SUBMISSION

SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE COMMITTEE

Inquiry into government advertising

Stephen Bartos
Visiting Fellow
Asia-Pacific School of Economics and Government
Australian National University*

*the views expressed in this submission are those of the author, and should not be attributed to APSEG or the ANU

Disclosure: the author was Deputy Secretary of the Department of Finance and Administration (DOFA) from 1997 to 2003. In that capacity he was responsible, among other things, for the Government Communications Unit (previously known as the Office of Government Information and Advertising, OGIA) in the period from October 1997 to November 1988. Following the merger of the former departments of Finance and Administrative Services in machinery of government changes in 1997, OGIA was located in the Resource Management Improvement Group of DOFA. It was transferred to the Department of the Prime Minister and Cabinet in 1988. Although the author's views have been informed by this experience, everything in this submission is based on or can be reasonably assumed from information on the public record, and does not contain or refer to unreleased information gained in an official capacity at that time.

Executive summary

Public confidence in the government, parliament and democratic processes in Australia is a foundation of a well functioning civil society.

Recent trends in government advertising undermine that faith.

The most obvious trend is the noticeable spike in the volume of government advertising in the leadup to a Federal election; also of concern is the partisan nature of much of the advertising.

The current arrangements for management of government advertising are inconsistent with the Commonwealth government's accountability framework. The heads of agencies under the *Financial Management and Accountability Act 1997* (FMA Act) are required to promote the proper use of resources – "proper" defined as efficient, effective and ethical. Agencies under the FMA Act are also required to go through the processes of the Ministerial Committee on Government Communications (MCGC): which has led to advertising campaigns that manifestly are not efficient, effective or ethical.

The MCGC is not itself accountable or responsible to anyone other than the executive government. Yet it has a considerable say over how advertising monies – part of the departmental expenses budget of departments and agencies – is spent.

There is a good argument that neither the Government Communications Unit nor the MCGC are required or useful for the purposes of good government (however much they might be useful in the pursuit of the political interests of the government of the day).

There are several options for making government advertising more transparent and accountable. Some of these include:

- Devolve advertising responsibilities to departments and agencies
- Make any advertising campaign a matter of public disclosure in advance of the advertising being booked
- Require all market research for government advertising campaigns to be published
- No longer add the authorisation required for political advertising to government advertising.

Submission - Inquiry into government advertising

Introduction

This submission is mainly aimed at addressing issues of accountability in government advertising. It follows the terms of reference for the inquiry in sequence, but some of these are covered only briefly, given they ask for factual material held by the responsible agencies within government.

Governments have always advertised their activities. One of the earliest publications of the Commonwealth Government in 1901 was a government Gazette. Advertising is a normal – and uncontroversial – aspect of much of the everyday business of government in areas such as provision of information on entitlements and benefits, grants programs, employment opportunities, contract and tender opportunities, locations and contact points for government agencies, and so on.

The problem with advertising is that it can also be used to entrench the power of the political party in government – and it is in this area that government advertising is controversial and sensitive.

The distinction made at present between "campaign" and "non-campaign" advertising is only partly useful in distinguishing sensitive from routine advertising. For example, Defence recruitment is by far the largest segment of campaign advertising – but it differs from other departments' recruitment advertising only in scale, not in its basic purpose. It is the nature of the advertising itself that determines whether or not it is sensitive.

There has been an increasing trend for governments to make use of publicly funded advertising to further their own political ends – a trend observed under past Labor governments but heightened under the present Coalition government.

This is a matter of some concern for democratic processes. Incumbency in government already carries with it considerable advantages: Ministers have vastly greater resources than other parliamentarians, governments have enormous powers of patronage in their appointments to boards and committees, and they have the resources of the public service to support their decision making. It would be unreasonable not to expect governments to make use of the powers of incumbency – but at some

stage a line has to be drawn between acceptable and unacceptable use of these powers. It is in this context that government advertising is sensitive – because it is an obvious area where such lines can and should be drawn.

