

Chapter 4

Appropriations process and the WorkChoices campaign

Budgeting for government advertising

4.1 Appropriations for government communications are not necessarily fully specified in advance in the budget papers.¹ Senator Abetz told the Committee that while some campaigns are planned in advance as part of a department's and minister's overall priorities, some arise in response to need. For example, he said: 'You ... have, let us say, a national security priority. All of a sudden, more money is made available for that because there is deemed to be a community need for that'.²

4.2 Mr Greg Williams, First Assistant Secretary, Department of the Prime Minister and Cabinet, clarified the budgeting process for government advertising in the following terms, saying:

in some cases a program will be foreshadowed in the budget and moneys will be appropriated to the department which will include the implementation of a program with an associated communications activity. In some cases it is not that clear cut. Issues might arise during the year where a department might, in looking at the priorities and the minister's and the government's priorities, identify that a communications campaign may be required.³

4.3 Mr Williams also said that, where additional funds are required for an advertising campaign,

The minister, depending on the timing of a budget cycle, may write to the Prime Minister seeking additional funding to be provided through additional estimates, the budget process or through other processes. A decision is taken as to whether the moneys should be provided and, if they are, they are provided through a budgetary process.⁴

4.4 The Committee acknowledges that it is appropriate for the government to have the flexibility to respond to urgent and unanticipated information needs of the community. However, it is of concern that a government, under this system, is able to use public funds to pay for politically motivated communications campaigns on an ad hoc basis, without being required to provide a rigorous justification of their public benefit relative to other possible uses of the funds.

1 Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 85.

2 *Committee Hansard*, 19 August 2005, p. 84.

3 Mr Greg Williams, *Committee Hansard*, 19 August 2005, p. 86.

4 Mr Greg Williams, *Committee Hansard*, 19 August 2005, p. 87.

4.5 Concerns about this issue raise questions, not simply about expenditure on government advertising, but about the whole appropriations process and Parliament's role in monitoring and approving government expenditure.

4.6 The Committee considers it important in the context of this inquiry to indicate where the appropriations process might contribute to the overall weakness in the accountability framework for government advertising. The consequences of this weakness are particularly evident in the recent WorkChoices advertising campaign.

4.7 Accordingly, this chapter discusses these issues, with particular reference to the government's WorkChoices advertising campaign and the High Court challenge to its legality.

WorkChoices advertising campaign

4.8 On 26 May 2005, the Prime Minister, the Hon. John Howard MP, announced to the House of Representatives that the Government intended to propose amendments to federal legislation on industrial relations.⁵ According to the Prime Minister, the proposed legislative changes would include: changes to arrangements for setting minimum wages and conditions; changes to processes for making both individual and collective workplace agreements; changes to the role of the Australian Industrial Relations Commission; amendment of unfair dismissal laws; and, progress towards 'a national industrial relations system' in place of the mixture of federal and State legislation now applicable in most parts of Australia.⁶

4.9 At the time of the announcement, no bill had been introduced into the Parliament to give effect to the legislative changes foreshadowed by the Prime Minister.

4.10 In response to the Prime Minister's announcement, the Australian Council of Trade Unions (ACTU) organised a national campaign opposing the proposed legislation. This campaign included public rallies, as well as advertisements in the print media and on television, radio and the internet. These advertisements were funded privately, by the ACTU, private organisations and individuals.⁷

4.11 The government responded to this campaign in public speeches and statements in defence of the proposals. Then, from 9 July 2005 in the print media and from 23 July in radio broadcasts, government advertisements began to appear

5 The Hon. Mr John Howard MP, *House of Representatives Hansard*, 26 May 2005, pp 38-43.

6 The Hon. Mr John Howard MP, *House of Representatives Hansard*, 26 May 2005, p. 39; see also, *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Kirby J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 177.

7 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Kirby J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 178.

supporting the proposals.⁸ These advertisements were funded, not by employers' industrial organisations equivalent to the ACTU nor by private businesses or political parties, but from taxpayer funds.

4.12 The ACTU and the Australian Labor Party (ALP) brought proceedings against the Commonwealth Government in the High Court challenging the lawfulness of the government's use of public money to fund its advertisements.

