

*Human Rights and
Equal Opportunity Commission*

Human Rights Commissioner

20 May 1991
Our ref: 39CPR007

Senator the Hon. Nick Bolkus
Minister for Administrative
Services
Parliament House
Canberra A.C.T. 2600

CC: Hon. Michael Duffy MP
Attorney-General
Parliament House
Canberra A.C.T. 2600

Attention: Mr John Richardson
Consultant to the Minister

Dear Minister

Further to my recent letters and our meeting on 14 May, I am writing to provide you with my initial response to the Government's draft legislation relating to political advertising - now that I have been given an opportunity to examine the Bill presently before the Parliament.

As I indicated at our meeting, I clearly acknowledge that my letter of 9 May was directed not to the Government's draft legislation, but to the best understanding of the proposal I had been able to arrive at, based on your public statements. I would have preferred to prepare more focused advice - specifically directed to details of the Government's proposals or to particular provisions of draft legislation.

You will, of course, appreciate that my inability to do so related to the fact that notwithstanding the request in my letter of 20 March to be provided with details of the Government's decision, to enable me to prepare precise advice, I was given only your press release. You are also aware that in spite of advice in your letter of 26 March that I would be kept "...informed of the progress of the drafting of the legislation" and provided "...with any further relevant information as soon as it comes to hand..." this did not happen.

Because complete information had not been provided to me, I decided, after careful consideration, that it was appropriate to provide advice to the Government on the principles at stake and the issues involved - rather than deliver (possibly too late to be useful) a concluded opinion in a report requiring tabling in Parliament - as I am entitled to do under Federal law.

Restriction of the Rights to Freedom of Expression and Information

My conclusion that a complete ban on political advertising in the electronic media would restrict the rights to freedom of expression and information recognized in Article 19.2 of the International Covenant on Civil and Political Rights (ICCPR) - as distinct from further questions as to whether the restrictions proposed are permissible - would remain valid whatever the terms of the ban proposed. Having now completed an initial reading of the Bill, and in the light of our discussions, there is nothing significant in my letter of 9 May in this respect which I would seek to vary.

I turn, therefore, to issues of justification relating to the proposed restrictions. As I explained at our meeting, at each relevant point I expressed in my letter not a "subjective" judgment on the merit of the proposal, but an objective evaluation which it is my responsibility under Federal law to make. My conclusion, based on the proposal as you had publicly described it, was that the Government had not demonstrated the conditions required by international law in order to justify aspects of the proposed ban, which were either inherent or anticipated on the basis of such information as was, available to me.

As is clearly set out in my letter, once it is established that a measure restricts the rights recognised „under Article 19.2 of the ICCPR (as is the case here) it is for the Government concerned to demonstrate the justification of the measure, rather than for bodies responsible for monitoring compliance with the Covenant to demonstrate the contrary. Following our discussion and an initial evaluation of the Bill, I have formed the view that, in a number of important respects, the proposed legislation goes beyond what has been demonstrated, for the purposes of international law, to be justified.

Importance of Measures Against Corruption

I can assure you that I have not omitted to take careful account of available data and reports on the potential or actual causal connection between campaign contributions and corruption. I have noted a number of public statements by yourself on behalf of the Government on this issue. As I indicated at our meeting, I dealt with this issue only briefly in my letter of 9 May not because I underestimate its seriousness, nor because I question that prevention of corruption related to the electoral process is a proper and permissible objective for Government to pursue.

Rather, the cursory consideration of this issue in my earlier advice reflects the readiness with which I accept that measures necessary for the prevention of corruption may be classified as measures necessary for the protection of "public order (ordre public)" and thus as falling within one of the permissible categories of limitation of the rights of freedom of expression and information under ICCPR Article 19.

Similarly, my letter indicated that the Government's stated purpose of preventing corruption should be accepted as addressing a "pressing social need", which relevant jurisprudence indicates to be a requirement of justification of limitations on these rights (as set out in my letter).

