Australian Senate
Finance and Public Administration References Committee

Inquiry into Government Advertising
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Credentials to make this submission: Graeme Orr has researched and published on the regulation of elections and politics for some 7 years. Relevant publications include 'The Currency of Democracy: Campaign Finance Law in Australia (2003) 26 University of NSW Law Review 1-31 and the report *Australian Electoral Systems – How Well Do They Serve Political Equality* (Democratic Audit of Australia, ANU, 2003). He co-edited *Realising Democracy: Electoral Law in Australia* (Federation Press, 2003) as part of a project co-funded by the ARC and Electoral Council of Australia with Professor George Williams and Bryan Mercurio. Graeme is also recognised overseas as a chronicler and commentator on Australian electoral law, having 2 chapters forthcoming in comparative studies of the regulation of money in western democracies.

Summary of Submission:

- **Political equality, fair electoral competition and public faith in government require restraints on unbridled government advertising. Unbridled advertising promoting government policy threatens to make redundant the political equality aim of electoral funding law.**
  - 'Self-regulation' of government advertising has been abused wantonly by governments of both persuasions, through a *flood* of 'soft-soap' ads prior to elections.
  - Government advertising is now routinely tagged 'Authorised by the Australian Government, Canberra'. This is either a mockery of broadcasting law, or an admission such advertising is 'political' in the sense of electorally sensitive puffery.

- **Current Auditor-General guidelines lack 'teeth'.**

- **Determining that any particular campaign *in isolation* is 'too political' is not necessarily an easy call. Just focusing on a single campaign misses the forest for the trees. Far from making regulation 'unworkable', however, this realisation means there *must be a mechanism to ensure governments err on the side of caution* so that taxpayer funded ads are unexceptionable and that overall, the level of spending is not immodest.**

- **The Auditor-General guidelines need to make it clear that individual advertising campaigns should not be examined in isolation of the *context* of the timing, frequency, cost and weight of contemporaneous campaigns.**

- **There is merit in the ALP proposal to review advertising after each election and 'dock' public funding when parties-in-government are found to have misused advertising:**
  - **This would create significant incentives for parties-in-government to err on the side of caution in the size, tenor and timing of advertising campaigns.**
  - **Taking effect 'after-the-event' of an election, however, such review has a 'horse has bolted' quality.**
  - **Also, although the proposal is intended to be compensatory, a tribunal administering it would also see**

it as quasi-punitive: this may tilt discretion, unnecessarily, in favour of the ads.

- **A 'bright line' approach is also needed. Since the real problem is the abuse of the quantity of advertising, *I recommend that Parliament enact limits or 'caps' on the government-advertising budget.* Such caps should exclude unexceptionable, recurrent programmes such as recruitment and citizenship drives. In effect, I propose limits on the government's 'pocket-money' to encourage it to husband taxpayer funds more wisely.**
  - **The amount would be strictly indexed, and not transferable between fiscal years, to avoid 'spikes' in election years. Governments would need to seek Parliamentary approval for excess expenditure, eg for campaigns over a certain size, or for unforeseen or unusual campaigns (eg in an Olympic year or emergency).**
  - **This proposal would balance the accountability of appropriations to Parliamentary sovereignty, with the Executive's need for flexibility.**
  - **Appropriate caps would be constitutional.**

- **Laws requiring the authorisation of political and electoral matter also need amendment. The purpose of tagging is to give voters information about an ad's source, and to attribute legal responsibility in case the material is, say, defamatory. *'The Australian Government, Canberra' is a deliberately amorphous phrase to use as a 'tag'.* The individual who authorises an advertising campaign should be required to take responsibility for it: in the case of government advertising, the specific Minister or Ministers whose portfolios were involved should be named (eg 'Joe Bloggs, Minister for XYZ').**

1. Abuse of Government Advertising

The amount, tenor and timing of government advertising campaigns via mass media (whether broadcast, newspaper or direct mail) have reached scandalous proportions.

