

## Chapter 7

### Enforcement of guidelines and other accountability mechanisms

#### Sufficiency of guidelines

7.1 The Committee acknowledges that general guidelines on government advertising have, on their own, limited power to direct the activities of the government. As Mr Harry Evans, the Clerk of the Senate, noted in his submission:

[The guidelines] amount to little more than an injunction that government advertising projects must not be party-political ... Their application would involve a great deal of subjective judgement. Because of this subjective element, governments could run partisan campaigns while claiming adherence to the guidelines, by pointing out that any claim that advertisements are partisan is merely a matter of personal opinion.<sup>1</sup>

7.2 This means that, even if the government were to adopt the JCPAA guidelines or some version of them, the 'problem' of government advertising being used or having the potential to be used for partisan political purpose will not be automatically solved. Guidelines will only be effective in the context of a broader accountability framework.

7.3 In this chapter, the Committee considers the question of the enforceability of the guidelines, as well as other mechanisms which could be part of an overall accountability framework.

#### Enforceability of guidelines

7.4 This inquiry received little new evidence on the question of how any guidelines covering the legitimate use of government advertising might be enforced. There was, however, extensive discussion of this issue in the inquiry into the 'political honesty' bills by the Senate Finance and Public Administration Legislation Committee (F&PA Committee) in 2002. In this section, the Committee reviews the major elements of that discussion.

7.5 There seem to be three main options available for monitoring and enforcing guidelines on government advertising, which could be implemented either singly or in some combination. They are: first, enforcement of the guidelines through the court system; second, establishing some form of independent scrutiny of proposed advertising campaigns; and, third, enabling more effective parliamentary scrutiny and accountability.

---

1 Mr Harry Evans, *Submission 6*, pp 2-3.

### ***Court enforcement***

7.6 An example of a proposal to monitor and enforce guidelines on government advertising directly through the court system was provided by the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000, introduced by the Hon. Kim Beazley MP.

7.7 The *Financial Management and Accountability Act 1997* contains a criminal offence, with a maximum penalty of seven years' imprisonment, that applies where a minister or official misapplies or improperly uses or disposes of public money.<sup>2</sup> The Bill sought to amend the Act to state that it is improper to use or permit the use of public money for a 'government information program' that does not comply with the principles and guidelines set out in the schedule to the Bill. That means that it is for the courts to decide whether or not there has been a breach of the guidelines.<sup>3</sup>

7.8 Again, under this kind of proposal, the guidelines would be legislated and their interpretation taken outside the Parliamentary arena. However, in this case, monitoring of the legitimacy of particular campaigns would always take place after the campaigns had run, rather than in the context of seeking prior approval.

7.9 The arguments raised against this proposal were:

- that to create a criminal offence punishable by up to seven years' imprisonment by reference to such vague guidelines would result either in a high likelihood of any prosecutions failing or a temptation to judicial activism;
- that it is 'inimical to the traditions of the Australian criminal law system' to invoke the criminal law to deal with a situation that is essentially political; and
- that courts are ill-equipped to make the kinds of determinations that would be required.<sup>4</sup>

7.10 The Committee agrees with the views on this proposal expressed in the additional comments and points of dissent by Senator the Hon. John Faulkner and Senator Michael Forshaw to the F&PA Legislation Committee report. The Senators recognised 'the serious difficulties ... of creating a criminal offence by reference to guidelines which necessarily lack precision and involve a large element of subjective assessment'.

---

2 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 103.

3 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 103.

4 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, pp 117-119.

---

### ***Independent scrutiny***

7.11 The Committee is aware of three different proposals for ensuring independent scrutiny of proposed government advertising campaigns. In this section, it outlines those proposals and then develops its own view in response.

### ***Government Publicity Committee***

7.12 The Charter of Political Honesty Bill 2000 [2002] introduced by Senator Murray proposed the establishment of an independent body, to be called the Government Publicity Committee, to monitor and enforce compliance with guidelines for government advertising campaigns.

7.13 The bill proposed that the members of the Government Publicity Committee be the Auditor-General, the Ombudsman and 'a person with knowledge and experience in advertising' to be appointed by the Auditor-General.<sup>5</sup> According to the bill, if the Committee considered that an advertising campaign did not comply with the guidelines, it could direct that the campaign be withdrawn or modified. The Committee would also be given the power to determine whether the objective of a campaign was legitimate, and whether a campaign was likely to achieve its stated objective. If not, the committee could order that the campaign be withdrawn.<sup>6</sup>

7.14 Senator Murray's proposal required that the guidelines become statutory or legislated guidelines, and that the independent body have recourse to the courts if a Commonwealth agency or employee failed to comply with its directions.

