

SELECT COMMITTEE ON CAMPAIGN ADVERTISING

**Inquiry into the Government Agencies  
(Campaign Advertising) Bill 2008**

AUGUST 2009



## Committee Membership

Ms Joy Burch MLA	Chair
Mr Shane Rattenbury MLA	Deputy Chair
Mr Alistair Coe MLA	

## Secretariat

Dr Sandra Lilburn

Ms Erin Anderson

## Contact Information

Telephone	02 6205 0199
Facsimile	02 6205 0432
Post	GPO Box 1020, CANBERRA ACT 2601
Email	<a href="mailto:committees@parliament.act.gov.au">committees@parliament.act.gov.au</a>
Website	<a href="http://www.parliament.act.gov.au">www.parliament.act.gov.au</a>

## **Resolution of Appointment and Terms of Reference**

On 1 April 2009, the Assembly resolved that the Government Agencies (Campaign Advertising) Bill 2008 be referred to a Select Committee on Campaign Advertising with the following terms of appointment:

(1) the Committee to be composed of:

(a) one Member to be nominated by the Government

(b) one Member to be nominated by the Opposition; and

(c) one Member to be nominated by the Greens;

to be notified in writing to the Speaker by 4 pm on the next sitting day;

(2) the Committee is to report to the Assembly by 31 August 2009;

(3) if the Committee is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker, or in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation; and

(4) the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

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## RECOMMENDATIONS

### RECOMMENDATION 1

3.4 The Committee recommends that a framework for ACT government campaign advertising be implemented, providing for accountability and transparency in the use of public funds.

### RECOMMENDATION 2

3.20 The Committee recommends that a legislative framework for the regulation of Government campaign advertising be adopted by the ACT.

### RECOMMENDATION 3

4.12 The Committee recommends that the review role proposed for the Auditor-General under the current Bill should instead be undertaken by an independent expert panel.

### RECOMMENDATION 4

4.13 The Committee recommends that membership of the panel be subject to statutory appointment, so that the appropriate Assembly Committee must be consulted before the Minister makes an appointment. The appointments should be made by disallowable instrument.

### RECOMMENDATION 5

4.20 The Committee recommends that any identifiable and attributable production and development costs should be included when calculating the total cost of a government advertising campaign.

### RECOMMENDATION 6

4.21 The Committee recommends that \$40,000 be the cost threshold for review and reporting of government advertising.

### RECOMMENDATION 7

4.29 The Committee recommends that the Government table in the Assembly a report detailing government advertising spending. The report should be tabled on a biannual basis by the final sitting week of the first quarter after the end of the reporting period. The report should be publicly available, possibly via the Chief Minister's Department website.

**RECOMMENDATION 8**

4.32 The Committee recommends that, should the current Bill proceed, the Bill be amended to clarify that the prohibition period before the election ends on polling day.

**RECOMMENDATION 9**

4.34 The Committee recommends that, should the current Bill proceed, the Bill be amended to exclude the Electoral Commissioner from the ban on government advertising in the prohibition period before an election.

**RECOMMENDATION 10**

4.40 The Committee recommends that restrictions be imposed on government advertising in the lead up to an election.

**RECOMMENDATION 11**

4.46 The Committee recommends that, should the current Bill proceed, clarification in relation to the definition of 'government advertising' and 'party political' be required.

**RECOMMENDATION 12**

4.54 The Committee recommends that the framework acknowledge the independence of statutory office holders from the Government, and require that the statutory office holder certify the campaign. Campaigns exceeding the cost threshold should still be subject to review by the independent panel.

**RECOMMENDATION 13**

4.61 The Committee recommends that Territory-owned Corporations should be covered by the proposed legislative framework for the regulation of campaign advertising.

**RECOMMENDATION 14**

4.66 The Committee recommends that, should the current Bill proceed, the Bill be amended to remove the requirement for a statement at the beginning of a television or radio announcement.

# 1 INTRODUCTION

## Introduction of the Government Agencies (Campaign Advertising) Bill 2008 and referral to Committee

- 1.1 The Government Agencies (Campaign Advertising) Bill 2008 (the Bill) was introduced into the Assembly by the Leader of the Opposition, Mr Zed Seselja MLA on 10 December 2008. A copy of the Bill can be found at [Appendix E](#).
- 1.2 The object of the Bill is to 'prevent the use of public funds for advertising or other communications for party political purposes' (clause 5). On introducing the Bill, Mr Seselja MLA elaborated on this objective:

Our bill aims to hold ministers and governments accountable for the money of the people that they spend with the strength of statutory regulations and requires all government advertising campaigns to meet certain standards, to curtail certain practices and to subject their campaigns to independent scrutiny.<sup>1</sup>
- 1.3 On 1 April 2009, the Bill was called on for debate. The Leader of the Opposition circulated amendments to the Bill ([Appendix F](#)). The Assembly agreed to the Bill in principle. However, before proceeding to the detail stage of the debate, the Assembly established the Select Committee for Campaign Advertising (the Committee) and referred the Bill to the Committee for inquiry and report.

## Conduct of the Inquiry

### Submissions received

- 1.4 The inquiry was advertised in the Canberra Times on Saturday 18 April 2009, and in the Chronicle on Tuesday 21 April 2009. In addition, the Committee wrote to a broad range of stakeholders, seeking their views on the Bill. A total

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<sup>1</sup> Mr Seselja MLA, *Hansard*, 10 December 2008, 172.

of 16 submissions were received (a list of submissions is included at [Appendix A](#)).

## Public hearings

- 1.5 Public hearings were held on 2 July 2009 and 23 July 2009. A list of witnesses is included at [Appendix B](#). The Committee wishes to thank all organisations and individuals who provided submissions to the inquiry, and is appreciative of the individuals who attended the public hearings to give evidence.

## Regulation of government campaign advertising

- 1.6 The nature and extent of government advertising has been the subject of extensive debate in recent years. Commentators argue that incumbent governments are using government advertising to sway public opinion in favour of the incumbents, particularly in the lead-up to elections. The issue has been the subject of both public and academic debate.<sup>2</sup> In his submission to the inquiry, Dr Graeme Orr observed that:

There is a problem with open slather government advertising in an age of government by PR and the permanent campaign. That much has become clear through numerous international and Commonwealth inquiries and controversies at Commonwealth and State level, and through a large body of media and academic critique (particularly the work of Dr Sally Young of Melbourne University).

The problem is twofold: (a) a risk to political equality and (b) degrading the currency of government information programmes, and indeed of public trust generally, by heightening cynicism.<sup>3</sup>

## Commonwealth Guidelines for Campaign Advertising

- 1.7 In July 2008 the Federal Government introduced Guidelines for Campaign

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<sup>2</sup> A number of academic texts have been published on the subject, including: Sally Young (ed), *Government Communication in Australia* (Cambridge University Press, 2007); Sally Young, *The Persuaders: Inside the Hidden Machine of Political Advertising* (Pluto Press Australia, 2004); Kathy McDermott, *Marketing Government: The public service and the permanent campaign* (Democratic Audit of Australia, the Australian National University, 2008).

<sup>3</sup> Dr Graeme Orr, Submission No. 1, p 1.

Advertising.<sup>4</sup> The guidelines set out the principles applying to Australian Government departments and agencies undertaking information and advertising campaigns. All agencies subject to the *Financial Management Act 1997 (Cth)* must comply with the guidelines.

- 1.8 A key feature of the Guidelines is the requirement that all campaign advertising costing in excess of \$250,000 must be reviewed by the Auditor-General, who will report on the proposed campaign's compliance with the guidelines. The Federal Government must make publicly available the cost of all campaign advertising by all agencies by way of a biannual report tabled in Parliament and published on the Department of Finance and Deregulation website.
- 1.9 The framework consists of five major guidelines:
- Guideline 1: Material should be relevant to government responsibilities
  - Guideline 2: Material should be presented in an objective, fair and accessible manner
  - Guideline 3: Material should not be directed at promoting party political interests
  - Guideline 4: Material should be produced and distributed in an efficient, effective and relevant manner, with due regard to accountability
  - Guideline 5: Advertising must comply with legal requirements

## **Guidelines in other jurisdictions**

- 1.10 Guidelines for campaign advertising have been adopted in other jurisdictions, including Victoria, New South Wales, Queensland and Tasmania.

### **Victoria**

- 1.11 The Guidelines for Victorian Government Advertising and Communications<sup>5</sup> consist of three basic principles that should be observed by all Government agencies in the planning, development and ongoing management of Government communications:

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<sup>4</sup> <http://www.finance.gov.au/advertising/index.html>

<sup>5</sup> The Victorian Guidelines are available from:

<http://www.dpc.vic.gov.au/CA256D8000265E1A/OrigDoc/~01F447638F3597D1CA256DD60082303E?OpenDocument&1=10-Listing~&2=-Communications~&3=10-Guidelines+for+Victorian+Government+Advertising+and+Communications~>

- Objectives of Government communications
- Avoiding misuse of public funds (including a requirement that public funds should not be used for Government communications where the Government is in caretaker mode, unless the purpose of communication is related purely to achieving compliance with the law, ensuring public safety, personal security, encouraging responsible behaviour or the preservation of order in a crisis or emergency)
- Maintenance of high standards

### **New South Wales**

- 1.12 The New South Wales Government Advertising Guidelines<sup>6</sup> include general principles/guidelines to be observed by Departments, Statutory Bodies, Declared Authorities and Public Trading Enterprises as well as Sydney Water Corporation and RailCorp.
- 1.13 A feature of the guidelines is a quarantine on all major advertising activities for a period of two months prior to a state election. The only advertising to be exempt during the quarantine period will be publicity that relates to community health and safety issues, appropriate public information and services having clear commercial considerations (for example transport providers and tourism promotion).
- 1.14 The guidelines also include a review and approval process whereby public awareness campaigns costing in excess of \$50,000 are subject to approval by the Cabinet Standing Committee on the Budget (BCC) before they may be implemented. In limited circumstances, a public awareness campaign may be approved out of session by the Minister for Commerce. An independent “peer review” of advertising is conducted at the concept stage prior to the advertising being submitted for approval. The Advertising Peer Review System is managed by Department of Commerce. Peer Reviews are conducted by a team of experienced advertising and communications practitioners drawn from across the NSW public sector who provide knowledgeable and fresh-minded consideration of the proposed strategy.