Figures contained in both the Auditor-General's Audit Report #12 of 1998-99[i] and the recent Parliamentary Library Research Note,[ii] demonstrate what ordinary citizens have felt for some years. We are being bombarded by soft-soap government ad campaigns, particularly in the lead up to elections. Figures published in the Herald-Sun in 2003,[iii] confirmed in the Research Note, reveal that at least $1.4 billion (2003-4 values) in federal government advertising will have been spent in the period 1991-2004. Estimates of the Coalition government's current raft of advertising campaigns, occurring in the lead up to the 2004 election, are widely reported to be in the order of $123 million; $151 million including promotion of superannuation changes.[iv] I am not aware of any challenge to the essential accuracy of these figures.

Both sides – ie both parties of government – have adopted a 'spoils of office' approach since the 1990s. The problem has escalated, however, since 1999. The escalation is undeniable: in real terms, of the 7 highest spending years since 1991, only one did not fall in the last 6 years.[v] 11 of the 20 most expensive campaigns are being conducted in or straddle the term of the current government. Leaving aside the unexceptionable (defence recruitment and the impartial referendum campaign), 5 out of the 6 most expensive campaigns feature in or straddle the 2004 pre-election period.[vi]

The now routine, but always dramatic pre-election 'spike' in spending on government advertising[vii] is the most damning circumstantial evidence imaginable of the fact that advertising campaigns are being used for political effect. Indeed, the fact that such ads stop during an election campaign is further evidence that they are assumed by all sides to have the potential for partisan effect: if they had no such effect, and if they were truly communicators of impartial information about established legislation and policy, there would be no need to invoke the 'caretaker' convention.

The amounts of money involved are staggering. They outstrip public funding of election campaigns nine-fold.[viii] They thus threaten to outflank the system of public funding of elections, introduced in 1983 to ensure a measure of political equality between all parties and candidates, on the basis of their voter support.

Federal and state governments are both abusing government advertising; Labor and Liberal administrations alike. We are caught in a vicious circle: like other forms of abuse, such as child abuse, victims grow up but rather than vowing to be virtuous, they become more adept at abuse than their predecessors. Labor's mid-90s campaigns on Medicare and Working Nation were almost overtly 'political'. The current government has learnt from these, and its campaigns are less blatantly political – however what is lost in subtlety is made up for in quantity. Dilute the medicine but increase the dose – the desired benefit to a government is the same.

Incumbents *already* enjoy very significant advantages over challengers in terms of access to resources, from parliamentary entitlements permitting PR mail-outs to the use of state resources to maintain databases used for partisan advantage.[ix] In addition, incumbency brings more media exposure, by virtue of the power to make official pronouncements and simple name recognition.[x] Of course, since incumbents are in the spotlight and are often blamed for things beyond their control, some incumbency benefits are tolerable.

Misuse of government advertising, however, is the worst form of incumbency benefit. The benefits mentioned above, which accrue to all parliamentarians, are shared between rival political groups in rough proportion to their parliamentary status.

Government advertising however is turning 'The Australian Government, Canberra' from being a servant of the public into a brand to be marketed. If the purpose and effect were to increase trust in public affairs generally, it might be less objectionable. But by and large it is not. The election cycle 'spikes' point inescapably to the (unsurprising) conclusion that much governmental campaigning through the mass media is intended to generate partisan advantage.

Australians like to believe that we have an innate cynicism in the form of 'bullshit detectors'. That might be true of individuals, in relation to issues in which they take a keen interest. But such individuals are not the targets of puffery in advertising. Its purpose is not to sway 'tuned in' individuals on issues of particular salience to them, but to produce warm-feelings or a softening of negative attitudes to the 'government', as a brand, across the population as a whole, over a range of themes rather than issues.

Since our electoral system almost invariably leads to close elections between government and opposition,[xi] government advertising does not in itself have to cause specific vote-changing to be effective. Rather it is a set of 'free-kicks' for one side of politics at the expense of all others, and manipulable as part of a set of campaign and PR strategies used by governing parties to hold on to office. Recall that Australia has had *just one* change of government federally in 20 years.

