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Dr Sandra Lilburn
Secretary, Select Committee on Campaign Advertising
ACT Legislative Assembly
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	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
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Inquiry into the Government Agencies (Campaign Advertising) Bill 2008

Dear Sandra

Please find attached the Democratic Audit of Australia submission. Please let us know when it has been approved for publication so that we can link to it on the Audit website.

We would be happy to provide any further evidence that the Committee may require.

Yours sincerely

Prof. Marian Sawyer
Director Democratic Audit of Australia-ANU

Submission from the Democratic Audit of Australia
to the
Select Committee on Campaign Advertising
Inquiry into the Government Agencies (Campaign Advertising)
Bill 2008

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Summary and Recommendations

The Democratic Audit of Australia appreciates the Committee's invitation to make a submission to its Inquiry.

In our view the Bill represents a positive step in the management of campaign advertising by ACT agencies. Overall, we see a critical need for legislation in this area and support the Bill.

A recent Audit report recommended that legislation on this model be adopted across all Australian states and territories. This Bill is important not only in its own right but also because it is likely to be looked at as a model by other jurisdictions.

The Audit notes that the Bill in large part reflects the approach of the 2008 Commonwealth Guidelines on Government Advertising. Our submission focuses on:

- recent criticism of the need for legislation and of particular aspects of the Bill by the ACT Chief Minister; and
- those provisions of the Bill that may weaken, rather than reinforce, the thrust of the recent Commonwealth guidelines on which it is based.

Our recommendations to the Committee are as follows:

Recommendation 1: The Audit gives strong in-principle support to the proposed legislation, and recommends that it become law subject to amendments proposed in this submission.

Recommendation 2: The Audit recommends that the Bill retain the decision-making model which requires the agency head to take responsibility for certifying to his or her minister that a campaign developed in their agency complies with ACT legislation with respect to campaign advertising.

Recommendation 3: The Audit recommends that the Bill retain the decision-making model which requires the Auditor-General to review agency compliance with ACT legislation with respect to campaign advertising.

Recommendation 4: The Audit recommends that the terms in which the Bill specifies the nature of the Minister's action following agency head certification and receipt of the Auditor-General's report be amended to clarify that the Minister's role is to give approval for the campaign to proceed.

Recommendation 5: We recommend that instead of mandating a second tier of guidelines the legislation be revised to give agency heads responsibility for establishing agency procedures for determining whether proposed campaign material is compliant with the provisions in section 13 of the Bill.

Recommendation 6: We recommend that, rather than being tagged as products of the Australian Capital Territory Government, advertisements should be tagged as the product of the relevant portfolio agency.

Recommendation 7: The Audit recommends that the contents of the reports required under the Bill be specified in a disallowable instrument under the legislation, and that each item contributing to the total cost of the campaign should be addressed separately. Reports should also be required to adhere to a common format to facilitate comparisons across portfolios and within portfolios over time. Reporting should adhere to a common timeframe.

Recommendation 8: The Audit recommends that the Bill should be amended to give agency heads rather than ministers the responsibility for reporting, and to make agency annual reports the vehicle for the reports.

Recommendation 9: The Audit recommends that the Chief Minister's Department be given responsibility for publishing a collated version of all agency spending on an annual basis.

Recommendation 10: The Audit recommends that agency annual reports should publish copies of documentation provided by agency heads to their ministers certifying the compliance of each campaign with ministerial advertising guidelines.

Recommendation 11: Where agency annual reports address advertising campaign costs, they should also include the costs of evaluating the effectiveness of campaigns that exceed the reporting threshold, or (at a minimum) should include effectiveness indicators.

Recommendation 12: Agencies should be required to lodge copies of any market research underpinning a given advertising campaign.

Recommendation 13: The Audit supports the proposed exemption from the certification and review processes of routine advertising and campaigns conducted in response to exceptional circumstances, and notes that such exemptions have proved workable at the Commonwealth level.