7.15 An objective of the bill, elaborated upon by Senator Murray, was to provide a mechanism whereby an advertisement that breached the guidelines could be withdrawn or modified at the time, rather than having to be adjudicated upon after the event when, perhaps, the 'damage' had already been done.<sup>7</sup>

7.16 There were, however, significant arguments raised against this proposal, including:

- concern about the subjectivity of the judgements required to be made by the independent body, especially given the lack of precision in the guidelines;
- the danger of politicising the role of offices such as the Auditor-General and the Ombudsman if they were able to direct that a campaign be withdrawn; and

---

5 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 102.

6 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 103.

7 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 112.

- the lack of provision for the review of the decisions and directions made by the body, and the fact that courts could be drawn into essentially political debates.<sup>8</sup>

7.17 The Committee recognises these concerns.<sup>9</sup> Senator Murray has accepted these are valid concerns, but continues to argue for an independent oversight body.

### ***Independent commission for advertising***

7.18 Other proposals concerning the establishment of some kind of independent body, but not requiring the involvement of the Auditor-General or the Ombudsman, have also been made. For example, in evidence on the Charter of Political Honesty Bill 2000 [2002], Mr Evans, Clerk of the Senate, said that he 'saw merit' in the establishment of a separate independent body, such as a government advertising tribunal, that would adjudicate on precise guidelines.<sup>10</sup>

7.19 Likewise, in his submission to this inquiry, Professor Charles Sampford, Foundation Professor of Law, and Director, Key Centre for Ethics, Law, Justice and Governance, Griffith University, argued that:

...it is time to recognize that we need an institutional solution that puts approval of government advertising in the hands of an independent body ... I recall the debates about gerrymanders that raged for most of the first century of federation. Each side had its own arguments about why what they did was OK and the other side was terrible. We have now largely taken redistributions out of the hands of politicians and put them in the hands of independent electoral commissions. It is one of those developments of our integrity system that are now completely accepted and which we trumpet to the world and occasionally provide useful and important assistance to fledgling democracies. I would like to suggest that the time is overripe for another development of our integrity system of which we can be retrospectively proud.<sup>11</sup>

7.20 In evidence given at a public hearing, Professor Sampford elaborated on the mechanism that might be used to appoint the members of such an independent

---

8 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, pp 109-114.

9 The Committee notes that legislation was introduced in Ontario, Canada, in December 1994 which requires that the provincial Auditor-General review specific types of advertising by government offices before they are released. The review includes assessing whether an advertisement has as its primary aim to promote the partisan political interests of the governing party. Under this legislation, any item that does not, in the opinion of the Auditor-General, meet the standards required by the Act cannot be used and the Auditor-General's decision is final. Dr Sally Young, *Submission 3b*, pp 4, 17.

10 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 115.

11 Professor Charles Sampford, *Submission 4*, p. 2.

---

commission for advertising. He suggested that the independent commission be appointed by a parliamentary committee, and that each appointment require multi-party support.<sup>12</sup>

7.21 As with Senator Murray's original proposal, Professor Sampford saw that an advantage of this kind of solution is that it would allow a system of prior approval of government advertising campaigns to be established.<sup>13</sup> In his words:

You want to have somebody making that primary decision, and that comes back to my big point: prior advice is better than subsequent investigation ... If you rely on subsequent investigation and exposure, it actually raises the stakes, and it also does not raise standards of behaviour as much as if you actually have the prior advice, especially if you have the capacity to actually get this a rubber stamp saying, 'This is done with integrity; this is within the guidelines', particular when it comes to say a government advertising campaign prior to an election campaign.<sup>14</sup>

7.22 Professor Sampford was questioned about whether, in reality, governments would be prepared to give up their capacity to run advertising campaigns without having to seek prior approval or being constrained by an independent arbiter. In response, he reiterated his earlier example of Australian governments giving up their capacity to determine electoral distributions. Professor Sampford suggested that there are two primary incentives for governments to relinquish the power they have in this area.

7.23 First, it is in governments' own interests to have fair rules because governments will be in and out of office. Once out of office, they may find the benefits of incumbency being used against them. He noted that 'obviously that interest fluctuates depending on whether you are in government or not'.<sup>15</sup>

7.24 Second, he said that the credibility of the institutions over which governments are fighting is an issue. 'If the credibility of winning government is tainted by an allegation of a gerrymander ... the office is not worth as much because the winners have been tainted'. Similarly, he suggested, democracy involves at heart the understanding that 'if only the public had a fair description of your views, compared to the other side's views, they would join you'. If you undermine people's capacity to gain a fair understanding of your views, or the other side's views, then you undermine a very important democratic principle.<sup>16</sup>

---

12 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 28.

