

Chapter 6

Adequacy of the guidelines for government advertising

6.1 In Chapters 2 and 3, the Committee noted that no comprehensive statement of expenditure on government advertising and no reasoned justification of the need for or evaluation of the effectiveness of government advertising campaigns is made available, as a matter of routine accountability, on the public record. The Committee also noted that the system for appropriating funds for government advertising provides little restraint on government spending in this area.

6.2 Given some of these deficiencies in accountability, the Committee considers that there is a need for clear principles to be established to provide guidance to officials, ministers and the Parliament about appropriate practice for government advertising and information activities.

6.3 Accordingly, in this chapter, the Committee examines the adequacy of the current guidelines covering Australian government advertising, and considers the merits of proposed alternatives to these guidelines.

The 1995 Guidelines

6.4 The *Guidelines for Australian Government Information Activities: Principles and Procedures* (the guidelines) used by the Australian government were first promulgated in February 1995 by the Keating Labor Government.

6.5 In evidence to the Committee, the Special Minister of State, Senator the Hon. Eric Abetz, maintained consistently that these guidelines do not require any revision or updating. He said:

Given the criticisms of previous administrations with advertising, the 1995 guidelines were set up and, in considering them, we think they are pretty good guidelines.¹

6.6 A little later in evidence, he reiterated the point:

We, as a government, overlook the whole system and we think it is working well. It is interesting that the principles and guidelines that we are using have been adopted by state governments, which I think might be seen as a bit of a tick of approval for them. You do not often get me saying this but the Labor government do sometimes get things right and when they do get

¹ Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 102.

it right we acknowledge it and we keep using it. We think that in 1995, in general terms, they got it right.²

6.7 In summary terms, the focus of the 1995 guidelines is on providing for government information programs to be communicated effectively to the whole community.

6.8 The guidelines emphasise the rights of all members of the community to be informed about government programs, activities and policies that affect them.³ They emphasise the need for information to be conveyed in such a way that it effectively communicates with the target audience as completely and impartially as practicable.⁴

6.9 They identify groups within the community, such as young people, the rural community, and those of non-English speaking background, whose particular needs must be considered in the development of information campaigns.⁵ The guidelines set percentage quotas for the expenditure of campaign money on advertising in non-English speaking media⁶ and they specify that the portrayal of women, ethnic communities and Aboriginal and Torres Strait Islander people must be 'realistic' and non-stereotypic, showing them as integral participants in and contributors to Australian society.⁷

Revising the 1995 guidelines

6.10 The Committee considers that the 1995 guidelines effectively cover a range of issues concerning government information activities that are important and relevant.

6.11 There are three reasons, however, for revising the guidelines.

6.12 The first is that they are ten years old and were written in a very different context. In 1995, continuous election campaigning was not a feature of the Australian political process as it is now. Devolution of accountability to agency level had not yet

2 Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 105. The Committee notes that these remarks do not appear to square entirely with either John Howard's promise to amend these same guidelines prior to the 1996 election, or with Senator Abetz's insinuation that the Carr government's spending on advertising in 2000-01 (using the guidelines) was excessive. See *Committee Hansard*, 19 August 2005, pp 77-78.

3 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, p. 2.

4 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, p. 3.

5 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, p. 3.

6 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, p. 5.

7 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, pp 3, 6.

occurred. This means that matters such as ensuring appropriate lines of process and accountability were not written into the guidelines. Technologies, such as the internet and mobile telephones, which were not widely used in 1995 are now key vehicles for advertising and marketing.

6.13 The Committee notes that there have been major revisions made by the Howard government in almost every other area of law, regulation and practice. Given that fact, and given the vastly different context in which the 1995 guidelines are now being applied, the Committee does not accept Senator Abetz's insistence that there is not one improvement, not one revision that could possibly be justified in relation to *these* guidelines.

6.14 The second is that, even as they stand, they are routinely not being met.

6.15 The guidelines state that 'at least 7.5 per cent of the campaign budget allocated to newspaper advertising must be devoted to non-English newspapers. Similarly, at least 7.5 per cent of the campaign budget allocated to radio advertising must be devoted to non-English radio'.⁸

6.16 Information provided by PM&C indicated that this target was not met in the case of newspaper advertising, and met only twice in the eight years since 1996-97 in the case of radio advertising. The following table illustrates the relevant percentages achieved.