As such, it is a means for the executive government to (further) corrode parliamentary democracy. Australia, especially by international standards, enjoys relatively fair electoral laws and best-practice, independent electoral administration. Both virtues, however, are at risk of being outflanked by abuse of government advertising, which cuts across all notions of a 'level playing field', let alone a 'free market' in elections, since it is a taxpayer subsidy of one side's policies and image over its rivals.

Obviously abuse of government advertising is less corrupt than old-fashioned vote-buying (through bribery) and less crude than vote-buying through pork-barrelling. But endless waves of feel-good advertising are not that subtle either: they are just the application of modern marketing techniques to the old game of trying to swing elections. They breach a basic principle, well recognised internationally: for instance, the Californian Supreme Court in *Stanson v Mott*

held that it was illegal to use public resources to advocate a position in a political campaign.[xii]

A second corrosion occurs in the extra cynicism that is bred towards politics. Such cynicism can only undermine the currency of trust between citizens and taxpayers, and governments, which democracy depends on for its long-term health. Abuses of power erode the very idea of fairness. For some, what replaces the idea of fairness are believes such as 'everything is fair game' and 'when my mob is in power they'll hit back'; for others, there is just weary resignation.

There is a third corrosion. It concerns the relationship between media and government. Senators will be aware of the scandals in Canada relating to government advertising contracts.[xiii] We hear evidence from time to time of governments in Australia favouring polling companies and market research consultants because their party machine trusts them. But that problem is risible compared to the abuse of government advertising as a whole.

Ideally, the private media acts as a check on government waste in a liberal democracy. A few, notably print journalists aside, that media has failed to do its job on the issue of government advertising. That is hardly surprising, since the same media (SBS included) profits from the largesse of such advertising. The federal government is its biggest single client, having reputedly become the nation's biggest spender on advertising.

2. In Defence of Public Advertising

No one suggests that governments should not advertise, or that they should not employ mass media forms and modern PR techniques. In an age saturated with information and images, public services need to be explained and promoted in ways that keep them accessible and relevant. There is nothing inherently wrong in using 'sexy' media to convey a message, provided the message is: (a) inherently justified on public service principles and (b) when taken in context with other mass media campaigns at the time, and against the backdrop of partisan contention issues, is not immodest in size, cost or tenor.

For government to remain a special trust, however – ie the holding of public power and resources for public benefit – governments must not become merely another purveyor of PR spin in a marketplace where image predominates over substance.[xiv] Not just because of fundamental values such as electoral fairness, but because the relationship of citizen to state is not the same as the relationship of consumer to corporate brand. Government does not exist to 'sell' us stuff - let alone all to employ our resources to sell itself to us! It exists to implement rule-governed systems and policies, laid down by Parliament either directly through legislation, or indirectly through discretions vested by Parliament in the executive, which balance interests and promote outcomes designed to achieve public benefits.

A classic example of abuse of government advertising was the promotion of the Coalition's policy for altering the taxation system prior to the 1998 election (the

'CEIP' programme). Although much smaller than the more controversial post-election and post-ANTS legislation campaign, the 1998 promotion was much more clearly political. It was a naked 'softening' up exercise to sell one thing: a policy that was subject to intense partisan and electoral debate. By contrast, the post-GST campaign, whatever its excesses, at least: (a) carried information about a system enacted by Parliament; (b) to the degree that it was advocacy rather than information, had a justification in the need to ensure compliance in a 'self-assessment' tax system.

Spin-doctoring, as a form of executive degradation of parliamentary democracy and rule of law ideals has similarly surfaced in recent years in the mis-use of legislative process through sloganeering. Recall attempts to make the law the mouthpiece of partisan slogans: eg the *Workplace Relations (More Jobs, Better Pay) Bill* 1999, the *Roads to Recovery Act 2001* (both Coalition government measures) and the *Quieter Advertising, Happier Homes Bill 2001* (ALP opposition measure).[xv]

3. Auditor-General Guidelines

The guidelines 'suggested' in the appendix to Audit Report #12 (1998-99) are unexceptionable as a set of principles. If anything, they are too softly worded.