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<sup>6</sup> The New South Wales Guidelines are available from:  
<http://www.advertising.nswp.commerce.nsw.gov.au/Advertising/Government+Advertising+Guidelines/Government+Advertising+Guidelines.htm>

## Regulation of government advertising by way of legislation

- 1.15 Although a number of jurisdictions have introduced guidelines, no Australian jurisdiction has legislated in this area. Bills have been introduced in most jurisdictions over the last few decades, but none of these bills have been passed. The most recent example was the Regulating Government Publicity Bill 2009, introduced in the Legislative Council for South Australia.
- 1.16 Despite the Regulating Government Publicity Bill 2009 receiving little support in parliament, on the day the Bill was debated the Legislative Council resolved to form a select committee:
- to inquire into and report on taxpayer-funded government advertising campaigns with specific reference to:
    - (a) the establishment of guidelines dealing with the appropriate use of South Australian government advertising;
    - (b) the cost of government advertising;
    - (c) a process for dealing with complaints about government advertising from the general public; and
    - (d) any other matters that the committee considers relevant.<sup>7</sup>
- 1.17 The Select Committee on Tax-payer Funded Government Advertising Campaigns had not yet reported.<sup>8</sup>

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<sup>7</sup> 18 February 2009, *Hansard*, Legislative Council for South Australia.

<sup>8</sup> The committee's website is:

<http://www.parliament.sa.gov.au/Committees/Select/LC/51/Tax-PayerFundedGovernmentAdvertisingCampaigns/TaxPayerFundedGovernmentAdvertisingCampaigns.htm>



## 2 SCOPE OF THE BILL

2.1 As presented, the object of the Government Agencies (Campaign Advertising) Bill 2008 is 'to prevent the use of public funds for advertising or other communications for party political purposes' (see clause 5).

2.2 Part 2 of the Bill sets out general principles for the use of public funds, and defines important terms including 'government agency', 'government campaign' and 'campaign costs'.

### **Auditor-General review for campaigns costing \$20,000 or more**

2.3 A major feature of the Bill is the requirement for the Auditor-General to review all government campaigns where campaign costs will likely exceed \$20,000. The responsible Minister could request a review for campaigns under \$20,000.

### **Certification requirements**

2.4 The Bill also includes certification requirements for campaign advertising. The responsible Chief Executive would be required to certify that the campaign complies with the Bill. Campaigns costing in excess of \$20,000 would also be need be reviewed by the Auditor-General before a government campaign is conducted.

### **Statement of total campaign costs**

2.5 The responsible Minister would be required to prepare a statement of the total campaign costs for the campaign. (see clause 12).

### **Guidelines**

2.6 The Bill requires that the Minister make guidelines for the Bill by way of a disallowable instrument. Clause 13 sets out detailed requirements for the content of the guidelines, which included:

- relevance to current government responsibilities;
  - information must be presented in an objective way and must not include comment, opinion or statements promoting the government's performance.
- Mr Seselja MLA's proposed amendment 4 (see [Appendix F](#)) would amend

clause 13(3)(b)(i) to require that information must be presented in an objective way and must not include comment or opinion, unless the comment or opinion has been clearly identified as comment or opinion and has been clearly distinguishable from statements of fact;

- information in a government campaign must not include slogans or other advertising techniques ('jingles' are given as an example of an advertising technique). Mr Seselja MLA's proposed amendment 5 (see [Appendix F](#)) amends clause 13(3)(c) to require that government campaigns must not include slogans or other advertising techniques designed to have, or likely to have, the effect of promoting a political party or position instead of communicating a factual message.
- presentation of information in an accessible way, taking into account special communication needs of particular people or groups;
- information must not be directed at promoting the government or party political interests in any way;
- information must be produced and distributed in an efficient, effective and relevant way with regard to accountability;
- presentation and delivery of information must be clearly identified as part of a government campaign (the example given being 'a statement at the beginning and end of a television or radio announcement')
- a government campaign must be presented and delivered in a way that recognises the diversity of the ACT community;
- the presentation and delivery of information must comply with any relevant laws in force in the ACT.

### **Restriction on government advertising prior to an election**

- 2.7 Clause 14 requires that a government agency must not conduct a government campaign in the 12-week period immediately before a general election. Clause 15 contains a number of exemptions to this rule. Clause 15 allows the Minister to exempt a campaign from the operation of the Bill by way of a disallowable instrument, only if satisfies that it is appropriate because of an emergency; or extreme urgency; or other extraordinary circumstances. When the Minister exempts a campaign under clause 15, the Minister must tell the auditor-general, in writing, about an exemption and the reasons for the exemption as soon as practicable after the exemption is given.

### 3 POSSIBLE FRAMEWORKS FOR GOVERNMENT ADVERTISING IN THE ACT

- 3.1 Submissions and witnesses were supportive of the intent of the Bill, being to prevent the use of public funds for advertising for party political purposes. There was also broad agreement that government has an obligation to inform all members of the public about their entitlements, rights and duties.
- 3.2 However, submissions varied greatly with respect to the best mechanism for achieving this goal, whether through a legislative or administrative framework. Witnesses were divided as to whether the Auditor-General is the appropriate office-holder to review proposed government campaigns. All submissions also pointed to specific provisions of the Bill which could be problematic in practice. All submissions noted the requirement for a range of amendments.
- 3.3 The Committee agreed with the core principles of the Bill. The Committee agreed that mechanisms should be in place to prevent use of public funds on party-political advertising. Accordingly, the Committee supported the introduction of an appropriate framework for government advertising, providing for accountability and transparency in the use of public funds.

#### RECOMMENDATION 1

- 3.4 **The Committee recommends that a framework for ACT government campaign advertising be implemented, providing for accountability and transparency in the use of public funds.**

#### **An appropriate framework for regulating government advertising**

- 3.5 The Committee considered that there are two alternative models for a campaign advertising framework in the ACT:
- a legislative framework with supporting guidelines; or
  - administrative guidelines.

## Legislative model

- 3.6 Many submissions supported the introduction of a legislative framework for government advertising. Even those submissions which supported the Bill in principle noted the need for substantive amendments. The Democratic Audit of Australia viewed the legislative format as 'preferable', and noted that in legislation guidelines for government advertising the ACT would be following best practice in comparable democracies (such as Canada) and giving a lead to the Commonwealth'.<sup>9</sup> The Democratic Audit of Australia also pointed out that:

the critical difference between [administrative guidelines and legislation] is the relative ease with which a subsequent government can amend or remove [administrative guidelines], while the legislative format proposed for the ACT would continue to bind future governments unless or until the Assembly passed alternative legislation.<sup>10</sup>

- 3.7 The Auditor-General observed during hearings:
- Often, if the guidelines are established as part of the legislation, they seem to get a higher priority and higher attention by the chief executive. In this case also, the chief executive has to sign the compliance certificate. I hope that also gets an even higher level of commitment to comply. So generally speaking, legislation has always provided additional incentive to comply, compared to just normal guidelines.<sup>11</sup>

## Administrative model

- 3.8 While some submissions supported a legislative model, all submissions supported the development and application of guidelines for government advertising. Some submissions supported the introduction of an administrative framework, consistent with the campaign advertising guidelines introduced by the Commonwealth Government in July 2008.
- 3.9 Commercial Radio Australia submitted that:

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<sup>9</sup> Democratic Audit of Australia, Submission No. 4, p 6.

<sup>10</sup> Ibid.

<sup>11</sup> Ms T Pham, *Transcript of Evidence*, 2 July 2009, p 10.

Before going down the legislative path, the ACT should test the effectiveness of a comprehensive administrative solution... The industry submits that to implement a detailed statute together with guidelines would be unnecessarily complicated for users and might create inconsistencies.<sup>12</sup>

- 3.10 The Advertising Federation of Australia also supported the development of an administrative scheme initially, to allow an opportunity to assess the effectiveness of guidelines and identify areas for improvement. Mr Rudder observed:

I would say guidelines always until such time that both parties, all parties involved, were satisfied that both parties had got it right.<sup>13</sup>

### **The Government's proposed administrative model**

- 3.11 During the hearing, the Chief Minister expressed the Government's concerns with respect to implementing a legislative regime:

We do believe that aspects of the legislation which the committee is inquiring into are not well-framed. We believe there are, or will be, a number of significant negative implications in relation to the capacity of government to engage with the community if the legislation as presented were to be passed.<sup>14</sup>

- 3.12 In its submission, the Government outlined an alternative framework, involving guidelines administered by the government, similar to the framework currently operating in the Commonwealth. The Government's proposal is at Appendix C.
- 3.13 Whilst supporting a legislative framework (refer paragraph 3.6), Dr Kathy MacDermott from the Democratic Audit of Australia commented on the value of guidelines in creating a framework of accountability for advertising expenditure:

What the guidelines have to offer that is really the key from my point of view, the fundamental innovation, is that it forces responsibility onto agency heads for making decisions about the suitability of the advertising that they are offering to their minister. So they have to offer

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<sup>12</sup> Commercial Radio Australia, Submission No. 10, pp 3 – 4.

<sup>13</sup> Mr G Rudder, *Transcript of Evidence*, 23 July 2009, p 61.

<sup>14</sup> Mr J Stanhope MLA, *Transcript of Evidence*, 23 July 2009, p 36.

the minister something which conforms to a set of guidelines, and then the minister can proceed to launch advertising and initially approve the expenditure of the advertising.<sup>15</sup>

3.14 The ACT Government approach included the appointment of an expert panel or individual rather than the ACT Auditor-General. The ACT Government proposed that the threshold for review of campaigns be \$100,000, and campaigns deemed to be of a sensitive nature would also come under review.

3.15 At the public hearing, the Chief Minister was willing to 'commit now to the earliest implementation of the proposals we put if that reflected the outcomes of this particular inquiry'.<sup>16</sup>

3.16 Implementing an administrative framework would allow for guidelines to be altered over time as required. According to the ACT Auditor-General, the Commonwealth experience illustrates the scope for refinement of an administrative framework:

I believe that the commonwealth guidelines are working well. Based on our discussions with the Australian National Audit Office, they are improving the guidelines.<sup>17</sup>

### **Committee findings**

3.17 Although acknowledging the potential for increased transparency through an administrative framework, the Committee was of the opinion that a legislative framework would provide a more robust model for enhancing accountability in government advertising expenditure.

3.18 However, the Committee was persuaded by the evidence to the Inquiry that there were a number of problems in the current Bill. Some of these problems are discussed in detail in forthcoming sections of this report. The current Bill would require significant redrafting to address these problems, particularly in the detail.