Table 6.1: Percentage of campaign budgets allocated to non-English media

Year	Budget percentage allocated to non-English language newspapers	Budget percentage allocated to non-English radio
1996-97	2.0%	Figures not available
1997-98	4.4%	Figures not available
1998-99	4.4%	2%
1999-00	5.8%	13.8%
2000-01	4.5%	6.9%
2001-02	4.4%	4.8%
2002-03	5.6%	5.6%
2003-04	5.1%	9.3%

Source: Department of the Prime Minister and Cabinet, answers to questions on notice, 13 September 2005 (received 7 October 2005).

8 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, p. 5.

6.17 PM&C advised the Committee that Defence Force Recruiting is exempt from the requirement to allocate 7.5% of the advertising budget to non-English language newspapers and radio, that some campaigns in specific locations are not serviced by non-English language media and that 'for some large campaigns 7.5% expenditure would be excessive (eg. Taxation Reform)'.⁹

6.18 The Committee questioned PM&C about whether these caveats explain all the underspending on non-English language media, or whether the 1995 guidelines are simply not being complied with. The Committee had not received answers to these questions at the time of finalising this report. In either case, the non-compliance suggests that the percentages allocated under the guidelines are unnecessary and that the guidelines need revision.

6.19 The third reason for revising the 1995 guidelines is that they are silent on the major question before this inquiry, namely the potential for the misuse of government advertising for political advantage.

6.20 As the Auditor-General pointed out in his 1998 audit about aspects of the government's pre-election GST advertising campaign, 'there are currently no guidelines on the use of the central advertising system for party-political advertising in particular, which distinguish between government program and party political advertising'.¹⁰

6.21 The Auditor-General noted then that, because of concerns about precisely this issue internationally, 'many jurisdictions recognise that ... there is a need for clear principles to be established to provide guidance in this area'.¹¹ He endorsed this approach, saying that 'the development and adoption of conventions, principles and guidelines that provide more specific guidance on the use of government advertising would be helpful'.¹²

9 Department of the Prime Minister and Cabinet, answers to questions on notice, 19 August 2005 (received 7 October 2005).

10 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, p. 22 [emphasis in original].

11 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, p. 28.

12 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, p. 30.

6.22 This view was also adopted by the Senate Finance and Public Administration Legislation Committee in its 2002 report on the so-called 'political honesty' bills.¹³ At that time, the Committee agreed that there was strong evidence to support the argument that arrangements for the regulation of the political content of government advertising needed to be improved.¹⁴ The Committee noted that:

the present guidelines on government advertising offer no guidance to departments or ministers on the avoidance of political content in government advertising campaigns.¹⁵

6.23 The report noted too that the process of developing and placing government advertising campaigns is administered by the Government Communications Unit in PM&C, and decisions about the appropriateness of any major or 'sensitive' campaign are made by the Ministerial Committee on Government Communications. This means that it is 'the ministry itself which determines what constitutes responsible use of the ministerial office in relation to government advertising' and that, in the absence of any rules or guidelines 'preventing the party political use of government advertising ... decisions about content and presentation style are wholly in the power of the Executive'. The government's own majority report then went on to say that:

This lack of guidance allows the party in government to conduct government advertising campaigns, particularly in the lead up to an election, without any reference to standards regarding the appropriate use of public monies to promote government interests as distinct from party interests.¹⁶

6.24 For that reason, the Senate Finance and Public Administration Legislation Committee's 2002 report recommended revisions to the 1995 guidelines on government advertising.¹⁷

13 The Committee examined four individual pieces of proposed legislation – three Private Senators' Bills and a Private Member's Bill – all of which attempted to address issues of probity in public affairs and public confidence in the institutions of government. Senate Finance and Public Administration Legislation Committee, *Report on the Charter of Political Honesty Bill 2000 [2002]*; *Electoral Amendment (Political Honesty) Bill 2000 [2002]*; *Provisions of the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*; *Auditor of Parliamentary Allowances and Entitlements Bill 2000 [No.2]*, August 2002 [hereafter, Political Honesty Report].

14 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

15 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

16 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

17 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

6.25 The government did not implement that recommendation, and appears to have resiled from the Committee's conclusions on this issue. As noted earlier, Senator Abetz maintained throughout this inquiry that there is no need for the current guidelines to be revised. His argument was based on the claim that it had not been proved that any of the current government's advertising campaigns were party political, and therefore that there was no 'abuse' to correct.