High Court challenge

4.13 In the action they brought against the Commonwealth government in the High Court, the ACTU and the ALP (the plaintiffs) asserted that the withdrawal of money from the Treasury of the Commonwealth to pay for advertisements promoting proposed future changes to federal industrial relations laws was unlawful, because it was not specifically authorised by the *Appropriation Act (No.1) 2005-2006*.

4.14 Chief Justice Gleeson outlined the essence of the issue before the High Court in the following terms:

The advertisements have been, and will be, paid for by moneys drawn from the Treasury. The appropriation by law relied upon is that made by the *Appropriation Act (No.1) 2005-2006 (Cth)* ('the Appropriation Act'). The plaintiffs contend that the Appropriation Act does not cover such drawings. The defendants contend that it does. That is the principal issue to be decided. The question is one of the construction of the Appropriation Act.⁹

4.15 The High Court found by majority judgement that the expenditure was authorised by the Appropriation Act, and therefore that it was lawful.¹⁰ Two of the High Court judges, Justices Kirby and McHugh dissented from the majority judgement, finding instead in favour of the plaintiffs.

Appropriation Act (No.1) 2005-2006

4.16 The Appropriation Act allocates money to different government departments and agencies to fund 'matters that are considered to be the ordinary annual services of the government and hence cannot be amended by the Senate under section 53 of the Constitution'.¹¹

8 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Kirby J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 180.

9 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gleeson CJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 1.

10 The majority consisted of Chief Justice Gleeson, and Justices Gummow, Hayne, Callinan and Heydon.

11 Budget Paper No.4, *Agency Resourcing 2005-06*, p. 4.

4.17 In 2005-06, under the Act, the Department of Employment and Workplace Relations (DEWR) was allocated a total of \$4,069,153,000. That total sum is divided into 'departmental outputs' (\$1,447,552,000) which represent the cost of all the outputs the agency plans to deliver, and into 'administered expenses' (\$2,621,601,000) which are expenses administered by the agency on behalf of the Government.

4.18 In other words, departmental outputs or expenses are expenses over which an agency has control and represent the cost to the department of doing its work of policy development and implementation, and advising government. They include salaries, accruing employee entitlements and operational expenses.¹² Administered expenses, on the other hand, are expenditures which agencies simply *administer* on behalf of the government and over which they have no discretion. They are normally related to activities governed by eligibility rules and conditions established by the government or Parliament, such as grants, subsidies and benefit payments.¹³ They would include, for example, the cost of paying unemployment benefits or youth allowance.

4.19 Section 81 of the Constitution requires that appropriations be made for particular purposes, and it is for Parliament to determine 'the degree of specificity with which such purposes are expressed'.¹⁴ Since 1999-2000, appropriations have been made against overall outcomes rather than against specific goods or services to be provided by government. Chief Justice Gleeson summarised this shift in the following terms:

A recent development in the theory and practice of public administration is the trend towards 'outcome appropriations' as a means of stating the purposes for which governments spend public money ... "Outcomes are the intended effects of government programmes, whereas outputs – the goods and services delivered by government – are the means of achieving those outcomes". A suggested benefit of changing the focus of appropriations from outputs to outcomes is the placing of greater emphasis on performance in the public sector.¹⁵

4.20 Chief Justice Gleeson went on to note that:

Typically, outcomes are stated at a high level of generality. Furthermore, they are commonly expressed in value-laden terms which import political

12 Budget Paper No.4, *Agency Resourcing 2005-06*, p. 4.

13 Budget Paper No.4, *Agency Resourcing 2005-06*, p. 4.

14 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gleeson CJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 5.

15 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gleeson CJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 6. The quote is from Brumby and Robinson, 'Performance Budgeting, an Overview', paper delivered at the International Seminar on Performance Budgeting, Brasilia, 2004.

judgement. Parliament is appropriating funds for use by a government, and the outcomes pursued may involve controversial policy judgements.¹⁶

4.21 In the case of the 2005-06 appropriations for DEWR, the total allocated sum of \$4,069,153,000 was made against three broad outcomes. They were: Outcome 1 – Efficient and effective labour market assistance; Outcome 2 – Higher productivity, higher pay workplaces; and Outcome 3 – Increased workforce participation. The specification of activities to be undertaken by the department in relation to each outcome is provided in the Portfolio Budget Statements (PBS) 2005-06.