Recommendation 14: The Audit supports the inclusion of a provision in the Bill prohibiting the conduct of a government campaign by a government agency in the 12-week period immediately before a general election.

Recommendation 15: The Audit recommends that section 13(3)(b) of the Bill be amended to replicate the corresponding provision in the 2008 Commonwealth Guidelines, namely that campaigns should '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.’

Recommendation 16: Recommendation 15: The Audit recommends that the Bill omit proposed clause 13(3)(c) specifying that a government campaign must not include ‘slogans or other advertising techniques’ such as jingles, and rely on the other guidance in section 13(3) to underpin the provision of fair and objective public information.

The need for legislation to address ACT Government advertising campaigns

The Audit has a longstanding interest in government advertising. Both the content and the conduct of government advertising have been considered at some length by contributors of Audit Discussion Papers and Reports on the audit website.¹ The content of government marketing affects both political equality—what should be the level playing field of electoral competition—and the quality of public debate. Its conduct raises issues of government accountability and the involvement of the public service in questionable marketing campaigns.²

Questionable government marketing ranges along a continuum that begins when advertising is such that the public is left uninformed, continues past the point where it is actively misinformed, and ends in political propaganda. Also problematic is the opportunity cost to taxpayers of government expenditure on marketing. Arguably the government carries electoral liability for its marketing practices: if policies do not work out as advertised or if the public believes that taxpayers’ funds are being misapplied to party political purposes, they can change the government at the next election. It is also arguable, however, that what the public believes when it votes is to some extent conditioned by government advertising previously underwritten by the public’s own purse.

The increasing use of public resources to underwrite government advertising campaigns also means the increasing involvement of the public service in marketing government. Public servants’ engagement in government marketing activities now extends well beyond direct ministerial media support; marketing has now become part of the work of many public servants engaged in policy development and program design. There are indications that as their involvement in government marketing widens, so does their political exposure.³

¹ Key Audit publications on political finance and government advertising include those by Graeme Orr, Sally Young and Joo-Cheong Tham. See <http://arts.anu.edu.au/democraticaudit/categories/polfin_gafrm.htm>

² See Kathy MacDermott, 2008, *Marketing Government: The public service and the permanent campaign*, Democratic Audit of Australia Report No 10. <http://democratic.audit.anu.edu.au/papers/focussed_audits/200810macdermottmarkng.pdf>

³ See MacDermott, Chapter 3.

The considerable resistance of long-term incumbent Commonwealth and State governments to criticism of their practice and to improving their governance of the content and conduct of their marketing⁴ indicates the importance they attach to existing arrangements, which offer them a clear political advantage over their oppositions.

The Chief Minister has argued that the unexceptional parts of the Bill reflect current practice. He cites the Commonwealth Electoral Act and Broadcasting Services Act.⁵ The *Commonwealth Electoral Act 1918* sets out certain requirements for identifying the source of authorisation of electoral advertisements⁶; the *Broadcasting Services Act 1992* imposes conditions on broadcasters in relation to broadcasts of 'political matter' or 'matter relating to a political subject or current affairs'.⁷ The effect of the conditions is that such material must be broadcast with information that identifies the relevant political party or the relevant advertiser (eg. 'Authorised by the Australian Capital Territory Government'), the location of the office and the person authorising the advertisement.⁸ The Audit endorses the finding of the 2005 Senate Committee on Finance and Public Administration, that these pieces of legislation do not substantially clarify the definitional issues associated with government public information campaigns⁹ and that even the then-current guidelines were 'silent on the major question before this inquiry, namely the potential for the misuse of government advertising for political advantage'.¹⁰

The announcement in 2008 of the Commonwealth *Guidelines on Campaign Advertising by Australian Government Departments and Agencies* constituted a welcome break in the ongoing cross-jurisdictional pattern of Government resistance to reform. The ACT's Government Agencies (Campaign Advertising) Bill 2008 is substantially based on these *Guidelines*. However, while the Commonwealth Guidelines are binding on agencies subject to the *Financial Management and Accountability Act 1997*, the ACT Bill would be law. Thus the critical difference between the two sets of provisions is the relative ease with which a

⁴ See discussion in Sally Young, 2007, 'The regulation of government advertising in Australia: The politicisation of a public policy issue', *Australian Journal of Public Administration*, 66 (4): pp. 438–52.