6.26 The Committee does not accept the premise of Senator Abetz's argument. However, even if that premise were accepted, it does not constitute an argument against the need for guidelines addressing the issue. This point was made cogently by Professor Charles Sampford, Foundation Professor of Law, Griffith University and Director, Key Centre for Ethics, Law, Justice and Governance. He said:

it is obvious beyond repetition that accusations of the abuse of government advertising are made by each side against the other and that the prevalence of complaints has risen with the scale and gloss of government advertising campaigns ... Each side considers that the other has abused the power it has as government to provide spin rather than information. The logical conclusion is that both agree that a temptation exists and that at least one political party has given in to the temptation. One does not have to take sides and agree with one party – or to say that each are right about the other.¹⁸

6.27 The point is, Professor Sampford concluded, that there is self-evidently a temptation to abuse and there is a risk that governments will give in to the temptation. There is almost universal agreement that at least one party has given in to temptation.¹⁹ Therefore, there is a need, in public policy terms, to implement arrangements which reduce the likelihood of future governments succumbing to it.

6.28 As the Committee indicated in Chapter 1, irrespective of whether there has been misuse of government advertising for party political purposes by the current or previous federal governments, or state and territory governments, good public administration and good ethical standards require a robust accountability framework in this area.

6.29 Accordingly, the Committee considers that the need for guidelines that specifically address the issue of the potential for the misuse of taxpayer funded government advertising programs for party political purposes is undeniable.

6.30 In the next section of the report, the Committee considers the principles and guidelines suggested by a number of different reports, with a view to developing recommended guidelines for Australian government advertising. In particular, the Committee considers the principles and guidelines suggested by:

18 Professor Charles Sampford, *Submission 4*, p. 1.

19 Professor Charles Sampford, *Submission 4*, p. 1.

-
- the 1998 Auditor-General report, *Tax Reform: Community Education and Information Programme*;
 - the 2000 Joint Committee of Public Accounts and Audit (JCPAA) report, *Guidelines for Government Advertising*; and
 - the 2002 Senate Finance and Public Administration Legislation Committee (F & PA) report, *Charter of Political Honesty Bill 2000 [2002]*; *Electoral Amendment (Political Honesty) Bill 2000 [2002]*; *Provisions of the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*; *Auditor of Parliamentary Allowances and Entitlements Bill 2000 [No.2]*.

Auditor-General's principles and guidelines

6.31 The principles and guidelines suggested by the Auditor-General were derived from guidelines adopted in New Zealand and the United Kingdom, and suggested as a result of reviews of government advertising in Victoria, New South Wales, Queensland, Western Australia and British Columbia.²⁰ They comprised two underlying principles and four guidelines.

6.32 The two underlying principles proposed were:

- all members of the public have equal rights of access to comprehensive information about government policies, programs and services which affect their entitlements, rights and obligations, except where providing this information would be a breach of government responsibility; and
- governments may legitimately use public funds to explain their policies, programs and services and to inform the public of their obligations, rights and entitlements.²¹

6.33 In summary terms, the four overarching guidelines proposed were:

- **Material should be relevant to government responsibilities.** Relevant considerations under this heading are that an information strategy should be considered as a routine and integral part of policy development and planning, and that no campaign should be contemplated without identifying the need and target audience through appropriate market research. Examples of suitable uses for government advertising include: dissemination of scientific, medical or safety information; provision of information to facilitate government accountability; provision of information about new, existing or proposed government policies, programs or services.

20 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, p. 57.

21 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, p. 57. The principles and guidelines are also summarised and discussed in Senate Finance and Public Administration Legislation Committee, *Political Honesty Report*, p. 105.

- **Material should be presented in an objective and fair manner.** This means that information campaigns should be directed at providing 'objective, factual and explanatory information', presented in an unbiased manner and capable of being substantiated and independently verified. Recipients of information should be able to distinguish clearly between facts and any comment, opinion and analysis, and any comparisons made should not be misleading.
- **Material should not be liable to misrepresentation as party political.** Material should not intentionally promote or be perceived as promoting party-political interests. Accordingly, it should be presented in unbiased and objective language, not directly attacking or scorning the views of others such as opposition parties, and should avoid using party political slogans or images, including ministerial photographs.
- **Distribution of sensitive material should be controlled.** As a general rule, material that is politically controversial should not reach members of the public unsolicited except where the information clearly and directly affects their interests. Generally, such material may be issued only in response to direct requests. Further, government advertising material should not be used or reproduced by political parties in support of party-political activities without 'appropriate approval'. Material should be produced and distributed in a cost-effective manner, following a justifiable cost-benefit analysis. Thus, objectives 'which have little prospect of being achieved, or which are likely to be achieved only at disproportionate cost, should not be pursued without good reasons'. Advertisements must comply with relevant law and with purchasing and procurement policies.²²