3.19 The Committee has identified an alternative legislative approach which would reduce some of the complexity found in the current Bill and allow those details to be defined and adapted in reviewable guidelines. The Bill could be structured to include key elements of the regulative framework – including,

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<sup>15</sup> Dr K MacDermott, *Transcript of Evidence*, 2 July 2009, p 24.

<sup>16</sup> Mr J Stanhope MLA, *Transcript of Evidence*, p 43.

<sup>17</sup> Ms T Pham, *Transcript of Evidence*, 2 July 2009, p 3.

important principles, the review mechanism/panel and the requirement to report. Such a model would direct the content of the guidelines, but not strictly prescribe the details of the guidelines. The guidelines would be a disallowable instrument, meaning that the Assembly has the power to disallow or amend<sup>18</sup> the Government's guidelines if the Assembly believed the guidelines were insufficient or otherwise inappropriate.

## **RECOMMENDATION 2**

- 3.20 **The Committee recommends that a legislative framework for the regulation of Government campaign advertising be adopted by the ACT.**

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<sup>18</sup> Refer *Legislation Act 2001*, Chapter 7.



## 4 FEATURES OF THE FRAMEWORK FOR REGULATING GOVERNMENT ADVERTISING

- 4.1 During the course of the Inquiry, the Committee considered the detail required in the regulative framework. The Committee also took evidence from a variety of stakeholders regarding aspects of the current Bill which may require amendment, should the current Bill proceed.
- 4.2 Major issues discussed in this report include:
- the proposed role of the Auditor-General in reviewing government advertising
  - the cost threshold for review
  - reporting requirements
  - government advertising prior to an election
  - content of the current Bill, including:
    - definition of key terms
    - banning slogans and jingles
    - concerns relating to the independence of statutory office-holders
    - application of the Bill to Territory-owned Corporations
    - authorisation requirements
    - certification requirements

### Review role of the Auditor-General

#### The appropriate review body

- 4.3 The Auditor-General raised a number of concerns with respect to the role envisioned for the ACT Audit Office in the current Bill:
- The Auditor-General may be perceived as involved in the preparation, rather than oversight of the campaign, contrary to the Auditor-General's traditional scrutiny role. The Auditor-General observed that:

I am concerned that, in performing such a review role, there will be some risk to the perception about the independence of the office. To be independent, and to be seen as independent, the office should not be directly involved in the decision-making process of a government agency.<sup>19</sup>

- The Auditor-General's 'review' could be perceived as an endorsement of the advertising campaign. In reality, the 'review' process as currently proposed is markedly different to a technical 'audit'. The Auditor-General observed that:

I think the work that we would take on or the work that we would do is of a review nature; it is about certification and checking that the processes that have been applied by the agencies actually do meet the guidelines... we are not auditing necessarily the efficiency or the effectiveness of that process... it is very different from a performance audit that might come later that would examine whether it was a worthwhile project in the first place.<sup>20</sup>

- The Auditor-General would prefer to maintain the discretion to audit an advertising campaign, even if her office has previously reviewed the campaign under the proposed legislation. This may result in the Auditor-General making negative findings in an audit, seemingly contradicting the original positive 'review' of the campaign. The Auditor-General observed that:

That created a risk for us, because later on, if we come back and do a performance audit and find a number of government advertisements are totally a waste of money because they did not achieve the intended outcome to change people's behaviour or to inform people, it looks as if we are in conflict with ourselves because we approved them in the first place.<sup>21</sup>

- The Auditor-General's Office would require appropriate resourcing to undertake additional functions, including staff with relevant experience and

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<sup>19</sup> Ms T Pham, *Transcript of Evidence*, p 1.

<sup>20</sup> Mr R Nicholas, *Transcript of Evidence*, pp 13-4.

<sup>21</sup> Ms T Pham, *Transcript of Evidence*, p 14.

seniority.<sup>22</sup>

- Processes would need to be timely, to avoid additional costs and any unnecessary delay in producing urgent information campaigns.<sup>23</sup>

4.4 The Auditor-General suggested that an expert panel independent of government may be a more appropriate review body.<sup>24</sup> This suggestion was consistent with other witnesses and submissions, including that provided by the Government.

4.5 The Government's proposal included the appointment of an expert panel or individual with strong government, legal and/or media background instead of the ACT Auditor-General.

### **Committee findings**

4.6 The Committee considered that a review of a proposed advertising campaign by an independent body a vital component in any advertising regulative framework, to improve accountability as well as to educate and inform public servants.

4.7 The Committee noted that the proposed review by the Auditor-General represented one stage of the review process. As drafted, the Bill would require both the responsible chief executive, as well as the Auditor-General, to certify that the proposed campaign complied with the Act. The responsible Minister could only conduct the proposed campaign once he or she has received certification of compliance from both the responsible chief executive and the Auditor-General as the review body (where applicable).

4.8 The requirement for certification at various levels was understood to be important, both from a quality-assurance perspective, but also in creating a culture of accountability and transparency amongst the ACT Public Service and Ministers with respect to government advertising expenditure.

4.9 The Committee considered that the Auditor-General gave good reasons as to why the Auditor-General may not be the most appropriate review body. The Committee was particularly concerned that the independence of the Auditor-General should not be compromised or appear to be compromised, and is also concerned that the Auditor-General may not be adequately resourced to undertake the review function.

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<sup>22</sup> ACT Auditor-General, Submission No. 11, pp 6-7.

<sup>23</sup> Ibid, pp 9-10.

<sup>24</sup> Ms T Pham, *Transcript of Evidence*, p 4.

- 4.10 The Committee considered that an expert panel would be a more appropriate review mechanism. The membership of the panel should be independent of Government, open to scrutiny and subject to consultation with stakeholders. This could be achieved by making the panel appointments statutory appointments. Under the *Legislation Act 2001*, when a Minister has the power to appoint a person to a statutory position, before making the appointment, the Minister must consult with the appropriate Assembly Committee.<sup>25</sup>

### **Composition of the review panel**

- 4.11 The composition of the panel could be a mixture of persons with legal, media, advertising and/or government experience. A three-person panel would probably be appropriate, to allow for a variety of perspectives and debate when assessing government advertising campaigns.

### **RECOMMENDATION 3**

- 4.12 **The Committee recommends that the review role proposed for the Auditor-General under the current Bill should instead be undertaken by an independent expert panel.**

### **RECOMMENDATION 4**

- 4.13 **The Committee recommends that membership of the panel be subject to statutory appointment, so that the appropriate Assembly Committee must be consulted before the Minister makes an appointment. The appointments should be made by disallowable instrument.**

### **\$20,000 review threshold**

- 4.14 The majority of stakeholders submitted that the current \$20,000 threshold was too low. In its submission, the Government recommended the threshold be increased to \$100,000. In giving evidence at the public hearing, the Auditor-General suggested that there should be some analysis of the advertising undertaken by the government over the last few years to determine a more appropriate threshold.<sup>26</sup>

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<sup>25</sup> Refer *Legislation Act 2001*, Division 19.3.3.

<sup>26</sup> Ms T Pham, *Transcript of Evidence*, 2 July 2009, p 7.

## Committee findings

- 4.15 In light of the evidence presented, the Committee recognised the need to examine government advertising spending to determine an appropriate threshold. Accordingly, the Committee requested additional costing information from the Chief Minister with respect to recent government advertising campaigns. The response to these questions is included at Appendix D.
- 4.16 In 2008-09, there were seven campaigns conducted where the campaign costs exceeded \$100,000. It would appear that the Community Noticeboard, which commenced in the *Saturday Canberra Times* in March 2009, would likely exceed \$100,000 during the 2009-10 financial year, assuming the campaign continued.
- 4.17 The Committee noted that setting a relatively low threshold would allow for greater scrutiny of government advertising spending. However, capturing more campaigns in the review process would be more resource intensive. The review panel would need to be convened more frequently. Reporting obligations would also increase, as more campaigns would need to be included in the biannual report.
- 4.18 The Bill defined 'campaign costs' as including the cost of development, production and conduct of government campaigns, as well as the costs relating to using the media. The answers to the questions on notice did not specify the development and production costs.
- 4.19 The Committee believed that clearly identifiable and attributable production and development costs should be included for the purposes of identifying the total cost of a campaign.

## RECOMMENDATION 5

- 4.20 **The Committee recommends that any identifiable and attributable production and development costs should be included when calculating the total cost of a government advertising campaign.**

## RECOMMENDATION 6

- 4.21 **The Committee recommends that \$40,000 be the cost threshold for review and reporting of government advertising.**

## Reporting requirements

- 4.22 The ACT Democrats and ACT Greens suggested in their submissions that the

statement of total campaign costs required by clause 12 should be made publicly available, by way of publication on a website following tabling in the Assembly. Making the report widely available would increase transparency and accountability.

### Timing and content of the reports

- 4.23 The Committee noted that the Commonwealth reports on a biannual basis. Campaign advertising data is available six weeks after the end of the relevant reporting period. The objective is to table biannual reports within the first quarter after the end of the reporting period. The inaugural report, covering the period 1 July 2008 to 31 December 2008, was tabled in March 2009.<sup>27</sup>
- 4.24 The mid-year report provided expenditure information on campaigns for which total expenditure exceeds \$250,000 during the reporting period. The expenditure was itemised per medium (such as television, press, radio, magazine, digital, other), followed by a total expenditure figure. The end of year reports will encompass the complete financial year and report on both direct campaign advertising expenditures and associated indirect expenditures such as campaign advertising research and evaluation.<sup>28</sup>
- 4.25 Because it was the inaugural report, in addition to providing information on government campaign advertising expenditure for the period 1 July 2008 to 31 December 2008, the report also provided some historical data and an explanation of the government's new advertising framework.

### Committee findings

- 4.26 The Committee agreed that regular reports to the Assembly are a necessary element in any government advertising framework. It was also agreed that these reports need to be easily accessible to the public, in the interests of transparency and accountability.
- 4.27 Regular reports should be tabled in the Assembly and be made publicly available, possibly by way of publication on a website.
- 4.28 The Committee supported a reporting model similar to that adopted by the Commonwealth. In particular, the Committee supported tabling a report on a biannual basis within the first quarter after the end of the reporting period, to

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<sup>27</sup> Australian Government Department of Finance and Deregulation, *Campaign Advertising by Australian Government Departments and Agencies - Half-year Report 1 July to 31 December 2008*, March 2009, p vi.

