Attachment A

2009

GOVERNMENT RESPONSE TO THE REPORT BY THE SELECT COMMITTEE ON CAMPAIGN ADVERTISING

INQUIRY INTO THE GOVERNMENT AGENCIES (CAMPAIGN ADVERTISING) BILL 2008

(REPORT AUGUST 2009)

Authorised by
Mr Jon Stanhope MLA
Chief Minister

General Comments
On 10 December 2008 Mr Zed Seselja MLA presented to the Legislative Assembly the Government Agencies (Campaign Advertising) Bill 2008. The stated purpose of the Bill is to prevent the use of public funds for advertising or other communications for party political purposes.

Currently Government campaigns are used to provide the community with information including:

a) new Government initiatives;
b) introduction of new policies and programs;
c) safety and health messages;
d) improvements and changes to services; and
e) community consultations.

Government campaigns provide the community with a means to access a wide range of information which affects their everyday lives. They provide the public with insight into the strategic direction and performance of government, and how government funds are being expended. They also provide a 'call to action' for the community to engage government and participate in policy development and other government business.

Current Practice
Much of the information presented in the Bill, particularly in the guidelines outlined in section 13, reflects current practice in the development of information campaigns and arguably does not require additional legislation.

The Bill states that information must be presented in an accessible way, take into account special needs, and recognise the diversity of the ACT community. These fundamental principles already guide the development and implementation of public information campaigns.

The Bill also states that information must be produced and distributed in an efficient, effective and relevant way with regard to accountability. Again this provision is currently addressed through legislated records management, procurement, and annual reporting policies and procedures.

Select Committee on Campaign Advertising
In April 2009 the Select Committee on Campaign Advertising was formed to further investigate the proposed Bill.

The Select Committee's Report on Campaign Advertising was tabled in the Assembly on 27 August 2009. The Report contains a number of comments and recommendations in relation to Government campaign advertising.

The following outlines the Government's response to the recommendations contained in the Select Committee Report.

Response to Select Committee recommendations

In its Report the Committee made 14 recommendations. The Government agrees with seven recommendations, agrees-in-part with three recommendations, and disagrees with four recommendations. The Government responses to the Committee's recommendations are set out below, under each of the Committee's recommendations.

RECOMMENDATION 1

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

Agreed.

The Government agrees that a framework should be adopted and observed by all ACT Government agencies to be used in the planning, development and delivery of Government information campaigns.

RECOMMENDATION 2

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

Disagree.

The Government disagrees with the proposed implementation of a legislative framework, and recommends an administrative framework in order to allow for amendments and necessary changes to the guidelines as they are introduced in their early phases.

This arrangement is consistent with the processes in use by the Commonwealth Government and other jurisdictions including Victoria, Tasmania, Queensland and New South Wales.

A probationary review period to measure the success and failings of the new guidelines and to allow for the identification of areas of improvement should be conducted under an administrative framework prior to setting in place a legislative framework and committing to prescribed guidelines in the form of a disallowable instrument.

Any move towards a legislative framework, under the guise that this will make the process more robust, should only be considered at a future date once the process has been implemented and properly trialled. With the initial draft of the Bill fraught with errors in concept and application, it is plausible that the initial introduction of the framework and accompanying guidelines may require amendment to ensure their effectiveness in achieving their desired outcomes.

There is significant value in a planned implementation and review process, allowing for the guidelines and reporting framework to be reviewed and adjusted where necessary in order to develop a management practice which generates best results.

RECOMMENDATION 3
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.

Agreed In Part.

The Government agrees that it is inappropriate for the Auditor-General to be charged with reviewing Government campaigns. This was the majority view of submissions provided to the Select Committee inquiry, including that of the Auditor-General herself.

Given that, at present, it is unclear how many and what variety of campaigns will be subject to review by the Assessment Panel, it is equally unclear what level of workload will be required of the Panel.

A three-person panel would likely require a membership of at least six people to ensure rotational availability when required. Scheduling and availability of all panel members at times necessary for campaign consideration would likely prove difficult. Potential issues of disagreement between panel members would stall decision-making.

As such, the Government recommends the appointment of an independent expert with strong government, legal and/or media background to scrutinise campaigns.

A suitable individual with the right mix of government/legal/media experience would allow for more robust and consistent decision-making, and would be more achievable in terms of scheduling and availability.

RECOMMENDATION 4

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.

Disagree.

The Government disagrees with statutory appointment to the Assessment Panel at this early stage, for the same reasons it is opposed to approving a legislative framework at this early stage. The Government recommends Panel members, or a suitable individual, are subject to a trial appointment whilst the framework and guidelines are going through their development and early implementation phase.

Again, depending on workload required of the Panel, the issue of possible remuneration for Panel members has not been addressed and would require consideration. Costs and resourcing associated with the provision of secretariat support for such a Panel has also not been addressed. It is presently unclear what ongoing costs would be required to establish, administer and support an assessment review panel, including coordinating the ongoing consideration of advertising campaigns by that review panel, and providing the necessary follow-up and secondary review processes required based on recommendations determined by the Panel.