While I do not wish to vary my previous advice in this respect, I attempted to make suggestions during our discussion on ways in which the Government might address this need in a manner which is consistent with our international treaty obligations on human rights. (One fundamental criterion, in my view, is that such measures would need to avoid discrimination against Australians with disabilities.)

Disclosure

Another issue which my previous advice did not address in any detail is that concerning more stringent requirements for disclosure of sources of funding. Again, this is not because I fail to recognise and acknowledge the central importance of such requirements for the prevention of corruption. I am well aware, in particular, of the importance which Commissioner Roden has recently attached to legislative reform in this area.

The simple fact is, as I indicated at our meeting, that I did not canvass the subject or "disclosure" at length in my previous advice because I am completely satisfied that more stringent disclosure laws, as proposed, would not infringe any right recognised in human rights instruments by reference to which I have responsibility,.

However, I remain of the view that the reports and statements on behalf of the Government to which you referred - while supporting the conclusion that the end being pursued by the Government is permissible and that the Government's view that there is a "pressing social need" should be accepted - do not, as a matter of international law, dispose of the issues of:

- (1) necessity, and
- (2) proportionality,

which arise under the ICCPR and which were raised in my letter in relation to the proposed ban on political advertising. Nor, with respect, do they dispose of the issues of discrimination to which I referred.

Relevance of the Costs of Advertising

Some public statements on behalf of the Government have emphasised the view that, in practice, few people can exercise their freedom of political expression through advertising, and therefore a complete ban on political advertising in the electronic media is justifiable on the basis of equity. In our discussion I understood you to indicate that you thought this view had not been adequately addressed in my letter of 9 May.

I can assure you that I have considered these factors. I continue, however, to regard my letter (at pages 7 to 8) as correctly stating the position at international law in this respect:

...the fact that the exercise of a right in practice is already limited to some extent (particularly by non-government actors or by economic considerations) cannot mean that all further restrictions, particularly those imposed by Government, are permissible. This is the case whether the practical restrictions existing are or are not themselves consistent with the right.

Simply stated, denying to all alike a right recognised in the ICCPR (and one which we have committed ourselves at international law to protect) would not be a permissible means of achieving "equality".

Categories of Permissible Restriction

I understood some suggestion to be made in our discussion that my letter of 9 May asserted or implied the view that only those restrictions on broadcasting imposed on technical grounds were properly permissible under the ICCPR. As indicated at our meeting, this is not the effect of my advice, and I would be puzzled if such a construction should be placed upon it. The relevant section of my advice (after explaining that in the drafting of the ICCPR a specific provision permitting licensing requirements was omitted from the limitation provisions of Article 19.3 because of the risk that such a provision would be interpreted to permit excessive restrictions) reads:

Licensing requirements, particularly [emphasis added] for technical purposes, were contemplated as permissible under the provision of Article 19 which permits limitations necessary for "public order", but only on the basis that these requirements are consistent with the right itself.

Clearly, the word "particularly" indicates that licensing requirements on technical grounds were not contemplated, far less specified, as the only permissible class of such requirements. Moreover, the contrary view would be inconsistent with my acknowledgment that some limitations on freedom of expression and information through the electronic media may be justified by reference to "public order". This clearly appears in the following passage (page 12 of my letter of 9 May):

Although there is no clear case law on the issue, there is little difficulty in relating the purpose of preventing political corruption to the heading 'public order (ordre public)'. Plainly, the political process is central to public order.

The issue, therefore, is not whether the proposed ban is related to a permissible purpose, but whether it is a permissible means of achieving that purpose.

I now turn, therefore, to issues we discussed relating to whether the proposed ban is a permissible means to achieve the ends identified by the Government.

Discrimination

At our meeting questions were raised concerning:

whether discrimination on the basis of disability is proscribed by the ICCPR, and

whether a significant differential impact of the proposed ban in relation to people with sensory impairments would constitute discrimination for this purpose.