<sup>28</sup> *Ibid.*

avoid excessive delay in reporting.

## RECOMMENDATION 7

- 4.29 **The Committee recommends that the Government table in the Assembly a report detailing government advertising spending. The report should be tabled on a biannual basis by the final sitting week of the first quarter after the end of the reporting period. The report should be publicly available, possibly via the Chief Minister's Department website.**

## Government advertising prior to an election

- 4.30 The ACT Government submission stated that the current Bill's restriction on government campaigns 12 weeks prior to an election was an 'unacceptable restriction on vital community information three months prior to an election'.<sup>29</sup>
- 4.31 During the public hearing, the Chief Minister suggested that the caretaker period would be a more appropriate period for limitations on government advertising, rather than 12 weeks before the general election.<sup>30</sup> Caretaker conventions apply for the period of 37 days ending on the end of polling day for an election.<sup>31</sup> This issue highlighted another difficulty with the Bill as currently drafted. The Bill does not clearly define when the 12 week period should commence and end, as it has referred to 'the 12 week period immediately before a general election'.<sup>32</sup>

## RECOMMENDATION 8

- 4.32 **The Committee recommends that, should the current Bill proceed, the Bill be amended to clarify that the prohibition period before the election ends on polling day.**
- 4.33 The Electoral Commissioner raised further concerns in the context of the ACT Electoral Commission's ordinary activities in the lead up to an election. The Commissioner believed that the Bill, as currently drafted, could prevent the ACT Electoral Commission from conducting its normal information campaigns in the lead up to Legislative Assembly elections. The Commissioner suggested that the Bill should explicitly exempt the ACT

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<sup>29</sup> ACT Government, Submission No. 13, p 2.

<sup>30</sup> Mr J Stanhope MLA, *Transcript of Evidence*, 23 July 2009, p 48.

<sup>31</sup> See definition of 'pre-election period', *Electoral Act 1992*, s 3.

<sup>32</sup> ACT Electoral Commission, Submission No. 5, p 2.

Electoral Commission from the operation of this section.<sup>33</sup>

## RECOMMENDATION 9

4.34 **The Committee recommends that, should the current Bill proceed, the Bill be amended to exclude the Electoral Commissioner from the ban on government advertising in the prohibition period before an election.**

4.35 The Commercial Radio Australia submission also expressed concern at restricting all government advertising before an election:

The industry strongly objects to the proposed prohibition of campaign advertising during the 12 week period prior to a general election.

Government campaigns are important means of raising public awareness of issues such as health, armed forces recruitment, safe driving, drugs and alcohol. There is no public benefit to be gained from banning all campaigns for so lengthy a period.<sup>34</sup>

## Committee findings

4.36 The Committee acknowledged the Government's concern that a total ban on advertising 12 weeks from an election could undermine the government's duty to inform the public, particularly in the case of an emergency situation.

4.37 However, the Committee noted that there is capacity for a Minister to exempt a campaign under clause 15 in the case of an emergency, extreme urgency or other extraordinary circumstances. Despite this exemption, because of uncertainty regarding what is captured by 'routine advertising' in clause 8(c)(iii), it is unclear whether regular, non-controversial advertising such as the information campaign conducted by the ACT Electoral Commission would be exempt or not. As currently drafted, the Bill does not provide clear guidance as to which advertising campaigns are covered by the legislation. Accordingly, it was uncertain which types of advertising would be banned prior to an election.

4.38 The Commonwealth guidelines do not currently impose any explicit restrictions on advertising before elections, although obviously the normal guidelines and principles would apply. New South Wales has implemented a two month quarantine, with exceptions for publicity that relates to community

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<sup>33</sup> Ibid.

<sup>34</sup> Commercial Radio Australia, Submission No. 10, p 2.

health and safety issues, appropriate public information and services having clear commercial considerations (for example, transport providers and tourism promotion). The Victorian guidelines have similar restrictions on advertising during caretaker period. The Queensland Government Advertising Code of Conduct has established guidelines to assist public servants determine how to best manage government advertising campaigns in the six months leading up to an election.<sup>35</sup> The Committee noted that both New South Wales and Victoria have fixed terms like the ACT, whereas the Commonwealth and Queensland do not. The Committee considered that the difficulty in setting a fixed period for restrictions on advertising before elections would occur in jurisdictions which do not have fixed terms.

- 4.39 The Committee concluded that in the event that restrictions were placed on advertising in the lead up to an election, there was a need to clearly define the period to which restrictions would apply. The Committee noted that the caretaker period in the ACT commences 37 days prior to the election.<sup>36</sup> In the Chief Minister's Department *Guidance on Caretaker Conventions: 2008 General Election*, the ACT's caretaker conventions applied from the beginning of the 'election period' as defined by the *Electoral Act 1992*. The 'pre-election period' was defined under section 3 as '...the period of 37 days ending on the end of polling day for an election'.

## RECOMMENDATION 10

- 4.40 **The Committee recommends that restrictions be imposed on government advertising in the lead up to an election.**

## Content of the Bill

### Definition of key terms

- 4.41 The majority of submissions raised concerns regarding the interpretation of various key terms throughout the Bill, which in-turn affected the scope of the Bill.

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<sup>35</sup> <http://www.premiers.qld.gov.au/publications/assets/advert-code-of-conduct.pdf>

<sup>36</sup> Chief Minister's Department (August 2008) *Guidance on Caretaker Conventions: 2008 General Election*, p 3 – [www.cmd.act.gov.au/pub](http://www.cmd.act.gov.au/pub)

### **'Government campaign'**

4.42 The definition of 'government campaign' in clause 8 would be pivotal to determining the coverage of the Bill. There was some concern amongst stakeholders, including the Electoral Commission, the Government, the Auditor-General and Grey Canberra around the extent of the exemptions under clause 8(c).<sup>37</sup> Clause 8(c) currently meant that 'government campaign' would not include any of the following:

- advertisements for stated jobs;
- tender advertising;
- other routine advertising carried out by an agency in relation to its operational activities (included examples are notices about traffic, transport or garbage collection times).

4.43 In particular, there was uncertainty regarding which activities would be covered by 'routine advertising carried out by an agency in relation to its operational activities'.<sup>38</sup>

### **'Party political'**

4.44 The object of the Bill would be to 'prevent the use of public funds for advertising or other communications for party political purposes.' The term 'party political' is used again in the general principles set out in clause 6. It was noted during the Inquiry that not defining 'party political' advertising could lead to confusion and uncertainty. The Electoral Commissioner observed that there could be difficulties encountered in interpreting clause 13 (information in a government campaign must not be directed at promoting the government or party political interests in any way). Mr Green anticipated that clear guidance would be required 'to determine whether a particular advertisement or campaign does or does not fall within that [statement]'.<sup>39</sup>

4.45 Comments on the Bill provided to the Chief Minister from the Department of Justice and Community Safety advised that 'this legislation cannot operate without a clear understanding of what kind of information is not permitted in an advertising campaign... It is likely that every program or campaign

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<sup>37</sup> ACT Electoral Commission, Submission No. 5, p 2; Comments by the Department of Justice and Community Safety, Exhibit No. 1, p 1; ACT Auditor-General, Submission No. 11, p 11; Grey Canberra, Submission No. 8, p 3.

<sup>38</sup> Comments by the Department of Justice and Community Safety, Exhibit No. 1, p 1.

<sup>39</sup> Mr P Green, *Transcript of Evidence*, 2 July 2009, p 22.

undertaken by an agency will invite argument about whether there is a “party political purpose” involved’.<sup>40</sup>

## RECOMMENDATION 11

- 4.46 **The Committee recommends that, should the current Bill proceed, clarification in relation to the definition of ‘government advertising’ and ‘party political’ be required.**

### Banning slogans and jingles

- 4.47 A majority of submissions, particularly those of the Government and various advertising industry bodies, agreed that the requirement that ‘information in a government campaign must not include slogans or other advertising techniques’<sup>41</sup> would be unworkable in practice. Grey Canberra, the Canberra operation of Grey Group - a multinational advertising agency, submitted that:

It is with this section of the Act that we particularly take issue. There are several points of contention...

1. Definition of “advertising techniques” - Grey contends that any advertisement must apply techniques of some kind... we contend that this provision of the Bill is unworkable because of the subjective nature of deciding what an advertising technique is.

2. Producing advertising that communicates with its audience - Leaving aside any issues of content, any advertising campaign that does not connect with its audience is a failure. Therefore, putting legal restrictions on “advertising techniques” could, if interpreted narrowly, mean that every piece of communication from the government was doomed to fail...

3. Restriction on normal business activity by government agencies... Many government agencies conduct commercial activities that require the effective use of advertising... a literal interpretation of this piece of legislation would mean that none of these agencies would be able to use “advertising techniques” to further their business objectives. Floriade would not be able to use beautiful pictures of flowers. Tourism campaigns would not be permitted to use the slogan “See yourself in

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<sup>40</sup> Comments by the Department of Justice and Community Safety, Exhibit No. 1, p 1.

<sup>41</sup> Refer clause 13(3)(c).

the national capital” – or any other slogan...<sup>42</sup>

- 4.48 The Committee noted that Amendment 5 circulated by Mr Seselja MLA (Appendix F) would address the concern surrounding an outright ban on using slogans and jingles, and instead require that:

Information in a government campaign must not include slogans or other advertising techniques designed to have, or likely to have, the effect of promoting a political party or position instead of communicating a factual message.

### **Committee findings**

- 4.49 The Committee was mindful of the potential difficulties banning slogans and jingles could present in the development of advertising campaigns.
- 4.50 The Committee considered that effective advertising may require jingles, slogans and other advertising techniques, notwithstanding the need to avoid promoting a political party.

### **Concerns relating to the independence of statutory office-holders**

- 4.51 Clauses 10 - 12 implied that a Minister would endorse all government advertising, but in the case of statutory office-holders, this may not be appropriate. For example, election information advertising carried out by the ACT Electoral Commission during election campaigns.
- 4.52 Further, the dictionary definition of ‘responsible chief executive’ excludes statutory office holders. Thus the ‘responsible chief executive’ for the purposes of the Bill is the chief executive officer (CEO) of the associated government agency. In the case of the Electoral Commissioner for instance, the CEO of the Department of Justice and Community Safety would be the ‘responsible chief executive’ for the purposes of the Bill.

