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Sent: Tuesday, 18 October 2005 8:41 AM

To: Bachelard, Sarah (SEN)

Subject: Submission



Inquiry into Government Advertising and Accountability

Submission

Dear Sarah

This email and the attached chapter from my recent book ***Selling the Australian Government: Politics and Propaganda from Whitlam to Howard***, (UNSW Press, 2005), deal with some of the issues raised by this Inquiry.

In particular it is important that this Inquiry focuses on the broader philosophical issues which underpin the debate about government advertising.

The need to ensure greater political engagement and political equality should be part and parcel of any reforms in this area.

The fact that governments utilise their advertising budgets as part of a state of perpetual campaigning is leading to cases where the line between information and propaganda is blurred most of the time.

The attached chapter deals with this problem and the Committee may find it useful.

Regards

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Chapter 6 – The Case for Reform

In his 2001 annual report to Parliament, the New South Wales Auditor-General, Bob Sendt, noted, ‘It is a fundamental feature of our democratic system that governments should not use public resources for private or political ends.’ A noble and apt sentiment, but one it would seem, that has been cavalierly ignored by the Liberal Party, its Coalition partners, the Nationals, and the ALP for the past two decades. The NMLS, and the GMS, are both clearly in breach of the letter and spirit of Mr Sendt’s view of the world.

To many in the community it might seem unimportant that taxpayers’ funds are being used by governments in Canberra to seize political advantage and win marginal seats in election campaigns. Certainly, after an initial flurry of interest in the GMS’s activities after the Howard government inspired attacks on Labor leader Mark Latham, the embers of that fire are well and truly extinguished. And Labor’s NMLS was really only a story of interest to political aficionados.

Today many people in our community are disengaged, disempowered and see hypocrisy in public life as normal. For many people, Sendt’s statement represents idealism – not something to apply to real life. If they genuinely believed it to be possible they would be drawn to it. But they don’t.

But if our democracy is to be enhanced, and faith restored in its workings, the matter of principle at stake in the taxpayer funding of bodies such as NMLS and GMS is of fundamental importance.

There are a number of reasons as to why this is the case. Firstly, because of what political theorist Robert Dahl, describes as the

‘importance of organisational resources in securing a satisfactory degree of political equality among citizens in a democratic country.’ⁱ

Dahl’s point is that resources for effective participation in the political process must be equally distributed otherwise, the ‘thin conception of citizenship’ is put at risk. By resources, we mean to include the public funds available for governments and parliaments to disburse to enhance democracy.

And Graham Orr of Griffith University has noted recently that,

Political equality requires that mechanisms be in place to minimise the benefits of incumbency and to ensure the system is open to outsiders and newcomers.’ⁱⁱ

These ideas are not new – it is axiomatic that democracy works best when the resources available to its promotion are spread as evenly as possible among the citizenry, and those who represent them. In this sense, organisations such as the GMS and the NMLS offend that idea, for they increase the capacity and influence of one group of the people’s political representatives over another group, and therefore undermine political equality.

Let's illustrate this point with an example. The Howard government's GMS, funded by taxpayers, ensures that government MPs are able to communicate more readily, on a larger scale, and potentially more effectively, than opposition political parties in that particular electorate. It is, if you like, a manifestation of the spoils of office going to the victor.

In marginal electorates, as we have noted earlier, the role of the GMS can be critical in ensuring that a government MP is returned to office. Government MP's have, if you like, a taxpayer funded advantage over their opponents in an election setting. To take Dahl's argument, this is clearly a case where 'political equality' is not present. Where the resources available to the political process, to apply Orr's argument, maximise, rather than minimize the advantage of incumbency.

That this is the case can be illustrated in the following way. In a marginal electorate, through the utilisation of funds from the public purse, the GMS can assist an MP in targeting specific voters, areas and interest groups, and providing them with key messages decided to swing their vote in the direction of the MP in question. In this way, the GMS, the MP and his or her office, are focusing on the 'participation' of a group of people in the particular electorate, in contrast to those other individuals in that electorate and to other electorates, where the risk of losing a seat or swinging a vote are less likely.

