

Chapter 1

PREVENTING THE MISUSE OF GOVERNMENT ADVERTISING BILL 2010

Introduction

1.1 On 16 June 2010, the Senate referred the *Preventing the Misuse of Government Advertising Bill 2010* (the bill) to the Senate Standing Legislation Committee on Finance and Public Administration (the committee) for inquiry and report by 21 June 2010.

Purpose of the bill

1.2 The purpose of the bill is to establish a legislative framework for accountability of expenditure on information and advertising campaigns undertaken by Australian government departments and agencies to 'ensure that the campaign advertising does not contain electoral matter'.¹

1.3 The framework to be established by the bill:

- (i) provides the Auditor-General with the powers and functions to review and report on government information and advertising campaigns;
- (ii) establishes a process by which ministers and the Auditor-General report to the Parliament; and
- (iii) outlines the principles and guidelines governing the use of public funds for government information and advertising.²

1.4 The framework also provides for exemption from the guidelines in cases of national emergency.

1.5 The guidelines contained in the bill are based on the 2008 *Guidelines on Campaign Advertising by Australian Government Departments and Agencies* (introduced by the current government but superseded by new guidelines in 2010) whilst incorporating key recommendations made by the Auditor-General in relation to the review of the guidelines conducted in early 2010.

Functions of the Auditor-General

1.6 The bill provides the Auditor-General with new functions of reviewing government information and advertising campaigns with a cost in excess of \$250 000

1 Preventing the Misuse of Government Advertising Bill 2010, *Explanatory Memorandum*, Outline.

2 Preventing the Misuse of Government Advertising Bill 2010, clause 3.

and reporting whether they comply with the principles and guidelines set out in the bill. The bill allows the Auditor-General to use the powers available under the *Auditor-General Act 1997* to undertake these new functions.³

1.7 A minister responsible for a campaign with expenditure of \$250 000 or less may ask the Auditor-General to review that campaign's compliance with the guidelines where the campaign is of a sensitive nature or the minister considers that such a review is appropriate.

1.8 The provisions of the bill also provide that the Auditor-General report to the minister and to the Parliament on each campaign. While the minister retains ultimate responsibility for the approval or rejection of a campaign, the process seeks to ensure that the public are fully informed of review and decision-making processes.

1.9 Clause 8 of the bill details the functions of the Auditor-General which include:

- (a) considering campaigns as specified in the guidelines;
- (b) reporting on compliance of campaigns with the guidelines;
- (c) reporting to each House of Parliament on matters connected to those guidelines;
- (d) providing advice to the minister and the Parliament on the operation of the guidelines and on any proposal by the minister to revise the guidelines; and
- (e) any other function necessary or convenient to enable the Auditor-General to undertake a function assigned to the Auditor-General.⁴

Administrative process

1.10 Agencies subject to the *Financial Management and Accountability Act 1997* must comply with the guidelines provided in the act 'whether delivered by the agency, third parties or jointly delivered', where the Commonwealth has committed to expenditure of \$250 000 or more.⁵

1.11 Government campaigns can be approved for launching by a minister when the chief executive of the involved agency certifies that the campaign complies with the guidelines and relevant government policy and, in case of campaigns in excess of \$250 000, the Auditor-General provides a report to the minister responsible for the

3 Preventing the Misuse of Government Advertising Bill 2010, *Explanatory Memorandum*, Outline.

4 Preventing the Misuse of Government Advertising Bill 2010, clause 8.

5 Preventing the Misuse of Government Advertising Bill 2010, Guidelines on campaign advertising, administrative process, clause 5.

agency undertaking the campaign on the proposed campaign's compliance with the guidelines.