### **Committee findings**

- 4.53 The Committee considered it inappropriate for the advertising of statutory officer holders to be subject to the endorsement of a Minister where there was no ‘responsible Minister’ for that statutory office holder. It was also inappropriate for such advertising to be subject to the endorsement of the chief

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<sup>42</sup> Grey Canberra, Submission No. 8, pp 4-5.

executive officer of a related government department. Instead, the certification and review process should be modified for statutory office holders, so that certification that a campaign has met the guidelines would be given by the statutory office holder. Campaigns which exceeded the cost threshold should still be referred to the review panel.

## RECOMMENDATION 12

- 4.54 **The Committee recommends that the framework acknowledge the independence of statutory office holders from the Government, and require that the statutory office holder certify the campaign. Campaigns exceeding the cost threshold should still be subject to review by the independent panel.**

### Application of the Bill to Territory-owned Corporations

- 4.55 Some submissions raised concerns with respect to whether the Bill as currently drafted would apply to Territory-owned Corporations (TOCs) such as ACTEW Corporation, and if so, whether it was appropriate or lawful for the legislation to apply to TOCs.
- 4.56 In his evidence to the Committee, the Managing Director of ACTEW Mr Mark Sullivan stated:

This bill is structured around public servant CEOs reporting to Ministers. ACTEW does not have a public servant CEO and does not have a Minister. It is a Board of Directors with a Chair who is responsible for all matters to do with ACTEW. So we cannot get to a responsible Minister because we do not have one...<sup>43</sup>

- 4.57 Mr Sullivan also stated that ACTEW does not run government campaigns, because ACTEW does not use public funds,<sup>44</sup> thus introducing further definitional difficulties if TOC campaigns were to be covered by the proposed legislation.
- 4.58 The Committee also discussed this issue with the Auditor-General during public hearings:

We are struggling with the idea of whether or not TOCs should be covered. The reason the government set up TOCs often is that they have commercial obligations and hence they are not normally subject to a

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<sup>43</sup> Mr M Sullivan, *Transcript of Evidence*, 23 July 2009, pp 64-5.

<sup>44</sup> *Ibid.*

number of government policies and guidelines. So if this legislation applied to TOCs such as ACTEW and ACTTAB then it will be a step away from the normal government legislation coverage.<sup>45</sup>

### Committee findings

- 4.59 The Committee noted the uncertainty surrounding the coverage of TOCs in the Bill as currently drafted. The Committee noted the merits of TOCS being subject to the standards for advertising proposed in the Bill, and TOCS being guided by the notion that advertising should not promote a political party.
- 4.60 To avoid confusion, the Committee considered that the legislation should state explicitly whether Territory-owned Corporations are included in the framework.

### RECOMMENDATION 13

- 4.61 **The Committee recommends that Territory-owned Corporations should be covered by the proposed legislative framework for the regulation of campaign advertising.**

### Authorisation requirements

- 4.62 Several submissions asserted that the requirement to clearly identify when material was part of a government campaign in clause 13(3)(g) duplicated requirements in the *Electoral Act 1992* and *Broadcasting Services Act 1992* (Cth). In its submission the ACT Electoral Commission stated that ‘therefore this provision is arguably unnecessary, while creating doubt as to whether compliance with those other Acts would be sufficient to meet the new requirement’.<sup>46</sup>
- 4.63 The Advertising Federation of Australia’s representative also voiced concerns over the need to include an identifying statement at the beginning and end of an advertisement:

The other risk you take is... You might just get a proportion of the viewing or listening public just turning off, “I do not want to listen to this. I do not want to listen to a message about tax or about water or about gas... I do not want to listen to it, and thank you for telling me I will just switch channels.” I have not had any experience anywhere in

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<sup>45</sup> Ms T Pham, *Transcript of Evidence*, 2 July 2009, pp 5-6.

<sup>46</sup> ACT Electoral Commission, Submission No. 5, p 3.

the world of ads being what we call topped and tailed with messages. I think it would be a big mistake.<sup>47</sup>

### Committee findings

- 4.64 The Committee decided to investigate alternative methods for clearly identifying government advertising. For instance, perhaps watermarking an advertisement with an ACT Government logo could avoid conflicting with requirements under other legislation, whilst providing a clear message to the viewer as to the source of the advertisement. In the case of commercial television stations, watermarking has become a well established practice in Australia across all networks for many years and has become standard practice internationally. Such watermarks have been used primarily for identification and copyright purposes.<sup>48</sup>
- 4.65 The Committee also noted the suggestion of the Democratic Audit of Australia that advertisements be tagged as the product of the relevant portfolio agency, instead of being tagged as products of the ACT Government.<sup>49</sup>

### RECOMMENDATION 14

- 4.66 **The Committee recommends that, should the current Bill proceed, the Bill be amended to remove the requirement for a statement at the beginning of a television or radio announcement.**

### Certification requirements

- 4.67 Clause 11 of the Bill required the responsible chief executive officer for the agency to certify that the campaign complied with the Act before the responsible Minister could conduct a government campaign.
- 4.68 The Government's proposed administrative framework also contained as a general principle, that Agency chief executives officers would be responsible for certifying that any campaigns developed within their agency were compliant with the guidelines and related government policies. In his evidence, the Chief Executive Officer of the Chief Minister's Department discussed the value of creating a culture and understanding of the guidelines within the public service:

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<sup>47</sup> Mr G Rudder, *Transcript of Evidence*, 23 July 2009, p 60.

<sup>48</sup> Refer [http://www.abc.net.au/contact/recent\\_response/s2252900.htm](http://www.abc.net.au/contact/recent_response/s2252900.htm)

<sup>49</sup> Democratic Audit of Australia, Submission No. 4, p 10.

... it is about making sure that there is an understanding within the public service as to the principles and how they are applied ... making sure that in the formation of advice to government around any such campaigns or activities that those guidelines and principles be applied.<sup>50</sup>

### **Committee findings**

- 4.69 The Committee agreed that there was merit to a certification process which created a culture of accountability and transparency within the ACT Public Service and the Government with respect to government advertising expenditure.

## **Additional comments**

### **Annual cap on government advertising costs**

- 4.70 A number of submissions recommended the Committee should consider introducing an annual cap on government advertising spending. The Canberra Liberals submit that 'this would prevent politically-motivated 'spiking' of the advertising spends on election issues during campaign years.'<sup>51</sup>
- 4.71 Introducing a cap on government advertising would be difficult in practice, as each government agency and department may have different advertising requirements in different years. For example, a pandemic such as H1N1 Influenza ('swine flu') would likely lead to an increase in advertising by ACT Health compared to previous years.

## **Conclusion**

- 4.72 The Committee considered that the core aim of the Bill and this Inquiry was to create a robust system to review and report on government advertising expenditure. All submissions agreed that there should be mechanisms in place to prevent the use of public funds for party-political advertising.
- 4.73 While the Committee supported the intent of the Bill, it recognised the

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<sup>50</sup> Mr A Cappie-Wood, *Transcript of Evidence*, 23 July 2009, p 47.

<sup>51</sup> Canberra Liberals, Submission No. 15, p 5; Dr Graeme Orr, Submission No. 1, p 3; ACT Greens, Submission No 16, p 4. Similarly the Community Alliance Party's submission suggested that an enforceable dollar limit be placed on election campaign expenditure per candidate and, separately per individual party, in order to promote a level playing field for contenders.

significant issues identified in this report.

- 4.74 The Committee believed that a legislative framework provided a strong foundation for improved accountability and transparency in government advertising, and thus recommended that a legislative framework be adopted, subject to the recommendations contained in this report.

Joy Burch MLA

Chair

21 August 2009



## ADDITIONAL COMMENTS:MS JOY BURCH MLA

### SELECT COMMITTEE ON CAMPAIGN ADVERTISING

#### INQUIRY INTO GOVERNMENT AGENCIES (CAMPAIGN ADVERTISING) BILL 2008

#### ADDITIONAL COMMENTS FROM JOY BURCH MLA

I would like to note my appreciation to the Secretariat for their assistance and support, and to thank the Committee members for their contribution. I would also like to thank the organisations, groups and individuals who provided submissions and who took the time to participate in the public hearings.

I fully support the development and implementation of robust and accountable mechanisms to ensure the appropriate use of public funds in government advertising. I recognise the Commonwealth and other jurisdictions have government advertising guidelines in place, however none have implemented legislation.

There was broad agreement that government has an obligation to inform all members of the public about their entitlements, rights and duties. Submissions and witnesses were supportive of the intent of the Bill.

Submission varied greatly with respect to the best mechanism for achieving this goal, whether through a legislative or administrative framework. It is my view that an administrative framework is the best option.

The ACT Government provided a submission which outlined an alternative administrative framework involving guidelines. The ACT Government noted their guidelines provide the basic principles that should be observed by all ACT Government departments and agencies in the planning, development and delivery of Government information campaigns.

The ACT Government draft guidelines included:

- Guideline 1- Relevance of campaign material
- Guideline 2 - Presenting campaign material in an objective, fair and accessible manner
- Guideline 3 - Material should not be directed at promoting party political interests
- Guideline 4 - Avoiding the misuse of public funds
- Guideline 5 - Complying with legal requirements

While I support many aspects of this Report I wish to provide the following comments.

- 1. I do not support Recommendation 2 – ‘that a legislative framework for the regulation of Government campaign advertising is adopted by the ACT’.**

The majority of submissions identified a range of problems with the proposed Bill. Submissions and witnesses raised a number of concerns, of which only some have been raised in this report. Other issues raised included:

- amendments to the principles
- authorisation requirements
- changes to the object of the bill
- exclusions such as opinions
- the review process
- reporting and public disclosure
- resourcing the review process
- definitions are inadequate and may be misleading
- lack of clarity regarding statutory authorities and TOCs
- need for consistency across commonwealth and jurisdictions
- need for consultation process prior to introduction
- objection to 12 week ‘blackout’ prior to an election
- restricting routine business of government
- use of slogans, jingles and marketing tools

I proposed that the ACT Government adopt guidelines and that these be reviewed after two reporting periods. This would allow for the guidelines and reporting framework to be adjusted as necessary, hence leading to a framework that is tailored for best results.

As noted by the ACT Auditor General the Commonwealth Guidelines are still being revised, indicating the value in a planned implementation and review process.

