

REPORT OF COALITION SENATORS

BACKGROUND & OVERVIEW

In 1998, the Auditor General issued a set of draft Guidelines for Government Advertising.

These Guidelines were the subject of a review by the Joint Committee of Public Accounts and Audit in 2000.

They were further revised in 2008 as Government policy and were revised again in March 2010.

This Bill seeks to codify advertising guidelines, based on the 2008 iteration. Importantly, the changes which have taken place between the original 1998 draft Guidelines and the current Bill are quite significant.

The Bill also seeks to require the Auditor-General to assess all advertising material (above a spending threshold of \$250,000) prior to its publication or broadcast.

THE ROLE OF THE AUDITOR GENERAL

This requirement upon the Auditor-General is both the core requirement of this Bill and its most contentious element.

Coalition Senators have genuine concerns with placing the Auditor-General in such a role.

Proponents of this Bill have not sufficiently addressed the concern that it may not be appropriate for the Auditor-General to be involved in the creation of a campaign, to approve a campaign and then retrospectively assess such campaigns through the process of performance audits.

The Auditor-General himself outlined these risks. Immediately after the election, in a letter to the Prime Minister, dated 26 November 2007, the Auditor-General wrote:

"Given the sometimes controversial history of government advertising there is a real risk that whoever administers the guidelines could be drawn into the policy and political debate as an active participant in, and possible defender of the processes of executive government. To preserve both the real and perceived independence of this office, I and my predecessors have actively sought placing the ANAO in such a situation."

We know from evidence in the JCPAA that the Prime Minister could not even be bothered to respond to this letter and, instead, pushed ahead with the 2007 Labor policy.

Instead, the Auditor-General proposed:

"a model involving a small independent committee with an executive or advisory role in relation to government advertising."

This would leave the Auditor-General free to pursue the traditional role of post-publication assessment of campaigns via regular performance audits.

The fundamental problem, however, remains unresolved. The Auditor General, under this Bill, is both decision-maker and auditor.

Furthermore, the use of the Auditor-General in this role does not necessarily guarantee the outcomes desired by the proponents of this bill.

In the JCPAA hearings regarding the 2008 Guidelines, the Audit-Office officials could only guarantee a 'limited' level of assurance, not even a 'reasonable' level of assurance of compliance with the Guidelines.

To more forensically investigate the advertising would put them in the position of being a decision-maker and thus voiding their own ability to engage in post-campaign performance audits!

THE CURRENT CRISIS – LABOR'S SPECTACULAR BACKFLIP

This inquiry arises out of revelations that the Labor Party decided to bypass the Independent Communications Committee (ICC) in favour of a highly-politicised framework in the final months before an election.

In March and April 2010, the Government had engaged a research company to undertake fieldwork to identify understanding of tax reform in the context of the forthcoming release of the Henry Tax Review.

On 21 April 2010, the ICC was provided with a Communications Strategy for a proposed campaign. There was no indication, at any stage, that there was a particular urgency to this campaign. The ICC approved the Strategy and a Brief was issued to a number of advertising agencies, who were due to present their creative executions on 10 May 2010.

In the first week of May, the Government announced its response to the Henry Tax Review. At this stage there was only muted criticism of the Government's response in the media, with only two full-page advertisements critical of the Government's proposal appearing on consecutive days in the West Australian. There was no other paid advertising or no campaign of misinformation that justified seeking an exemption from the Guidelines.

However, the Treasurer, Mr Swan, hit the 'panic' button. On 10 May 2010, he wrote to the Cabinet Secretary, seeking exemption from the advertising Guidelines. That same day, the advertising agencies were scheduled to present their creative pitches to the Department of the Treasury officials. The agency selected, Shannon's Way, has a

long and close association with the Labor Party, including being the agency for Labor election campaigns.

The following day, in the Federal Budget, the Treasurer announced that the communications campaign would have an appropriation of \$38.5m.

On 14 May 2010, the Department provided a brief to the Minister which included a draft letter to the Treasurer and a draft Statement to Parliament. The Cabinet Secretary then ‘sat’ on this brief for ten days.

On 24 May 2010, the Cabinet Secretary approved the request for exemption, citing ‘extreme urgency’ and ‘compelling reasons’. Mr Hawke has made it clear that the ‘compelling reasons’ justification was never intended to be used in this manner.

However, the notification to Parliament was deliberately delayed for another four days. It was only tabled on 28 May 2010 which was, notably, the day after the Senate Estimates hearing into government advertising had concluded.

However, the Cabinet Secretary laid an unintentional trap for the Treasurer. In his letter of 24 May 2010 to the Treasurer, he stated:

Despite the exemption, there are associated campaign processes which can be applied without any impact on the ability of the Government to quickly communicate important information relating to Tax Reform. I expect the Treasury to adhere to the intent of the Guidelines...

In that context, the Government Mining Tax advertising campaign fails to meet the conditions set. In the current Guidelines, it is clear:

18. The subject matter of campaigns should be directly related to the Government’s responsibilities. As such, only policies or programs underpinned by:

- legislative authority; or
- appropriation of the Parliament; or
- a Cabinet Decision which is intended to be implemented during the current Parliament should be the subject of a campaign.

The Mining Tax campaign does not meet any of the three criteria. It is not yet legislated for; there has been no appropriation for the Mining Tax; and the decision is not intended to be implemented in the current Parliament.

As such, the Treasurer is in breach of the Cabinet Secretary’s own conditional approval for exemption.

What appears clear is that the Guidelines, which had already been weakened by the March 2010 changes, were still too restrictive for Labor’s wish to use taxpayers' funds for partisan political advertising.

The Labor Government clearly felt that, in the run up to an election, they needed to run an aggressive, partisan campaign and wanted complete control over the nature and content of that advertising.

CONCLUSION

While the conduct of the Labor Party in regard to government advertising has shown an unparalleled hypocrisy and disregard for honesty and integrity as well as the Parliament (particularly the Senate Estimates process), the proposal to place the Auditor-General at the centre of approval for future campaigns does not address the problems outlined.

The Auditor-General's independence is of paramount importance to the statutory responsibilities of that office.

To place the Auditor-General at the centre of decision-making will potentially risk the perceived independence of the office and also put at risk the ability of the Auditor-General to undertake performance audits on behalf of the Parliament.

Coalition Senators believe the Auditor-General's paramount role is as outlined in the Audit Act, to audit the finances and performance of the Commonwealth. This includes advertising campaigns, and the assessment of compliance with the Guidelines. This role can potentially be strengthened with a requirement for such an assessment within a short time period from the commencement of the relevant campaign.

Coalition Senators do not support the proposed Bill.

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