There is of course, nothing wrong with political parties and interest groups utilising their own funds for the purpose of increasing the 'participation' in the political process of voters and groups in particular electorates that will be more likely to vote for the political party or candidate that commands their attention. But should taxpayers' funds be used for a purpose that does little to improve democracy, and in fact, distorts it? The answer must be an emphatic no. To return to the NSW Auditor-General Bob Sendt's statement, the use of public resources for private or political ends constitutes a direct threat to democracy.

Of course, we cannot pretend that we live in a pure and idealised world in which governments will not take advantage of their incumbency to boost their own capacity within the electorate. But we argue here, that the use of public resources by a government – in the current case, the Howard government – for the primary purpose of bolstering MPs against challengers, or even researching and supplying material about another politician's previous personal history, cannot be said to be advancing the cause of the Australian government's programs that are delivered to the people.

This important distinction was tackled by the Australian Government Solicitor in an advice it gave to the Commonwealth Auditor-General in 1998. According to the AGS,

It needs to be recognised that the core of the Executive Government is made up of members of Parliament in the political party or parties which command a majority in the House of Representatives. Therefore there is an intimate link between the Government and one or more political parties. Provided the policy is developed, explained and advertised for the Commonwealth Government qua Government, this link is no basis for arguing that this is not done for the purposes of the Commonwealth.ⁱⁱⁱ

At the time when this advice from the AGS was proffered to the ANAO, the latter was examining the Howard government's extensive advertising and marketing campaign of its tax reform program. The ALP had argued, unsuccessfully as it turned out, that the Howard government was using public servants and taxpayers' funds to push a political agenda.

But if we apply the AGS reasoning to bodies like the GMS and even the NMLS we can readily come up with a different answer that further fuels the argument as to why such bodies should not be funded by taxpayers.

What the AGS advice appears to be saying, and rightly so, is that it is inevitable that some political advantage might accrue from actions that the Commonwealth government takes vis a vis the electorate. In the case of advertising campaigns such as the Howard government's graphic images of 'unchaining' the tax system in 1998-99, it is likely that this was the case. As it potentially was a decade ago, for the Keating government's 'Working Nation' advertising campaign featuring well known actor Bill Hunter – at that time revelling in the success of film, 'Muriel's Wedding' in which he had a prominent part.

In both those cases, Commonwealth government programs were being promoted through the use of taxpayers' money. The Coalition parties and the ALP both stood to gain electorally from the positive and high profile promotion of these government programs since they were in office at the time, and therefore responsible in the public's eyes for tax reform and job creation initiatives.

But where is the line drawn? When does advertising of a government program become a political propaganda exercise? The answer to this question is difficult but it is noteworthy that in election years government advertising expenditure escalates.

As the Australian Parliamentary Library has pointed out, there are plenty of examples of governments' spending up big in the lead-up to an election campaign on electorally sensitive advertising campaigns.

The APH provides the following examples:

- *the bulk of the Keating Government's \$3 million advertising campaign on Medicare Hospital Entitlements was spent the month before the 1993 poll*
- *the Keating Government spent \$9 million in the three months prior to the 1996 Federal election campaign*
- *the Howard Government spent \$29.5 million in the three months before the 1998 election campaign. Half this expenditure (\$14.9 million) was on the GST campaign. Still, pre-election spending on GST advertising accounted for only 13 per cent of total expenditure on the GST campaign, and*
- *in the four months before the 2001 election, the government spent roughly \$78 million.^{iv}*

To these examples could be added the Howard government's expenditure of \$16 million of taxpayers' money on its 'Strengthening Medicare' campaign in the months leading up to the 2004 federal election.

Perhaps there ought to be a cap placed on government advertising in election years to prevent political parties using the advantage of incumbency to drive home positive political messages? And the fact that governments for over a decade now have been getting away with increasing their expenditure on advertising in election years, is yet another indication that the government advertising approval process needs reform.

Allied to this is the issue of governments using the public purse for ongoing propaganda efforts (the NMLS), electoral databases or MP's electoral political activities (the GMS). It is hard to see how funding for such a purpose is done for 'the purposes of the Commonwealth', to use the AGS' phrase. The activities of units such as the GMS or the NMLS, or even the Fraser and Whitlam government's incarnations of such bodies, are clearly partisan. They are designed to give the government, and therefore the political party or parties in office, an electoral edge over their opponents in opposition.