4.22 The expenditure for the WorkChoices advertising campaign has been charged as departmental expenditure against Outcome 2 – Higher productivity, higher pay workplaces.¹⁷ No provision for this expenditure was identified in the department's PBS.¹⁸

Reasoning in the High Court's decision

4.23 As noted earlier, the High Court found by majority judgement that the expenditure *was* authorised by the Appropriation Act, and therefore that it was lawful.¹⁹ There were two strands of reasoning in the majority judgement, detailed respectively by Chief Justice Murray Gleeson and by the joint reasons of Justices Gummow, Hayne, Callinan and Heydon.

4.24 Chief Justice Gleeson held that the expenditure was authorised, because in his view Outcome 2 is stated with such breadth that it does encompass the advertising activity. He said:

Persuading the public of the merits of policy and legislation may be vital to the achievement of the desired policy objective. There may be many grounds of political objection to the advertising in question, such as that the proposed changes will not result in 'higher productivity, higher pay workplaces', or that a publicly funded advertising campaign is an inappropriate means of advocating such changes. The legal question, however, is whether the drawings in question are covered by the appropriation. The relevant outcome is stated with such breadth as to require an answer to that question adverse to the plaintiffs.²⁰

16 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gleeson CJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 6.

17 See *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 69.

18 See *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Kirby J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 210.

19 The majority consisted of Chief Justice Gleeson, and Justices Gummow, Hayne, Callinan and Heydon.

20 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gleeson CJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 29.

4.25 The other four justices also held that the expenditure was authorised, but on different grounds. In their joint reasons, they found that differences in the wording of the text of s 7 and s 8 of the Appropriation Act mean that, whereas appropriations for administered expenses must be expended under their designated Outcomes, appropriations for departmental outputs need not be expended against Outcomes but need only be 'departmental expenditure'.²¹

4.26 That means that the argument about whether the advertising expenditure can be considered to further the achievement of Outcome 2 is simply irrelevant.²² The key question is whether the expenditure is departmental expenditure, not whether it happens to fit under one of the specified outcomes. The joint reasons said that:

Contrary to the plaintiffs' case, the question for decision is not whether the advertising expenditure answers one or more of the stipulated outcomes but whether it is applied for departmental expenditure. Satisfaction of that criterion is not challenged by the plaintiffs.²³

4.27 Justices Kirby and McHugh dissented. Both determined that the expenditure was *not* authorised, because it could not reasonably be said to further the achievement of Outcome 2 and because nothing in the Portfolio Budget Statement 2005-06 indicated that money would be spent on such an advertising campaign.

4.28 In his reasons, Justice McHugh said that although he accepted that the Portfolio Budget Statements do not exhaust the expenditures that an agency may incur to achieve an outcome, 'I find it impossible to conclude that there is any rational connection between the advertisements and Outcome 2 – which was the Outcome upon which the defendants relied'. He continued:

There is simply nothing in the advertisements that could result in an increase in productivity or wages. On their face, the advertisements are concerned to reassure members of the public – and workers in particular – that, under the reform package, workers will not be worse off and that there will be more jobs and higher wages for Australian workers and their families. The defendants tendered no expert evidence that 'feel good' advertisements of this kind will increase the number of units of goods or services produced per worker or will induce employers to pay higher wages. In the absence of such evidence, I can see no connection – rational

21 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gummow, Hayne, Callinan and Heydon JJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 135.

22 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gummow, Hayne, Callinan and Heydon JJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 131-133.

23 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, Gummow, Hayne, Callinan and Heydon JJ., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 136.

or otherwise – between the advertisements and higher productivity or higher wages.²⁴

4.29 He concluded that:

The advertisements appear to be political in nature. They appear designed to win support for government policy or, at least, to negate the impact of criticism of that policy. Nothing in them provides any support for the conclusion that somehow by some means the advertisements will contribute to achieving higher productivity or higher pay workplaces. In my opinion, there is no rational connection between the advertisements and Outcome 2. It follows that the defendants had no lawful authority to draw funds from the Treasury of the Commonwealth to finance the advertisements in question.²⁵

4.30 Justice Kirby likewise noted the absence of any indication in the Department's PBS that the money appropriated for Outcome 2 would be expended on advertising. He said:

