

Proposed ban on political advertising

Anthony Short argues the Federal Government's proposed legislation will not achieve its objectives and is in breach of international law

The Political Broadcasts and Political Disclosure Bill 1991 will, if passed, result in a ban on political advertising on electronic media. Such advertising will include express or implicit reference to or comment on a matter intended or likely to affect voting at an election. The ban will apply to Commonwealth, State and Local government elections.

It will apply to advertisements by political parties, interest groups and other members of the community. Broadcasters will also be banned from running advertisements for governments or government authorities for prescribed periods prior to elections. A breach of the ban will constitute a breach of a broadcaster's licence conditions, and so be relevant at any renewal hearing.

The government has raised two main justifications for the ban. First, that the pressure of funding election advertising has potential for abuse and corruption. Secondly, that the ban will provide a level playing field for those seeking election.

The arguments against

There will be no ban on print media advertising. Political parties will still be free to spend as much as they like in relation to papers, posters, pamphlets and mail. The demands for funding will remain; simply the areas of expense will alter. The same temptations, needs and problems will exist as are currently said to justify the proposed ban.

The Bill includes disclosure aspects in relation to political donations. These aspects go a long way to rebutting arguments in favour of the advertising ban based on potential corruption.

The political playing field will not be levelled however. Smaller parties will still have the same difficulties in trying to match print media or mail campaigns of larger parties. They will still struggle for equal air time on news or current affairs programs.

It is also difficult to see any nexus between a ban on conservation or other lobby groups running special interest advertising campaigns and political party corruption.

While political parties will be entitled to free time for policy launches, the Bill will not allow any person or organisation who is banned from advertising by virtue of the legislation a grant of free time. They will simply be restricted from communicating their views as they wish.

The Bill's ban on advertising making even an implicit reference to an issue "likely to be submitted or otherwise before" electors, is also undesirably vague.

The ban will also disadvantage those persons who have restricted access to the print media, including those who have difficulty reading, are in remote locations, or have language difficulties.

It has been the subject of strong criticism from the Human Rights Commissioner. He has pointed out that insofar as the Government relies upon the report of the joint standing committee on electoral matters, it both goes beyond the recommendations of the report, and relies upon incorrect factual material.

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International obligations

Australia is a signatory to the *International Covenant on Civil And Political Rights* which has been enacted into Australian law as Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986*. Article 19.2 provides:

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The right is not absolute. Article 19.3 reads:

"The exercise of the rights provided for in paragraph 2 ... may ... be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) *For respect of the rights or reputation of others;*
- (b) *For the protection of national security or of public order ... or of public health or morals."*

Whatever slim case may be made out to justify the ban under sub paragraphs (a) and (b), there does not appear to be a clearly

demonstrated need so as to make the ban 'necessary'. This is the view the Human Rights Commissioner has taken.

The A-G's opinion

An opinion from the Commonwealth Attorney General's department tabled in the Senate on 28 May states in part:

"On the issues of necessity and proportionality, there is essentially a difference of view ... It must be emphasised that governments have a wide margin of discretion in relation to the public order exception. While Government has to justify any restriction, there is not, in my view, any requirement to justify with proof beyond reasonable doubt or even on the balance of probabilities ... Any international body will be slow to question a national legislative decision that is taken in good faith."

In relation to the definition of 'prescribed material' for the purposes of the ban, the opinion concluded that "it is possible to argue that inclusion of this clause was necessary and proportionate".

Conclusion

The Bill represents a serious attack upon the principle of freedom of speech. While it is recognised that this principal is not absolute, restrictions should only be imposed where necessary and are provided for by law.

The Chairman of the Law Council of Australia, Alex Chernov QC, summarised the position as well as anyone when he stated on 23rd March that it:

"is a retrograde step that any means of communication should be closed. It is particularly undesirable that two of the most widely accepted and used media in a modern and free society should be subject to the ban."

One can only hope the Government will reconsider the legislation, or that if passed, the constitutional challenge foreshadowed by New South Wales will succeed.

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