*Ms Pham [2/7/09]: I believe that the commonwealth guidelines are working well. Based on our discussions with the Australian National Audit Office, they are improving the guidelines. Also, the process was reviewed throughout the last 12 months or so.*

**2. I do not support Recommendation 6 – ‘that \$40,000 be the cost threshold for review and reporting of government advertising’.**

The Committee noted that clearly identifiable and attributable production and development costs should be included for the purpose of identifying the total cost of campaign. The other members have set the threshold at \$40,000 which seems to indicate that they want to capture as much advertising as possible, without consideration of the costs or usefulness of reviewing this high number of campaigns.

The threshold was also raised at public hearings with most commentary saying \$20,000 was too low and suggesting a range of \$50,000 - \$100,000 as an alternate threshold.

*Ms Pham [2/7/09]: If I can make a quick reaction to it: I think \$20,000 is too low; \$100,000 is maybe too high. I think something between \$50,000 and \$100,000 could be more reasonable.*

*Mr Green [2/7/09]: I would probably agree with the statements that the Attorney-General made earlier. Somewhere between \$50,000 and \$100,000 feels right intuitively, without knowing what agencies typically spend on an advertising campaign. From memory, our formal campaigns—radio, television, newspaper et cetera—for an election would be in the order of about \$100,000.*

*MR Rattenbury [23/7/09]: In your letter, you speak about clause 10. You say the federation feels that the \$20,000 threshold is too low.*

*Mr Rudder: Yes.*

*MR Rattenbury: What do you consider would be an appropriate threshold? Do you have any advice for us?*

*Mr Rudder: That is fairly difficult for me to say, given my limited knowledge of your advertising budgets and so on. But I would say that if it is set at that low level, that would embrace a very high proportion of advertising briefs that come in.*

I proposed a range of \$50,000- \$80,000 as a more appropriate threshold.

**3. I do not support recommendation 13 – ‘that Territory owned corporations be covered by the proposed legislative framework for the regulation of campaign advertising’.**

Territory owned corporations (TOCs) are companies, they are governed by a board, they are covered by the Corporations Act and they do not report to a Minister. In short they are not a government agency.

I do not support the inclusion of TOCs. This is also considered unworkable by Mr Mark Sullivan, Managing Director, Actew Corporation Ltd., and problematic by the ACT Auditor General, as noted below

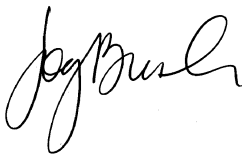
*Mr Sullivan: [23/7/09]: Actew does not use public funds; it does not use government money. Actew’s revenue sources are from people who purchase water in the ACT and dividends, largely from its part-owned subsidiary and joint ventures such as ActewAGL, and then it provides its profit as a dividend to government which then becomes public funds. A government campaign: Actew has never run a government campaign; it runs Actew campaigns. Government funding: no, we are not a government-funded organisation; we have no appropriation from government. We provide dividends back to government.*

*Ms Pham [2/7/09]: The question raised in a number of submissions was whether or not this requirement to comply with the bill should apply to statutory authorities and TOCs. We believe that it should cover statutory authorities.*

*It will be a bit different with TOCs. That means Actew and ACTTAB. We are struggling with the idea of whether or not TOCs should be covered. The reason the government set up TOCs often is that they have commercial obligations and hence they are not normally subject to a number of government policies and guidelines. So if this legislation applied to TOCs such as Actew and ACTTAB then it will be a step away from the normal government legislation coverage.*

*I think that could be very hard for government legislation in terms of complying with policy and procedure to be intended to cover TOCs.*

In addition to the points I make above, I also look forward to making additional comments when the report is tabled 24 August 2009.



Joy Burch MLA  
**Member for Brindabella**  
24 August 2009



## APPENDIX A: List of Submissions

Submission Number	Author
1.	Dr Graeme Orr
2.	ACTTAB
3.	Australian Christian Lobby
4.	Democratic Audit of Australia
5.	Elections ACT
6.	CityNews
7.	Australian Democrats, ACT Division
8.	Grey Canberra
9.	Community Alliance Party
10.	Commercial Radio Australia
11.	ACT Auditor-General
12.	Advertising Federation of Australia
13.	ACT Government
14.	ACTEW Corporation
15.	Canberra Liberals
16.	ACT Greens



## **APPENDIX B: Public Hearings and Witnesses**

### **Thursday, 2 July 2009**

#### **ACT Auditor-General's Office**

Ms Tu Pham, ACT Auditor-General

Mr Rod Nicholas, Director, Performance Audits and Corporate Services

#### **Elections ACT**

Mr Phillip Green , ACT Electoral Commissioner

#### **Democratic Audit of Australia**

Dr Marian Sawyer

Dr Kathy MacDermott

### **Thursday, 23 July 2009**

**Mr Jon Stanhope, Chief Minister**

#### **Chief Minister's Department**

Mr Andrew Cappie-Wood, Chief Executive Officer

Ms Carol Cartwright, Executive Director, Arts, Communication, Events and Protocol

Mr Simon Kinsmore, Senior Manager, Arts, Communication, Events and Protocol

#### **Advertising Federation of Australia**

Mr Gawen Rudder, Manager, Business Services and Advice

#### **ACTEW Corporation**

Mr Mark Sullivan, Managing Director



## **APPENDIX C: ACT Government's proposed campaign advertising framework**

### **Extract from the ACT Government's submission to the Select Committee on Campaign Advertising**

#### **General principles**

The use of public funds for ACT Government communications (campaigns) should be governed by the principles that:

- All members of the public have the right to equal access to information about government policies, programs and services;
- Public funds may legitimately be used for information, education programs community consultation and initiatives for public comment that explain the Government's policies, programs or services or that inform members of the public of their obligations, rights and entitlements;
- Government advertising campaigns should not be conducted for party political purposes;
- Campaigns should not be instigated unless the need is demonstrated and target recipients are clearly identified;
- The Government has responsibility for ensuring equity, fairness, probity, appropriateness and public responsibility in all of its communications;
- Communications material should be produced and distributed in an efficient, effective relevant and accountable manner with due regard to maximising community access;
- Individual agencies are responsible for developing and implementing communication of initiatives and actions which are within the agency's field of responsibility;
- Agencies subject to the Financial Management Act must comply with the guidelines;
- Ministers are responsible for authorising campaigns within their portfolios and for authorising campaign launches;

- Agency Chief Executives are responsible for certifying that any campaigns developed within their agency are compliant with the guidelines and related government policies; and
- Government advertising campaigns must comply with all legal requirements.
- The use of ACT public servants in advertising campaigns is permissible on the signing of a release by the public servant whose image and/or voice including approval by the relevant departmental Chief Executive.

The Government should not undertake campaign advertising when it is in Caretaker mode, unless the purpose of communication is related purely to public health, public safety, or achieving compliance with the law, ensuring public safety, personal security, encouraging responsible behaviour or the preservation of order in a crisis or emergency.

### **Definition of Government Campaign Advertising**

For the purpose of these guidelines, government campaigns do not include advertising for specific jobs, tender advertising or other similar routine advertising carried out by agencies in relation to their operational activities.

Campaign costs include those activities involved in the development, production and dissemination of information to the public about government programs, policies and matters which affect their benefits, rights and obligations.

Examples of these activities include:

- The use of market research agencies, public relations consultants, advertising agencies and other specialist consultants in the development of such materials; and
- The production of press, radio, television, cinema and on-line advertisements, other electronic media, audio-visual and printed material (pamphlets, explanatory booklets, etc).

### **Objectives of Government communications**

Public funds may be used for Government communications campaigns in the pursuit of any of the following objectives:

- To maximise compliance with the law;
- To achieve awareness of a new or amended law;
- To raise awareness of a planned or impending initiative or to initiate community consultation;

- To ensure public safety, personal security or encourage responsible behaviour;
- To assist in the preservation of order in the event of a crisis or emergency;
- To promote awareness of rights, responsibilities, duties or entitlements;
- To encourage usage of, or familiarity with, Government products or services;
- To report on performance in relation to Government undertakings; and
- To encourage social cohesion, civic pride, community spirit, tolerance or to inform the community about a public policy outcome.

### **Guidelines for Campaign Advertising**

Consideration should be given to public information requirements during policy development and program planning.

The subject matter of material to be communicated to the public should be directly related to the Government's responsibilities. As such, only policies or programs underpinned by legislative authority, appropriation of the Legislative Assembly or a Cabinet decision which is intended to be implemented during the current Assembly should be the subject of an advertising campaign.

The target audience should have a convenient means of contacting the originating government agency so that questions, complaints or requests for further information may be dealt with promptly.

#### ***Guideline 1***

#### **Relevance of campaign material**

Some examples of suitable uses for government campaign advertising include:

- Informing the public of new, existing or proposed government policies or policy changes;
- Providing information on government programs or services or changes to programs or services which the public can access;
- Disseminating important health and safety information;
- Assisting in the preservation of order in the event of an emergency or crisis;
- Raising awareness of a new or amended law;

- Ensuring public safety, personal security or encouraging responsible behaviour;
- Encouraging usage of, or familiarity with, government products or services; and
- Reporting on the performance of government to facilitate accountability to the public.

### ***Guideline 2***

#### **Presenting campaign material in an objective, fair and accessible manner**

All government campaign material must be presented in a fair, objective and accessible manner. Specifically, information in campaigns should be directed at the provision of objective, factual and explanatory information and enable the recipients of the information to reasonably and easily distinguish between facts, on the one hand, and comment, opinion and analysis on the other.

Where information is presented as a fact, it should be based on accurate, verifiable facts, and expressed in conformity with those facts. No factual claim should be made which cannot be substantiated.

Pre-existing policies, services, activities and products should not be presented as new.

Special attention should be paid to communicating with disadvantaged groups and individuals which are identified as being within the designated target audience. Particular attention should be given to the communications needs of people with disabilities, young people, the aged and those for whom English is not a convenient language in which to receive information.

There should be recognition of the full participation of women, ethnic and Indigenous communities by realistically portraying their interests, lifestyles and contributions to Australian society. Care should be taken that this is not done in a stereotypical way.

### ***Guideline 3***

#### **Material should not be directed at promoting party political interests**

Government campaign material should be presented in a manner free from partisan promotion of political argument, and in objective language.

The dissemination of information using public funds should not be directed at fostering a positive impression of a particular party or promoting party political interests.

Public funds should not be used for Government communications campaigns where:

- The party in Government is mentioned by name;
- A reasonable person could misinterpret the message as being on behalf of a political party or other grouping;
- A political party or other grouping is being disparaged or held up to ridicule;
- Members of the Government or political candidates are named, depicted or otherwise promoted in a manner that a reasonable person would regard as excessive;
- There are references or links to the websites of Ministers or political parties.