In Australia, to this time, the provision of policy advice and the development of legislation by a Department of State has not normally involved an advertising campaign directed at the public in advance of the enactment, or even the introduction, of such legislation.²⁶

4.31 He remarked that occasionally the public might be invited to make submissions about proposed public policy changes or on the contents of proposed legislation. However:

No such invitations appeared in the advertisements complained of by the plaintiffs. The provision of policy and the development of legislation are governmental activities different in kind from publicly funded advertising campaigns for the purpose of public persuasion and to respond to a privately funded campaign by political opponents.²⁷

4.32 In criticising the joint reasons, Justice Kirby noted several difficulties with the approach adopted. In particular, he said:

24 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 93.

25 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 94 and 95.

26 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 207.

27 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 207.

...it is not consistent with the scheme of the Appropriation Act itself, the accompanying budget papers and the explanatory material. As outlined earlier, these materials all indicate that the federal parliamentary appropriations system is designed to revolve around outcomes and outputs. No distinction is made in this regard between departmental items and administered expenses ... It would be an astonishing result if the Parliament, having gone to all the trouble of designing and implementing the complicated appropriations system which operates by reference to departmental outcomes, then proceeded to appropriate a great part of federal revenue in a manner falling outside that system that it had so painstakingly adopted.²⁸

Implications of the High Court judgement

4.33 The implications of the judgement by the High Court are twofold.

4.34 The first is that the outcome of the challenge in the High Court supports the contention made in evidence to the Committee by the Clerk of the Senate, Mr Harry Evans. His view is that under the financial management framework erected since 1997, the Parliament has limited ability to determine how much money is available for particular purposes or the purposes for which money is to be spent.²⁹

4.35 According to Mr Evans, this state of affairs has arisen for a number of reasons. They include: that 'special appropriations' rather than 'annual appropriations made by Parliament' now account for most government expenditure; that there are a number of other sources of money available to government apart from appropriations; that the outcomes for which money is appropriated by departments are so 'nebulous and vaguely expressed that the purposes of expenditure are unknown until the expenditure occurs'; and that new programs and expenditures are increasingly being funded out of 'ordinary annual services money'.³⁰ He commented:

This system has made it much easier for government to find large amounts of money for unanticipated advertising campaigns, or indeed anything else, without parliamentary approval...³¹

4.36 As outlined earlier, there are two arguments made in the High Court's judgement for the government's freedom specifically in relation to the expenditure of appropriated monies. The first is that a department's broad statement of outcomes can cover expenditure that is not contemplated in the PBS; the second is that the expenditure need not even fall under a stated outcome as long as it falls into the (even

28 *Combet v Commonwealth of Australia [2005] HCA 61 (21 October 2005)*, McHugh J., http://www.austlii.edu.au/au/cases/cth/high_ct/2005.61.html (accessed 24 October 2005), at 284.

29 Mr Harry Evans, *Submission 6b*, p. 1.

30 Mr Harry Evans, *Submission 6c*, pp 1-4.

31 Mr Harry Evans, *Submission 6b*, p. 1.

broader) category of 'departmental expenditure'. This suggests that Mr Evans is correct in saying that:

Parliament, in making appropriations, is giving government a blank cheque to spend money for any purpose.³²

4.37 As Mr Evans has noted, this issue goes much wider than simply the issue of expenditure on government advertising.³³ It concerns the whole financial accountability framework and Parliament's role in monitoring and approving government expenditure. In commenting upon the implications of the High Court judgement, Mr Evans said that:

The separate judgement of Chief Justice Gleeson explicitly puts the responsibility for control of expenditure back on to the Parliament:

If Parliament formulates the purposes of appropriation in broad, general terms, then those terms must be applied with the breadth and generality they bear (at 27).³⁴

4.38 Mr Evans noted that: 'The fact that the High Court has, by a majority, vacated the field makes the requirement for parliamentary accountability mechanisms more pressing'.³⁵ Accordingly, he concluded: 'It is now clear that control of expenditure must be undertaken by Parliament or it will not be undertaken at all'.³⁶

4.39 The second, and consequent, implication of the High Court's judgement is that because of the government's freedom in relation to the expenditure of its appropriations, there is almost nothing in the appropriations process itself that will provide any restraint on government expenditure on politically contentious advertising activities.

