



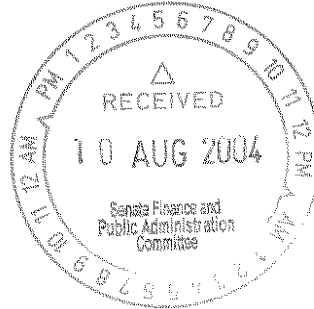
AUSTRALIAN SENATE

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10 August 2004



Mr Alistair Sands
Secretary
Finance and Public Administration References Committee
The Senate
Parliament House
CANBERRA ACT 2600

Dear Mr Sands

GOVERNMENT ADVERTISING

Thank you for your letter of 6 August 2004, in which the committee invites me to make a submission in relation to the committee's inquiry into government advertising. I am hastening this response to meet the committee's deadline. I hope that the following observations may be of some use to the committee.

Accountability questions

Government advertising projects give rise to several accountability questions appropriate for parliamentary scrutiny. The following questions particularly arise in relation to each substantial advertising project:

- (1) Is there a clearly-identified need for the information to be conveyed by the project?
- (2) Is the scale of the project appropriate to that need for information?
- (3) Is the project accurately targeted to the people who need the information?
- (4) Does the project clearly and accurately convey the required information?
- (5) Are the means adopted of conveying the information the most efficient for that purpose?
- (6) Is the project conducted in the most economical way of achieving the purpose, that is, is the best value for money achieved?

All substantial advertising projects could appropriately be scrutinised on these grounds, and the legislature satisfied as to the answers to these questions.

The perceived problem with government advertising campaigns, however, arises not so much from failures on these grounds, but from the perceived misuse of such campaigns for political purposes.

Advertising for party-political advantage

There is a widespread perception that government advertising campaigns are employed for party-political and electoral advantage. The perception is that the party in government uses taxpayer-funded government advertising campaigns as a supplement to party-political advertising to achieve favourable perception of the party in the electorate, and favourable election results.

Advertising campaigns conducted for party-political advantage will probably fail one or more of the tests suggested by the foregoing questions. The adherence of a party-political "spin" to advertising campaigns may, however, be extremely subtle. For example, a project may meet all of these tests but also achieve a party-political advantage by including a photograph and personal message from the prime minister. A purist may say that this will cause the project to fail the tests, because the photograph and message would add to the cost while not adding to the information required to be conveyed. The subtlety of this kind of "spin" poses a problem for any policing of government advertising to eliminate all party-political advantage. The problem is how to identify and prevent party-political misuse of advertising projects.

Cross-subsidising

The other problem which has been perceived in government advertising is the cross-subsidising of party-political advertising. It is suspected that advertising firms accept lower fees for advertisements paid for by the party in power with an assurance that more lucrative government advertising contracts will fall their way. In effect, the expenditure on the government advertising projects subsidises the party-political advertising of the government party.

This is tantamount to corruption. Again, it could be said that any government advertising of this kind would be bound to fail one or more of the tests suggested above. The abuse could be extremely difficult to detect, however, except by close scrutiny of the *process* of conducting government advertising projects, accompanied by full disclosure of the details of party-political projects. The accountability tests listed above would not necessarily detect the problem without that additional information.

Audit and JCPAA Guidelines

The guidelines suggested by the Australian National Audit Office and the Joint Committee on Public Accounts and Audit are directed to the problem of detecting and eliminating party-political "spin" on government advertising campaigns. They avoid simple rules, such as a prohibition on photographs and letters from the prime minister, no doubt because of an awareness that such rules would not get to the essence of the problem, or fully cover all the possible techniques. Instead, the guidelines seek to lay down general principles. As such, they really amount to little more than an injunction that government advertising projects must not

be party-political, while covering some of the ground of the above accountability tests. Their application would involve a great deal of subjective judgment. 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.

The Senate resolution of 29 October 2003, requiring the publication of certain information about substantial advertising projects, incorporates the guidelines. This incorporation is not in the form of an attempt to lay down a rule that advertising projects must conform with the guidelines, but in effect requires the government to certify to the Senate that the projects conform with the guidelines and to explain any unwillingness to make that certification. The resolution would make governments who are guilty of party-political misuse of government advertising also guilty of false and deceptive certification to the Senate. It is somewhat like requiring witnesses to take an oath: it forces them to compound any falsehood. The resolution, therefore, does not adopt the approach of laying down rules, but a different approach which seeks to overcome the limitations of attempts to establish rules.