In short, and this provides us with a second compelling reason as to why the development of taxpayer funded propaganda and electoral support units is an unhealthy development in our democracy, there is the possibility that the Constitution is being breached by such activities.

Section 81 of the Commonwealth Constitution provides,

All revenues or money raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund; to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

The funds allocated to units like the GMS and the NMLS are drawn from the Consolidated Revenue Fund – they are 'appropriated for the purposes of the Commonwealth.' And, as we have noted earlier, the appropriation of taxpayer funds to establish and maintain these organisations is significant enough to be taken seriously. In total, between \$15-\$20 million have been expended on such bodies over the past 20 years – in May 2004 the Howard government's Special Minister of State, Senator Eric Abetz, reported that salaries and allowances alone for GMS staff amounted to \$867,000 per year.^v

In 1908, Justice Isaacs, later to become Australia's first native born Governor-General, defined the phrase 'appropriated for the purposes of the Commonwealth' in this way:

"Appropriation of money to a Commonwealth purpose" means legally segregating it from the general mass of the Consolidated Fund and dedicating it to the execution of some purpose which either the Constitution has itself declared, or Parliament has lawfully determined, shall be carried out.^{vi}

Justice Isaacs' words imply that whether or not the appropriation of monies, which takes place in the Commonwealth Budget each year, is in accordance with section 81 of the Constitution, depends on whether it comes under a Constitutional power or through another regulation of the Parliament.

And as Sir Owen Dixon, undoubtedly Australia's greatest jurist, noted in 1945,

An appropriation is not a departure from the Constitution merely for the reason that it is made for a purpose not envisaged by the makers of the Constitution. As the Constitution is an instrument of government it has the quality of adaptability to new needs and conditions. The purposes of the Commonwealth are not fixed or immutable. They expand and change with the growth and development of the nation. As the Constitution is an instrument of government it should not be construed as if it were merely an Act of Parliament or a contract. When Parliament has appropriated revenue for any purpose the Court could not decide the question whether it was a purpose of the Commonwealth without entering into a consideration of matters of policy which are peculiarly and exclusively within the legislative sphere.^{vii}

What this all means, is that the Australian Parliament has a fairly wide scope for the purposes of appropriating money for various purposes – 'the purposes of the Commonwealth are not fixed and immutable', as Dixon noted.

But it does appear to be stretching the rather wide boundaries allowed by Justices Isaacs and Dixon to argue that the appropriation of funds each year of up to \$2 million for the purposes of running a unit whose purpose is solely to advantage one group of parliamentarians over another, is within the scope of section 81 of the Constitution. If there were to be case where the appropriation of funds was outside the scope of what is allowed under this section, as interpreted by the High Court, then this may well be it.

Even if we accept that appropriation of funds to run a propaganda and political tactics unit is constitutional, in a climate of increasing budget stringency a question of priority arises. As the Australian population grows older, health care costs continue to rise, and downward pressure on taxation as the primary source of revenue continues, our democracy is entitled to ask why political parties themselves are not funding their thinly disguised propaganda units. This is 'capital D' discretionary expenditure by government.

This point is strengthened considerably when one considers that all MPs, not just those in the government parties, are able to spend in excess of \$150,000 per year in taxpayer funded entitlements for printing, stationery, and mail-outs. As Melbourne University academic Sally Young, who has written extensively on government advertising, notes,

By using the perks of office that an MP receives, incumbents are spending far more on mail, newsletters and other types of promotional material whilst in office. They are using increased parliamentary entitlements, printing and communications allowances and new office equipment to do it.^{viii}

The Australian Democrats' senator Andrew Murray, who has long campaigned for greater transparency and cost control over MP's entitlements, has provided a neat summary of the largesse currently available to all MPs in the Australian Parliament for communicating with their constituents.

According to Murray,

In 2003 regulations were introduced which essentially increased the cap on printing entitlements for members from \$125,000 to \$150,000 and allowed 45 per cent of the entitlement to move from one year to the next. Consider that 10 years ago the average spending on printing was \$5,000 and only three years ago the printing average, as recorded by the auditor, was \$37,287 a year. If each member of the House of Representatives were to be given a capped maximum \$150,000 printing allowance—and it will not happen—and if all members were to use that, you would find that there would be \$22 million spent on legitimate usage plus propaganda. That is \$22 million.