International Covenant on Civil and Political Rights

As to the first point, I was extremely surprised by the suggestion by one of your advisers (particularly in this context) that Governments may be permitted to legislate in a manner which effectively discriminates against people with disabilities in the enjoyment of rights recognised under the ICCPR. (I say "particularly in this context" because while it is obvious that many Australians with disabilities are still victims of unjustifiable discrimination, their right to participate equally in the conduct of public affairs and to have equal access to information, is one of the most important human rights - by any standards.)

States Parties to the ICCPR undertake, in Article 2.1, "to respect and to ensure" the rights recognised therein "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" [emphasis added].

Discrimination of any kind which affects the exercise or enjoyment of rights recognised in other provisions of the ICCPR is within this clause. Discrimination on the basis of disability affecting rights embodied in Articles 19 or 25 of the Covenant would therefore, in my considered view, clearly be included.

Insofar as the words "or other status" are relevant, my view is that these words include disability. I acknowledge there is no unanimity among experts in this area as to the breadth of the obligation imposed by the term. However, the drafting history, although complex, indicates a broad interpretation.

The phrase "or other status", as originally used in the Universal Declaration of Human Rights, was apparently intended to cover distinctions related to socio-economic status, analogous to "property status" as initially proposed (see U.N. Doc.A/2929). However, when the phrase "or other status" was discussed in the drafting of the Covenants, it was regarded by delegates representing governments as an all inclusive term (see M.Bossuyt, Guide to the Travaux Préparatoires of the International Covenant on Civil and Political Rights, 1987, p.486). On accepted rules of interpretation, the view held by the drafters of the Covenants should be applied in the interpretation of these instruments - rather than a view based on the earlier context. (I would respectfully suggest, while immediately acknowledging that it is not a matter of treaty interpretation, that it would be extremely disappointing for any Australian government to be arguing for a narrow interpretation of this phrase. I would also respectfully note that it would be inconsistent with a number of recent government initiatives to better protect the rights of Australians with disabilities.)

Declaration on the Rights of Disabled Persons

In addition to the prohibition of discrimination under the ICCPR, as indicated at the conclusion of my letter of 9 May, the Declaration on the Rights of Disabled Persons - which is also incorporated in Federal law in the Human Rights and Equal Opportunity Commission Act - is also relevant. In addition to confirming (in Principle 4) that people with disabilities "have the same civil and political rights as other human beings", Principle 10 of the Declaration requires that people with disabilities be protected against

"all regulations and all treatment of a discriminatory [emphasis added], abusive or degrading nature".

Discriminatory impact of the proposed ban

As to whether the proposed ban on political advertising in the electronic media is capable of having a discriminatory impact on people with sensory disabilities, as already noted I did not examine this issue at length in my letter of 9 May for the same reason as I did not discuss at length the legitimacy of taking measures to prevent political corruption - that is, I considered the point obvious..

As noted in my letter of 9 May (page 9), Article 19.2 of the ICCPR recognises not only the right to impart information and ideas, but also to receive such information and ideas. People who have sensory disabilities (as well as those who are functionally illiterate) are likely, of necessity, to rely more heavily than others on electronic media as the means of receiving such ideas. Moreover, as noted in my letter of 9 May, Article 19.2 of the ICCPR recognises the right of every individual to receive ideas "through any media of his [or her] choice" (emphasis added'.

I have noted carefully the statement in this respect by the Minister for Communications in his Second Reading Speech. He said:

The broadcast of bona fide news reports, current affairs programs and documentaries which contain or relate to political issues will not be affected by the legislation. Broadcasters and members of the public will continue to be free to use these forums and others, such as talkback radio, to express views on political issues. Editorial comment by broadcasters will not be impeded by the ban on advertising. The delivery of information to the public including the print handicapped by such means will be unimpeded.

The issue under Article 19.2 of the ICCPR is not, however, disposed of by the contention that what the government adjudges to be an adequate range of political information will continue to be delivered. Article 19.2 confers on each individual, including those who are visually impaired or functionally illiterate, an individual right (subject to the permissible limitations provided for by Article 19.3) to receive information and ideas of any kind through the media of his or her choice. Under this provision (subject as noted to permissible limitations, such as those necessary to protect children from harmful material) it is the right of each individual - and not, with respect. of government - to determine what information he or she should receive, and through which media.