⁵ Weekly Hansard of the Seventh Assembly, 1 April 2009, p. 1639.

⁶ Senate Finance and Public Administration Legislation Committee, *Report on Charter of Political Honesty Bill 2000* [2002]; Electoral Amendment (Political Honesty) Bill 2000 [2002]; Provisions of the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000; Auditor of Parliamentary Allowances and Entitlements Bill 2000 [No.2], August 2002, p. 100.

⁷ Senate Finance and Public Administration Legislation Committee, *Report on Charter of Political Honesty Bill*, p. 101; see also Broadcasting Services Act 1992, ss 2 (1).

⁸ Senate Finance and Public Administration Legislation Committee, *Report on Charter of Political Honesty Bill*, p. 101.

⁹ Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government Advertising and Accountability*, p.7 para 1.34.

¹⁰ Senate Finance and Public Administration References Committee, 2005, *Report of the Inquiry into Government Advertising and Accountability*, p.72 para 6.19.

subsequent government can amend or remove the 2008 Commonwealth Guidelines, while the legislative format proposed for the ACT would continue to bind future governments unless or until the Assembly passed alternative legislation.

The Audit views the legislative format as preferable, and notes that in legislating guidelines for government advertising the ACT would be following best practice in comparable democracies (such as Canada) and giving a lead to the Commonwealth.

Recommendation 1: The Audit gives strong in-principle support to the proposed legislation, and recommends that it become law subject to amendments proposed in this submission.

Respective roles of ministers, agency heads and the Auditor-General

The Chief Minister has identified the role proposed for the Auditor-General under the Bill as a 'very significant issue'. He has characterised this role as 'deciding whether government policy or a government decision is appropriate'.¹¹ He argues that 'I think the more fundamental issue in relation to government policy decisions being referred to the Auditor-General—an independent statutory officer—for authorisation before the fact, before the action is undertaken is that the Auditor-General becomes part of the decision making process...to include the Auditor-General in the decision-making chain in relation to a government program is to fundamentally misconstrue the role of the Auditor-General.'¹²

It does not appear to us that the Bill would fundamentally change the role of the Auditor-General. Under the Bill the minister would retain responsibility for a policy decision to provide public resources to underwrite a public information campaign. If the resources involved were in excess of \$20,000 the proposed campaign would be formally provided to the Auditor-General only after it had already been certified by the responsible agency head as complying with the guidelines to be made under the Bill. As the Commonwealth Minister said in introducing the same framework in the 2008 Commonwealth Guidelines, 'ministers will be briefed on the progress of campaign development, but responsibility for that development will be wholly undertaken by the commissioning department'¹³ or agency. These were deliberate design features of the new Commonwealth arrangements:

Every advertising campaign will now be certified against the new guidelines by the chief executive of the commissioning department or agency, and major campaigns will be reviewed by the Auditor-General before they can go ahead. These new procedures will now give the public confidence that campaigns are legitimately authorised,

¹¹ Weekly Hansard of the Seventh Assembly, 1 April 2009, p. 1639.

¹² Weekly Hansard of the Seventh Assembly, 1 April 2009, p. 1640.

¹³ Joint Media Release from John Faulkner and Lindsay Tanner, 2008, 'New Advertising Guidelines'. <http://www.smos.gov.au/media/2008/mr_222008_joint.html>

properly targeted and non-political. Gone is the Ministerial Council on Government Communications, which put politics into government advertising. Our new process restores responsibility for advertising to the public service. It relies heavily on the judgement and integrity of agency heads who are required to sign off that the content of advertising meets strict new guidelines.¹⁴

The Commonwealth process has been taken into the ACT Bill at section 11, under which the Minister cannot act unless:

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

This is not an unusual model for public administration: agency heads are responsible for ensuring that their agencies comply with a range of administrative standards legislated by the Assembly, and Auditors-General are responsible for reviewing agency compliance with those standards.