Aftermath of High Court decision

4.40 The High Court brought down its decision on 29 September 2005. On 9 October the government resumed its WorkChoices advertising campaign on television, print media, radio and the internet. The campaign concluded on 30 October 2005.³⁷

4.41 The relevant legislation, the Workplace Relations Amendment (Work Choices) Bill 2005, was finally introduced to the Parliament on 2 November 2005 and

32 Mr Harry Evans, *Submission 6c*, p. 4.

33 Mr Harry Evans, *Submission 6b*, p. 1.

34 Mr Harry Evans, *Submission 6e*, p. 2.

35 Mr Harry Evans, *Submission 6e*, p. 3.

36 Mr Harry Evans, *Submission 6e*, p. 2.

37 Mr Greg Williams, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 71.

passed by the House of Representatives on 10 November 2005. The bill itself is 687 pages in length, and its accompanying Explanatory Memorandum runs to 565 pages.

4.42 Four features of the WorkChoices advertising campaign are of particular concern. They are:

- the contempt for Parliament;
- likely inaccuracies in advertisements;
- the wastefulness of the campaign expenditure; and
- lack of real information in the advertisements.

Contempt for Parliament and likely inaccuracies in advertisements

4.43 Two major tranches of advertising for the WorkChoices 'reforms' were conducted before the legislation was introduced into the parliament. As noted earlier, advertisements were published and broadcast in July 2005 and from 9 October to 30 October 2005. The relevant legislation was introduced into Parliament on 2 November 2005.

4.44 In fact, the advertisements were aired even before the legislation had been fully drafted. In evidence to a Senate Estimates hearing on 31 October 2005, Senator Robert Hill, Leader of the Government in the Senate, confirmed that 'information was provided in principle whilst the detail of the drafting was progressing'.³⁸

4.45 This advertising summarising major policy detail prior to the detail being publicly available and the legislation being passed demonstrates contempt for the Parliament. The changes may not be passed by the Parliament, or they may be significantly amended. In either of these cases, the advertisements may turn out to have contained substantial inaccuracies or to have been a large waste of taxpayer funds.

4.46 As Senator Andrew Murray (Australian Democrats) said in the Estimates hearing:

I would be absolutely amazed if the initial advertisements that came out exactly matched the final legislation passed by the Senate. I would be absolutely amazed. You should not, as a government, be advertising prior to legislation passing the Senate. It is immoral.³⁹

38 Senator the Hon. Robert Hill, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 79.

39 Senator Andrew Murray, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 78.

Wastefulness of campaign expenditure

4.47 The wastefulness of the government's expenditure on the WorkChoices campaign is demonstrated not only by the total amount spent, but also by the saturation coverage at which the campaign aimed. The Committee will look at these aspects in turn.

4.48 There was some confusion in the evidence provided about the total cost of the advertising campaign. Initially, Mr Williams told an Estimates hearing that the 'indicative budget' of the advertising campaign itself was \$44.3 million and that an additional \$10.7 million was budgeted for the costs of the information booklet and the call centre.⁴⁰ Mr Williams disaggregated those costs as follows:

- \$44.3 million – Total advertising budget
 - \$2.9 million – July advertising tranche (media buy)
 - \$36.8 million – October advertising tranche (media buy)
 - \$21.4 million – television advertising
 - \$8.7 million – newspaper advertising
 - \$3.7 million – radio advertising
 - \$2.5 million – other (including non-English language newspapers, indigenous newspapers, radio for the print handicapped and internet advertising)
 - \$4.6 million – research, public relations and evaluation costs
- \$2.6 million – printing and distribution costs for 16-page information booklet
- \$8.1 million – call centre⁴¹

4.49 On this account, the total cost associated with the WorkChoices advertising campaign is \$55 million.

4.50 Later in evidence to the Estimates hearing, however, Mr Williams gave revised estimates for the cost of the advertising campaign. He said that the actual cost of the advertising component was \$6 million less than budgeted, and accordingly was reduced from \$44.3 million to \$38.3 million. Similarly, the actual cost of the call centre has been revised down from the budgeted figure of \$8.1 million to \$4.7 million. Mr Williams said: 'So we are not looking at \$55.1 million, we are looking at \$45.7