13 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 36.

14 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 36.

15 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 37.

16 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 37.

7.25 Professor Sampford also suggested that there might be direct advantages in government advertising campaigns having the imprimatur of an independent body. He said:

As far as straight-out efficiency is concerned, if any government wants to communicate information to the public, the fact that it has gone through this independent scrutiny will make it much more credible, people are much more likely to believe it and you will not have to spend as much money on it ...<sup>17</sup>

### ***Scrutiny by Public Service Commissioner***

7.26 Finally, the Committee notes the proposal for independent scrutiny of government advertising made by Mr Kelvin Thomson MP in a Private Member's bill, that was read for the first time on 12 September 2005. The bill includes a modified version of the JCPAA guidelines and provides that 'a Minister, a Commonwealth agency or an official must not take any action that is contrary to the Guidelines'.<sup>18</sup>

7.27 The bill then provides that for each advertising project proposed by a Commonwealth agency which is estimated to cost \$250,000 or more, the Chief Executive of the agency must make a statement to the Public Service Commissioner. The statement must include information about the purpose and target audience of the advertising, information about the tendering and contracting arrangements, the estimated cost of the project, the compliance of the project with the guidelines and the extent of, and reasons for, any non-compliance.<sup>19</sup>

7.28 The Commissioner must assess the proposed advertising project, and recommend that the project be approved or not.<sup>20</sup> The Commissioner's assessment must be tabled in Parliament and provided to the responsible Minister.<sup>21</sup> The responsible Minister 'must take into account any recommendations that the Commissioner makes'.<sup>22</sup> The Minister cannot approve a proposed advertising campaign until the Commissioner has reported, except where the project addresses

---

17 Professor Charles Sampford, *Committee Hansard*, 19 August 2005, p. 39.

18 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclause 5(2).

19 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclause 6(2).

20 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclause 7(1).

21 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclause 7(4).

22 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclause 7(6).

---

major issues of public health, public safety or public order that have arisen at short notice.<sup>23</sup>

***Committee proposal – report by Auditor-General***

7.29 The Committee notes that the merits of all these proposed 'institutional solutions' to the issue of government advertising are that they attempt to address the potential impact of government advertising campaigns in propaganda as well as fiscal terms.

7.30 The very fact, however, that they attempt to address this issue means that any body charged with approving or withholding approval of proposed advertising campaigns may be vulnerable to being caught in political cross-fire.

7.31 The Committee seeks to draw on the strengths of a number of the proposals outlined in this section, while being realistic about the fact that ultimately the development and approval of advertising campaigns is in the hands of the government of the day. The Committee also does not wish an independent scrutineer to duplicate monitoring that is taking place by other means.

7.32 Accordingly, the Committee makes the following proposal for ensuring some degree of independent scrutiny of government advertising activities:

- Once an advertising campaign valued at \$250,000 or more has been finalised and has been given final approval by the MCGC, the advertisements must be submitted to the Auditor-General or their delegate for assessment. The advertisements are to be submitted to the Auditor-General by the department that is incurring the expenditure. The Auditor-General must report back to the department and the portfolio minister whether the campaign complies with the revised guidelines on government advertising, and the extent of any non-compliance.
- It is open to the department and the Minister to make the changes necessary to bring the campaign into compliance, or to reject the Auditor-General's report.
- Every six months, the Auditor-General must table a report in the Parliament which details his or her assessment against the guidelines of the advertising campaigns that have been implemented during that six-month period.
- If a department continues with a campaign that the Auditor-General has assessed as not complying with the guidelines, and has provided reasons for that course of action, the Auditor-General must include the departmental response in the tabled report. If a department has amended a campaign in the light of the Auditor-General's initial assessment, the Auditor-General will not table the initial report but only the final assessment made of the campaign.

---

23 Government Advertising (Prohibiting the use of taxpayers' money on party political advertising) Bill 2005, Part 2, subclauses 7(7) and 7(8).

7.33 The Committee notes that the former NSW Auditor-General, Mr Tony Harris, endorsed the notion that it was appropriate for the Commonwealth Auditor-General to audit government advertising campaigns for their legality and their efficacy.<sup>24</sup>

7.34 It may be argued that this proposal still risks politicising the office of the Auditor-General. The Committee does not believe this will occur for the following reasons.

7.35 First, the Auditor-General routinely makes critical findings relating to government departments, programs and policy implementation. Indeed, the role of the Auditor-General is to improve the integrity of public administration by examining where the government is not meeting its own guidelines or stated objectives. The extent to which the government is being successful in this regard is always a matter of judgement and analysis, rather than of mechanical checking against a set of undisputed 'facts'.