The requirement that government marketing campaigns meet formal standards of non-partisanship also means that reporting can be made more transparent at the administrative level without the risk of giving rise to embarrassment at the ministerial level.

The ACT Bill varies the Commonwealth provision, however, by the terms in which it specifies the nature of the minister's action. The ACT Bill specifies that the 'responsible Minister for a government agency may conduct a government campaign only if' the above conditions are met, while the 2008 Guidelines specify that the 'government campaigns can only be approved for launching by a minister when' substantially identical conditions have been met. In both cases the conditions specified do not enable the minister to override agency head certification or decline to receive the report of the Auditor-General; there is no improper control of the decision-making process of statutory or departmental agency heads. However, we accept that the expression 'conduct a campaign' is less clear in this respect than 'approve for launching'.

Recommendation 2: The Audit recommends that the Bill retain the decision-making model which requires the agency head to take responsibility for certifying to his or her minister that a campaign developed in their agency complies with ACT legislation with respect to campaign advertising.

Recommendation 3: The Audit recommends that the Bill retain the decision-making model which requires the Auditor-General to review agency compliance with ACT legislation with respect to campaign advertising.

¹⁴ John Faulkner, 2008, 'New Directions: Setting the Agenda on Accountability and Integrity', 16 July. <http://www.smos.gov.au/speeches/2008/sp_20080716.html>

Recommendation 4: The Audit recommends that the terms in which the Bill specifies the nature of the minister's action following agency head certification and receipt of the Auditor-General's report be amended to clarify that the Minister's role is to give approval for the campaign to proceed.

The Chief Minister has raised the possibility that there may be a drafting issue in the Bill with the use of the term 'chief executive' as it applied to heads of statutory agencies to which the ACT Financial Management Act applies. This submission does not address any this drafting issue, but accepts that if it is present in the Bill it should be rectified.

Purpose of Guidelines under the Bill

Under section 13 of the ACT Bill ministers must make guidelines for the application of the proposed legislation consistent with its object and the general principles, and including a range of provisions to the effect of those set out in section 13. Their agency heads would apply the guidelines and certify the compliance of particular campaigns with those guidelines.

Guidelines under section 13 are comprehensive and (with some exceptions noted below) are consistent with those already operating at the Commonwealth level. The Audit does not see the need for individual ministers to redraft or tailor the current guidelines, or to adapt them to the purposes of particular agencies. Where such supplementary guidelines are not simply redundant they may run the risk of exposing particular agencies and agency heads to interpreting and pursuing differing sets of criteria. Instead, we recommend that agency heads be given responsibility for establishing agency procedures for determining whether proposed campaign material is compliant with the provisions in section 13 of the Bill.

Such procedures should in any event be put in place as a matter of course. The responsibility of agency heads for certifying compliance with the legislation should call forth a chain of accountability down the line. A senior public servant would have to be accountable to the agency head for presenting a campaign that is able to be certified. If the senior public servant were prudent, that sign-off would be premised on a formal record or checklist confirming that the planned campaign had been considered by the relevant line area during its development and judged to meet the guidelines. The Audit sees considerable value in the maintenance of such a record, which has also been recommended by the UK Auditor-General, as helping to keep the lines of accountability clear.¹⁵

Section 13 of the Bill, which sets out the factors that may cause a campaign to be perceived as party-political, offers the basis for developing such a checklist. According to Section 13 'information in a government campaign must not be directed at promoting the government or

¹⁵ National Audit Office (UK), 2003, Government Advertising, p. 3 para 1.6.