Addressing the terms of reference...

a) the level of expenditure on, and the nature and extent of, government advertising since 1996

The information available in the very helpful Parliamentary Library *Research Note* of 21 June 2004 by Dr. Richard Grant provides a good outline of expenditure trends in aggregate. The author of this submission has no access to other data in this area. It is hoped that this inquiry will obtain confirmation of the information from the Government Communications Unit, together with a more detailed breakdown of the annual data. What would be most useful would be data on annual spending by department and agency, and on what type of advertising, in the period concerned.

What is clear is that there has been a pattern of a sharp spike in the volume of government advertising in the six months or thereabouts immediately prior to a Federal election. It is obvious from the volume of government advertising at present that 2004 will be no exception. It would not be surprising to discover that the 2004-05 spend on government advertising in the first six months (ie from 1 July 2004) exceeds the total spending on government advertising in all of 2003-04.

b) the processes involved in decision-making on government advertising, including the role of the Government Communications Unit and the Ministerial Committee on Government Communications, and
c) the adequacy of the accountability framework and in particular, the 1995 guidelines for government advertising

i) relationship with financial legislation

The decision-making roles of the GCU and MCGC are in many ways inconsistent with the overall management framework for Australian government agencies. Under the *Financial Management and Accountability Act 1997 (FMA ACT)*, s. 44:

> "a Chief Executive must manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for

which the Chief Executive is responsible...in this section *proper use* means efficient, effective and ethical use".

At the same time, in relation to some of the resources included in departmental expenses, those to be used on advertising, the Chief Executive is tied to the GCU and any "major and or sensitive information activities" [1] has to be "brought before the MCGC for approval" (ibid.).

Being tied to another agency is not unprecedented – a parallel example would be arrangements for legal advice on constitutional issues, which are tied to the Australian Government Solicitor. What is unusual is the level of decision making power exercised by the GCU and the MCGC. In effect these take away from the Chief Executive the responsibilities conferred on them by s.44 of the *FMA Act.*

To illustrate with a few examples:

- recent blanket advertising of the government's Medicare reforms was so intense that media analysts have been reported as asserting that much of the spending was wasted (beyond a certain point excessive advertising becomes counterproductive, viewers just switch off their attention – or even become hostile). These views, if correct, imply that the spending on this campaign would not meet the test of being either efficient or effective.
- Environment department television advertising "lend the land a hand" is virtually devoid of semantic content. Other than the arguably misleading claim that the current government is spending more on the environment than any other (a highly contestable political claim) it consists of frequent repetitions of the title slogan and accompanying images. It is hard to see how this specifically relates to the responsibilities of that department; consider the fact that the slogan could equally well be applied to advertising for social welfare, defence recruitment or any number of other government purposes. This advertising seems designed solely for emotional affect.

There are many other examples that could be added to the list – these are merely recent illustrations. This advertising is funded from departmental expenses and therefore constitutes use of resources as defined under the FMA Act. Does this mean that the Chief Executives of the relevant departments should be considered to be in breach of s.44 (ie not

[1] Source: *Guidelines for Australian Government Information Activities Principles and Procedures,* (the *Guidelines)* Australian Government, February 1995 as updated (version viewed on GCU website on 3 August 2004)

promoting efficient, effective and ethical use of resources)? Surely not – because the advertising decisions are effectively out of their hands and instead rest with the MCGC.

It is hard to think of any other area where the use of departmental expense budgets is subject to this sort of secondary decision making. In relation to senior executive staffing the Public Service Commissioner has a role in approving appointments – but the decision itself rests with the Chief Executive. There are various financial requirements in place on agency spending, but again the decision making rests with the Chief Executive. The level of devolution of responsibility in the Australian Government is reasonably consistent across other areas of resource use and management decision-making.

But in relation to advertising, the MCGC intervenes on the timing, style, content and use of the advertising to a degree that effectively takes the decision making power away from the Chief Executive.

Nor is this necessarily a case of Cabinet imposing scrutiny conditions prior to agreeing on a spending program. While sometimes funds are specifically approved for an advertising campaign (in which case terms on how decisions are made could be imposed), in other cases they have been found within existing departmental budgets.