As stated in response to Recommendation 3, the Government believes an individual with the right mix of government/legal/media experience would be a more viable option than a panel of three. The appointment of an individual would allow for more robust and consistent decision-making and would be more flexible in terms of scheduling.

However, should a three-person Panel be the final decision, the Government proposes options with regard to the makeup of the assessment panel, and recommends consideration of:

a) a panel comprising a mix of Government and Party-selected nominees chosen against a set (yet to be determined) criteria;
b) a panel comprising representatives from professional organisations such as The Public Relations Institute of Australia and individuals nominated by the Assembly; or
c) a suitable individual with the right mix of government/legal/media experience.

RECOMMENDATION 5

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.

Agreed.

The Government agrees that production and development costs should be included as part of the total cost of a government advertising campaign.

RECOMMENDATION 6

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

Disagree.

The Government believes $40,000 is too low a threshold as it will capture a high number of campaigns within its scope. This will in turn result in a high number of campaigns requiring panel assessment and subsequent endorsement before being able to proceed.

This has ramifications on the regularity of scheduling an assessment panel to be available for deliberations, plus the time and resources associated with the scheduling and secretariat work necessary in order to support convening regular panel meetings, as well as the ongoing management and follow-up of panel recommendations.

Agencies such as ACT Tourism, Territory and Municipal Services, ACT Health and Chief Minister's Department conduct numerous high profile and necessary advertising campaigns each year. A $40,000 threshold would capture almost all campaigns conducted by these agencies and would significantly impact on their ability to deliver their core services in a timely and cost effective manner. Panel assessment of all campaigns will impact on a campaign's development time, as will amendment and redesign of a particular campaign based on the assessment panel's review and recommendation.

The Government maintains that the threshold be raised to $100,000.

RECOMMENDATION 7

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.

Agreed.

The Government agrees that a reporting mechanism, publicly available, is a suitable method of demonstrating accountability and transparency in campaign advertising expenditure.

The amount of detail provided in a publicly available report will need to be subject to further consideration, as it is not unrealistic for marketing and promotion agencies to expect confidentiality in their pricing structures and advertising packages. Whilst details such as production and development costs should be able to be identified in conjunction with the overall cost of a campaign, advertising agencies may have certain aspects of their pricing structures which they would require remaining confidential.

RECOMMENDATION 8

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.

Agreed In Part.

The Government agrees that the Bill should be amended to clarify the applicable prohibition period on advertising in the lead-up to an election, however the Government maintains that any prohibition should be kept in line with existing Caretaker provisions. It is cumbersome and unnecessarily bureaucratic to enforce a separate provision for advertising limitations apart from that which already exists in recognised Caretaker provisions.

RECOMMENDATION 9

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.

Agreed.

RECOMMENDATION 10

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

Agreed In Part.

As with the Government response to Recommendation 8, the Government maintains that any prohibition on advertising in the lead-up to an election should be kept in line with existing Caretaker provisions. It is cumbersome and unnecessarily bureaucratic to enforce a separate provision for advertising limitations apart from that which already exists in recognised Caretaker provisions.

The Government maintains that the Bill requires greater clarification in clearly identifying which campaigns would be subject to the prohibition, to ensure that the provision of necessary and vital community information is not subject to outright restrictions.

RECOMMENDATION 11

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

Agreed.

The Government maintains that the Bill will generate confusion and uncertainty without clear and measurable definitions of what comprises both a 'government campaign' and a 'party political' purpose.

RECOMMENDATION 12

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.

Agreed.

RECOMMENDATION 13

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

Disagree.

The Government recognises that TOCs are companies and are not subject to the same reporting obligations and statutory requirements under which government agencies operate. TOCs have commercial obligations generally related to the marketing and promotion of their core products rather than engaging in advertising for the purposes of promoting any party political agenda.

It is inappropriate to subject TOCs to legislation designed for government agency accountability, as to do so will impact on their statutory responsibilities and duties. There are also ramifications associated with releasing TOC records and financial information to an assessment panel, thereby making those records subject to the same publicly accessible channels as other government information considered by that panel.

A working threshold of $40,000 would see almost all campaigns prepared by a TOC such as ACTEW and ACTTAB subject to the obligations of the legislation and the approval process required by the assessment panel.

In addition, the Government recommends that ACT Tourism be exempt from the requirement to seek approval for campaign advertising through the assessment panel process. Given that a significant amount of ACT Tourism's core business is devoted to actively promoting the ACT as a tourist destination, there is no party political agenda to this activity. ACT Tourism would still be required to report on activity as part of the biannual reporting process, but their promotional and marketing activities would be exempt from consideration by the assessment panel.

RECOMMENDATION 14

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.

Agreed.

The Government supports the proposal to remove the requirement for a statement at the beginning and end of a television or radio announcement.