For example, why not 'must', rather than 'should', in guideline 1 ('the subject matter should be directly related to the government's responsibilities')? And why, does the heading to guideline 3 read: 'Material Should Not be Liable to Misrepresentation as Party-Political'? This implies that someone other than the government is at fault for 'misrepresentation' – as if the problem were in the eye of the beholder! Power corrupts its possessor before anyone else.

Above all, the guidelines, especially the key guideline 3 referring to 'the environment' in which the ads are screened, need to make it clearer that an assessment of the 'political' quality of the advertising must specifically consider the context of:

- the total spend of advertising in that period, especially on major advertising or direct mail campaigns
- the frequency of the use of similar media
- the stage of the electoral cycle, including public expectations of an early election (if any)
- the political context, including whether the issue or theme of the ad is subject to partisan or public disagreement (especially between parties, but including wider political speech, such as debate in the media)

Governments, by establishing a central 'Government Communications Unit' and a 'Ministerial Committee of Government Communications', have enshrined the idea that a 'whole-of-government' approach is required to oversee and even co-ordinate government advertising. It can hardly, then, be said that individual campaigns are to be scrutinised in isolation.

4. Enforceability, or the Lack of It

The present government has failed to live up to its promise to implement the guidelines. Indeed, it has failed to heed the endorsement given the Auditor-General's guidelines by a Parliamentary Committee on which it had a majority.[xvi] The guidelines therefore have no teeth.

The previous Labor government, as mentioned above, also abused government advertising. It merely developed certain procedural requirements in 'Guidelines for Australian Government Information Activities'. The present government claims those procedural requirements are sufficient. When a pox infects box houses, it is a sign that the disease is an epidemic, not that it is of less concern.

The current government alleges the Auditor-General guidelines as 'unworkable'. It does not, as far as I can tell, challenge their relevance or underlying aims. The inference from the government's position is that no-one can tell when ads cross the boundary between legitimate public information, to become either wasteful puff or, worse, ads calculated in the ordinary course of events to generate political benefit for the government.

Surely the over-arching principle, when dealing with public money, especially in an area of great sensitivity such as this, should be *prudence*. We need a system that forces governments to err on the side of caution, not a system of carte blanche. There is ample evidence of campaigns that taken as a whole are poorly targeted, low in informational value and high in advocacy value, of dubious timing and/or unduly expensive. Just focussing on the current crop of ads, we find campaigns:

- promoting to the world at large a benefit only a select proportion is entitled to (one-off family bonus) and which, since no claim had to be made to secure, recipients could simply have been informed by letter.
- through unduly repetitive ads promoting modest changes to Medicare. These ads adopt an advocacy rather than information mode: eg they are packaged (and in a 30 second ad, packaging is *designed* to trump content) under the slogan and get-up of 'Strengthening Medicare' - apparently borrowed from a slogan of the US Republican administration. That the decline of bulk-billing is a contentious political issue, makes the packaging even more tendentious. To the extent that the ads seek to convey information (eg the level of the cut-offs) that is complex and only comprehensible within a context – ie a particular patient paying a series of bills at her doctors – a campaign designed to assist patients rather than 'puff' a government's position would surely have focused itself on written information at the point of contact with the health system, rather than soft-soap television ads.
- against domestic violence, whose motherhood nature is unexceptionable, but clouded by the delay in timing of the campaign, which ensured that it ran in the lead up to an election.

5. The ALP Proposal

The ALP has pledged to institute a system to 'claw-back' expenditure on ads found to have breached the Auditor-General guidelines.

This seems to be based on corrective justice principles. That is, the compensatory ideal. It would require a party to, in effect, pay back to Consolidated Revenue the cost of ads found to be unduly political, by deducting that cost from the party's entitlement to public funding, the prospect of which parties and their bankers rely on in planning their election campaign expenditure.

