

6 March 2013

Electoral Reform
Strategic Policy
Department of Justice and Attorney-GeneralBy email: electoralreform@justice.qld.gov.au

To whom it may concern,

Submission – Electoral Reform Discussion Paper

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters. Our members provide nine channels of content across a broad range of genres, as well as rich online and mobile offerings. These services are free to view. The value of commercial free-to-air television to all Australians remains high. On any given day, free-to-air television is watched by more than 14 million Australians.

Free TV welcomes the opportunity to comment on the *Electoral Reform Discussion Paper* released in January by the Department of Justice and Attorney-General (Discussion Paper). This submission relates solely to the issue raised in the Discussion Paper regarding truth in political advertising.

As the Discussion Paper notes, the issue of legislating to regulate the truthfulness of political advertising has been the subject of a number of inquiries over time.¹ Each of these inquiries has explored the practical and conceptual difficulties of regulating the truth of political advertising. These difficulties are well documented² and Free TV does not propose to comment on them.

However, if obligations regarding truth in political advertising are introduced in Queensland, Free TV is concerned to ensure: (a) that there is no increased regulatory burden placed on free to air broadcasters; and (b) that broadcasters, who have no role in the development or authorisation of such advertising, are not subject to civil or criminal action.

If any legislation is to be introduced in Queensland to regulate truth in political advertising, liability should rest exclusively with the person who authorised the advertisement. Organisations which do no more than broadcast or publish such advertising should not be subject to any enforcement action. Section 113 of the *Electoral Act 1985* (SA) provides a reasonable model for such legislation, if the Queensland Government decides to enact such provisions.

If broadcasters were to face any potential liability in relation to truth in political advertising, then this would require broadcasters (or Free TV) to vet political advertisements to determine their truthfulness prior to their broadcast. Free-to-air broadcasters are not well placed to assess the 'truth' of political claims, and it would be inappropriate to place the media in a position of being the arbiter of disputes between political parties. The inappropriateness of requiring media bodies to make assessments about the truthfulness of political advertising (and withdraw advertisements as

¹ For example, the Electoral Matters Committee of the Parliament of Victoria (2010) *Inquiry into the Provisions of the Electoral Act 2002 (Vic) relating or misleading or deceptive political advertising*; Commonwealth Joint Standing Committee on Electoral Matters (1997) *The 1996 election* pp81-85; and the Queensland Legal, Constitutional and Administrative Review Committee (2000) *The Electoral Amendment Bill 1999*, 20th Report, pp 11-15.

² See also: Associate Professor Anne Twomey (2010) "Truth in Political Advertising" *Public Law Review* (2010) 21PLR 223

a result) have been well recognised.³ Further, broadcasters would be required to seek legal advice in relation to the content of political advertising and its truthfulness, which would be an unreasonable regulatory burden.

Commercials Advice (CAD), which is a part of Free TV, provides an information and classification service for all advertisers, including political parties. CAD currently reviews election and political advertisements for the purposes of:

- Classifying the advertisement under the Commercial Television Industry Code of Practice;
- Ensuring the advertisement includes the authorisation tag required by the *Broadcasting Services Act 1992* (Clause 4 of Part 2 of Schedule 2) and any other applicable electoral laws; and
- Assessing whether the advertisement contains defamatory material.

CAD may require an advertiser to provide substantiation for statements in a political advertisement but this will only be for the purposes of assessing whether the advertisement may be defamatory. However CAD does not otherwise assess the accuracy of statements in political advertisements and will not consider complaints in this regard. Organisations such as CAD are not equipped with the necessary information or resources to determine the truthfulness of all claims in political advertising.

Free TV is also very concerned that the discussion paper raises the prospect of potentially extending the regulation of inaccurate or misleading political statements beyond advertising, although the scope of this is not clear from the Discussion paper. In particular, Free TV is opposed to any measures that would result in political discussions in news or current affairs programs being subject to legislation regulating truth and accuracy.

The implied right of freedom of communication on all political matters has been established in Australia since 1992.⁴ Free TV would be very concerned if general political discourse was to become the subject of regulation, particularly in relation to matters of opinion or commentary. In a free and democratic society, it must be left up to the voting public to determine the veracity of political claims and statements.

The Commercial Television Industry Code of Practice already contains a number of provisions regulating the broadcast of news and current affairs, including a requirement that licensees must broadcast factual material accurately and represent viewpoints fairly.

Thank you for taking the time to consider our submission. Please contact me if you wish to discuss any aspect of this letter.

Yours sincerely



JULIE FLYNN
Chief Executive Officer

³ Twomey, op. cit.

⁴ Following the High Court decisions in: *Australian Capital Television Pty Ltd v Commonwealth* (1992) 108 ALR 577 and *Nationwide News Pty Ltd v Wills* (1992) 108 ALR 681.