

2002-2003

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Electoral Amendment (Political Honesty)
Bill 2003**

No. , 2003

(Senator Murray)

**A Bill for an Act to amend the *Commonwealth
Electoral Act 1918* to provide for truth in political
advertising, and for related purposes**

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1 **A Bill for an Act to amend the *Commonwealth***
2 ***Electoral Act 1918* to provide for truth in political**
3 **advertising, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Electoral Amendment (Political*
7 *Honesty) Act 2003*.

8 **2 Commencement**

9 This Act commences on the day on which it receives the Royal
10 Assent.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Truth in political advertising

Commonwealth Electoral Act 1918

1 Subsection 329(6)

Repeal the subsection.

2 At the end of section 329

Add:

- (7) A person must not print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any electoral advertisement containing a statement, purporting to be a statement of fact, that is inaccurate and misleading to a material extent.
- (8) A person who contravenes subsection (7) is guilty of an offence punishable on conviction:
 - (a) if the offender is a natural person—by a fine not exceeding 2000 penalty units; or
 - (b) if the offender is a body corporate—by a fine not exceeding 10,000 penalty units.
- (9) In a prosecution of a person for an offence against subsection (8) by virtue of a contravention of subsection (7), it is a defence if the person proves that he or she:
 - (a) took no part in determining the content of the advertisement; and
 - (b) could not reasonably be expected to have known that the advertisement was inaccurate and misleading to a material extent.
- (9) If the Electoral Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Electoral Commissioner may request the advertiser to do one or more of the following:
 - (a) withdraw the advertisement from further publication;
 - (b) publish a retraction in specified terms and a specified manner and form (and in proceedings for an offence against subsection (8) arising from the advertisement, the

1 advertiser's response to a request under this subsection will
2 be taken into account in assessing any penalty to which the
3 advertiser may be liable).

4 (10) If the Federal Court is satisfied beyond reasonable doubt on
5 application by the Electoral Commissioner that an electoral
6 advertisement contains a statement purporting to be a statement of
7 fact that is inaccurate or misleading to a material extent, the Court
8 may order the advertiser to do one or more of the following:
9 (a) withdraw the advertisement from further publication;
10 (b) publish a retraction in specified terms and a specified manner
11 and form.

12 (11) In this section:

13 *advertiser* means a person who authorises, causes or permits the
14 publication of an electoral advertisement but does not include a
15 person who took no part in determining the content of the electoral
16 advertisement.

17 *electoral advertisement* means an advertisement containing a
18 matter calculated to affect the result of an election.

19 *publish* includes publish by radio, television or the Internet.

20 (12) This section does not apply to the extent (if any) that would
21 infringe any doctrine of implied freedom of political
22 communication.