The proposal has particular merit to the extent that, in theory, it should provide a strong incentive to governing parties to err on the side of caution and ensure that the advertising guidelines are not flouted. This is because all parties have become significantly dependent on public funding, and any reduction in that funding after an election would cause them financial difficulty.

However there are two potential pitfalls for the ALP proposal:

(a) It operates only after an election. The desire to hold on to office is obviously great enough to lead to abuse of public service principles in the first place: the fear of impoverishing one's party after an election may not be enough to overcome that desire.

(b) Any quasi-judicial tribunal administering the proposal would probably view its power to reduce the entitlement to public funding as quasi-penal - even though the proposal aims to be compensatory, and even though a statutory entitlement, by definition, can legitimately be subject to statutory qualifications. The feeling that any 'claw-back' amounts to a quasi-penalty may cause the tribunal to use a higher standard of 'proof', an excessive legalism, and a narrow, case-by-case approach in applying the guidelines. This would go contrary to what is needed, that is a common sense and holistic approach to the whole of government advertising, especially that aired in the months leading up to an election.

In other respects the proposal, whilst it would obviously need to be fine-tuned, is supportable. Anticipating arguments against it:

- It is not illogical. Public funding is a statutory benefit, not a God-given right. Public funding is intended to introduce a level of practical political equality in campaigning. Since abuses of government advertising upset that equality, it is logical that public funding be an avenue to redress that upset.
- It is not unprecedented - public funding systems naturally lend themselves to 'carrot-and-stick' regulation. Deductions are a reasonable, civil-law method of accounting for abuses of fair election rules. Thus in Germany, for example, public funding is reduced for violations such as taking anonymous donations or failing to disclose donations (double forfeiture), and public funding is lost for failure to disclose accounts.
- If the tribunal is suitably independent, empowered and expert in both public service values and the media (as opposed to being a legalistic

tribunal), the proposal is not unworkable. The tribunal could develop further specification of the guidelines through its review of advertising.

- The proposal is certainly less crude than Mr Beazley's proposals, raised in private member's Bills in 2000-01, for the Federal Court to hear criminal or injunction proceedings over government advertising.[xvii]

One variation of the ALP proposal worth considering would be to have a standing, part-time tribunal or commission to apply the guidelines to advertising at say quarterly intervals. Whilst this might create some inflexibility in a government's desire to have a rapid response, free rein over advertising, it would be far less likely to lead to 'gridlock' than alternative options, such as having an all-party committee vetting major campaigns.

An obviously key issue is the tribunal's impartiality and independence, which may require a process of appointment involving parliamentary scrutiny and special majority.

6. A Cap on Expenditure

I believe the real problem is not government advertising occasionally straying into the political, but the great inflation in expenditure on it. It is probably true that all government advertising, however bland, can generate *some* goodwill towards the government. The problem of a threat to political equality is thus a problem of quantity as much as quality: the cumulative effect of advertising, and the cynical spike in the timing of much of it close to elections, is what makes this inquiry urgent, when it may have seemed a low-order concern prior to the 1990s. Fortunately, issues of quantity are more regulable than issues of quality or content.

Parliament should legislate caps on government advertising. 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. Caps could be worded only to apply to the cost of mass-media campaigns - broadcast, newspaper and/or direct-mail - excluding forms of advertising such as classifieds, employment ads and advertising conducted by independent agencies (eg the AEC).

Caps are a 'bright-line' approach, compared to the more subjective task of determining undue 'politicalness' in particular campaigns.

A key aspect of any caps would be for them to be set early in a new Parliament, with strict indexation and no differentiation between the early and late years of the life of a government. To avoid the problem of a government calling an election early in a fiscal year (so as to spend up to the cap fully prior to an election), the cap could apply to monthly or quarterly expenditure, rather than annual.

Caps would have to be reinforced with prohibitions on the use of 'hollow logs' such as AMFA or departmental under-runs for advertising campaigns.