Joint Committee of Public Accounts and Audit

6.34 In 2000, the Joint Committee of Public Accounts and Audit (JCPAA) reviewed the Auditor-General's report and, in particular, his proposed guidelines for government advertising. The then Chair of the Committee, Mr Bob Charles MP, noted in his foreword to the JCPAA's report that the issue of government advertising guidelines is highly controversial in a party-political sense. Nevertheless, he said, the Committee 'determined that it wished to produce draft guidelines for Government to consider which, while not perfect nor totally agreed by all Committee members, do represent the majority and largely consensual views of the Committee'.²³

6.35 Mr Charles reported that the JCPAA took the guidelines suggested by the Auditor-General in 1998 as its starting point. It compared these proposed guidelines with the existing 1995 guidelines, and with other guidelines in both Australian and

22 Auditor-General, *Taxation Reform: Community Education and Information Program*, Audit Report No.12, October 1998, pp 57-60. See also Senate Finance and Public Administration Legislation Committee, *Political Honesty Report*, p. 105.

23 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. iii.

overseas jurisdictions. These included guidelines proposed by the Australasian Council of Auditor-Generals, the audit offices of Queensland and Victoria, and the guidelines of the United Kingdom and New Zealand governments.²⁴

6.36 The main differences between the JCPAA draft guidelines and those proposed by the Auditor-General are as follows:

- the underlying principles include an additional clause, stating specifically that 'government information programs shall not be conducted for party-political purposes';
- under the second sub-heading, 'Material should be presented in an objective and fair manner', the JCPAA guidelines include three additional dot points which address the accessibility of information to disadvantaged individuals or groups. These new dot points essentially incorporate the elements of the 1995 guidelines which require that particular attention be given to the communication needs of young people, the rural community and people of non-English speaking backgrounds, and also that attention be given to the appropriate portrayal in government advertising of women, ethnic communities, and Aboriginal and Torres Strait Islander communities;
- the Auditor-General guideline headed 'Distribution of sensitive material should be controlled' is omitted, and a dot point is added to the previous guideline which states just that 'distribution of unsolicited material should be carefully controlled' and that all advertising material and the manner of its presentation should comply with relevant law, including broadcasting, media, privacy and electoral law; and
- an additional guideline, headed 'Material should be produced and distributed in an efficient, effective and relevant manner, with due regard to accountability' is included. This guideline states that information campaigns should be justified by a cost-benefit analysis and that the campaign 'should be justified in terms of society's needs, efficiency and effectiveness, and there should be a clear audit trail regarding decision making'.²⁵

6.37 The then Deputy Chair of the JCPAA, Mr David Cox MP, argued for the incorporation of an objective test for the expenditure of public money on government information campaigns, to determine the threshold between party political and appropriate expenditure by government. In particular, he suggested that no expenditure of public money on mass advertising should occur until the legislation to implement the relevant policy, program or service has been passed; and, where a proposed advertising campaign covers a matter that does not require legislation, an

24 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. iii.

25 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, pp 4-7; see also Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 106.

appropriation for the specific purpose of the campaign must be obtained. He proposed that the only exclusions to these requirements be where major issues of public health, public safety or public order arise at short notice.²⁶

6.38 The JCPAA did not adopt Mr Cox's proposals in its guidelines.

6.39 In addition, another member of the Committee, Mr Petro Georgiou MP, dissented from components of the JCPAA's guidelines headed 'Material should not be liable to misrepresentation as party political' on the grounds that:

- in a highly combative political system, materials which are non-partisan are open to misrepresentation as party political; and
- the dot points indicating the factors to be used to determine whether material can be perceived as 'party political' do not provide a sufficiently clear and objective basis for assessing whether or not such a perception is valid.²⁷

6.40 Senator Abetz relied on these remarks by Mr Georgiou to argue against adopting any part of the JCPAA's proposed guidelines.²⁸ The Committee notes, however, that neither Mr Georgiou nor Mr Cox dissented from the JCPAA's statement of the underlying principles governing the use of public funds for government information programs. There was therefore unanimous support from the JCPAA for the principle that 'government information programs shall not be conducted for party-political purposes'.