I must emphasise that this point also applies to the rights of individuals more generally to receive information. I have dealt with it in the context of discrimination affecting the "print handicapped" (to use the Minister's phrase) because of the particular significance of rights in this area for these Australians.

Relevance of the merits of political advertising

In some public statements (and particularly during our discussion) reference was made to views or evidence that political advertising serves no social good, and to its superficiality, trivialisation of issues and concentration on images rather than substance. A number of points need to be made in response to this.

1. Since freedom of expression is a right recognised in international instruments which the Government of Australia has ratified, and which are incorporated in the charter of this Commission under Federal law, the Government and this Commission are obliged to recognise freedom of expression as a right to be respected and ensured in its own right, independently of whether particular manifestations of the exercise of this right can be shown to have any beneficial effects for those receiving or imparting information and ideas - or for society considered more generally.

As already indicated, the fact that information or ideas may be assessed by government or others as superficial, boring, or lacking in substance does not remove those ideas from the area protected by Article 19.2. Nor does it remove the right of individuals to receive such information or ideas if they so choose.

In any case, views that political advertising serves no social good have, as far as I am aware, referred primarily to party political advertising. As confirmed in our discussion, the prohibition to be effected by this Bill is not confined to such advertising, since the area covered by the Bill includes advertising referring to political issues - whether or not emanating from or referring to political parties.

Provisions of the Bill

I expressed the view in my letter of 9 May that a ban as proposed would exceed what is permissible by reference to demonstrated need. In this respect I raised particular concerns relating to bodies affected, types of expression restricted, and times at which the ban is to apply.

Having examined the Bill in the relatively brief time it has been available to me, I should indicate that I continue to have the concerns identified in my letter of 9 May.

Definition of political advertisements

"Political advertisements" (which are to be banned on radio and television at all times pursuant to the proposed s.95A(1)) are defined as advertisements containing "political matter" (s.95A(2)). "Political matter" includes (s.95A(2)):

matter "intended or likely to affect" voting at a Commonwealth, Territory or State election, or an election to a local government authority of a State, in each case including "any such election that might be held in the future": or

matter containing "prescribed material" - which means "material containing an express or implicit reference to, or comment on:

a Commonwealth, Territory, State or local government election or a candidate or group of candidate.s in such an election;
the government or opposition (present or past) or a member of Parliament of the Commonwealth, a Territory or a State;
a political party or a branch or division of a political party; or
an issue submitted or otherwise before, or likely to be submitted or otherwise before, electors in such an election [emphasis added].

Each of these classes of matter, with the exception of the last, has in my view a reasonably close nexus with the conduct of elections and is therefore, at least prima facie, referable to the objective stated by the Government for the proposed ban - although as was made clear in my earlier advice this is not, in itself, sufficient to demonstrate that restrictions on these classes of matter would be permissible.

The last provision listed, however, which addresses issues rather than political parties or electoral processes directly, could in my view potentially include almost any matter of public interest or importance - having regard to the fact that elections at all levels of government are included and that the section extends to elections "that might be held in the future".

The speculative element thereby introduced, and the resulting increased uncertainty, in my opinion present additional problems. Even if the ambit of this measure (as ultimately applied in practice or as finally interpreted by the courts) is narrower than the potential reach, the measure may have consequences (referred to descriptively in United States constitutional jurisprudence as a "chilling effect") beyond the area to which it is directly applied.

As indicated in my letter of 9 May, this problem of ascertainability could constitute an independent reason for finding the measure inconsistent with the ICCPR in some aspects, since the ambit of a restriction must be reasonably ascertainable in order to satisfy the requirement that restrictions be "provided by law".

Exemptions

If I understand the Bill correctly there are to be two categories of exceptions from the definition of "political matter" for the purpose of this general ban: "exempt matter" and "public health matter".

