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Ms Joy Burch MLA  
 Chair, Select Committee on Campaign Advertising  
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 A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
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Dear Ms Burch

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

The ACT Greens welcome this inquiry into the important issue of accountability of Government advertising. We support the *Government Agencies (Campaign Advertising) Bill 2008* (the Bill) in principle, as well as suggesting areas for amendment which we feel strengthen or clarify the intent of the Bill. We also propose some additional measures to provide for:

- regular public reporting of Government campaign advertising expenditures; and
- greater accountability requirements on agencies and their Ministers to outline the intended outcomes of 'large' advertising campaigns, as well as appropriate evaluation to see if campaigns achieve outcomes.

We welcome and look forward to further discussion of the best ways to achieve the intent of the Bill through this Select Committee process.

#### Context for supporting the Bill

While we recognise the legitimate need for Government advertising we support the intent of this legislation as we believe the ACT Government should be a leader and innovator in good governance. A healthy democracy requires frank, transparent and accountable practices in executive government and Government advertising is noted as one area causing or leading to community cynicism of our democratic institutions.

Some key reviews of Government advertising, although not in the ACT, have called for action to increase accountability of government advertising. Particularly, noteworthy is the review of 'Government advertising and accountability' by the Senate Finance and Public Administration References Committee whose report was published in December 2005.

While it seems the ACT has not gone down the path of excessive or improper government advertising to the extent of other jurisdictions, we support the introduction of appropriate measures that provide for accountability, transparency and openness of the use of public expenditure on Government advertising, particularly during and prior to elections.

In addition we have a number of specific reasons for supporting the intent of this Bill, noting that these arise from trends and experience in other jurisdictions rather than actual practice in the ACT.

- Firstly, we are concerned about increasing government expenditure on advertising for what can in some instances be seen to be for political purposes.
- Secondly, there is a general lack of transparency and public reporting regarding government expenditure on advertising, particularly close to elections or in election years.
- Thirdly, there are insufficient criteria and guidelines for determining the justification for a particular advertising campaign and subsequently, assuming there is a genuine rationale, the appropriateness of the content or size of the government advertising budgets.
- Fourthly, we note the potential unfair benefits incumbency can provide to Governments through use of advertising budgets prior to and during election campaigns, particularly of generalist 'feel good' advertising, or self promotion of Government performance.
- Fifthly, there is a need for clear guidance and support to public servants on how to distinguish between their role in assisting with the appropriate public education of Government policy, programs and services and, improper advocacy or promotion of government policy on behalf of the Government.
- Finally, again while recognising the valid need for some advertising, as a general principle we believe advertising should be limited unless linked to clear outcomes and priorities areas. Scarce Government resources should be used to deliver services and programs rather than unnecessary promotion of those services and programs.

### **Proposed Amendments – matters for consideration**

#### *1) Object of the Act*

We propose another object [s.5] be included in this section along the lines of: “to ensure greater transparency and accountability of Government campaign advertising expenditure and outcomes”.

We also suggest the objects should clarify that the Act would apply to Independents or non-Party MLAs, who can form part of Government (e.g. Independent Michael Moore as Minister for Health).

#### *2) General Principles*

We propose that additional principles [s.6] be included using similar words to those in the Canadian legislation, that Government advertising:

- ‘must not be partisan’; and
- ‘must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the Government’.

#### *3) Consultation regarding the guidelines and any regulations under the Act*

The proposed guidelines [s.13] and potentially regulations [s.15] will be key components of the capacity of the legislation to deliver the desired outcomes, therefore it is proposed that appropriate consultation and review mechanisms be included in the Bill.

As the Bill [s.13] requires the Minister **must** make guidelines, it is proposed that a timeline for the development of the initial guidelines be included, as well as a requirement for review of the guidelines every term of Parliament (i.e. every four years, as well as requirements for public consultation on the initial guidelines and their subsequent review. Likewise there should be provisions in the Act for the processes and public consultation of any potential regulations.

#### *4) Definition of campaign costs*

We propose that the definition of campaign costs [s.9] be expanded to specifically include market research activity, even if it is not then used to develop an information campaign. The definition could also provide some clarity on whether it includes internal staff costs.

### *5) Guidelines*

We propose that the Bill and the guidelines contain more specific definitions of 'current government responsibilities' [s.13(3a)]. For instance, the definition as stated does not seem to preclude Government advertising of decisions which the Government intends to implement rather than those it will introduce, thereby potentially allowing a work-choices style advertising campaign of 2005, which was widely criticised.

In addition, we propose there is a need for guidance to the public service differentiating between providing information to explain a Government program or policy and advocacy for the Government. Consideration could be given to enhancing the role of the Commissioner for Public Administration in providing such guidance and oversight.