6.41 The JCPAA recommended that the Government adopt its guidelines for government advertising. It noted that there were different views within the Committee over whether the guidelines should be legislated or left as Ministerial or Cabinet guidelines.²⁹

Senate Finance and Public Administration Legislation Committee

6.42 In 2002, the F&PA Legislation Committee reported on its inquiry into four pieces of proposed legislation introduced as either Private Member's or Senator's Bills. The four pieces of legislation were:

- the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000 introduced into the House of Representatives by the Hon. Mr Kim Beazley MP;

26 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. 2.

27 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. 3.

28 Senator the Hon. Eric Abetz, answers to questions on notice, 19 August 2005 (received 7 October 2005); *Committee Hansard*, 19 August 2005, p. 104.

29 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. 3.

-
- the Charter of Political Honesty Bill 2000 [2002] introduced into the Senate by Senator Andrew Murray;
 - the Electoral Amendment (Political Honesty) Bill 2000 introduced into the Senate by Senator Andrew Murray; and
 - the Auditor of Parliamentary Allowances and Entitlements Bill 2000 introduced into the Senate by Senator John Faulkner and into the House of Representatives by the Hon. Mr Kim Beazley MP.³⁰

6.43 Two of these bills, the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000 and the Charter of Political Honesty Bill 2000 [2002], proposed measures to better regulate government advertising. The measures proposed in both bills drew largely on the guidelines proposed by the Auditor-General and the JCPAA, but also advocated enforcement of those guidelines respectively through the courts and through a committee including the Auditor-General and the Ombudsman.³¹

6.44 These proposals were discussed in the F&PA Legislation Committee's report, which raised a number of concerns about the enforcement provisions. Largely because of these concerns, the Committee recommended that the bills not proceed.

6.45 Nevertheless, as noted above, the F&PA Legislation Committee also concluded that there was strong evidence to support the argument that arrangements for regulating the political content of government advertising need to be improved 'in the face of public criticism'.³² The Committee notes that public criticism has not abated. Indeed, if anything, it has increased.

6.46 The Committee therefore recommended that, 'as a minimum', the 1995 guidelines should be amended to include 'a clear statement of the fundamental principle: that government information programs should not be, or be liable to misrepresentation as being, party political'.³³

6.47 The F&PA Legislation Committee acknowledged that it is difficult to codify the distinction between what is party political and what is not. However, it noted that its recommended 'fundamental principle' had been recognised in the United Kingdom's equivalent guidelines together with elaboration on how that principle is to

30 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 1.

31 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, pp 108-119.

32 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

33 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

be applied. The Committee said that it saw 'no reason why similar material should not be contained in the Australian guidelines'.³⁴

6.48 The F&PA Legislation Committee recommended that the guidelines proposed by the Auditor-General and the JCPAA, in combination with evidence received by its inquiry, should be used as a basis for developing a detailed set of standards. It agreed, however, with the Auditor-General that the development of standards on these matters is 'essentially political', and that consequently it is for Parliament as a whole to examine, decide and issue detailed guidelines on what is appropriate.³⁵

6.49 Accordingly, the Committee's government majority recommended that the task of developing these standards be referred to a new joint parliamentary committee.³⁶ This recommendation was not acted upon by the government.

Government arguments against revision of 1995 guidelines

6.50 In evidence to this Committee, the government mounted two arguments against the revision of the 1995 guidelines using those proposed by previous inquiries as a basis.

6.51 The first argument, as noted above, was that there is no need to revise the existing guidelines. That argument in turn relies upon the claim that there are no 'problems' with government advertising practice that are not covered by those guidelines.

6.52 The Committee finds Senator Abetz's dogged defence of the sufficiency of these guidelines somewhat undermined by the fact that his government consistently fails to meet the only measurable requirement they contain, namely the requirement that 7.5% of expenditure on advertising in newspapers and on radio be spent on non-English language media. Further, his insistence that there is nothing 'necessary for accountable, efficient and cost-effective delivery of information activities'³⁷ that is not covered fully by the 1995 guidelines is simply not borne out by comparison between them and the revised guidelines proposed by the Auditor-General and the JCPAA.

34 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

35 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 121.

36 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 122. The government's majority on the Committee had recommended the establishment of a new joint parliamentary committee, the Joint Standing Committee on a Code of Conduct for Ministers and Other Members of Parliament, and so recommended that the task of developing guidelines be referred to that body.