The mere fact that the GCU and MCGC arrangements are inconsistent with other elements of the management framework is not necessarily a problem – it could simply be a special case. Why it is a problem is that the accountability structure imposed by the FMA Act, the assurance that Act provides to the public that Commonwealth funds are being used properly, is undermined.

ii) accountability of the MCGC

Is there then an accountability vacuum, given the FMA Act mechanisms do not fulfil that role in relation to government advertising? The answer depends on whether or not the MCGC itself is accountable – and the evidence suggests that it is highly unaccountable.

The MCGC does not answer to the Parliament for its actions. It produces no Annual Report, and is not regarded as a separate reporting entity for financial reporting purposes. It is difficult even to find out what its charter is or who its members are. The MCGC, unlike the GCU, does

not have a website, nor does it provide public statements. Its operations are among the most obscure of any government decision making body.

Nevertheless it is clear from the *Guidelines* that it does make decisions – activities go to it "for approval" – not for information or for the MCGC to make suggestions to the responsible Minister, but "for approval". It is thus taking decisions about the use of public funds, without the normal accountability mechanisms that accompany such decisions if made by other bodies such as departments or agencies of government or by Ministers themselves.

iii) the membership of the MCGC

A further concern is the membership of the MCGC. Were it a committee of Ministers – who are accountable to the Parliament via question time, and in various other forums – then there would be a greater argument that there is no accountability vacuum.

In fact the name "Ministerial" Committee is a misnomer – only one member is a Minister. The other members are two MPs and a Prime Ministerial staffer. Given the dominance of the Prime Minister in current government decision making, in practice the staffer must be assumed to exercise considerable power within the MCGC, despite not being answerable to an electorate or indeed to anyone other than the Prime Minister.

Were the government to allocate a grant of $100m to a member of the Prime Minister's staff to be used for political purposes then there would be - rightly – a considerable public outcry. The annual government advertising spend since 1999-00 has been more than this (in real terms) each year. Thus, to the extent that this money is perceived by the public as being used in political ways, there is a real cause for concern.

Obviously much government advertising is apolitical – but without clearer safeguards and accountability mechanisms, it is difficult to avoid perceptions that at least some proportion of it is being used politically.

The MCGC structure inherently leads to this conclusion. Public confidence that government advertising is not being used politically would be enhanced if the MCGC were abolished.

This then raises the question, addressed below, of whether there is a need at all for a coordinating mechanism for government advertising.

iv) the role of the GCU

Why is there a GCU? According to its website:

> "The role of the GCU is to provide advice and support on communications issues to the Australian Government and the Ministerial Committee on Government Communications and to manage the Central Advertising System." (www.gcu.gov.au – viewed 6 August 2004 – quotes attributed to the GCU in this section are obtained from this source)

If the MCGC were no longer in existence (see above) the secretariat function would no longer be required and the role of the GCU would then become mainly one of managing the Central Advertising System (CAS).

The question then becomes, is the CAS necessary? The reasons why government advertising is consolidated through the CAS are to:

> "secure optimal media discounts and value-added benefits and to ensure that Australian Government departments and agencies do not compete against each other for media time and space." (ibid.).

The idea that centralised purchasing secures discounts for government has been comprehensively disproven in relation to a range of other formerly centralised services.

In the past, a range of services such as travel, leased office buildings and fitout, removals and the like were centrally managed. In many cases the published government rate was indeed lower than the maximum rate in the market – but there was little flexibility and little opportunity for agencies to take advantage of special circumstances. For example, while official government airfares were nominally lower than the regular fare, government departments frequently had no access to other discounted fares. The devolution of responsibility for their own purchasing decisions has meant agencies have greater scope for innovation and for tailoring services to best meet their needs, generally at a lower cost.

Central advertising is a throwback to central purchasing ideas. It is doubtful whether there are in fact savings in net terms as a result of the system. Some departments that are large advertisers (eg Defence) are likely to be able to obtain significant media discounts based on the volume of their spend in their own right. For other agencies, any savings on the advertising rate are likely to be more than offset by the additional costs of having to go through the CAS and GCU processes. These

compliance costs are considerable – they involve additional expenditure within agencies associated with the time and effort involved in shepherding proposals through the processes, and also some risk to delivery of government programs given the delays they entail.