"Exempt matter" for this purpose means:

- matter relating to warnings of, or measures to deal with natural disasters or civil or military disorders;
- matter provided by electoral authorities including procedure for voting and promotion of participation;
- advertisements of goods or services offered for sale by or on behalf of Commonwealth, Territory or State Government or government authorities "being

- advertisements that do not contain a political reference";
- advertisements relating to tenders or public appointments;
- announcements relating to public inquiries or public hearings under any Commonwealth, State or Territory law;
- notices or announcements required to be broadcast by or under any law "other than a prescribed notice or announcement";
- promotion of ABC or SBS activities.

"Prescribed notice or announcement" does not appear to be defined. Possibly the intention is that a "prescribed announcement" should be one containing "prescribed matter" - but if this is the intention it does not appear clear from the Bill on my examination.

Government advertising

As I read the Bill, with the possible exception of the provision for announcements concerning emergencies, "exempt matter" deals entirely with advertising for the purposes of Government or Government business enterprises.

My view of the problems which may arise in relation to Government advertising, as identified in my advice of 9 May, is confirmed by my present understanding of the provisions of the Bill.

(i) Discrimination While there is no general exemption for Government advertising, there are a number of exceptions for legitimate public purposes. However necessary this is, the same exceptions are not made for legitimate private purposes. That is, there is an element of discrimination according to the category of political expression involved or the identity of the "author" of the material.

A more specific case is that it is apparently permitted to advertise goods or services offered for sale by Government (albeit excluding those containing material of some "political reference"), but no equivalent exemption is made for advertising of private sector material (which in some cases could potentially be restricted as "political"). More broadly, no exemption is made for advertising expressly or impliedly critical of such Government goods and services or promoting, for example, alleged need for private sector competition with such services.

(ii) Restriction on promotion of legitimate public purpose

Only those government authorities offering goods or services for sale are, by the exception referred to, permitted to advertise. As identified in my letter of 9 May, many other public purposes may conceivably be promoted by electronic media advertising, but would be likely to be restricted as containing "political matter".

What advertisement the Commonwealth and its agencies engage in is principally a matter for the Commonwealth. However, restrictions on advertising by State or Territory governments or authorities may restrict rights both of freedom of expression and freedom of information.

Even the ordinary commercial advertising of goods and services for sale could potentially be restricted as containing matter having "political reference". "Political reference" is defined as meaning material containing an express or implied reference to the same range of matters as are comprised in "prescribed material" (supra) including "an issue submitted or otherwise before, or likely to be submitted or otherwise before, electors" in a Commonwealth, State, Territory or local election or future election. (Some advertisements of services by Telecom, for example, could conceivably be seen as having political reference, since the issue of the privatisation of that body may be an election issue.)

Public health

The "public health matter" which is to be exempt from the general ban is defined as meaning "any matter relating to public health, other than matter that directly or indirectly promotes or criticises a particular public health system".

It is not clear how this exemption would be interpreted. It may be intended to exclude only advertising canvassing the merits of differing degrees of private sector involvement in health care, or more broadly issues of partisan debate. Potentially, however, I am concerned that any advertising promoting the availability or use of a particular service might be interpreted as promoting a particular public health system.

As I emphasised at our meeting, some obvious concerns arise regarding the impact of this ban on a number of important issues affecting human rights - for example the implementation of the National AIDS Strategy. It may be helpful if I am even more specific. One program which I believe the proposed legislation could call into question would be the forthcoming education campaign, recently announced by the Minister for Community Services and Health.

Inevitably, this campaign will have the potential to be seen as having some political reference, for example with respect to the laws criminalising homosexual behaviour maintained in some jurisdictions or the laws criminalising aspects of drug use, discrimination in law or government practice or policy on the basis of sexuality, and the degree of protection in law against such discrimination. I therefore continue to have concerns in this respect - notwithstanding the statement by the Minister in the Second Reading Speech that AIDS prevention and anti-drug education advertisements would be protected by the public health exception.

