

Introduction

Background

Government advertising

- 1.1 Government advertising is a legitimate element of government communication and information strategies. It provides a mechanism for governments to connect directly with citizens, informing them about new and existing government programs, providing advice about rights and responsibilities and conveying important information.¹
- 1.2 Australian Government advertising can be separated into two categories:
 - Non-campaign – typically recruitment advertisements and notices about tenders, grants and public consultations; or
 - Campaign – all other forms of advertising.²
- 1.3 There have been concerns that governments are able to misuse advertising to self-promote rather than merely inform.³ This was highlighted in the *Government Advertising and Accountability* report by the Senate Finance and Public Administration References Committee in 2005:

In other words, the problem arises when governments use or are perceived to use taxpayer funds to gain political advantage

1 Australian National Audit Office (ANAO) Audit Report, No. 24, 2008-09, *The Administration of Contracting Arrangements in relation to Government Advertising to November 2007*, p 18-19.

2 Department of Finance and Deregulation, Campaign Advertising, viewed at <http://www.finance.gov.au/advertising/campaign-advertising.html> on 18 March 2010

3 Young, S. *Government Communication in Australia*, (2007), p 19.

through promoting themselves, rather than to meet the genuine information needs of citizens.⁴

- 1.4 In a change from what she describes as an unwritten convention that taxpayers' money should not be used for unnecessary campaigns or for partisan promotion, Dr Sally Young of the University of Melbourne contends that:

... from the late 1980s and especially the early and mid- 1990s, Australian governments began to produce more controversial advertisements which opponents argued broke the old conventions and were being used to carry a partisan, political message promoting (and defending) the government and its policies in ways calculated to obtain an electoral advantage.⁵

- 1.5 Additionally there has been quite a level of variation in the level of expenditure on government advertising over the last few years. The ANAO's *Campaign Advertising Review 2008-09* stated that the annual cost of advertising rose from \$79 million in 2004 to \$254 million in 2007 before dropping back to \$87 million in 2008.⁶

Current restrictions on government advertising

- 1.6 There are only very limited restrictions on government advertising in legislation.⁷
- 1.7 The *Broadcasting Services Act 1992* imposes conditions on broadcasters in relation to broadcasts of political matters. Political matter is required to be tagged with the name and locale of the authoriser, the person responsible for approving the content and for the decision to be broadcast.⁸
- 1.8 Section 328 of the *Commonwealth Electoral Act 1918* sets out requirements for identifying the source of authority for advertisements and pamphlets

4 Senate Finance and Public Administration References Committee, *Government Advertising and Accountability*, (2005), p xiii.

5 Young, S. (2007). The regulation of government advertising in Australia: the politicisation of a public policy issue, *Australian Journal of Public Administration*. 66 (4): pp 438-452.

6 Australian National Audit Office (ANAO), *Campaign Advertising Review 2008-09*, p 14.

7 Senate Finance and Public Administration References Committee, *Government Advertising and Accountability*, (2005), p 7.

8 *Broadcasting Services Act 1992*, Schedule 1, Part 1-2.

containing electoral matter.⁹ Electoral matter means matter which is intended or likely to affect voting in an election.¹⁰

Context

- 1.9 Prior to the introduction of the *Guidelines on Campaign Advertising by Australian Government Departments and Agencies* in July 2008, government advertising and information campaigns were required to comply with the *Guidelines for Australian Government Information Activities - Principles and Procedures, February 1995* as well as the *Commonwealth Procurement Guidelines*. These documents provided the overarching principles and regulations for the decision making processes around government advertising campaigns.
- 1.10 Until November 2007 the Commonwealth Government's information activities were coordinated by the Special Minister of State, who chaired the Ministerial Committee on Government Communications (MCGC), which took key decisions relating to major and sensitive information campaigns.¹¹
- 1.11 The MCGC was supported by the Government Communications Unit (GCU), which was based in the Department of the Prime Minister and Cabinet (PM&C) and also provided support for Ministers and agencies on communication issues.¹² The GCU also managed the Central Advertising System (CAS), which provided media placement services for agencies.
- 1.12 Following the 24 November 2007 federal election, the Government abolished the GCU and did not re-establish the MCGC. Responsibility for the administration of the CAS was transferred from PM&C to the Department of Finance and Deregulation (Finance) on 3 December 2007.
- 1.13 A revised management framework, incorporating new guidelines for Commonwealth Government campaign advertising, was announced by the Government on 2 July 2008.
- 1.14 A number of inquiries over the last ten years have recommended reforms to the guidelines on government advertising, including one by this Committee.