...That \$22 million, maximum, is not even indicative of the situations where members of parliament might choose to roll over the existing allowances to the following year, particularly given that it is an election year. That is an excess that simply cannot be acceptable to the Australian people. My judgment of the sorts of correspondence we get and the way the media reacts to public pressure on this is that the Australian people really will not like the idea of \$22 million of expenditure of this kind being able to be shoved into their letterboxes.^{ix}

Given this generous allocation by taxpayers, to MPs for electoral communications, it is outrageous that that government parties then dip further into the Consolidated Revenue to create another source of help and support for MPs. A taxpayer-funded GMS to write generic letters for government MPs to send to constituents is obsolete when there is already capacity for that to occur within the allocated budget to each MP.

Similarly, for organisations such as the NMLS, or the Howard government's media monitors that monitor opposition media comment and assist government MPs in their media coverage, it is equally offensive that taxpayers' should have to fund such an activity when there is a media adviser within each Ministers' office and each government department.

It would appear that, despite there being cogent and compelling reasons as to why it is inappropriate for government propaganda and electoral support units to be established and funded by the Australian taxpayer, at this time there is little incentive for the major political parties to cease the practice.

In a sense this reflects the competitive nature of Australian politics, where daily combat and getting the upper hand on a weekly basis is vitally important in the eyes of the Canberra Press Gallery. It is also, and again Sally Young is prescient on this point, because,

The mediated nature of modern politics, the changing use of new technology to communicate, the permanent campaign –has increased the major political parties perceived need for money to finance their communication exercises.^x

The 'permanent campaign' equals government funding of political activities, as Brad Rourke of the Institute of Global Ethics notes;

If spin is the tactic exported from Washington, the permanent campaign is the strategy that drives it. Simply put, it is the practice of using the power of one's elected office to ensure re-election. Like spin, the permanent campaign has a relatively benign and time-honored form. Incumbent members of Congress, for instance, send newsletters to their constituents at government expense touting their legislative accomplishments, publications that, while useful, are clearly aimed at eking out another term in office.^{xi}

Rourke's comments are as applicable to Australian politics as they are to the US and the UK. In a 2002 article, American political scientist, James A Thurber, noted there are a number of features that characterise the 'permanent' campaign in that country:

- *Political party organizations are weaker than they were thirty years ago at the birth of the permanent campaign. They have little control over candidate recruitment, voter mobilization, and the strategy theme and message of candidates. Candidate individualism dominates the campaign scene. Parties finance campaign consultants who advocate the use of ideology and attack politics to influence voters.*
- *Second, the expansion of an open, extensive, and in many cases well funded system of interest-group politics is a source of attack issue advertising and massive amounts of campaign money directed at defeating candidates not in support of narrow interest group policy preferences...*
- *Third, the new communications technologies of modern politics, media specialists, television, the Internet, grassroots professionals (including a focus on "Astroturf" and "top-roots"), and coalition building specialists can be brought to bear to help deter potential candidates from running for public office, defeat candidates, and change elected public officials' minds about policies.*
- *Fourth, the advanced techniques of campaign consultants, pollsters, direct mail specialists, media professionals, and campaign fund raising experts have expanded the permanent campaign by using sophisticated attack tactics politics and by totally destroying opponents with massive amounts of campaign funds to control the message of a campaign.*
- *Fifth, the demand for campaign money is insatiable and endless (even with the Bipartisan Campaign Reform Act of 2002). The more one candidate gets, the more the opposition needs. Members of the House are in a perpetual quest for campaign dollars having to face re-election contests every two years. Senators are also forced to begin fund raising throughout their six-year terms. Viable presidential candidates must win the money chase before they are taken seriously.*
- *Sixth, with close elections and partisan parity in the House and Senate, there is a drive to control both houses of Congress using any means do to do so and higher stakes for interest groups backing one party or the other.^{xiii}*

Sadly, and given the derivative nature of political campaigning in Australia it is no surprise, Thurber's observations hold true in Australia. Despite the fact that in each of the 2001 and 2004 federal elections, few seats have changed hands, both the ALP and the Coalition parties know that the concept of a safe seat is much less relevant in an era where independent candidates, savvy grass roots local issues campaigners, and local media can turf out sitting MPs.