Requiring disclosure

That other approach is to require disclosure of information about government advertising campaigns, so that the Senate and the public can form their own judgment about whether misuse has occurred. The hope is that such disclosure will lead to public censure of cases of misuse and a deterrent of further misuse. This is the rationale adopted by the Senate resolution of 29 October 2003.

It might have been thought that the requirement for government to provide the specified information about advertising projects would be unobjectionable. On the contrary, the government, by a ministerial statement in the Senate on 12 February 2004, declined to comply with the Senate resolution. It is instructive to analyse the reasons for that refusal. The grounds given were as follows:

- The resolution duplicates the requirements of the Senate's resolution of 20 June 2001 requiring the publication of information about departmental and agency contracts. This is not true, because the advertising resolution requires many further particulars than the contracts resolution, and, in any case, advertising projects may not be conducted by contract, and this is one of the pieces of information required.
- The information required by the resolution may be sought by other means, particular through estimates hearings. At the last round of estimates hearings, Senator Murray lodged questions on notice to all departments and agencies requiring the same information as the Senate's resolution. At the time of writing it is not clear whether responses will be forthcoming to these questions. If responses are not forthcoming, this contradicts the ministerial statement that the information may be sought through estimates hearings. If responses are forthcoming, this means that the government is willing to provide the information required by the Senate's resolution, and the question then arises, why not provide the information in response to the resolution?
- There appeared to be some disagreement within the Public Accounts and Audit Committee about the appropriateness of the guidelines. This ground appears to involve the government in adopting the minority view rather than the majority view of the

committee, leaving the question of why the minority view was preferred. In any event, the problem perceived with the guidelines related generally to their subjectivity. As has already been noted, the Senate's resolution simply requires the government to certify that the guidelines have been adhered to and to explain any departure from them. The government is able to exercise its own subjective judgment about whether the guidelines have been adhered to. Where is the problem in that?

- Compliance with the resolution would involve officers making the subjective judgments. This is not true, as the resolution requires *ministers* to make the specified statements to the Senate, not officers.

The resolution therefore requires only the disclosure of information which should be available about every government activity, barring soundly-based grounds of confidentiality, and there would seem to be no valid objection to making it available about government advertising activities which, by their nature, are conducted in public. The government has made no claim of confidentiality in relation to advertising projects.

Moreover, the scope of the resolution is limited, and its requirements for information extremely modest. It would not support the intense scrutiny of the processes of formulating advertising projects which has been previously mentioned. 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. This approach does not prevent abuses in advance, but seeks to detect them after the event and to deter further abuses. This is the essence of parliamentary scrutiny of executive government activities.

Process regulation

That is not to say that there should not be some attempt to regulate in advance the process of formulating government advertising campaigns so that they can be seen to be free of political manipulation. It should be possible for governments to lay down a transparent and regular process for formulating government advertising projects.

It would be possible for government to ordain, for example, that substantial government advertising projects (the \$100,000 figure could be used) would not be embarked upon except after a report from the responsible department or agency identifying how the accountability tests listed above, with the exception for the time being of the value for money test, have been taken into account and met. On that report, the minister would then approve the project proceeding to the letting of tenders. The contract would be let under the regular processes for doing so by the responsible department or agency, which would then recommend the acceptance of a contract to the minister, leading to a final ministerial decision for the project to go ahead. If a contract is not to be let, the method for conducting the project, for example, by the department or agency through its own resources, would be the subject of report and final ministerial approval. A report from the department or agency could, of course, be

compiled at the instigation of the minister. The report and the contracting process would be made public when the project is commenced.

The suggested process could be put in place by legislation, but the legislation would not pass the House of Representatives without government acceptance. Government could simply agree to regulate itself.

Such a process would supplement, not replace, the publication of the information under the resolution of the Senate, and would instil greater confidence that government advertising campaigns would be free of abuse. The process and the publication of the information would probably remove the necessity for close parliamentary scrutiny of projects. That is in the nature of accountability safeguards: the existence of the safeguards prevents abuse. The absence of abuse, and the absence of parliamentary interest in the subject, could not be taken to mean that the safeguard is unnecessary. Such a combination of a disclosure safeguard and a process safeguard would also appear to be an unobjectionable and sound basis for accountability.

The requirement for transparency and accountability in government advertising is only one part of such a requirement in government activities generally, but there is a case for more stringent and regularly-applied requirements because of the great potential for misuse of government advertising.

I would be pleased to elaborate on these observations or provide any further information should the committee so require.

Yours sincerely



(Harry Evans)