1.12 The chief executive's certification will be published on the relevant department's website when the campaign is launched. Chief executives are responsible for ensuring that research reports for advertising campaigns worth \$250 000 or more are published on the agency's website following the launch of the campaign where appropriate, and details of advertising campaigns undertaken will be published in agency annual reports.⁶

1.13 The requirements for review and certification of campaign advertising are determined by the value of the campaign. The bill defines the value of the campaign as the budget for all campaign elements across all financial years and includes:

- market or social research consultants, public relations consultants, advertising agencies and/or other specialist consultants commissioned in the development of advertising material;
- production and placement of advertising in print, radio, digital, cinema, television or out-of-home media; and
- production and dissemination of other campaign materials.⁷

Exemption from the guidelines

1.14 The bill also provides for the exemption of information and advertising national emergencies from the guidelines. Subclause 6(2) of the bill provides that, in the event of a national emergency, the minister may seek to have the advertising campaign exempted by the Cabinet Secretary in accordance with clause 9 of the guidelines. The exemption for that advertising campaign will expire when the national emergency has ended. Subclause 6(5) sets out the requirement that the minister seek a review by the Auditor-General in relation to national emergency campaigns 'as soon as practicable' following the exemption.⁸

1.15 In his second reading speech, Senator Bob Brown stated the following in relation to the exemption process:

This provision removes all room for subjective interpretation and political expediency in the exercise of exemptions from compliance. The current guidelines which allow exemptions on the basis of 'a national emergency, extreme urgency or other compelling reason' allows broad interpretation

6 Preventing the Misuse of Government Advertising Bill 2010, Guidelines on campaign advertising, clause 8.

7 Preventing the Misuse of Government Advertising Bill 2010, Guidelines on campaign advertising, clause 14.

8 Preventing the Misuse of Government Advertising Bill 2010, *Explanatory Memorandum*, Outline.

which demonstrably results in campaign which breach the clear and stated intention. This Bill closes that loophole.⁹

Legislated process of revision of guidelines

1.16 The bill also provides for a legislated process for the revision of the guidelines governing government advertising campaigns. Under provisions of the bill, the guidelines can only be revised by regulations following a process of public consultation. The proposed process would require the Finance Minister to publish a draft of the revised guidelines on the department's website; call for public submissions on the draft; consult with the Auditor-General; and, table a report on the consultation in each House of Parliament.

1.17 In the second reading speech, Senator Bob Brown stated that this provision:
...makes sure that the revision process and the changes themselves are subject to public and parliamentary input and approval.¹⁰

Conduct of the inquiry

1.18 The committee advertised the inquiry on the Internet and invited submissions from interested organisations and individuals.

1.19 The committee received four public submissions. A list of individuals and organisations who made submissions to the inquiry together with other information authorised for publication is at Appendix 1. Submissions may be accessed through the committee's website at: http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

Evidence before the inquiry

1.20 The committee was faced with an exceptionally short reporting timeframe, a fact reflected in the small number of submissions received. For this reason, and in acknowledging the wider contemporary debate around government advertising, the committee chose to consider all relevant public evidence on the matter.

1.21 Central to the bill, and debate which surrounds it, are concerns about the appropriateness or otherwise of the Auditor-General undertaking the oversight functions of proposed government advertising campaigns. Much of the debate has taken place in a number of different contexts, most recently, the Budget Estimates 2010–11 hearings of the Senate Finance and Public Administration Legislation Committee. The 2010 *Independent Review of Government Advertising Arrangements* addressed these matters as did the Auditor-General in a number of reports. The Joint Standing Committee of Public Accounts and Audit is currently conducting an inquiry

9 Senator B Brown, *Senate Hansard*, 16 June 2010, p. 56.

10 Senator B Brown, *Senate Hansard*, 16 June 2010, p. 56.

into the role of the Auditor-General in scrutinising government advertising campaigns.¹¹ Given this fact, the report considers all such material where relevant.

Acknowledgement

1.22 The committee thanks those organisations and individuals who made a submission.

Structure of the report

1.23 The committee's report is structured as follows:

- Chapter 2 provides a brief historical overview of the guidelines governing government advertising and amendments to them; and
- Chapter 3 considers the evidence in support of and against the bill and provides the committee's concluding comments and recommendation.

11 Joint Standing Committee of Public Accounts and Audit, *Role of the Auditor-General in scrutinising government advertising campaigns*, <http://www.aph.gov.au/house/committee/jpaa/govtad/index.htm> (accessed 16.6.10)