A useful discussion of these issues is provided in Democratic Audit of Australia, Report No. 10: *Marketing Government: The public service and the permanent campaign*, Kathy MacDermott, October 2008, chapter six.

We support the adoption of nationally consistent principles and guidelines and therefore recommend the Committee seek advice on the status and timetable on the deliberations of COAG in developing national government advertising principles. We do not support a delay in action in the ACT if it appears that progress on these national principles is some time into the distant future, as can occur with some COAG processes.

### *6) Role of the Auditor-General*

The bill as drafted requires the Auditor-General to review government advertising campaigns over \$20,000 on referral from the Minister [s.10]. We support a legal requirement that significant Government advertising campaigns be subject to some form of independent scrutiny to assess whether they meet specified criteria and this proposed legislation. However we propose that greater consideration be given to whether the Auditor-General is the most appropriate body to undertake such scrutiny. We note that recent changes at the Federal level give a review role to the Federal Auditor-General for advertising campaigns over \$250,000. In the ACT consideration could be given as to whether review is more appropriately undertaken by the Commissioner for Public Administration, or some other body. We note however, that the Commissioner for Public Administration is a half-time position, coupled with a Public Sector role.

Regardless of who undertakes this important function, we suggest additional requirements are necessary with regard to the implications of a decision of non-compliance, as well as some reporting function of the review body. Finally consideration needs to be given to the resourcing implications of this review role.

### *7) Threshold of campaign advertising*

We suggest that consideration be given to some mechanism being placed in the legislation such that agencies can not avoid consideration of the campaign by the Auditor-General [s.10] by running a series of campaigns under the \$20,000 threshold. We would also appreciate greater analysis of the size of general ACT Government advertising in order to assess the appropriateness of the \$20,000 threshold.

### *8) Use of slogans and advertising techniques*

We propose that the bill be amended to more adequately address the issue of the use of slogans or advertising techniques. The bill currently indicates that government advertising must not include slogans or other advertising techniques [s.13(3c)]. While understanding the intent of the clause we note that we want necessary Government advertising to be successful and therefore, the use of

slogans or jingles can be an effective tool. Some examples include the “Take ACTION” campaign slogan which encourages Canberrans to address climate change by taking public buses. Likewise Switch Your Thinking is clearly a slogan, yet it is an important community education campaign to help the ACT community reduce their greenhouse gas emissions. We suggest this matter can be better resolved through broader accountability measures referred to elsewhere rather than a ban on the use of slogans.

*9) Mechanism for accountability of Government expenditure on advertising*

The ACT Greens support additional requirements in this Bill or other legislation requiring greater accountability of Government advertising budgets. For instance we support public reporting of Government expenditure on advertising, as there is not currently a clear figure of ACT Government campaign advertising. We also support more public accountability around the purpose of government advertising campaigns, their intended outcomes and appropriate evaluation.

Suggested mechanisms include:

- a requirement that all advertisements include the total cost of the advertising campaign in the advertisement;
- public disclosure within a short specified time, including on the Government internet site, of the statements of advertising costs that must be prepared by the Minister [s.12];
- annual disclosure of Government campaign advertising expenditure in Departmental Annual Reports through the Chief Minister’s Annual Report Directions;
- the Auditor-General [or alternate review body] to produce an Annual Report on Government advertising which will be tabled in the Assembly and which will outline:
  - details of all reviews / assessments undertaken;
  - advertising costs by agency; and
  - analysis of ‘large’ advertising campaigns, such as their purpose, key strategies, intended outcomes, outline of expenditure by media outlets and post-advertising evaluation of outcomes achieved.
- consideration of other measures to ensure Government advertising is undertaken with clear objectives and expected outcomes and appropriate post-evaluation to assess performance.

*10) Annual cap on Government advertising or other measures*

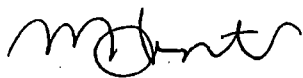
Noting the difficulties even with clear guidelines and requirements the Auditor-General [or an alternate review body] might face in making the decision as to whether the advertising is potentially party-political, or crossing the line of going beyond information and into advocacy, we also support consideration of other measures such as an annual cap on Government advertising and certain additional requirements for authorisations of expenditure, such as evaluation prior to additional expenditure.

We suggest the individuals / organisations be asked to provide expert advice to the Committee:

- Dr Sally Young – Senior lecturer, Media and Communications, University of Melbourne
- Kathy MacDermott – author of *Marketing Government 2008*
- Marian Sawyer – Democratic Audit of Australia, Australian National University.

We would be pleased to discuss these matters in greater detail during the progress of the inquiry deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Hunter', written in a cursive style.

Meredith Hunter  
ACT Greens Parliamentary Convenor  
12 June 2009