The cost of maintaining the GCU itself is also a factor, but a much lower cost than the invisible – but real – costs of compliance spread across FMA Act agencies as a whole.

Devolution of advertising responsibilities to agencies would be consistent with the Australian government management framework that has developed over the past 20 years.

There is specialised knowledge involved in purchasing advertising time, but as with other types of purchasing, advice is available from consultants or can be sourced in house by large purchasers (such as Defence). It is not as though advertising is an especially difficult procurement responsibility to devolve: other far more complex purchasing and contracting responsibilities are already devolved to agencies.

The second aim, "to ensure that Australian Government departments and agencies do not compete against each other for media time and space" is equally dubious. If it were a real concern, why is it that the CAS only applies to those government agencies under the FMA Act, and ignores the larger number covered by the *Commonwealth Authorities and Companies Act 1997*? The latter includes large advertisers such as Australia Post, Telstra, and Medibank Private among others.

The difference with CAC bodies is of course that they are less likely to be responsible for the sorts of policy changes that lead to pre-election advertising spikes. Their advertising spending is more regularly spaced over the three year electoral cycle.

There is in fact little prospect of government advertising competing for media time and space – <u>except</u> in the period of the pre-election advertising spike. If there were no such spike, this justification for centralised purchasing would be much less plausible.

The GCU has some other related functions. One is the maintenance of:

> "a register of communications consultants (including advertising agencies, public relations consultants, market research companies, graphic designers, writers and the like) interested in undertaking government work" (ibid.)

Given there is a large, transparent and open market for such services, it is hard to see a reason for such a register – especially as

a) registration is an additional cost to the consultants that they will have to recoup from their government clients (thus increasing the bill for taxpayers), and
b) the register does not avoid normal tendering processes anyway.

Normal purchasing processes, including tendering, are designed to ensure probity and that the government achieves value for money. An exclusive register does not assist that process, and in fact impedes it by excluding potential tenderers (those not included on the register for whatever reason) from being included in the competitive process.

It is hard therefore to avoid a suspicion that the register exists to allow the government of the day to reward or punish particular consultants. The committee could confirm whether there is any such possibility by asking the GCU whether the register of consultants is discussed with the MCGC and if members of the MCGC have ever expressed views on whether particular consultants should or should not be included on the register.

The conclusion from this analysis of the GCU is that were government advertising to be more strictly apolitical – ie without a pre election spike and without MCGC oversight – then there would arguably be no need for the GCU or at the very least its role could be wound back considerably.

It is however worth noting here that the transformation of the former Office of Government Information and Advertising (OGIA) to the GCU under the present government has been a positive step. The former OGIA had ventured into separately branding and promoting itself, had taken a highly directive role in relation to other government agencies' requests for assistance with advertising, and did not have an open and transparent process for managing its finances. Bringing it in to a normal accountability relationship within a department of State was an important change. If the GCU were to be maintained, these arrangements should continue.

d) the means of ensuring the ongoing application of guidelines based on those recommended by the Auditor-General and Joint Committee of Public Accounts and Audit to all government advertising

The guidelines recommended by the Auditor-General and the JCPAA were based on wide consideration of the practice of other jurisdictions and would go a long way to reassuring the public that government advertising was not being misused for political ends. They are principle based, and readily understood.

The only way in which the guidelines can be applied, however, is if they are adopted by the government. There seems no good reason for government to reject them if government advertising is apolitical. However to date they have not been taken up.

The length of the guidelines is a possible barrier to their adoption, as is the absolute nature of some of the suggestions. For example, "no campaign should be contemplated with out an identified information need by identified recipients based on appropriate market research" is perhaps overstated – in some cases the need may be so obvious that market research is not required to establish it. Qualifiers in such clauses such as "unless there is other supporting evidence…" may assist. Likewise, where there are references to how government advertising might be perceived, an "objective test" approach may be more appropriate: eg "campaigns should not…be perceived as promoting party-political interests" might instead be worded "campaigns should not be able to be perceived by a reasonable person as…". Arguably these qualifiers are already implicit in the guidelines, but making them explicit may lead to greater willingness for them to be applied.

e) the order of the Senate of 29 October 2003 relating to advertising projects, and whether the order is an effective mechanism for parliamentary accountability in relation to government advertising.