37 Senator the Hon. Eric Abetz, answers to questions on notice, 19 August 2005 (received 7 October 2005).

6.53 For example, in relation to the requirements of objectivity and impartiality, the 1995 guidelines say that:

All information programs conducted by departments should be as impartial and as complete as practicable and based on the information needs and capacities of the target audience. Information programs should be based on relevant research, and contain feedback and evaluation mechanisms where possible. Departments should use simple, clear language in all communication with the public to ensure their messages are easily understood.³⁸

6.54 The Auditor-General and JCPAA guidelines state:

The following guidelines are suggested to assist in determining whether the material communicated is presented in an explanatory, fair, objective and accessible manner:

- Information campaigns should be directed at the provision of objective, factual and explanatory information. Information should be presented in an unbiased manner;
- Information should be based on accurate, verifiable facts, carefully and precisely expressed in conformity with those facts. No claim or statement should be made which cannot be substantiated.
- The recipient of the information should, to a practical and reasonable extent, be able to distinguish clearly and easily between facts on the one hand, and comment, opinion and analysis on the other.
- When making a comparison, the material should not attempt to mislead the recipient about the situation with which the comparison is made and it should state explicitly the basis for the comparison.³⁹

6.55 There is nothing incorrect about the overall statement of principle given by the 1995 guidelines on this matter. Only someone wishing to wilfully avoid the requirements of objectivity and impartiality, however, could claim as Senator Abetz did that this second set of guidelines 'offers nothing of value in addition to the 1995 Guidelines'.⁴⁰

6.56 The second of Senator Abetz's arguments against revising the 1995 guidelines is that it is not possible to codify the distinction between 'government' and 'political'

38 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995, para 2.6.

39 Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising*, September 2000, p. 5. See also Auditor-General, *Taxation Reform: Community Education and Information Programme*, Audit Report No.12, October 1998, p. 58.

40 Senator the Hon. Eric Abetz, answers to questions on notice, 19 August 2005 (received 7 October 2005).

advertising, and that any attempt to make such distinctions will require public servants to make essentially political judgements.

6.57 In his submission to the Committee, Senator Abetz made both these points. On the first issue, he said that the requirement in both the Auditor-General's and the JCPAA's proposed guidelines that 'material should not be liable to misrepresentation as party political' is unworkable in a combative political system. He argued that:

Even seemingly innocuous and bipartisan campaigns could become the subject of political controversy. For example, doctrinaire pacifist parliamentarians could claim that something as accepted as 'Defence Force Recruitment' is 'party political' because it reinforces a view of Australian defence – ie. armed forces – which is at odds with their own view. Another seemingly innocuous example is the 'Tough on Drugs' campaign that carries an overtly anti-marijuana message, despite the fact that there are some parliamentarians who actively support the decriminalisation and use of that drug.⁴¹

6.58 The Committee notes that Senator Abetz has confused two separate issues in these remarks. He has confused the question of whether there may be controversy over the content of certain advertisements with the question of the reasons for that controversy. He has failed to notice the distinction between controversy which arises on *policy* grounds or because of *policy* differences, and controversy which arises because of the misuse of taxpayer funds in the service of essentially *political* interests.

6.59 In other words, Senator Abetz's argument implies that it is not possible to distinguish between government advertising campaigns that inform the public of policies or advise of entitlements, whether one endorses those policies or not, and advertising campaigns that promote the government's views in a partisan way. This is clearly not the case.⁴²

6.60 The Committee acknowledges that whether a particular campaign to advertise a government policy or program avoids 'partisan promotion' of that policy is a matter of judgement. There may be differences of opinion on these questions, and no guidelines can provide an absolutely objective way of drawing the line. However, this does not mean that it is impossible to make any judgements at all on these issues. Other governments in other countries do it quite easily.

6.61 As was illustrated by the discussion in Chapter 4, it is clearly possible to distinguish between a campaign such as the WorkChoices campaign which asserts disputed political opinion as fact and those, such as the Super Choices or the Keeping the System Fair campaigns, which state the facts about government policies and the obligations they impose on citizens.

41 Senator the Hon. Eric Abetz, *Submission 9*, p. 5.

42 It is interesting to note that Senator Abetz himself found no difficulty in making such a judgement when he recently publicly criticised a Tasmanian government advertising campaign promoting a business telephone hotline. See *The Mercury*, 28 October 2005, p. 5.