9 *Commonwealth Electoral Act 1918*, Schedule 328.

10 As defined in Section 4 of the *Commonwealth Electoral Act 1918*.

11 Australian National Audit Office, Sub 1, p 3.

12 Australian National Audit Office, Sub 1, p 7.

- 1.15 In September 2000 the then Joint Committee of Public Accounts and Audit (JCPAA) examined ANAO Audit Report no. 12 1998–99, which studied aspects of taxation reform advertising. JCPAA then recommended the Government adopt guidelines for advertising, similar to those proposed earlier by the ANAO. This recommendation was not accepted.
- 1.16 In 2004 and 2005, the Senate Finance and Public Administration References Committee undertook an inquiry into government advertising and accountability.
- 1.17 Also the then Government’s advertising in support of proposed workplace relations reform legislation was challenged in the High Court of Australia by the Australian Council of Trade Unions (ACTU) and the Australian Labor Party (ALP) in the case *Combet v Commonwealth*¹³ (2005).¹⁴

The administration of contracting arrangements in relation to government advertising from November 2007

- 1.18 ANAO Audit Report no. 24 2008-09 *The Administration of Contracting Arrangements in relation to Government Advertising to November 2007* was the most recent performance audit relating to government advertising completed by the ANAO.
- 1.19 This report was tabled in March 2009 and drew attention to the governance arrangements for advertising campaigns to November 2007.
- 1.20 The arrangements varied significantly to those existing at the time of this inquiry, however, the audit report found there was not clear accountability and transparency in the framework for administering government advertising.¹⁵

13 <http://www.tup.net.au/tup/samples/CN-AustralianLaw-2e1p-Chpt27Extract.pdf> viewed on 15 June 2010.

14 The application was dismissed on as the Court determined that it was inappropriate to answer the key question of whether appropriations necessary to fund the advertisements were authorised.

15 Australian National Audit Office (ANAO) Audit Report, No. 24, 2008-09, *The Administration of Contracting Arrangements in relation to Government Advertising to November 2007*, p 29.

Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies

- 1.21 The Government announced in July 2008 that all government agencies undertaking information and advertising campaigns were required to comply with the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies* (July 2008). A copy of the Guidelines is at Appendix A.
- 1.22 The Guidelines stated that departments and agencies subject to the *Financial Management and Accountability Act 1997* (the FMA Act) must comply with the Guidelines and that a Minister could only launch an advertising campaign when:
- the Chief Executive of the agency undertaking the campaign has certified that the campaign complies with the Guidelines and relevant government policies; and
 - for campaigns with expenditure in excess of \$250 000, the Auditor-General has provided a report to the Minister on the proposed campaign's compliance with the Guidelines.¹⁶
- 1.23 Agencies were also obliged to comply with all policies and processes in relation to government campaigns which are issued by the Cabinet.¹⁷
- 1.24 In February 2009 Finance issued a companion document to the Guidelines, *Business Planning Processes for Campaign Information and Advertising Activities*. This document outlined the roles and responsibilities of all relevant parties and provided more specific guidance on the campaign advertising process for agencies.¹⁸

The role of the Auditor-General

- 1.25 During the campaign for the 2007 federal election, Mr Kevin Rudd MP, then Opposition Leader, stated:

There should be, both at a federal level and a state level, a process involving the auditor-general . . . who should scrutinise all proposals for government-funded advertising . . . Otherwise you

16 Australian National Audit Office, Sub 1, p 3.

17 Department of Finance and Deregulation, *'Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies'* (July 2008) p 3.

18 Australian National Audit Office, Sub 2, p .1

are just scooping your hand ever deeper into the taxpayers' pocket and throwing out effectively political propaganda.¹⁹

- 1.26 In November 2007, the Auditor-General wrote to the Prime Minister expressing concern over the possibility of the Auditor-General performing an administration role to say that a campaign should not proceed.²⁰ He stated:

Given the sometimes controversial history of Government advertising, there is a real risk that whoever administers the guidelines could be drawn into the policy and political debate as an active participant in, and possible defender of, the processes of executive government. To preserve both the real and perceived independence of this office, I and my predecessors have actively sought to avoid placing the ANAO in a situation of being both decision maker and auditor.²¹

- 1.27 The Auditor-General subsequently explained to the Committee that he did not feel that it was appropriate for an auditor to take an executive role when they have an audit role.²²
- 1.28 With the release of the Guidelines in July 2008, the Auditor-General was not required to decide whether a campaign would run or not, but to provide a review opinion as to whether he considered the Guidelines had been satisfied.²³

Refined framework for government campaign advertising

- 1.29 This inquiry commenced in October 2008 and was still in progress when, on 31 March 2010, the Special Minister of State announced a refined framework for government campaign advertising. This followed the release of the *Independent Review of Government Advertising Arrangements* (the Hawke Report) by Dr Allan Hawke AC.
- 1.30 The Report recommended that the Auditor-General's role in reviewing proposed advertising campaigns before their launch be abolished. Instead

19 *The Australian*, 'The price of political expediency', viewed on 8 June 2010 at <http://www.theaustralian.com.au/news/features/the-price-of-political-expediency/story-e6frg6z6-1225873751579>

20 Mr Ian McPhee PSM, transcript, 11 March 2009, p 4.

21 Australian National Audit Office, Exhibit 3.

22 Mr Ian McPhee PSM, transcript, 11 March 2009, p 4.

23 Mr Ian McPhee PSM, transcript, 11 March 2009, p 5.

it recommended that the Auditor-General should be requested to conduct a performance audit on at least one campaign per year or the administration of the campaign advertising framework.²⁴

- 1.31 The Report also recommended the creation of an independent government communications committee, the Independent Communications Committee (ICC).²⁵ This would replace the Interdepartmental Committee on Communications (IDCC) which was a committee of officials which reviewed advertising campaigns to ensure whole-of-government coordination.²⁶
- 1.32 The Government accepted both of these recommendations, effective as of 31 March 2010.²⁷
- 1.33 Additionally the Government accepted the recommendation that the Guidelines be simplified and clarified except for the proposed raising of the threshold from \$250,000 to \$3.5 million. The previous threshold of \$250,000 will remain.²⁸
- 1.34 Chapter 4 addresses the refined framework for government advertising campaigns in more detail.

Purpose of the inquiry

- 1.35 After the release of the Guidelines in July 2008, the then JCPAA resolved on 15 October 2008 to hold a public hearing with the Auditor-General on his new role in scrutinising compliance of public advertising campaigns with the Guidelines. This hearing took place on 11 March 2009 and featured witnesses from ANAO and Finance.
- 1.36 The Committee decided to hold additional public hearings with a focus on examining several advertising campaigns through the review process, with the relevant agencies and the ANAO to give evidence.
- 1.37 Following the release of the Hawke Report and the announcement by the Government on 31 March 2010 of the refined framework for government

24 Hawke, A. 'Independent Review of Government Advertising Arrangements' (2010), p 26.

25 Ibid

26 Department of Finance and Deregulation, *Campaign Advertising by Australian Government Departments and Agencies, Full Year Report 2008-09* (2009), p 5.

27 Summary of Hawke Report recommendations and Government response, viewed at www.finance.gov.au on 5 May 2010

28 Ibid

advertising, the Committee decided to report on the progress of the inquiry until this date.

- 1.38 The Committee held a public hearing with the Auditor-General and Dr Hawke on 17 June 2010 to gain more evidence on the impact of the revised framework.

Conduct of inquiry

- 1.39 In all, the Committee held eight public hearings in Canberra, with oral evidence provided by 23 witnesses. The Committee was provided with 26 submissions for consideration.

Structure of the report

- 1.40 The report comprises four chapters. Chapter 2 covers the role of the Auditor-General in scrutinising government advertising, providing details on the review process as well as details of other agencies that were involved in the campaign advertising process. Chapter 3 highlights some of the issues that arose as a result of the Auditor-General's role in compliance. The final chapter provides an outline of the refined framework for government advertising, following the Government's announcement on 31 March 2010. This includes the Hawke Report and the new ICC.
- 1.41 The Committee has made only one recommendation which is listed in Chapter 4.