#### ***Guideline 4***

##### **Avoiding the misuse of public funds**

Campaign material should be produced and distributed in an efficient, effective and relevant manner, with due regard to accountability.

Public funds should not be used on campaigns where:

- The method or medium of communication is manifestly excessive or extravagant in relation to the objective being pursued; and
- There is no clear line of accountability, appropriate audit procedures or suitable purchasing process; and

#### ***Guideline 5***

##### **Complying with legal requirements**

Government campaigns and related material, the manner of presentation and the delivery of the campaign must comply with all relevant laws including:

- Privacy laws;
- Electoral laws;
- Broadcasting and media laws;
- Intellectual property laws;
- Trade practices and consumer protection laws; and
- Workplace relations laws.

## **The Review Framework**

The Chief Minister's Department, as the central agency, is responsible for the application and operation of these guidelines and for providing advice and a framework to departments and agencies which may be considering conducting advertising campaigns.

The framework requires each advertising campaign to be certified as complying against the new guidelines by the Chief Executive of the commissioning department or agency.

In addition, an agreed expert panel or individual provides a review of all government campaigns with expenditure in excess of \$100,000, which will report to the relevant Minister on the proposed campaign's compliance with the guidelines.

A Minister or Chief Executive responsible for a campaign with expenditure of \$100,000 or less may ask the expert panel to review that campaign's compliance with these guidelines where the campaign is of a sensitive nature or the Minister or Chief Executive considers that such a review is appropriate.

The reviews undertaken by the expert panel is not an audit, but is designed to provide limited assurance through inquiry, observation and analysis of key documents and information that the government's guidelines have been adhered to.

Funding for the expert panel or individual (paid a nominal per diem) will be included as part of the overall budget for all campaigns in excess of \$100,000. CMD Communications and Engagement Unit will provide secretariat support to the expert panel.

Summaries of reviews of government campaigns against the guidelines by the expert panel will be undertaken on an annual basis and tabled annually for scrutiny in the Legislative Assembly.

## APPENDIX D: Answers to Questions on Notice

The Committee asked the Chief Minister:

Could you please provide the Committee with the following details:

1. a list of advertising campaigns where the total cost exceeded \$100,000 (for 2008-09 financial year);
2. confirmation of the annual cost of the Community Noticeboard in the Saturday Canberra Times;
3. annual cost of advertising by ACT Health and the Department of Education and Training (for 2008-09 financial year);
4. costs to date of the health information campaign for H1N1 influenza ('swine flu');
5. total cost of advertising the new ACTION bus network timetable in 2008; and
6. Budget 2008-09 highlights brochure:
  - total cost of production and distribution
  - was a similar brochure distributed by direct mail for 2006-07 or 2007-08?
  - is a similar brochure planned for 2009-10?

The Committee is seeking information regarding the total cost of these campaigns, as well as a breakdown of costs for each medium as applicable (direct mail, print, television etc).

Jon Stanhope MLA: The answers to the Committee's questions are as follows:–

1. (i) Electoral Commission 2008 Election
- (ii) CIT Semester 1 2009 Student Recruitment
- (iii) ACTION Network 08
- (iv) Medicare Change of Address
- (v) Shop and Celebrate in Canberra
- (vi) Winter Flu Campaign
- (vii) ACT Tourism Campaigns
  - Wrapt in Winter

- Spring Campaign (incorporating Floriade and Floriade NightFest)
  - Culture Shock Campaign
  - Australian Capital Tourism Brand Campaigns
2. The Community Noticeboard commenced in the *Saturday Canberra Times* in March 2009. Between March 2009 and August 2009 costs for the Community Noticeboard have totalled \$175,876. This equates to approximately \$35,175 per month.
3. (i) ACT Health Advertising 2008-09: \$347,961
- (ii) Department of Education & Training Advertising 2008-09: \$68,349
4. H1N1 Influenza information campaign cost to date: \$188,434
- Radio: \$53,069
  - TV: \$70,101
  - Print: \$21,411
  - Bus: \$38,681
  - Posters: \$5,172
- Note: these figures incorporate the costs of the Winter Flu campaign. The Winter Flu campaign was markedly expanded to accommodate the H1N1 Influenza outbreak internationally, including mini information campaigns relating to school exclusion information and updates to television, radio and print media information.*
5. ACTION Network 08 advertising: \$479,522
- Radio \$30,959
  - TV: \$221,781
  - Print: \$37,782
  - Brochures: \$144,000<sup>(a)</sup>
  - Bus advertising: \$45,000

<sup>(a)</sup>*Note: this cost includes production of timetables, maps and customer information pamphlets.*

6. Budget 2008-09 highlights brochure:

- total cost of production and distribution
  - Answer: \$49,258
- was a similar brochure distributed by direct mail for 2006-07 or 2007-08?
  - Answer: 2006-07 - A Letter to Residents was distributed via mail addressing the structural reforms associated with the 2006-07 Budget
  - Answer: 2007-08 – No.
- is a similar brochure planned for 2009-10?
  - Answer: No.

\*\*\*\*\*

Breakdown of costs by print, TV, radio etc for each campaign identified at Question 1.

(i) Electoral Commission 2008 Election

- 2008-09 cost: \$210,000
  - Radio: \$15,000
  - TV: \$95,000
  - Print: \$22,000
  - Brochures: \$78,000

(ii) CIT Semester 1 2009 Student Recruitment

- 2008-09 cost: \$153,545
  - Radio: \$10,428
  - TV: \$15,840
  - Print: \$112,629
  - Cinema: \$9,600
  - Print/letterbox drop: \$5,048

(iii) ACTION Network 08

- 2008-09 cost: \$479,522
  - Radio \$30,959
  - TV: \$221,781
  - Print: \$37,782
  - Brochures: \$144,000<sup>(a)</sup>
  - Bus advertising: \$45,000

<sup>(a)</sup>Note: this cost includes production of timetables, maps and customer information pamphlets.

## (iv) Medicare Change of Address

- 2008-09 cost: \$105,839
  - Radio: \$25,862
  - TV: \$51,315
  - Print: \$26,531
  - Brochures: \$231
  - Posters: \$1,900

## (v) Shop and Celebrate in Canberra

- 2008-09 cost: \$110,009
  - Radio: \$21,895
  - TV: \$43,102
  - Print: \$33,137
  - Posters/Displays: \$4,816

*Note: Shop and Celebrate in Canberra comprised the Christmas campaign in December 2008 and the Autumn 'Stick Around and Shop in Canberra' campaign in March/April 2009. Costs in addition to those identified for each medium relate to concept development costs, generic production and design agency management fees.*

## (vi) Winter Flu Campaign

- 2008-09 cost: \$125,883
  - Radio: \$23,875
  - TV: \$46,188
  - Print: \$11,878
  - Bus advertising: \$25,000
  - Posters: \$2,861

*Note: Costs in addition to those identified for each medium relate to concept development costs, generic production and design agency management fees.*

## (vii) ACT Tourism Campaigns

- 2008-09 cost: \$2,500,418
  - Radio: \$130,000
  - TV: \$560,000
  - Print: \$1,030,000
  - Online: \$470,000
  - Signage/Billboards: \$60,000
  - Consumer Shows/PR: \$100,000

*Note: ACT Tourism campaigns are managed under one general development contract rather than separate contracts for each campaign. As such, specific costs for each medium incorporate all ACT Tourism campaigns. Costs in addition to those identified for each medium relate to concept development costs and design agency management fees.*

## **APPENDIX E: Government Agencies (Campaign Advertising) Bill 2008**



2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Mr Zed Seselja)

## Government Agencies (Campaign Advertising) Bill 2008

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4	Notes 2
5	Object of Act 2
<b>Part 2</b>	<b>Important concepts</b>
6	General principles 3
7	What is a <i>government agency</i> ? 3
8	What is a <i>government campaign</i> ? 4

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2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Mr Zed Seselja)

## **Government Agencies (Campaign Advertising) Bill 2008**

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### **A Bill for**

An Act about campaign advertising by government agencies

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Government Agencies (Campaign Advertising)*  
4 *Act 2008*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Dictionary**

10 The dictionary at the end of this Act is part of this Act.

11 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
12 Act, and includes references (*signpost definitions*) to other terms  
13 defined elsewhere.

14 For example, the signpost definition '*general election*—see the  
15 *Electoral Act 1992*, dictionary.' means that the term '*general election*' is  
16 defined in that dictionary and the definition applies to this Act.

17 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
18 the entire Act unless the definition, or another provision of the Act,  
19 provides otherwise or the contrary intention otherwise appears (see  
20 Legislation Act, s 155 and s 156 (1)).

21 **4 Notes**

22 A note included in this Act is explanatory and is not part of this Act.

23 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of  
24 notes.

25 **5 Object of Act**

26 The object of this Act is to prevent the use of public funds for  
27 advertising or other communications for party political purposes.

1 **Part 2** **Important concepts**

2 **6** **General principles**

3 The following general principles apply to the use of public funds for  
4 government campaigns:

- 5 (a) members of the public have the right to access comprehensive  
6 information about government policies, programs and services  
7 which affect their entitlements, rights and obligations;
- 8 (b) governments may use public funds for information programs  
9 and education campaigns to explain government policies,  
10 programs or services and to tell members of the public about  
11 their entitlements, rights and obligations;
- 12 (c) information programs and education campaigns must not be  
13 conducted for party political purposes.

14 **7** **What is a *government agency*?**

15 In this Act:

16 ***government agency*** means:

- 17 (a) an administrative unit; or  
18 (b) a territory instrumentality; or  
19 (c) a statutory office-holder and the staff assisting the statutory  
20 office-holder.

- 1 **8 What is a *government campaign*?**
- 2 In this Act:
- 3 *government campaign*—
- 4 (a) means the dissemination by a government agency of  
5 information to members of the public about a government  
6 program, policy or matter which affects their entitlements,  
7 rights or obligations; and
- 8 (b) includes an information program or education campaign to  
9 explain the program, policy or matter; but
- 10 (c) does not include any of the following:
- 11 (i) advertisements for stated jobs;
- 12 (ii) tender advertising;
- 13 (iii) other routine advertising carried out by an agency in  
14 relation to its operational activities.
- 15 **Examples—par (c) (iii)**
- 16 1 notices about traffic or transport
- 17 2 notice of garbage collection times
- 18 *Note* An example is part of the Act, is not exhaustive and may extend, but  
19 does not limit, the meaning of the provision in which it appears (see  
20 Legislation Act, s 126 and s 132).

