

Chapter 1

Background to the inquiry

Establishment of inquiry

1.1 On 23 June 2004, the Senate referred to the Finance and Public Administration References Committee for inquiry and report by 27 October 2004, the following matters:

- (a) the level of expenditure on, and the nature and extent of, government advertising since 1996;
- (b) the processes involved in decision-making on government advertising, including the role of the Government Communications Unit and the Ministerial Committee on Government Communications;
- (c) the adequacy of the accountability framework and, in particular, the 1995 guidelines for government advertising, with reference to relevant reports, guidelines and principles issued by the Auditor-General and the Joint Committee of Public Accounts and Audit;
- (d) the means of ensuring the ongoing application of guidelines based on those recommended by the Auditor-General and the Joint Committee of Public Accounts to all government advertising; and
- (e) the order of the Senate of 29 October 2003 relating to advertising projects, and whether the order is an effective mechanism for parliamentary accountability in relation to government advertising.

1.2 Parliament was prorogued on 31 August 2004 and, in accordance with Senate Standing Order 38 (7), the Committee presented an interim report on its inquiry on 1 September 2004. The report noted that the Committee had received nine submissions on the terms of reference, and that the Committee would review the need for the inquiry in the new Parliament.

1.3 On 18 November 2004, the Senate re-established the inquiry into government advertising and accountability with amendments to term of reference (a). The revised term of reference (a) specifies that the inquiry is to focus on 'Commonwealth government advertising', and accordingly reads as follows:

- (a) the level of expenditure on, and the nature and extent of, Commonwealth government advertising since 1996.

1.4 The other terms of reference were unchanged.

Changes to terms of reference

1.5 The Special Minister of State, Senator the Hon. Eric Abetz, suggested that the change in the terms of reference was an attempt by the Committee to exclude examination of advertising conducted by State Labor Governments.¹

1.6 This claim is not sustainable. As was pointed out by the Chair of the Committee, Senator Michael Forshaw, the original terms of reference (b), (c), (d) and (e) were already clearly directed towards *Commonwealth* government expenditure on advertising. They specifically referred to Commonwealth bodies such as the Government Communications Unit, the Ministerial Committee on Government Communications, to the principles recommended by the Auditor-General and the Joint Committee of Public Accounts and Audit to the Commonwealth government, and to the order of the Senate of 29 October 2003. The alteration to term of reference (a) merely served to *clarify* the original intent of the inquiry, not to change it.²

1.7 In any case, in the first phase of the inquiry the Committee had noted that the phrase 'government advertising' in the original terms of reference could be construed as extending to state government advertising. Because of this, the Committee wrote to each premier and chief minister, and to the leader of the opposition in each state and territory, inviting them to make a submission to the inquiry. There was no response to these invitations, except from the Chief Minister of the Australian Capital Territory, who indicated that his government did not wish to make a submission.³

1.8 Finally, the revised terms of reference were ultimately adopted by the Senate without debate. It is thus demonstrably the case that the Committee did not seek to exclude submissions from the states and territories, and did not arbitrarily curtail the original intent of the inquiry.

Conduct of inquiry

1.9 The inquiry referred on 18 November 2004 was scheduled to report by 22 June 2005. On 16 June 2005, the Senate extended the time to report to 10 November 2005. On 11 October 2005, the Senate extended the time to report until 1 December 2005.

1.10 The submissions received to the original inquiry were treated as evidence to the re-established inquiry. A full list of submissions received is provided at Appendix 1.

1 Senator the Hon. Eric Abetz, *Submission 9a*, p.1; *Committee Hansard*, 19 August 2005, p. 77.

2 Senator Michael Forshaw, *Committee Hansard*, 19 August 2005, p. 81.

3 Senator Michael Forshaw, *Committee Hansard*, 19 August 2005, p. 81.

1.11 The Committee held public hearings on 18 August 2005, 19 August 2005, and 7 October 2005. A list of witnesses who appeared before the Committee is provided at Appendix 2.

Government cooperation with inquiry

1.12 Although almost all departments conduct government advertising campaigns, none of the 'line' departments made submissions to the Committee's inquiry. The Department of the Prime Minister and Cabinet (PM&C) made a submission which described the Central Advertising System (CAS), the role of the Government Communications Unit (GCU) and the Ministerial Committee on Government Communications (MCGC), and briefly addressed the terms of reference.

1.13 Officers from the GCU in PM&C appeared at the initial public hearings of the Committee on behalf of all government departments. This caused some difficulty for the Committee, as these officers were unable to directly answer questions posed about the development of particular government advertising campaigns within other departments.

1.14 This experience highlighted for the Committee one of the issues relating to accountability in government advertising. This is the difficulty of identifying exactly which department, unit or minister within government is finally accountable for the decision to expend money on government advertising, and which department, unit or minister is accountable for the final shape and content of the campaigns. These matters will be discussed in detail in the report.

