POLITICIANS AND HONESTY: A Submission to the Electoral Matters Committee

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Honesty and candour in politicians are central to the proper functioning of a democracy. Politicians today enjoy many privileges. They have power that in some cases transcends their native gifts. Their words spoken in parliament cannot be used against them in legal proceedings of any sort, allowing them to vilify people or defame them without the inconvenience of being sued for defamation. Even though they are entrusted with one of the most significant jobs in the country, they are not liable if they mislead or deceive the public, whose interests they are supposed to serve.

The usual response to this is that the way to discipline politicians whose standards fall below what is acceptable is to vote them out. Yet the number of dismal performers in political office suggests that the acceptable standard must be fairly low. Elections tend to be fought on a narrow range of issues and to be decided on an even narrower range. Only in a lean year will the personal honesty of a politician be a deciding factor.

Most members of the public see honesty as a core value in our society. In personal dealings, dishonesty on matters of any significance is rightly regarded as an unacceptable breach of standards. The Commonwealth Trade Practices Act was introduced by Lionel Murphy in 1974. Almost as an afterthought, Murphy included section 52. In its original form, it comprised just one sentence—probably the most potent sentence in the statute books. It says,

‘A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive’.

In only twenty-three words—a very modest number by legislative standards—section 52 introduced a new norm of corporate behaviour. It changed the landscape of commercial dealings and quickly became the commonest cause of action in the Federal court. It has been replicated in Fair Trading Acts of a number of States, where it applies to individuals.

Falsehood comes in many forms. Telling only part of the truth is a notorious way of misleading the unwary, and the method generally favoured by politicians since it is less easily exposed than a direct lie. In parliament, politicians are not allowed to mislead the house. They should not be allowed to mislead the public either, given that they are the servants of the public, paid from the public purse and representing the public interest.

Several commentators have dismissed the idea of a law which would punish politicians for engaging in misleading and deceptive conduct. Some have suggested that it should be judged and dealt with at elections. Unfortunately, this is no solution at all. It has been shown repeatedly that it does not work. The reason is simple. A vote at an election is dictated by many things, only one of which is an assessment of the candidate’s honesty. Generally speaking, a candidate whose dishonesty has been exposed will nevertheless be supported in the election if he or she offers a sufficient inducement – lower interest rates, higher Centrelink benefits, or whatever.

Others have objected that it is too difficult to decide whether a politician has engaged in misleading conduct. They object that changed circumstances may falsify statements which were made in all honesty. It is a misconceived objection courts have a great deal
of experience in deciding whether a person has engaged in misleading or deceptive
conduct. If a person makes a statement that is false but represents it as fact, that is
misleading conduct. It is central to a court’s role to decide whether a person spoke
falsely. A difficulty arises when a person offers opinions or makes statements about the
future. Opinions and predictions may turn out to be wrong, but that does not of itself
mean that the speaker has engaged in misleading conduct. But if a person expresses an
opinion that they do not in fact hold, that is misleading conduct. If a person offers a
prediction of the future for which they have no reasonable foundation, that is misleading
conduct. This again is an area in which courts have vast experience, because section 52
of the Trade Practices Act has been argued in courts for 25 years.

Most people believe politicians lie. Some politicians lie more than others. It is not a
trivial problem: politicians play a vital role in our society. Why should the behaviour of
politicians fall short of the standards that parliament has set for business, and which we
all set for ourselves and each other? Every time politicians mislead us, they betray the
public in a fundamentally important way.

But honesty in politicians is important for another reason. A politician’s vision for the
future generally does not extend past the next election. Anything over that magic horizon
can readily be put aside for another time. It may turn out to be someone else’s problem. If
politicians could be punished for misleading and deceptive conduct, they would have to
confront long-term problems much sooner.

Global warming is a recent example. The science concerning global warming has been
tolerably clear at least since the Intergovernmental Panel on Climate Change report of
1995. The overwhelming preponderance of scientific opinion supports the view that
global warming is a real phenomenon, that it is caused largely by human activity and that
if left unchecked, it will lead to catastrophic global consequences. Dissenting views tend
to come from people acting at the instance of vested interests.

Politicians confronted with the scientific evidence have a few choices: they can say they
believe global warming is true and that there is a problem; they can say they do not
believe it is true, and that there is not a problem; or they can say that they do not know or
do not care. But if the opinion they express is not an opinion they truly hold, then they
mislead us. If politicians had been forced to express an honest opinion—that is, an
opinion they honestly hold—rather than one peddled by vested interests or lobbyists, or
one that is politically convenient, we might have begun the conversation about global
warming a decade ago. Enforcing honesty in politicians would help extend the policy
horizon beyond the election cycle.

There are two levels at which this could operate. One is to make it an offence for a
politician to engage in conduct which is misleading or deceptive, in their capacity as a
politician, in connection with an election. This is a limited approach, but it is better than
the present situation. It is notorious that politicians make outrageously misleading
statements in connection with elections. That is the time when their misleading conduct
most obviously distorts the political process.

However a better approach is to make it an offence for a politician to engage in conduct
which is misleading or deceptive, in their capacity as a politician, whenever that conduct
occurs. This would catch all conduct whether in connection with an election or not. It is
to be preferred because politicians should never be allowed to mislead the people they serve.

I put this idea to the 2020 Summit in April 2008. It was greeted with enthusiasm by members of the public, which tends to support the view that the public think politicians frequently mislead us. It was greeted with interest but skepticism by commentators, whose objections I have mentioned above. No politician said anything about it, to my knowledge. I suspect that no politician is willing to argue publicly that they should be allowed to mislead the public. If politicians can advance good reasons of principle why they should be allowed to mislead the electors, let them do so.

Failing a convincing argument to the contrary, I submit that politicians should be legally liable if, in their capacity as politicians, they engage in misleading or deceptive conduct. Penalties should include fines or disqualification from office or, in extreme cases, gaol. There can be no legitimate policy reason why politicians should be allowed to mislead the people they are entrusted to lead.