The order of the Senate would make advertising campaigns costing more than $100,000 more open to scrutiny. In general terms transparency is the best safeguard for accountability and probity – and therefore the Senate order would be a desirable improvement. It does not go so far as to make government advertising disallowable – nor should it. Publication is of itself a virtual guarantee that an unacceptably partisan advertising campaign proposal would never in practice be put forward.

The Senate order operates in relation to advertising that has been approved. An alternative approach would be to require proposals for advertising campaigns to be alerted prior to their being booked – this would mean that a campaign could be called off it attracted criticism sufficient to cause it to be reconsidered.

As with the Auditor-General and JCPAA guidelines, the issue here is not whether the Senate order is an effective mechanism but whether it has any practical effect. It will be a useful mechanism if it is adopted.

There is another way to approach the issue of transparency and disclosure – and that is to require publication of advertising campaign proposals online. The tabling of documents in the Senate is only one of the options for obtaining transparency. A well-signposted website, on which details of proposed advertising campaigns were required to be posted by their sponsoring agencies, would enable ongoing scrutiny not only by Senators but the media and interested members of the public. It would also be a cost effective mechanism for the agencies concerned.

Just as important as the actual advertising campaigns is the market research commissioned by departments and agencies. Under the *Guidelines* "the MCGC considers all significant market research related to information programs or campaigns that is either sensitive or has an expected value of $100,000 or more". The research might include surveys, focus groups, opinion polls or other means of evaluating public information.

This information should arguably be made public, as an assurance that it is not in fact being used to bolster party political opinion polling. Similar market research is done by political parties, which use it to assist them to develop and sell policies – this is a proper use for the parties' own funds, not public monies. There is no evidence that government advertising market research is used in this way – but equally, given it is kept confidential, no evidence that it is not. Disclosure would provide the level of assurance needed.

Publication of research by government agencies is a normal and accepted part of government business, and there is a wealth of information already made public in a wide range of fields – agriculture, resources, science, health, economics, social welfare etc. Publication of the research that supports government advertising campaigns – assuming that it is not designed to meet partisan political ends – would be a useful complement to these other policy publications.

Publication of the market research would also be highly valuable in providing evidence to the public that the government advertising in question was meeting a genuine need for government information and not serving a political purpose.

A final thought…

The "…authorised by the Commonwealth Government Canberra, spoken by…" tagline at the end of electronic media advertising by the Australian Government is a relatively recent phenomenon. Prior to the advertising campaign for "A New Tax System" (the introduction of the Goods and Services Tax) government advertising did not have such authorisation.

Authorisation is required under clause 4, part 2, schedule 2 of the *Broadcasting Services Act 1992*, which relates to the broadcasting of political matter. If a broadcaster broadcasts political matter they must announce the "required particulars" in the form approved by the Australian Broadcasting Authority.

The authorisation for the GST campaign was challenged at the time by Senator Faulkner. The ABA found that the governments' tax reform advertisements complied with the Broadcasting Services Act (source: ABA Press release, Professor David Flint, ABA Chairman, 1 October 1998).

The introduction of the authorisation was, it has to be assumed, prompted by a concern on the part of either Ministers or government agencies that the advertising for the GST was in fact political in nature. If there was legal advice to that effect, it has not (to the knowledge of the author) been made public. It may be useful, in terms of public disclosure, for the committee to inquire of the GCU as to whether the decision was in fact based on legal advice, and if so, what that advice was.

The problem with adoption of the authorisation for all government advertising is the "might as well be hung for stealing a sheep as a lamb" problem. That is, there is now no impediment under the *Broadcasting Services Act* to blatant political advertising by the government – so it is more likely to be tempted to undertake such advertising.

A better course would be for government advertising **not** to be authorised – which would leave government advertising open to challenge were it to become party political in nature. This would mean that any government department commissioning advertising would need to consider the implications of a possible challenge. Thus there would be an inbuilt incentive for them to ensure that government advertising was apolitical.