**

27. This clause amends section 327 of the Principal Act to create a new offence of hindering or interfering with the free exercise by a person of his or her right to make a gift to a political party. The penalty prescribed is \$1 000, or imprisonment for 6 months, or both.

**Clause 22 – Voiding election for illegal practices etc.**

28. This clause amends section 362 of the Principal Act so as to ensure that the result of an election will not be overturned by the Court of Disputed Returns because of a contravention by any person of the Broadcasting Act 1942 or the Radiocommunications Act 1983.

**PART 4 – AMENDMENT OF THE RADIOCOMMUNICATIONS ACT 1983**

**Clause 23 – Principal Act**

29. Formal.

**Clause 24 – Conditions to which transmitter licence is subject**

30. The clause makes it a condition of multipoint distribution station licences under the Radiocommunications Act 1983 that licensee should comply with the bans on political and government advertising as if they were broadcasters.

**PART 5 – AMENDMENT OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984**

**Clause 25 – Principal Act**

31. Formal.

**Clause 26 – Insertion of new section**

32. This clause inserts a new section 108A in the Principal Act. That new section provides that the result of a referendum must not be overturned by the Court of Disputed Returns because of a contravention by any person of the Broadcasting Act 1942 or the Radiocommunications Act 1983.













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