<http://www.nao.org.uk/publications/gov_advertising.pdf>

party political interests in any way', including through its content, source, reason, purpose, choice of media, timing, geographic or demographic targeting, or designed effect. Concrete examples are specified but these are not exclusive. Public servants required to apply a checklist derived from Section 13 would see the value in substantive training on the nature of the guidelines and the type of judgment involved in their application. Over time, the numbers of public servants with relevant training and experience in decision-making around campaign propriety should increase, particularly in agencies where campaigns are more likely to occur.

The Chief Minister has expressed concern that the Bill would 'severely impact on the ability of government agencies to effectively provide to the community timely and accessible information on government programs and hinder government efforts to effectively engage the community'.¹⁶ Setting aside the fact that the Bill would not apply to either routine advertising or to exceptional or emergency campaigns, there should be no negative impact on the timeframe for developing advertising campaigns if agency heads ensure that agency staff address the guidelines in the Bill during the developmental phases of the campaign. The Commonwealth Auditor-General has made it clear that in the case of the corresponding provisions for national campaigns his review 'includes an examination of the certification by the Chief Executive and supporting documents and records relevant to the campaign, and interviews with staff of the department or agency involved with the preparation of the campaign' and that:

To ensure the review is able to be undertaken in a timely manner, departments and agencies are encouraged to contact the ANAO early in the initial design of the campaign and again at key points in campaign development. The ANAO will generally be in contact with the department or agency over weeks or even months as campaign development proceeds, providing the agency with any preliminary feedback on matters arising in respect of each of the Guidelines and ensuring the ANAO is well placed to undertake a final assessment of the campaign at the appropriate time.¹⁷

If, as Orr has suggested,¹⁸ advertisements were also tagged as the product of the relevant portfolio agency rather than, as currently, that of the Australian Capital Territory Government, the accountability framework would be further tightened and the incentive for hastily developed Government 'feel good' campaigns further reduced.

Recommendation 5: We recommend that instead of mandating a second tier of guidelines the legislation be revised to give agency heads responsibility for establishing agency

¹⁶ Weekly Hansard of the Seventh Assembly, 1 April 2009, p. 1637.

¹⁷ ANAO, *Auditor-General's Review of Information and Advertising Campaigns—Overview* <http://cms.anao.gov.au/uploads/documents/Auditor-Generals_Review_of_Information_and_Advertising_Campaigns_-_Overview.pdf> pp. 2-3

¹⁸ Graeme Orr, 2006, 'Government advertising: Informational or self-promotional?', Democratic Audit of Australia Workshop Paper. <http://democratic.audit.anu.edu.au/papers/20060320_fin_orr.pdf>

procedures for determining whether proposed campaign material is compliant with the provisions in section 13 of the Bill.

Recommendation 6: We recommend that, rather than being tagged as products of the Australian Capital Territory Government, advertisements should be tagged as the product of the relevant portfolio agency.

Reporting by ministers

At section 12 of the Bill there is a requirement that a minister responsible for an agency that has undertaken a government campaign must prepare a statement of the total campaign costs for that campaign. Costs are defined to include the development, production and conduct of government campaigns and the use of the supporting media. Examples of such costs correspond to those set out in the 2008 Commonwealth Guidelines and include:

- the cost of using market research agencies, public relations consultants or advertising agencies to develop information;
- production costs of press, radio, on-line or other electronic media, cinema or television advertisements;
- production costs of audio-visual material; and
- production costs of pamphlets and explanatory booklets

Despite these examples, however, there is no indication of how the reporting of 'total costs' will be broken down for the proposed reports. In the audit's view the Bill should clarify that, at least in the case of campaigns over the specified minimum (now \$20,000), each item contributing to the total cost should be addressed separately. Reports should also be required to adhere to a common format. This means that both the specification of costs and the underlying accounting framework should be mandated centrally to facilitate comparisons across portfolios and within portfolios over time. It also means that reporting should adhere to a common timeframe rather than addressing individual campaigns at different points in time.