7.36 This proposal requires simply that the Auditor-General evaluate the extent to which the government is complying with the guidelines on government advertising that the Committee has recommended the government adopt. It is therefore not different in kind to the evaluations and performance audits that the Auditor-General routinely conducts on other activities of government.

7.37 As Mr Harris said:

ANAO has a duty to perform audits that are relevant to improving the legality and efficiency, economy and effectiveness of government. ANAO may not validly question the merits of government policies, but it may – and must – examine their legality and their efficacy. Indeed, if ANAO avoided audits solely because they are controversial, it would be failing its duty.<sup>25</sup>

7.38 Second, this proposal does **not** require that government advertising campaigns are approved by the Auditor-General before they can be run, nor that the Auditor-General may direct the withdrawal of an advertising campaign. Rather, government advertising campaigns are simply certified as complying with the guidelines or not, and a report on the extent of any non-compliance made available to the Parliament and the public.

7.39 The consequences of any non-compliant government advertising being implemented remain a matter for the Parliament to pursue.

---

24 Mr Tony Harris, *Submission 8*, p. 6.

25 Mr Tony Harris, *Submission 8*, p. 5.



---

### *Effective parliamentary scrutiny*

7.40 The third option that is available for monitoring government compliance with any guidelines on government advertising is the establishment of conditions for more effective parliamentary scrutiny.

7.41 The F&PA Legislation Committee report discussed this option in terms of a suggestion from the Ombudsman that a parliamentary committee be established for the purpose. Parliament, it was proposed, could set the standards to be considered and the committee might recommend action 'related to a Minister' or reimbursement to the relevant agency of money spent on politically partisan advertisements.<sup>26</sup>

7.42 This option would not require that the guidelines or standards be legislated, and would put the issue of making judgements about political matters back in the sphere of politics.

7.43 A concern expressed about this proposal was that any parliamentary body which had 'right of veto' over an executive government advertising program would find its role difficult.<sup>27</sup>

7.44 However, an advantage of this proposal is that it would allow parliament to scrutinise proposed advertising campaigns in advance of their being broadcast, and to directly monitor large-scale expenditure of public funds. The scrutiny proposed is analogous to that undertaken by the Joint Standing Committee on Public Works, which considers expenditure of \$6 million or more on all public works sponsored by Commonwealth departments and major statutory authorities with large building programs.

7.45 Another approach to ensuring more effective parliamentary scrutiny of advertising activities would be to require that the Parliament have access to all information relevant to the government's decision making about the need for and the appropriation of funds for government advertising campaigns. Provided with this information, the Parliament would then be in a position better to hold the relevant Minister to account for the expenditure of funds in his or her portfolio.

7.46 The Committee notes that this approach falls into the 'subsequent investigation' rather than 'prior advice' category, but considers that it is a necessary element of any effective accountability framework in this area. The question of what information might be required by the Parliament to exercise this role will be considered in part in the next section of the report.

---

26 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 115.

27 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 115.

## Other accountability mechanisms

7.47 In evidence to the Committee, two other accountability mechanisms were suggested which have not previously been discussed in the report. They were, first, caps on expenditure and, second, further disclosure provisions.

### *Caps on expenditure*

7.48 The case for implementing caps on expenditure on government advertising was put most comprehensively to the Committee by Dr Graeme Orr, Senior Lecturer, Law, Griffith University.<sup>28</sup>

7.49 Dr Orr's view is that the 'real problem is not government advertising occasionally straying into the political, but the great inflation in expenditure on it'.<sup>29</sup> According to Dr Orr, it is probably true that all government advertising, however bland, can generate some goodwill towards the government. Therefore, he maintained, the problem of 'incumbency benefit' from government advertising is a problem of its quantity or cumulative effect as much as its quality or overtly political tone.

7.50 For that reason, Dr Orr suggested that rather than focusing so heavily on guidelines for the *content* of government advertising, Parliament should legislate caps on its expenditure. He said:

Caps could include specific tailored allocations for certain unexceptionable and recurrent types of advertising: eg. government recruitment (including defence) and citizenship drives. Alternatively caps could be worded so as to apply to all advertising *except* such nominated types of advertising.<sup>30</sup>

7.51 The advantage of this approach, noted Dr Orr, is that caps are a 'bright-line' approach, compared to the more subjective task of determining undue 'politicalness' in particular campaigns.<sup>31</sup> They allow Parliament to be involved in determining 'what is a reasonable limit on government advertising', but they allow the government to retain the discretion to prioritise and control expenditure on particular information activities. Dr Orr suggested that:

Any campaigns in excess of the periodic limit set would have to be the subject of specific debate and authorisation by Parliament. It ought become parliamentary convention that only truly exceptional events should justify a particular proposed campaign being the subject of funding above the cap.<sup>32</sup>

---

28 Dr Graeme Orr, *Submission 2*, pp 10-12; the proposal was also supported by Dr Sally Young, *Submission 3*, p. 11.

29 Dr Graeme Orr, *Submission 2*, p. 10.

30 Dr Graeme Orr, *Submission 2*, p. 10. Dr Orr also suggested that caps should be set in such a way as to limit the government's opportunity to have a 'spike' in advertising activity in the lead up to an election.