1.15 Subsequently some departments gave evidence on specific campaigns at a public hearing and others agreed to take questions on notice from the Committee. The Committee has also made use of evidence relevant to the inquiry taken by Senate Committees during the Supplementary Estimates hearings in October and November 2005.

Evidence from Minister Abetz

1.16 Senator Eric Abetz made two submissions to the Committee's inquiry in his capacity as Special Minister of State and Chairman of the MCGC, and subsequently gave evidence at two of the Committee's public hearings.

1.17 The Committee notes that it is not all that common for Ministers to appear before Senate Committees (except Estimates hearings). The Committee therefore appreciates Senator Abetz's active participation in this inquiry.

1.18 However, the Committee is disappointed and perturbed at the personal attacks against other witnesses to the inquiry which comprised a large part of Senator Abetz's contribution. These attacks were unwarranted, often factually wrong, and ran the risk of bringing the Committee process itself into disrepute. In particular, the Committee notes that the notion that holding political opinions or engaging in political activism makes a witness biased or irrelevant is offensive and intolerant.

1.19 In several cases, Senator Abetz attempted to discredit the evidence of other witnesses, by alleging that partisan political affiliation on their part influenced their evidence. For example, he accused Dr Sally Young of having been a Labor Ministerial staffer, a campaign worker for a Labor MP in the 2001 federal election and a media adviser at Labor campaign headquarters during the 2002 Victorian election. On the basis of this history, according to Senator Abetz, Dr Young is to be regarded as 'a hard-core pro-Labor ideologue' which is 'why she is criticising the Howard Government'.⁴

1.20 In fact, Dr Young is a lecturer in the Media and Communications Program at the University of Melbourne and, as an expert in the field of government advertising, has published extensively.⁵ In response to this extraordinary *ad hominem* attack from Senator Abetz, Dr Young noted that she had never been a Labor Ministerial staffer and that her total work history with the Australian Labor Party had totalled three months (two months as a staffer with a Labor MP in 2001 and one month as an unpaid volunteer during the 2002 Victorian election).⁶

1.21 Senator Abetz also failed to mention that when Dr Young worked as a public servant, part of her duties involved writing material for ministerial briefs and speech notes for then Liberal Party MP and Minister, Bronwyn Bishop, and that she had worked briefly in the office of a National Party MP.⁷

1.22 The Committee is also particularly concerned about the intemperate attacks made by Senator Abetz on the Clerk of the Senate, Mr Harry Evans, who also made several submissions to the inquiry.

1.23 Senator Abetz disagreed with aspects of the Clerk's evidence, calling it variously 'scurrilous', 'unprecedented', 'highly regrettable', 'unsupported', and 'slanderous'.⁸ While Senator Abetz is entitled to critically analyse any evidence, that should be done without personal attacks. Rather than addressing the issues raised in this evidence, however, Senator Abetz implied that the Clerk had no business to be making a submission to the inquiry. He said:

I would remind him of what Odger's requires of him as Clerk of the Senate – that is, that he is the principal adviser in relation to the proceedings of the Senate. They are the technical proceedings of the Senate, not whether or not

4 Senator the Hon. Eric Abetz, *Submission 9a*, p. 8.

5 Dr Young's publications include: *The Persuaders: Inside the Hidden Machine of Political Advertising*, Pluto Press, Melbourne 2004; 'Killing competition: Restricting access to political communication channels in Australia', *AQ: Journal of Contemporary Analysis*, vol.75 (3), May-June 2003; and, 'Spot on: The role of political advertising in Australia', *Australian Journal of Political Science*, vol.37 (1), March 2002.

6 Dr Sally Young, *Submission 3a*, pp 7-8.

7 Dr Sally Young, *Submission 3a*, p. 7; *Committee Hansard*, 18 August 2005, p. 1.

8 Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 79; *Submission 9a*, pp 20-22.

a government should have its budget blocked, whether a minister ought be censored or whether legislation ought be passed. If you read Odger's, in terms of the proceedings of the Senate, it is quite clear that it is the technical aspects.⁹

1.24 The Committee absolutely rejects this suggestion by the Minister that the Clerk of the Senate should be restricted to commenting and advising on merely technical or procedural matters.

1.25 The right of the Clerks of both Houses of Parliament to make submissions to parliamentary inquiries is enshrined in the *Parliamentary Services Act 1999*. Section 19 of the Act states that:

the Clerk of either House of the Parliament is not subject to direction by a Presiding Officer in relation to any advice sought from, or given by, the Clerk with respect to that House or any of its committees or members.