For these reasons, the Audit would recommend that the responsibility for reporting should be given to agency heads rather than ministers, and that agency annual reports be made the vehicle for the publication of the information relating to campaign advertising. We also recommend that the Chief Minister's Department be given responsibility for publishing a collated version of agency spending on an annual basis. This should not be onerous if all agencies report against a common framework. Agency annual reports should also publish copies of documentation provided by agency heads to their ministers certifying the compliance of each campaign with ministerial advertising guidelines. The inclusion of such documentation will ensure that agency heads remain focussed on the nature of their legislated role with respect to the integrity of campaign advertising.

The Audit has noted elsewhere that Canadian reporting requirements include the costs of evaluating the effectiveness of campaigns that exceed the reporting threshold or (at a minimum) should include effectiveness indicators.¹⁹ These should help to ensure that campaigns remain focussed on their public information function. For the same reason, agencies should be required to lodge copies of any market research underpinning a given advertising campaign. The Bill specifies at Section 6(b) that ‘governments may use public funds for information programs and education campaigns to explain government policies, programs or services and to tell members of the public about their entitlements, rights and obligations’. If market research is addressed to this function it should be able to be made public, and should also be able to be cross-referenced to evaluations of the success of the campaign in targeting and informing relevant members of the public.

Recommendation 7: The Audit recommends that the contents of the reports required under the Bill be specified in a disallowable instrument under the legislation, and that each item contributing to the total cost of the campaign should be addressed separately. Reports should also be required to adhere to a common format to facilitate comparisons across portfolios and within portfolios over time. Reporting should adhere to a common timeframe.

Recommendation 8: The Audit recommends that the Bill should be amended to give agency heads rather than ministers the responsibility for reporting, and to make agency annual reports the vehicle for the reports.

Recommendation 9: The Audit recommends that the Chief Minister’s Department be given responsibility for publishing a collated version of all agency spending on an annual basis.

Recommendation 10: The Audit recommends that agency annual reports should publish copies of documentation provided by agency heads to their ministers certifying the compliance of each campaign with ministerial advertising guidelines.

Recommendation 11: Where agency annual reports address advertising campaign costs, they should also include the costs of evaluating the effectiveness of campaigns that exceed the reporting threshold, or (at a minimum) should include effectiveness indicators.

Recommendation 12: Agencies should be required to lodge copies of any market research underpinning a given advertising campaign.

Exemptions to the proposed legislation

Section 15 of the Bill sets out the exemptions to the proposed arrangements for campaign advertising in virtually the same terms as the Commonwealth guidelines. These include routine

¹⁹ Sally Young, 2007, ‘Following the money trail: Government advertising, the missing millions and the unknown effects’, *Public Policy*, 2 (2): p. 104ff.

advertising—which is defined out of ‘campaign’ advertising—and campaigns conducted in response to exceptional circumstances.

The Chief Minister has reported receiving advice that ‘if this bill passed today the electoral commissioner could not, in the lead-up to the next election, let voters know the location of polling booths or advise them of their responsibilities under the law’.²⁰ Evidently his advice is that pre-election publication of the location of polling booths and voter requirements does not fall under ‘routine advertising’. If this is the case then certainly there is a drafting issue that needs to be addressed not only by the drafters of the Bill but also by the Commonwealth Government. If urgent health and safety issues (what the Commonwealth refers to as ‘national emergencies’ and the Bill as ‘emergencies’) require advertising campaigns, they will be exempt; if such issues are not urgent, agency heads should in any case be responsible for ensuring that any campaigns over the cost threshold comply with the guidelines before they are presented to the Auditor-General.

Recommendation 13: The Audit supports the proposed exemption from the certification and review processes of routine advertising and campaigns conducted in response to exceptional circumstances, and notes that such exemptions have proved workable at the Commonwealth level.

Variations from Commonwealth arrangements

Despite its similarities to many of the provisions of the 2008 Commonwealth Guidelines, the Bill is different in some important respects.