31 Dr Graeme Orr, *Submission 2*, p. 10.

32 Dr Graeme Orr, *Submission 2*, p. 11.

7.52 Dr Orr noted that this system could operate in tandem with a set of guidelines covering the content of government advertisements, and that such guidelines might still be required to the extent that 'government advertising acts out a "permanent campaign" tactic'. Nevertheless, he argued that caps could take much of the 'sting' out of the problem, 'which lies in the cumulative cost and effect of excessive expenditure, and the "spikes" prior to elections'.<sup>33</sup>

7.53 The Committee agrees with Dr Orr that the cumulative effect of large-scale government advertising campaigns may itself purchase political goodwill for the government, even if the content of these advertisements is not overtly partisan. The Committee also agrees that an advantage of Dr Orr's proposal is that it takes the pressure away from finding a suitable mechanism for evaluating the partisan-political nature of particular government advertising campaigns.

7.54 However, apart from the practical difficulties of implementing the required legislation, the Committee has some concern about the underlying principles of this approach.

7.55 Effectively, the proposal would see the power of the executive to determine its expenditure priorities ceded to the Parliament. Dr Orr argued that 'Parliament is sovereign as regards appropriations, and it is parliamentary democracy that is most at risk from partisan abuse of government advertising by the executive'.<sup>34</sup> The Committee considers, though, that while it is true that Parliament approves proposed government expenditure through the appropriations process,<sup>35</sup> that is not the same thing as having the Parliament itself pre-emptively determine the quantum of expenditure that should be allowed to the government for particular functions for which it is responsible.

7.56 The Committee does not consider that introducing a system of Parliamentary caps on expenditure on government advertising is either practically feasible, or consistent with the underlying principles of Parliamentary control of government expenditure.

### ***Further disclosure provisions***

7.57 At present, disclosure of expenditure on government advertising is made in the annual reports of each government department or agency. A total figure for the amount of government advertising expenditure put through the Central Advertising System is also provided in PM&C's annual report.

7.58 As noted in Chapter 2, nowhere is there at present provided:

---

33 Dr Graeme Orr, *Submission 2*, p. 11.

34 Dr Graeme Orr, *Submission 2*, p. 11.

35 As noted in chapter 4, the nature of Parliamentary 'approval' of government expenditure may be in very broad terms, with Parliament having little idea of the details of proposed expenditure.

- a total figure for the amount spent on government advertising across all agencies;
- a total figure for each department or agency for the amount spent on government advertising; or
- a total consolidated figure for the amount spent on each campaign.

7.59 Nor is it possible from the information provided to calculate any of those figures with any degree of confidence.

7.60 As a matter of routine accountability, no detailed information is provided about the rationale or market research justifying the need for particular government advertising campaigns, no information is provided about any cost-benefit analysis of proposed campaigns or campaign strategies, and there are no published evaluations of their effectiveness.

7.61 The Committee considered two main proposals for improving the disclosure of information about government advertising campaigns. They were the Senate resolution of 29 October 2003, and the Canadian government model.

### ***Senate resolution of 29 October 2003***

7.62 The Senate resolution of 29 October 2003 requires that a statement be tabled in the Senate for each advertising or public information project undertaken by any agency, where the cost of the project is estimated or contracted to be \$100,000 or more. The statement is to be tabled within five sitting days of the Senate after the project is approved and must indicate the following:

- (a) the purpose and nature of the project;
- (b) the intended recipients of the information to be communicated by the project;
- (c) who authorised the project;
- (d) the manner in which the project is to be carried out;
- (e) who is to carry out the project;
- (f) whether the project is to be carried out under a contract;
- (g) whether such contract was let by tender;
- (h) the estimated or contracted cost of the project;
- (i) whether every part of the project conforms with the Audit and JCPAA guidelines; and
- (j) if the project in any part does not conform with those guidelines, the extent of, and reasons for, the nonconformity.<sup>36</sup>

---

36 The Senate, *Standing Orders and other orders of the Senate*, November 2004, Procedural Orders of Continuing Effect 10.