The Auditor-General and/or the Parliament itself could monitor spending - through an obligation on Treasury and/or a centralised government advertising unit to regularly report and account on advertising.

We could label caps as a 'pocket money' approach. Government advertising exhausts precious taxpayer-funded revenues. It is a community value, shared by liberals and social democrats alike, that such expenditure should be husbanded much more carefully than it has over the past 10+ years.

Caps retain the idea of executive discretion in prioritising and controlling the content of expenditures that are ancillary to substantive programmes and policies. But they do so by involving Parliament directly in the process of determining what is a reasonable limit on government advertising. After all, Parliament is sovereign as regards appropriations,[xviii] and it is parliamentary democracy that is most at risk from partisan abuse of government advertising by the executive.

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. That is, the presumption would be that the obligation was on the government to live within its cap. Provided the Senate remains plurally hung, as it has been for two decades, Parliament will not be merely a rubber-stamp for executive demands.

Admittedly a government might try to 'game' such a system: eg by spending up to its annual cap on dubiously political campaigns, then presenting a paupers plate to the Senate to cover clearly worthy campaigns (so as to 'wedge' the Senate). A government that did that however would rightly face rejection in the Senate and its tactics becoming a political negative for it, as well as losing parliamentary goodwill.

Advertising in excess of the cap could be subject to injunction, forcing it into the next year of expenditure. There could also be offence provisions, including political or civil ramifications, for a Minister – or perhaps the Treasurer/Prime Minister, to whom any centralised government advertising unit should be accountable – who authorises expenditure that caused the cap to be breached by a non-trivial amount. All Parliamentarians could be given explicit standing to seek court review of such matters.

Caps need not exclude a system of enforcement of Auditor-General rules against *political* ads. To the extent that government advertising acts out a 'permanent campaign' tactic, enforceable guidelines may still be necessary. Caps however could take a lot of 'sting' out of the problem, which lies in the cumulative cost and effect of excessive expenditure, and the 'spikes' prior to elections. Any procedure to deter or prevent political ads would then not be executed in an all-or-nothing regulatory environment.

Caps are constitutional. Certainly there is an implied freedom of political communication in the structure of representative democracy under our Constitution. But that freedom is not licence: it is not a guarantee of unbridled

executive expenditure, least of all given the countervailing problems that the abuse of government advertising has revealed (viz, cynicism, waste and above all corruption of the core ideal of political equality). The case *ACTV v Commonwealth*,[xix] it should also be noted, only concerned bans – not expenditure limits. A cap on certain forms of mass-media advertising by the government is far from a ban on government advertising; governments would still have great access to other media and communication channels to communicate ideas and information. And, most of all, a key reason for the High Court rejecting the advertising ban in *ACTV* was because the proposed broadcasting regime *favoured incumbents*. Caps on government advertising advance that rationale: they address the real concern about governments stacking-the-rules-to-suit-themselves, since caps would reduce the systemic discrimination in favour of incumbent governments.

7. Broadcasting Law Reform – 'Tagging'

Finally, the 'tagging' laws must be reformed. What we loosely call 'government' advertising exemplifies the problem with the current authorisation laws as they stand in both the electoral and broadcasting legislation.

Authorisation is meant to serve dual purposes:

(a) to provide citizens and voters with information. Knowing the source of political speech enables us to help weigh its value.

(b) to provide traceability, in case of legal responsibility. For example, a need to attribute authorship if an ad might breach either the general or the electoral laws governing defamation.

Currently, almost all government advertising is now routinely tagged 'Authorised by the Australian Government, Canberra'. This confirms the suspicion that much of such advertising has an undeniable political element. But its thoughtless application to unobjectionable ads also makes a mockery of the purpose of tagging in distinguishing political from apolitical speech.

In any event, there is no such entity as 'the Australian Government'. It is even more amorphous than the term 'the Crown'. Who can define the limits or locus of 'the Australian Government' without a complex map of the various arms of the state?