Whether or not the ban would ultimately be found by the courts to apply to any such advertising generally, I note that, as indicated in the Second Reading Speech, the exemption to the additional ban provided for on advertising by Government during election periods does not include public health.

The motive for this is clear enough, since public health issues may be issues in elections at any level of government and could easily be construed as having political reference. However, our three tiers of government and the consequent frequency of elections means that any further use of electronic media advertising for implementation and promotion of the National HIV/AIDS Strategy - and thus, ultimately, the continuation of Australia's relative success in saving lives - will, at least, be made very difficult. To place this concern squarely in its human rights context it is only necessary to point out that such a ban will have a discriminatory effect in relation to hundreds of thousands of Australians who are blind, visually impaired or functionally illiterate. (On the basis of evidence currently available it is not, I believe, going too far to say that this effect could even indirectly impact, for some Australians, on the most basic of all human rights - the right to life itself.)

Moreover, public health is only one of many issues of public concern affected where important social goals - and in some cases the promotion or protection of fundamental human rights - may be served by advertising which could be construed as having political content. (My advice of 9 May provides other examples.)

While I note the Minister's statement in his Second Reading Speech that this provision in relation to government advertising during election periods gives effect to existing administrative practice so far as the Commonwealth is concerned, I believe that its embodiment in statutory **form and** its application by the Commonwealth, not only to other levels of Government but to advertising by non-government actors, may potentially, have serious adverse effects on the promotion, protection and enjoyment of human rights.

Unpaid advertising

In view of one major justification for the Bill advanced by the Government publicly and to the Parliament - that is, reduction of the potential for corruption arising from the high cost of paid advertising in the electronic media - there was one aspect of the Bill which I did not anticipate in my letter of 9 May. I refer to the fact that the proposed s.95A states that, subject to the provisions regarding party political launches in s.95E, "a broadcaster must not at any time broadcast a political advertisement, whether for consideration or otherwise."

As confirmed by the Minister for Communications in his Second Reading speech, this means that the ban will extend to broadcasts of unpaid political advertising.

The statement in the Second Reading Speech that to extend the ban to unpaid advertising by broadcasters on behalf of others "is designed to ensure that broadcasters do not flout the ban", with respect, does not of itself identify a justification commensurate with the Government's stated purpose - in the absence of evidence of the occurrence, or a substantial risk, of payments or improper favours to broadcasters in return for advertisements ostensibly not made for consideration. Were such evidence available, it would remain to be demonstrated that it would not be practicable to detect such practices or that for other reasons the extension of the proposed ban to unpaid advertisements is the least restrictive means reasonably available to prevent such practices. (The relevant principles in this respect are set out in my advice

of 9 May.)

The Second Reading Speech by the Minister for Communications, however, confirms that it is intended that the ban. should extend to unpaid advertisements "whether run by broadcasters on their own behalf or on behalf of others". (As you would be aware, the Acts Interpretation Act s.I5AB(2)(f) now directs that the responsible Minister's Second Reading Speech may be referred to in interpreting Commonwealth legislation.)

This statement indicates that the Government does not intend that the legislation should operate only to ban advertisements which are broadcast ostensibly, but not in fact; without consideration. This wider application, in my view, is not supported by the rationale advanced by the Government by reference to public order (ordre public). I am also of the view that it cannot be supported by reference to any other permissible criterion under the ICCPR.

Moreover, even assuming the objections stated above could be satisfactorily addressed (for example, by reference to practices inimical to the proper protection of human rights), this aspect, as with the Bill generally, would face the fundamental objection that, irrespective of arguments of necessity, the proposed ban is so radically inconsistent with the right to freedom of expression and information as to constitute or authorise "destruction of rights", and therefore to be impermissible under ICCPR Article 5.

In particular, if it is permissible under the ICCPR to prohibit a political "advertisement" made by broadcasters on their own behalf, it would logically also appear permissible to prohibit editorial comment, or political commentary of any kind.

I do not, of course, suggest that the Government intends such a course. I note, however, that, while "political advertisement" is defined to mean "an advertisement containing political matter", the Bill itself does not define "advertisement".