7.63 The government declined to comply with this resolution on 12 February 2004. In a statement to the Senate, Senator the Hon. Robert Hill said that the government had provided information about government advertising and information projects through the Senate order on departmental and agency contracts, departmental and agency annual reports, and through the gazettal of contracts on the internet. He also cited the mechanisms of questions on notice and Senate estimates hearings as additional sources of information on these matters.

7.64 Senator Hill noted that the government had not adopted either the Auditor-General's or the JCPAA's guidelines on government advertising. He concluded that:

The government continues to support a broad approach which allows detailed scrutiny and accountability but avoids duplication and unnecessary complexity and cost. Therefore our position is that the existing levels of scrutiny should continue and will be underpinned by the former government's 1995 guidelines in relation to implementing government communication activities.<sup>37</sup>

7.65 The Committee acknowledges that some, though by no means all, of the information required by the Senate's resolution *is* available through the mechanisms outlined in Senator Hill's statement.<sup>38</sup> In fact, since most of this information is **not** provided through standard reporting mechanisms such as annual reports, questions on notice and Senate estimates hearings are the primary sources for it.

7.66 However, almost as important for accountability purposes as the *availability* of information, is the *timeliness* of the provision of that information. In seeking a consolidated statement of the state-of-play of government advertising arrangements on a regular basis, the Senate is seeking the information it needs to monitor the government's advertising activities as they are being developed.

7.67 Senator Murray, for example, lodged questions on notice to all departments and agencies requiring the same information as the Senate's resolution in May 2004. The complete set of answers to those questions still had not been provided by May 2005, even though the failure of the departments to provide the answers had been raised during Senate Estimates hearings in November 2004 and February 2005.<sup>39</sup> Delays of this nature mean that it may be impossible for the Parliament to react in a timely way to the misuse of public funds on politically motivated government advertising campaigns. This sort of delay does not reflect well on the government either, and adds to the perception of a politicised process.

---

37 Senator Robert Hill, *Ministerial Statement*, 12 February 2004, reprinted in Senator the Hon. Eric Abetz, *Submission 9*, pp 6-7.

38 See Mr Harry Evans, *Submission 6*, pp 3-4 for an analysis of the validity of the government's reasons for refusing to comply with the Senate resolution.

39 *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 23 May 2005, p. 173.

7.68 The Committee notes that the information required by the Senate resolution is significantly less than would be required to answer the key questions identified by the Clerk of the Senate in his submission to the Committee and discussed in Chapter 3.<sup>40</sup> In the Committee's view the provision of this information would not be sufficient to ensure full parliamentary accountability in relation to government advertising. Nevertheless, it may be sufficient to allow parliament to identify emerging problems which require further scrutiny. Mr Evans said:

The rationale of the resolution is that the particular information required might signal possible problems with particular projects which could then be selected for more intense scrutiny. For example, if a large contract was let without tenders being called, this could indicate a possible problem requiring further information.

This is a satisfactory basis for parliamentary scrutiny of all kinds. It is not possible for the Parliament to require full details of everything or to fully scrutinise everything. The sound approach is to require basic information about government activities and select possible problem areas for closer examination.<sup>41</sup>

7.69 For this reason, the Committee considers that, if the government were to comply with this resolution, it would significantly improve the parliament's capacity to hold the government to account in relation to its government advertising program. The Committee urges the government to comply with the Senate resolution of 29 October 2003.

### ***Canadian Government model***

7.70 The Canadian Government introduced radical changes to its government communication and advertising processes in 2003-04.<sup>42</sup> The Committee understands that these changes were driven by controversy over its contracting arrangements and a detailed and highly critical report on the government's advertising activities by the Canadian auditor-general.<sup>43</sup> Dr Sally Young indicated in evidence to the Committee that, in her view, the new Canadian system is 'exemplary in terms of mechanisms in place to ensure transparency and accountability in regard to government advertising'.<sup>44</sup>

7.71 There are three key features of the disclosure regime now operating in Canada, which the Committee considers are worthy of serious consideration. They are:

---

40 Mr Harry Evans, *Submission 6*, p. 1; chapter 3, p. 29.

41 Mr Harry Evans, *Submission 6*, p. 4.

42 Public Works and Government Services Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising 2003-04*, Spring 2005, p. 7. Available from [www.pwgsc.gc.ca/advrptpub/text/index-e.html](http://www.pwgsc.gc.ca/advrptpub/text/index-e.html) (accessed 28 September 2005).