As a shorthand, it is used purely for political reasons. In public discourse, 'the Government', to most people has a primary connotation of its political occupants, especially the Ministry. Perversely then, governments (in the party-political sense) are happy to use the term as an authorisation. It is used as a brag, not a tag: it enables credit for the nice things and puffery in ads to flow not to the 'Commonwealth' in the sense of all of us, nor to the Public Service, but to a partisan entity.

The legal entity for purposes of litigation, in most instances, is 'the Commonwealth of Australia'. I don't advocate that term be used: it is as opaque as 'Australian Government' when it comes to achieving the purposes of tagging.

The law should, instead, provide that any advertising paid for by government revenues (except for that authorised by independent statutory agencies) must be authorised by a responsible Minister, by both her first and surname, and title of the Ministry concerned. Whilst this wouldn't stop credit flowing to that individual, at least it is accurate and traceable as a form of 'authority'.

In passing, given the 'JohnHowardLies.com' episode, it would be worth also legislating so that authorisation of non-government material must be made by an individual, ie natural person, and not a corporation. Ideally, an individual making an authorisation as a representative of an organisation, especially a registered political party, should be required to identify both the party and their name, a rule that could apply as well to material produced by bodies corporate.

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[i] Auditor-General, *Taxation Reform: Community Education and Information Programme*, ANAO, Audit Report # 12, 1998-99 (October 1998).

[ii] Dr Richard Grant, *Federal Government Advertising*, Parliamentary Library Research # 62 of 2003-04

[iii] Gerard McManus, 'PM's $665m Feel-Good Ads', *The Herald-Sun*, 3 September 2003, 14.

[iv] Misha Schubert, 'Howard's $151million Ad Blitz' *The Age*, 22 June 2004, 4.

[v] Grant, above n ii, table 1.

[vi] Ibid, table 2.

[vii] Auditor-General, above n i, figure 1; Grant, ibid, p 3.

[viii] Public funding generated by the 2001 federal election was $38.6 million (2001 dollars) – or approximately $12.6 million across all parties per year of the electoral cycle. The average of federal government advertising for the same years, at prevailing dollar values, was assessed by Grant, ibid table 1, at $322 million.

[ix] Peter van Onselen and Wayne Errington, 'Electoral Databases: Big Brother or Democracy Unbound?' (2004) 39 *Australian Journal of Political Science* 349.

[x] Sally Young, 'Killing Competition: Restricting Access to Political Communication Channels in Australia' (2003) AQ (May-June) 9; Graeme Orr, *Australian Electoral Systems – How Well Do They Serve Political Equality* (Democratic Audit of Australia, ANU, 2003) 73-78.

[xi] For reasons of historical electoral culture – the solidification of Labor vs Conservative blocs – as well as due to the political consequence of certain electoral laws – eg compulsory, preferential voting.

[xii] Daniel H Lowenstein, *Election Law* (California Academic Press, 1995) 680-2.

[xiii] Discussed in Sally Young, *The Hardest Sell: What's Wrong with Political Advertising in Australia* (forthcoming).

[xiv] That party politics is already heavily image-conscious, especially if it is accepted that parties are less ideological than was once the case, is not to the point. We ought all the more ensure we can distinguish government from party politics.

[xv] See Graeme Orr, 'Names Without Frontiers, Legislative Titles and Sloganeering' (2000) 21 *Statute Law Review* 188. Unsurprisingly, this trend began in the US, see eg Eugene R Fidell, 'Legis-flation' *New York Times*, 1 June 1995.

[xvi] Joint Committee of Public Accounts and Audit, *Report 377: Guidelines for Government Advertising*, September 2000.

[xvii] Government Advertising (Objectivity, Fairness and Accountability) Bills 2000 and 2001.

[xviii] It is commonplace for spending by the state to be subject to caps, limits and special authorisations in the interests of financial control and accountability. See, eg, the statutory scheme limiting discretionary spending by the ABC, applied by the High Court in *Australian Broadcasting Corporation v Redmore* (1989) 166 CLR 454.

[xix] *Australian Capital Television v Commonwealth* (1992) 177 CLR 106.