6.62 Senator Abetz raised a second objection to the 'workability' of any of the proposed guidelines. He claimed that the adoption of guidelines requiring a judgement on the 'partisan political' content of advertisements would place public servants in an invidious position. He said:

if the ANAO/JCPAA recommendations were to be implemented, officials would be required to certify that each element of any information campaign could, in no way, be misinterpreted as 'party political', yet that official would have no objective criteria to support their decision for any such certification ... Thus, any Government official effectively stakes their reputation and career on the probability that no MP will criticise, either with or without justification, that particular advertising campaign.⁴³

6.63 A similar point was made in the submission from the Department of the Prime Minister and Cabinet, which spoke about the 'subjectivity and difficulty' for officials of interpreting whether a particular information campaign would be 'liable to misrepresentation as "party political"'.⁴⁴ The submission continued that:

It would always be difficult for officials to make judgements in these areas. For example, any advertising to promote understanding of a government policy could be regarded as not being 'free from partisan promotion'. In practice, it would be more appropriate to resolve these interpretations at the Parliamentary and political level.⁴⁵

6.64 The Committee considers that these arguments are highly misleading. As is clear from the previous chapter's discussion of the processes involved in decision making about government advertising, these judgements *are* made at the political level. Officials provide advice and are involved in implementing government approved advertising campaigns, but it is the Executive itself through the MCGC that approves every major and 'sensitive' campaign.

6.65 It is the members of the Executive, and not officials, who would therefore be required under the guidelines to make the judgement that a particular campaign is directed at promoting party political interests or not. The argument that officials would be placed in an invidious position by the government's adoption of the guidelines is a complete furphy.

Conclusion

6.66 The Committee considers that the guidelines proposed by the JCPAA, which combine both the Auditor-General's guidelines and the essential elements of the 1995 guidelines regarding effective communication to the whole community, provide a comprehensive basis for a set of principles and guidelines for government advertising.

43 Senator the Hon. Eric Abetz, *Submission 9*, p. 5.

44 Department of the Prime Minister and Cabinet, *Submission 5*, p. 5.

45 Department of the Prime Minister and Cabinet, *Submission 5*, pp 5-6.

The Committee cannot give credit to a line of argument that says that every line of those principles and guidelines has no merit.

6.67 The Committee considers, however, that the two sets of additional remarks made by Mr Cox and Mr Georgiou raise points that should also be taken account of in implementing the guidelines.

6.68 First, the Committee considers that no expenditure of public money for mass media advertising should be undertaken until the government has obtained passage of the legislation giving it authority to implement the relevant policy, program or service. Where a proposed public information or education campaign covers a matter which does not require legislation, an appropriation for the specific purpose of the campaign must be obtained. The requirement should not be enforced in situations where major issues of public health, safety or public order have arisen at short notice.

6.69 Second, the Committee considers that the heading of the guideline which states that 'material should not be liable to misrepresentation as party political' may give rise to unnecessary debate and controversy. The heading should read instead that 'material should not be directed at promoting party political interests'.

6.70 The question of what other measures might need to be taken to give effect in practice to such principles and guidelines is considered in the next chapter.

Recommendation 3

6.71 The Committee recommends that the government update the 1995 Guidelines on Australian Government Information Activities as a matter of urgency.

Recommendation 4

6.72 The Committee recommends that the Government adopt the Joint Committee of Public Accounts and Audit's draft guidelines for government advertising, amended as follows:

- **insert after the third dot point under 'Material should be relevant to government responsibilities' three additional dot points as follows:**
 - (a) No expenditure of public money should be undertaken on mass media advertising, telephone canvassing or information services, on-line services, direct mail or other distribution of unsolicited material until the government has obtained passage of legislation giving it authority to implement the policy, program or service described in the public information or education campaign.**
 - (b) Nothing in (a) should be taken to prohibit the government from seeking a public response to draft legislation or to Green or White papers. Advertising for public response to draft legislation, however, must take the form of inviting submissions and formal comment on a published bill or discussion paper.**

- (c) Where a proposed public information or education campaign covers a matter which does not require legislation, an appropriation for the specific purpose of the public information or education campaign must be obtained.**
- (d) The only exclusions to these requirements are where major issues of public health, public safety or public order may arise at short notice.**
- replace the guideline heading 'Material should not be liable to misrepresentation as party political' with heading 'Material should not be directed at promoting party political interests'.**