43 Dr Sally Young, *Submission 3*, p. 11.

44 Dr Sally Young, *Submission 3b*, p. 2.

- 
- annual reports on government advertising;
  - annual reports on public opinion research; and
  - publication of other relevant information.<sup>45</sup>

7.72 The Canadian Government produces an annual report specifically on government advertising, which consolidates and provides information about all government advertising activities for the financial year. This report provides a comprehensive summary of major campaigns run, a complete list of expenditure by each government organisation on advertising services including the costs of planning, creation, production, and media placement of advertisements, a list of the suppliers used by the Government of Canada, a diagram showing the percentage of advertising expenditure by media type, and a table showing advertising expenditure per month.<sup>46</sup> Extracts of this part of the annual report are at Appendix 6.

7.73 The report also contains an appendix with detailed information about major campaigns. This information includes a statement of the objectives of the campaign, the target audience, a detailed breakdown of media placement, evaluation of the campaign including information about the methodology used and the measurable results, and a breakdown of the costs into 'production', 'media placement' and 'evaluative research'.<sup>47</sup> Extracts of this part of the annual report are at Appendix 7.

7.74 In relation to public opinion and market research, the Committee has earlier noted the potential for research purchased with taxpayer funds to be used for partisan advantage. As Dr Sally Young noted in her submission, this research is 'potentially of great benefit when research such as focus groups, opinion polls and surveys drive political party strategy, planning, campaigning and advertising'.<sup>48</sup>

7.75 The Canadian Government communications policy specifically encourages public opinion research to be undertaken in the development of programs, policies and services. This research is coordinated and managed by a central agency within government, to ensure procurement of the best value for money services and also to foster the sharing of research across the Government of Canada.

7.76 Importantly, this central agency is responsible for ensuring that research reports are available to the public through the National Library of Canada and the

---

45 Dr Sally Young, *Submission 3b*, pp 2-3.

46 Public Works and Government Services Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising 2003-04*, Spring 2005, pp 14-18. Available from [www.pwgsc.gc.ca/advrptpub/text/index-e.html](http://www.pwgsc.gc.ca/advrptpub/text/index-e.html) (accessed 28 September 2005).

47 See, for example, Public Works and Government Services Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising 2003-04*, Spring 2005, pp 25-26. Available from [www.pwgsc.gc.ca/advrptpub/text/index-e.html](http://www.pwgsc.gc.ca/advrptpub/text/index-e.html) (accessed 28 September 2005). See also, Dr Sally Young, *Submission 3b*, pp 13-15.

48 Dr Sally Young, *Submission 3b*, p. 2.

Library of Parliament. This means that research purchased with public funds is able to be read and made use of by the public.

7.77 The central agency also produces the annual report on public opinion research on behalf of the government. This report provides information including the total government expenditure on public opinion research, expenditure by agency, a breakdown of the type of research commissioned including the expenditure on research for advertising as a percentage of total research costs, highlights of key research projects, and a listing of research firms used by business volume.<sup>49</sup>

7.78 Finally, other relevant information made publicly available by the Canadian Government includes:

- posting all advertising contracts awarded through the 'Communication Procurement Directorate' on the Contracts Canada website, and all those above \$10,000 on departmental websites; and
- posting all approved advertising funding on the Treasury Board of Canada Secretariat's website.<sup>50</sup>

7.79 In addition to these disclosure measures, the Committee was impressed by a number of the objectives that the Canadian Government had set for itself in order to improve accountability for government advertising expenditure. In particular, the Committee notes the stated objectives of:

- reducing spending (including through a 15 percent reduction in the amount spent on media placement, representing a savings of \$36 million over three years);
- reallocating advertising resources from lower to higher priorities;
- producing fewer and more effective campaigns;
- focussing primarily on programs and services; and
- ongoing monitoring of results.<sup>51</sup>

---

49 Government Information Services Branch, Public Works and Government Services Canada, *Public Opinion Research in the Government of Canada, Annual Report 2003-2004*, October 2004. Available from [www.communication.gc.ca/reports\\_rapports/por\\_rop/2003-2004/03-04\\_toc.html](http://www.communication.gc.ca/reports_rapports/por_rop/2003-2004/03-04_toc.html) (accessed 28 September 2005). See also Dr Sally Young, *Submission 3b*, pp 2, 16.

50 Public Works and Government Services Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising 2003-04*, Spring 2005, p. 20. Available from [www.pwpsc.gc.ca/advrptpub/text/index-e.html](http://www.pwpsc.gc.ca/advrptpub/text/index-e.html) (accessed 28 September 2005).

51 Public Works and Government Services Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising 2003-04*, Spring 2005, p. 19. Available from [www.pwpsc.gc.ca/advrptpub/text/index-e.html](http://www.pwpsc.gc.ca/advrptpub/text/index-e.html) (accessed 28 September 2005).