1 **9**           **What are *campaign costs*?**

2           In this Act:

3           *campaign costs*—

4           (a) means the cost of the development, production and conduct of  
5           government campaigns; and

6           (b) includes the costs relating to using the media.

7           **Examples—campaign costs**

8           1 cost of using market research agencies, public relations consultants or  
9           advertising agencies to develop information

10          2 production costs of press, radio, on-line or other electronic media, cinema or  
11          television advertisements

12          3 production costs of audio-visual material

13          4 production costs of pamphlets and explanatory booklets

14          *Note*     An example is part of the Act, is not exhaustive and may extend, but  
15          does not limit, the meaning of the provision in which it appears (see  
16          Legislation Act, s 126 and s 132).

1 **Part 3** Requirements for government  
2 campaigns

3 **10 Auditor-general to review certain government campaigns**

4 (1) If the campaign costs of a government campaign proposed by a  
5 government agency are likely to exceed \$20 000, the responsible  
6 Minister for the agency must ask the auditor-general to review the  
7 proposed campaign and report to the Minister about whether it  
8 complies with this Act.

9 *Note* A reference to an Act includes a reference to the statutory instruments  
10 made or in force under the Act, including guidelines (see Legislation  
11 Act, s 104).

12 (2) The responsible Minister for a government agency may ask the  
13 auditor-general to review, and report to the Minister about, a  
14 government campaign proposed by the agency even if the campaign  
15 costs are not expected to exceed \$20 000 if the Minister considers  
16 that the subject matter of the campaign is sensitive or otherwise  
17 considers that a review is appropriate.

18 (3) If the auditor-general is asked to review a proposed government  
19 campaign, the auditor-general must—

20 (a) review the campaign; and

21 (b) report to the responsible Minister on whether the campaign  
22 complies with this Act.

1   **11           Government campaigns must comply with Act**

2           The responsible Minister for a government agency may conduct a  
3           government campaign only if—

- 4           (a) the responsible chief executive for the agency certifies that the  
5           campaign complies with this Act; and
- 6           (b) if the campaign costs for the campaign are likely to exceed  
7           \$20 000—the auditor-general has reported to the responsible  
8           Minister in relation to the compliance of the campaign with  
9           this Act.

10           *Note*     A reference to an Act includes a reference to the statutory instruments  
11                    made or in force under the Act, including guidelines (see Legislation  
12                    Act, s 104).

13   **12           Statement of total campaign costs**

14           The responsible Minister for a government agency that has  
15           undertaken a government campaign must prepare a statement of the  
16           total campaign costs for the campaign.

17   **13           Minister must make guidelines**

- 18           (1) The Minister must make guidelines for this Act consistent with its  
19           object and the general principles.
- 20           (2) Guidelines are a disallowable instrument.

21           *Note*     A disallowable instrument must be notified, and presented to the  
22                    Legislative Assembly, under the Legislation Act.

- 1 (3) Without limiting subsection (1), the guidelines must include  
2 provisions to the following effect:
- 3 (a) information in a government campaign must be relevant to  
4 current government responsibilities;
- 5 **Example—information relevant to current government**
- 6 1 information about existing or new government policies or policy  
7 changes for which there is legislative authority, an appropriation or a  
8 current government decision to implement
- 9 2 information about government programs or services or changes to  
10 programs or services for which there is legislative authority, an  
11 appropriation or a current government decision to implement
- 12 3 scientific, medical or health and safety information
- 13 4 information about government performance to facilitate accountability  
14 to the public
- 15 *Note* An example is part of the Act, is not exhaustive and may extend,  
16 but does not limit, the meaning of the provision in which it  
17 appears (see Legislation Act, s 126 and s 132).
- 18 (b) information in a government campaign must be presented in an  
19 objective and fair way and not include—
- 20 (i) comment or opinion; or
- 21 (ii) statements promoting the government's performance;
- 22 **Examples**
- 23 1 objective facts and explanatory information are included
- 24 2 material presented as fact is based on and conforms with accurate,  
25 verifiable facts
- 26 3 factual comparisons are presented in a way that is not misleading and  
27 state the basis for comparison
- 28 4 existing policies, services or activities are not represented as new
- 29 (c) information in a government campaign must not include  
30 slogans or other advertising techniques;
- 31 **Example—advertising techniques**  
32 jingles

- 1 (d) information in a government campaign must be presented in a  
2 way that is accessible and takes into account any special  
3 communication needs of particular people or groups;

4 **Examples—groups that may have special communication needs**

- 5 1 young people  
6 2 Aboriginal and Torres Strait Islanders  
7 3 people whose first language is not English

- 8 (e) information in a government campaign must not be directed at  
9 promoting the government or party political interests in any  
10 way, including by way of—

- 11 (i) content; or  
12 (ii) source; or  
13 (iii) reason; or  
14 (iv) purpose; or  
15 (v) choice of media; or  
16 (vi) timing, geographic or demographic targeting; or  
17 (vii) designed effect;

18 **Examples—promoting government or party political interests**

- 19 1 mentioning the party in government or the party leader by name  
20 2 deriding the views, policies or actions of others, including policies and  
21 opinions of opposition parties or groups  
22 3 including party-political slogans or images  
23 4 designing to influence public support for a political party, a candidate  
24 for election, a Minister or a member of the Assembly  
25 5 mentioning or linking to a website of a politician or a political party

1 (f) information in a government campaign must be produced and  
2 distributed in an efficient, effective and relevant way, with  
3 regard to accountability;

4 **Examples**

5 1 justifiable by cost-benefit analysis in terms of community needs,  
6 efficiency and effectiveness

7 2 clear audit trail regarding decision-making

8 3 current procurement policies and procedures for tendering, obtaining  
9 services and employing consultants followed

10 (g) the presentation and delivery of information in a government  
11 campaign must be clearly identified as part of a government  
12 campaign;

13 **Example**

14 a statement at the beginning and at the end of a television or radio  
15 announcement

16 (h) a government campaign must be presented and delivered in a  
17 way that recognises the diversity of the ACT community and  
18 the full participation of women, and ethnic and Aboriginal and  
19 Torres Strait Islander communities, by realistically  
20 representing their interests, lifestyles and contributions to  
21 Australian society;

22 (i) the presentation and delivery of information in a government  
23 campaign must comply with any relevant laws in force in the  
24 ACT.

25 **Example**

26 privacy laws

27 **14 No government campaigns before election**

28 A government agency must not conduct a government campaign in  
29 the 12-week period immediately before a general election.

30 *Note* The Minister may exempt a campaign from this Act in an emergency,  
31 urgent circumstances or other extraordinary circumstances (see s 15).

1 **Part 4** **Miscellaneous**

2 **15 Exemptions**

- 3 (1) The Minister may exempt a campaign from this Act.
- 4 (2) However, the Minister may exempt a campaign only if satisfied it is  
5 appropriate because of—
- 6 (a) an emergency; or
- 7 (b) extreme urgency; or
- 8 (c) other extraordinary circumstances.
- 9 (3) The Minister must tell the auditor-general, in writing, about an  
10 exemption and the reasons for the exemption as soon as practicable  
11 after the exemption is given.
- 12 (4) An exemption is a disallowable instrument.

13 *Note* A disallowable instrument must be notified, and presented to the  
14 Legislative Assembly, under the Legislation Act.

15 **15 Regulation-making power**

16 The Executive may make regulations for this Act.

17 *Note* A regulation must be notified, and presented to the Legislative  
18 Assembly, under the Legislation Act.

## 1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to  
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • ACT
- 7 • auditor-general
- 8 • disallowable instrument (see s 9)
- 9 • Executive
- 10 • Minister (see s 162)
- 11 • notifiable instrument (see s 10)
- 12 • statutory office holder
- 13 • territory instrumentality.

14 *campaign costs*—see section 9.

15 *general election*—see the *Electoral Act 1992*, dictionary.

16 *government agency*—see section 7.

17 *government campaign*—see section 8.

18 *responsible chief executive*—see the *Auditor-General Act 1996*,  
19 dictionary.

20 *responsible Minister*, for a government agency, means the Minister  
21 responsible for the administration of the agency.

---

## Endnotes

- 1 Presentation speech**  
Presentation speech made in the Legislative Assembly on 2008.
  - 2 Notification**  
Notified under the Legislation Act on 2008.
  - 3 Republications of amended laws**  
For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).
- 

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**APPENDIX F: Government Agencies (Campaign  
Advertising) Bill 2008 –  
Amendments to be moved by Mr  
Zed Seselja**

**Circulated 1 April 2009**

Australian Capital Territory  
Legislative Assembly

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**Government Agencies (Campaign Advertising)  
Bill 2008**

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Amendments to be moved by Mr Zed Seselja

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**1**  
Clause 8, definition of *government campaign*, proposed new  
paragraph (c) (ia)  
Page 4, line 10—

*insert*

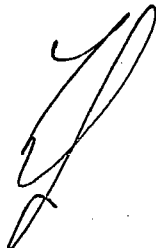
- (ia) dissemination of information about public health or safety programs, including road safety programs;

---

**2**  
Clause 8, definition of *government campaign*, paragraph (c) (iii)  
Page 4, line 13—

*omit clause 8 (c) (iii), substitute*

- (iii) other routine advertising campaigns carried out by an agency in relation to its operational activities and costing less than \$20 000.



---

3

**Clause 8, definition of *government campaign*, paragraph (c),  
proposed new examples**

**Page 4, line 14—**

*insert*

**Examples—par (c) (ia)**

- 1 road safety programs about the dangers of drink driving, speeding or not wearing seatbelts
- 2 public health programs about the dangers of smoking or obesity
- 3 public health programs about losing weight and getting fit

---

4

**Clause 13 (3) (b) (i)**

**Page 8, line 20—**

*omit clause 13 (3) (b) (i), substitute*

- (i) comment or opinion, unless the comment or opinion is clearly identified as comment or opinion and is clearly distinguishable from statements of fact; or

---

5

**Clause 13 (3) (c)**

**Page 8, line 29—**

*omit clause 13 (3) (c) other than the example, substitute*

- (c) information in a government campaign must not include slogans or other advertising techniques designed to have, or likely to have, the effect of promoting a political party or position instead of communicating a factual message;
-