40 Mr Greg Williams, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, pp 67, 75.

41 Mr Greg Williams, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, pp 68-75.

million ... [That] is the likely cost of the campaign, the advertising and the call centre arrangements'.⁴²

4.51 On the next day, the Prime Minister, the Hon. Mr John Howard MP, reiterated that the 'real figure' for the government's expenditure on the campaign is \$45.7 million.⁴³ However, later on the same day, Senator Abetz was reported as saying that the higher figure of \$55 million was 'as accurate as you can get', and that it takes into account 'ongoing costs yet to be spent'.⁴⁴

4.52 The exorbitant cost of the campaign was a function, in part, of the saturation coverage aimed at by the government.

4.53 For example, Mr Williams described for an Estimates hearing the intended 'reach and frequency' of the television components of the campaign. He said: 'we were targeting 95 per cent of the viewing audience seeing a commercial at least once during the campaign and 82 per cent of the viewing audience seeing the commercials three-plus times over the three-week period'. This meant, he noted, that the 'average viewer – which is the 50th percentile – would see it 29 times'.⁴⁵

4.54 In addition to the television advertisements, an Estimates hearing was told that six million information booklets were produced for distribution. At 3 November 2005, 157,500 of the six million booklets had been ordered and just over 178,000 had been dispatched.⁴⁶ This meant that about 5.8 million booklets were left in the warehouse.

4.55 When asked whether there were prospects for using the remainder of the booklets, Mr Finn Pratt, Deputy Secretary, Department of Employment and Workplace Relations said that 'our education campaign will extend over a number of years, and that material will still be useful in future years when we go out and do seminars and things like that'.⁴⁷

4.56 Mr John Kovacic, Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations, informed the Estimates hearing that in addition to the six million booklets produced, a further 458,000 booklets had

42 Mr Greg Williams, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 95.

43 <http://www.abc.net.au/news/newsitems/200511/s1495370.htm> (accessed 1 November 2005).

44 <http://www.abc.net.au/news/newsitems/200511/s1495543.htm> (accessed 1 November 2005).

45 Mr Greg Williams, *Estimates Hansard*, Senate Finance and Public Administration Legislation Committee, 31 October 2005, p. 94.

46 *Estimates Hansard*, Senate Employment, Workplace Relations and Education Legislation Committee, 3 November 2005, p. 67.

47 *Estimates Hansard*, Senate Employment, Workplace Relations and Education Legislation Committee, 3 November 2005, p. 67.

been pulped at a cost of \$152,944.⁴⁸ The pulping of the booklets occurred as a result of a 'government decision',⁴⁹ so that the word 'fairer' could be inserted into the title, 'A simpler, fairer, national Workplace Relations System for Australia'.

4.57 The Committee considers the wastefulness evident in this campaign to be very disturbing. Did the government seriously think that six million households would seek an information booklet about legislation yet to be introduced to the Parliament? Did the government seriously think that it was necessary to expose the average viewer to 29 television advertisements in order to convey the information that reforms were proposed?

4.58 The extravagance of the advertising campaign suggests that the government has developed a disregard for the principles of accountability and stewardship in its expenditure of taxpayer funds.

Lack of information in advertisements

4.59 The lack of real information in the WorkChoices campaign advertisements becomes obvious when they are compared to certain other government advertising campaigns.

4.60 In a submission to the inquiry, Mr Chris Monnox compared the WorkChoices campaign to the Super Choice campaign which was run earlier in the year. He wrote:

Take for example the section of the Superchoices website dealing with advice to employees:

'Some funds may not offer insurance, or you may have to pass a medical examination or undergo a waiting period before they will cover you. There may also be restrictions for age, dangerous jobs, part-time or casual work, and maternity leave. Some funds make some insurance cover compulsory. Some allow you to opt out and not be charged, while others allow you to opt in.

'Decide how much insurance you want and compare the costs. These can vary significantly between different superannuation funds.'

What we have here is a simple statement of fact advising employees as to what superannuation funds may or may not cover.⁵⁰

4.61 In a similar vein, the advertising campaign, Keeping the System Fair, advises people who are receiving government benefits in a straightforward manner of their obligations to report changed circumstances to the relevant agencies.⁵¹

48 *Estimates Hansard*, Senate Employment, Workplace Relations and Education Legislation Committee, 3 November 2005, p. 66.