Given this lack of definition of the term "advertisement" and the fact that "political matter" is not restricted to party political promotion, or to the promotion of the views of a political organisation, I am not persuaded that it can be safely assumed that the Bill will not be interpreted as having this effect - notwithstanding the statements made on this issue by the Minister for Communications in his Second Reading Speech.

I am similarly not convinced, notwithstanding the statement by the Minister for Communications, that the Bill in its present form could not apply to some documentary programmes. I am aware, for example, of a number of programmes produced for ABC Television by or with the involvement of Aboriginal organisations, which have clearly promoted what would indisputably be classified as "political" positions on issues of electoral contention such as land rights. I can find nothing in the Bill which would clearly prevent such programmes being regarded as advertisements in support of these political positions by the organisations involved, and therefore, at least potentially, being subject to prohibition.

Charities and Analogous Organisations

I note the stated intention of the Government that this legislation should not restrict the ordinary fund-raising activities of charities. In my view, this intention is not given adequate effect in the Bill as drafted. As I read the Bill, either a paid advertisement, or a "community service announcement" broadcast without payment, would be capable of constituting an 'advertisement'. Many of the issues dealt with by charities, such as child poverty and overseas aid needs (which are not confined to "measures ...taken to deal with ... disasters or disorders"), which would be expressly or impliedly referred to in their ordinary fund-raising promotion, would be capable of being, or would presently be, issues "submitted or otherwise before, or likely to be submitted or otherwise before, electors in such an election". As I understand the Bill, such advertisements would accordingly be prohibited as containing "prescribed material" and not falling within the definition of "exempt matter".

Moreover, international law is not, in my view, consistent with an interpretation of the right to freedom of expression having the effect that charities and community organisations may not legitimately address political issues directly through electronic media advertising rather than confining their use of advertising in these media to fund-raising. I am not persuaded that prohibiting them from doing so has been demonstrated to be necessary for the purpose of preventing corruption among political parties, or that such a measure has been demonstrated to be proportionate to such necessity, as is required. (Again, the relevant principles are set out in my letter of 9 May.)

I am aware that to make exceptions from the proposed ban for charitable organisations or purposes, and not for others, raises problems of discrimination and may well render a ban administratively unworkable. In my view, however, this, and other anomalies or problems which may flow from attempting to address particular respects in which, in my view, the ban is over-extensive, underline the need for reconsideration of the proposed ban - rather than providing support for its wide ambit under the present Bill.

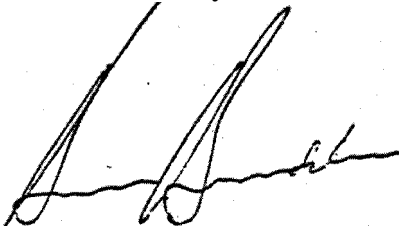
Overseas experience

In my letter of 9 May I noted my belief that the trend of overseas practice was in the direction of increased openness, rather than in the direction proposed by the Government. I received advice late last week (and have not yet been able to verify it) that in Sweden a proposal to ban political advertising on television was rejected by the Council on Legislation (a body composed of judges of the Supreme Court and the Supreme Administrative Court, to which government Bills are generally referred before their submission to Parliament). The information I received from Stockholm indicates that the Council rejected the proposed ban on the basis that it would impermissibly restrict the right to freedom of expression.

I have provided this advice (which should obviously be read in conjunction with my letter of 9 May), as a matter of urgency for two reasons. First, I note from the Hansard proofs that the Prime Minister, late last week, indicated that the Government would review the

position after it had had an opportunity to consider my views in relation to the Bill. It is for that reason I thought it may be helpful to canvass in the first part of this letter a number of the major points raised during our discussion last Tuesday night in addition to those arising from my consideration of the actual provisions of the Bill. Second, I am particularly conscious that the House will resume next week and, as I understand it, will immediately take up the Bill again.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Burdekin', written in a cursive style.

BRIAN BURDEKIN
Federal Human Rights Commissioner