---

## Conclusion

7.80 In this chapter, the Committee has considered possible mechanisms for enforcing compliance with guidelines on government advertising, as well as other accountability measures.

### Recommendation 5

**7.81 The Committee recommends that the government implement, as a matter of urgency, a mechanism to monitor and enforce compliance with guidelines on government advertising activity.**

7.82 The Committee considers that there are two measures that will most effectively enhance the accountability framework for government advertising.

7.83 The first of these measures is monitoring of and reporting by the Auditor-General on the government's compliance with revised guidelines.

### Recommendation 6

**7.84 The Committee recommends that once an advertising campaign valued at \$250,000 or more has been given final approval by the MCGC, the advertisements must be submitted to the Auditor-General by the department that is incurring the expenditure. The Auditor-General must report back to the department and the portfolio minister as soon as possible whether the campaign complies with the revised guidelines on government advertising, and the extent of any non-compliance.**

### Recommendation 7

**7.85 The Committee recommends that every six months the Auditor-General must table a report in the Parliament which details his or her assessment against the guidelines of the advertising campaigns that have been implemented during that six-month period.**

### Recommendation 8

**7.86 The Committee recommends that if a department continues with a campaign that the Auditor-General has assessed as not complying with the guidelines, and has provided reasons for that course of action, the Auditor-General must include the departmental response in the tabled report. If a department has amended a campaign in the light of the Auditor-General's initial assessment, the Auditor-General will not table the initial report but only the final assessment made of the campaign.**

7.87 The second measure required to enhance the accountability framework for government advertising is substantially increased disclosure of information about advertising expenditure.

7.88 The Committee is of the view that the Senate Order of 29 October 2003 relating to advertising projects goes some way to identifying the information that is required for effective parliamentary scrutiny in this area. In particular, by requiring that a statement of information about advertising projects be tabled within five sitting days of the Senate after the project is approved, the Senate Order ensures that the Parliament is able to monitor the government's major advertising expenditure and activities on a reasonably contemporaneous basis.

7.89 The Committee rejects the government's assertion that the information required by the Senate Order can be discovered by the Parliament by other means within the stated timeframe.

### **Recommendation 9**

**7.90 The Committee recommends that the government comply with the Senate Order of 29 October 2003 relating to agency advertising and public information projects.**

7.91 The Committee considers that, although a necessary first step in improving government accountability for its advertising activities, the Senate Order is not sufficient to ensure that all essential information is provided. In particular, the Committee notes that the following information is required for minimum accountability to the Parliament:

- a total figure for the amount spent each financial year on government advertising across all agencies;
- a total figure for each department or agency for the amount spent each financial year on government advertising; and
- a total consolidated figure for the amount spent on each campaign.

7.92 Also required is an appropriate level of transparency about the rationale or market research justifying the need for particular government advertising campaigns, any cost-benefit analysis of proposed campaigns or campaign strategies, and evaluations of their effectiveness.

7.93 The Committee considers that the new Canadian system of disclosure of information about government advertising is exemplary and should provide a model for the Australian government.

### **Recommendation 10**

**7.94 The Committee recommends that the Government Communications Unit in the Department of the Prime Minister and Cabinet publish an annual report on government advertising, commencing in financial year 2005-06. The annual report should be modelled on the Annual Report on the Government of Canada's Advertising 2003-04. It should include:**

- a total figure for government expenditure on advertising activities;

- 
- total figures by agency for expenditure on advertising activities;
  - figures for expenditure on media placement by type and media placement by month; and
  - detailed information about major campaigns, including a statement of the objectives of the campaign, the target audience, a detailed breakdown of media placement, evaluation of the campaign including information about the methodology used and the measurable results, and a breakdown of the costs into 'production', 'media placement' and 'evaluative research'.

#### **Recommendation 11**

**7.95** The Committee recommends that from financial year 2005-06 the annual reports of each government agency must include:

- a total figure for the agency's advertising expenditure; and
- a consolidated figure for the cost for each campaign managed by that agency.

#### **Recommendation 12**

**7.96** The Committee recommends that from financial year 2005-06 the annual reports of each government agency must include:

- a total figure for departmental expenditure on public opinion research;
- a breakdown of the type of research, including the expenditure on research for advertising as a percentage of total research costs;
- highlights of key research projects; and
- a listing of research firms used by business volume.

#### **Recommendation 13**

**7.97** The Committee recommends that public opinion and market research commissioned by government departments be made available by departments to the public through the National Library of Australia and the Parliamentary Library.

**Senator Michael Forshaw**

**Chair**