49 *Estimates Hansard*, Senate Employment, Workplace Relations and Education Legislation Committee, 3 November 2005, p. 66.

50 Mr Chris Monnox, *Submission 12*, p. 1.

4.62 These are cases of government advertising campaigns which advise people of information on which they need to act or of which they should be aware in relation to new arrangements.

4.63 By contrast, the WorkChoices advertising campaign does not provide information about new entitlements or specific obligations. Nor does it provide information about which people may need to be aware when negotiating a workplace agreement under the new arrangements.

4.64 For example, in a two-page newspaper advertisement that was run three times in the national papers, *The Australian* and *Australian Financial Review*, twice in the metropolitan newspapers and once in the regional, suburban, and rural newspapers, one entire page is taken up with the slogan, 'Australia can't afford to stand still'. On the second page, the major heading reads 'If we're serious about an even stronger economy, more jobs and higher wages we need a new workplace relations system'.

4.65 Under the heading, there follows a series of assertions such as:

- 'The current system is too complex, inflexible and outdated. It's costing Australians precious new employment opportunities'.
- 'Countries have the choices of either going forwards or backwards. Marking time is not an option'.
- 'Nations which have reformed their workplace systems have benefited from stronger economies, higher job growth and lower unemployment. Those that have been reluctant to reform their labour market systems continue to suffer from sluggish economic growth and high unemployment. The lesson for us all is simple'.
- 'The creation of WorkChoices will move us towards one simpler, national workplace relations system. It will improve productivity, encourage more investment, provide a real boost to the economy and lead to more jobs and higher wages'.⁵²

4.66 The advertisements state opinions as facts. They provide no evidence which supports their assertions and no information about when the legislation will be introduced or what concrete effect it will have on individuals.

4.67 The purpose of the advertisements therefore seems primarily to persuade people of the need for reform of the workplace relations system, and secondly to counter certain fears about the reforms that the government believes may be current.

4.68 The puzzling aspect of the campaign is that it is hard to see what the government will achieve by undertaking it, and therefore hard to see what has been purchased with \$55 million of taxpayer funds.

51 Mr Pete Searle, *Committee Hansard*, 7 October 2005, p. 33.

52 The full text of the advertisement is at Appendix 3.

4.69 If, for example, the campaigns on Super Choices or Keeping the System Fair achieve their purposes, then presumably more people will make responsible superannuation arrangements and more people on government benefits will claim only what they are entitled to. The campaigns will change people's behaviour.

4.70 However, in the absence of enacted legislation and detailed information, what can the WorkChoices campaign achieve? The real purpose of the campaign seems to be to try to persuade the public, in advance of any scrutiny or debate on the substance of the reforms, that whatever the legislation contains it must be supported. Such a campaign is properly called propaganda.

Conclusion

4.71 In this chapter, the Committee has examined what the High Court judgement in *Combet v Commonwealth of Australia* has revealed about the legislature's control of government expenditure. This is a very serious issue which should greatly concern the Parliament. It raises questions and matters which are broader in scope than can be considered in detail by this inquiry.

4.72 The Committee therefore suggests that consideration should be given to referring the question of the impact of outcome budgeting for appropriations on the accountability of, and Parliamentary control over, government expenditure to a Senate Committee for inquiry and report. The inquiry should consider ways in which Parliamentary scrutiny of government expenditure can be enhanced before and after such expenditure has occurred.

4.73 In relation to the inquiry at hand, however, the High Court's judgement demonstrates that, as things stand, the appropriations process itself exercises almost no restraint on government expenditure on advertising activities.

4.74 The consequences of this lack of restraint are illustrated by the government's extravagant and irresponsible expenditure on the WorkChoices campaign.

4.75 In this context, it is all the more essential that a rigorous set of processes and guidelines govern departmental and government decision-making on proposed advertising campaigns, and that full disclosure of all elements of that expenditure is made. In the next chapter, the procedures that govern the decision-making process for government advertising are discussed. The adequacy of current guidelines and disclosure provisions are considered in Chapters 6 and 7.

Recommendation 1

4.76 The Committee recommends that the Senate refer to the Finance and Public Administration References Committee for inquiry and report the matter of the impact of outcome budgeting for appropriations on Parliamentary consideration and approval of government expenditure, and the accountability of government for such expenditure.