That permanent campaigning is a feature of the Australian political landscape was evident in Prime Minister John Howard's constant reminder to his colleagues before the 2004 federal election that only 8 seats stood between his government and the ALP winning office. And despite the magnitude of the Coalition's win in that election, the experience of Paul Keating who won the 1993 election handsomely but was thrashed by the Coalition only three years later, is evidence of the need for a permanent campaign.

That Thurber's descriptions of the features of permanent campaigning are so apt in the Australian context means that, despite the damage to democracy and the dubious constitutionality of taxpayers' expenditure by governments on financing of political activities that assist incumbency, it is unlikely that either the Coalition parties or the ALP would sanction the outlawing of bodies like the GMS and the NMLS.

Finally, there is the fact that MPs and political parties are exempted from the Privacy Act when it comes to collecting data on constituents and community groups. Shouldn't taxpayers have the right to be able to access information that their local MP or that a political party keeps on them? Particularly, given that the taxpayer is funding the operations that allow for the collation of such information in the first place?

Perhaps the last word on this state of affairs goes to an unlikely source – the American conservative political commentator, George F Will. Will's columns appear in around 450 American and overseas newspapers, so he wields considerable influence. And he's dead against government expenditure for political campaigning, whether by conservatives or the left.

Will's regular column in the Washington Post on January 13 2005 thundered,

It is impossible to draw, with statutory language, a bright line between legitimate informing and illegitimate propagandizing by government... Obviously government leaders must try to lead by persuading the public. But government by the consent of the governed should not mean government by consent produced by government propaganda. Unfortunately, as government's pretensions grow, so does its sense that its glorious ends justify even the tackiest means.^{xiii}

Amen to that!

ⁱ R.A Dahl (1987) Dilemmas of Pluralist Democracy in P. Koslowski (Ed) Individual Liberty and Democratic Decision-making (J C B Mohr, Tubingen) p. 213.

ⁱⁱ G. Orr (2004) Australian Electoral Systems - How Well Do They Serve Political Equality? Report No 2 for the Democratic Audit of Australia (ANU Canberra) p. 3.

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- ⁱⁱⁱ 2. AGS (1998) quoted in ANAO, Audit Report: Taxation Reform –Community Education and Information Program (Commonwealth of Australia, Canberra) paragraph 2.8.
- ^{iv} R. Grant (2004) Research Note No 62: Federal Government Advertising (Australian Parliamentary Library, Canberra). Viewed online at <http://www.aph.gov.au/library/pubs/rn/2003-04/04rn62.htm> on 11 April 2005.
- ^v E. Abetz (2004) Answer to Question on Notice, Finance and Administration Portfolio, 26 May. Viewed at http://www.aph.gov.au/senate/committee/fapa_ctte/estimates/bud_0405/finance/fl6-18.pdf on 31 January 2005.
- ^{vi} See *NSW v Commonwealth* (1908) 7 CLR 129 at p.
- ^{vii} See *Victoria v Commonwealth* (1945) 71 CLR 237, at p.
- ^{viii} S. Young (2003) Democracy, Communication and Money, posted November at <http://democratic.audit.anu.edu.au/Elections.htm>
- ^{ix} A. Murray (2003) Senate Hansard, 20 August, p. 14170.
- ^x Young (2003) op. Cit.
- ^{xi} B. Rourke (2002) The Permanent Campaign; Here to Stay? In Ethics Newslines, Vol. 5 No. 9 (Camden, Maine) viewed online at <http://www.globalethics.org/newsline/members/issue.tmpl?articleid=03040214311831> on 31 January 2005.
- ^{xii} J. Thurber (2002) Is the Permanent Campaign Alive and Well after 9/11? in Extensions, Spring 2002 (University of Oklahoma, Carl Albert Center) viewed online at <http://www.ou.edu/special/albertctr/extensions/spring2002/Thurber.html> on 31 January 2005.
- ^{xiii} G. Will (2005) No Ad Left Behind, Washington Post, January 13, p. A21.