12 weeks prior to an election

Under section 14 the ACT Bill would prohibit the conduct of a government campaign by a government agency in the 12-week period immediately before a general election. The exemption provision set out in section 15 would apply to this prohibition, however, and routine advertising would also be excluded as not constituting a campaign. The corresponding provision in the 2008 Commonwealth Guidelines is the identification of the ‘environment’ as one of the factors to be taken into account when considering whether a campaign has party political features.

The proposed ACT provision is narrower in scope than that of the 2008 Commonwealth Guidelines, but is likely to have more effect as a consequence of its specificity. On balance, the ACT provision is to be preferred.

Recommendation 14: The Audit supports the inclusion of a provision in the Bill prohibiting the conduct of a government campaign by a government agency in the 12-week period immediately before a general election.

²⁰ Weekly Hansard of the Seventh Assembly, 1 April 2009, p. 1642.

No opinion

Under section 13(3)(b) of the ACT Bill, which sets out the factors which must be addressed in ministerial guidelines on campaign advertising, there is provision that information in a government campaign must not include 'comment or opinion; or statements promoting the government's performance'. The 2008 Commonwealth Guidelines have a weaker provision, namely that information in campaigns should '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'.

The Audit notes that both provisions are intended to support the principle that campaign content be both objective and fair. The examples underpinning the provisions in the ACT Bill are: that objective facts and explanatory information are included; material presented as fact is based on and conforms with accurate, verifiable facts; factual comparisons are presented in a way that is not misleading and state the basis for comparison; existing policies, services or activities are not represented as new. It is possible, however, that advertising material may meet all the standards set on the examples in the ACT Bill and yet could also have the effect, contrary to the proposed guideline, of 'promoting the government's performance'. It may also be the fact that, in the case of more complex policies, some comment is required to summarise or clarify the purport of bare facts.

In the Audit's view the provision proposed in the ACT Bill may prove too rigid to be workable and the weaker provision in the 2008 Guidelines is more likely to prove practicable. The Audit also notes that the proposed prohibition on 'promoting' government performance will be otherwise triggered in the lead-up to an election through the 12 week prohibition on all campaigns that are not either urgent, or called for by an emergency or other extraordinary circumstance.

Recommendation 15: The Audit recommends that section 13(3)(b) of the Bill be amended to replicate the corresponding provision in the 2008 Commonwealth Guidelines, namely that campaigns should '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.'

No slogans or advertising devices

Also in section 13(3) there is a provision at subsection (c) that does not correspond to any in the 2008 Guidelines, and that is the requirement that information in a government campaign must not include 'slogans or other advertising techniques' such as jingles.

While we accept that such devices are not targeted at providing objective information, in practice they have provided valuable support to health and safety campaigns. The 'slip, slap,

slop' slogan and the image of the grim reaper in the early AIDS campaign are two example of advertising techniques that are widely agreed to have added considerably to the effectiveness of health and safety messages. We accept that in some cases, including the grim reaper advertisements, campaign devices have proved to be controversial. But the purpose of the Bill is to prevent the use of advertising techniques to sell government while purporting to provide public information, and the proposed provision would sacrifice much of the effectiveness of public information campaigns to a general ban on slogans and jingles. It might also result in debate about what is or what is not a slogan.

The Audit recognises the difficulty and inefficiency of separating advertising techniques from government campaigns. On balance, we would recommend that the Bill omit the proposed clause and rely on the other proposed guidance to underpin fair and objective public information. This would include the example at subsection (e), where the use of 'party-political slogans or images' is specified as a means of 'promoting government or party political interests' and made non-complaint with the proposed legislation.

Recommendation 16: The Audit recommends that the Bill omit proposed clause 13(3)(c) specifying that a government campaign must not include 'slogans or other advertising techniques' such as jingles, and rely on the other guidance in section 13(3) to underpin the provision of fair and objective public information.

Conclusion

The ACT Bill in its current form is less than perfect, but its deficiencies are not by any means systemic and could be readily addressed. The introduction of an amended Bill would be very welcome.