1.26 Mr Evans himself noted that an important part of his role as Clerk of the Senate is to assist the Senate and its committees to carry out their legislative functions. He said:

One of the legislative functions of the Senate and its committees is to establish and improve oversight and scrutiny measures to scrutinise the activities of the executive government and the expenditure of public moneys. In assisting the Senate and its committees to perform that function, I frequently make recommendations for, and comment on, accountability and scrutiny mechanisms and the enhancement of existing mechanisms. The comments and the recommendations I make might not necessarily always be agreeable to the executive government, but that is not a factor which I can allow to influence the recommendations I make, which are based on assisting the Senate and its committees as legislative bodies.¹⁰

1.27 The Committee is highly disturbed by the Minister's suggestion that it is inappropriate for the Clerk to make substantive comment about the accountability of the executive to the Parliament on particular issues. This smacks of an attempt to intimidate the Clerk into not providing advice which is discomfiting to the government of the day. It is not a mark of an open and liberal democracy for criticisms of government to be met with slander, intimidation and the attempted discrediting of reputations.

1.28 Quite apart from the abuse of the Committee's processes involved in peddling falsehoods disguised as evidence, the Committee is concerned about whether Senator Abetz's widely publicised attacks on the integrity of witnesses may serve to inhibit ordinary Australians from participating in the Senate's inquiries in future.

9 Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 79.

10 Mr Harry Evans, *Committee Hansard*, 19 August 2005, p. 1.

1.29 As Professor Charles Sampford, another witness who was personally and inaccurately criticised by Senator Abetz, said:

I did not come here to make partisan comments but to address a genuine problem arising from a temptation to abuse power that goes directly to the heart of our democracy. I did not come to Canberra to pick a fight with Senator Abetz and I did not make a criticism of any campaign from either side of politics ... I must say that I am taken aback at the comments of Senator Abetz as I have to date always been treated with respect by parliamentary committees and their members ... I note that Senator Abetz seeks to dismiss some of the other submissions because of the alleged political affiliations of those making them ... I believe that the Committee should examine all submissions on their merits. I am not the issue and I do not intend to be the issue. I take it that the same holds true of others making submissions.¹¹

1.30 Senate Committee inquiries are utterly dependent on the citizens who volunteer their time, energy and expertise to write submissions and to participate in public hearings. It is in the public interest for Australians to feel free to come before the Senate and freely give their opinions.

1.31 This Committee records, in the strongest possible terms, its abhorrence of the bullying and personal vilification by Senator Abetz and one of his staff¹² of those who contributed to this Senate inquiry. Whatever one's view of the validity or merits of particular arguments presented to the Committee, there is no excuse for engaging in personal attacks on witnesses. It is even more reprehensible when conducted by a Minister of the Crown. Such attacks add nothing to the debate, reflect badly on the Cabinet and would seem designed to avoid serious engagement with the issues under scrutiny.

What is government advertising?

1.32 Government advertising or information campaigns are an accepted means by which governments inform the public about new initiatives, policies or programs, and advise people how they might benefit or what they need to do to comply with new requirements. The Commonwealth government is one of the largest national advertisers in Australia.¹³

1.33 Government advertising is divided into 'non-campaign' advertising and 'campaign' advertising. Non-campaign advertising is usually non-contentious and includes one-off advertisements for job vacancies in Australian government

11 Professor Charles Sampford, *Submission 4a*, p. 1.

12 The Committee is aware of ongoing attacks upon Dr Young by Senator Abetz's staffer, Peter Phelps, in www.crikey.com.au.

13 See Government Communications Unit website, <http://www.gcu.gov.au/code/cas/index.html> (accessed October 2005).

organisations, public notices and tenders. Campaign advertising includes the production and dissemination of material to the public about government programs, policies and matters which affect their benefits, rights and obligations.¹⁴ Recent examples of Australian government campaign advertising include the GST campaign (A New Tax System campaign), the Pharmaceutical Benefits campaign, the Smart Traveller campaign,¹⁵ and the WorkChoices campaign promoting workplace relations reforms.

1.34 There are only very limited restrictions on government advertising in legislation. The *Commonwealth Electoral Act 1918* sets out certain requirements for identifying the source of authorisation of electoral advertisements.¹⁶ 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'.¹⁷ 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 Government'), the location of the office and the person authorising the advertisement.¹⁸

Need for the inquiry

1.35 The Committee received no evidence expressing concern about 'non-campaign advertising by the Commonwealth government, and no evidence which disputed the right or the propriety of governments conducting 'campaign' advertising under a range of circumstances.

1.36 In his Research Note for the Parliamentary Library, Dr Richard Grant noted that:

At one level, government advertising has an important democratic function. The public has a right to be informed about the programs which their taxes fund. Equally, governments have a right to establish a framework for delivering this information, subject to parliamentary scrutiny.¹⁹

14 Australian Government, *Guidelines for Australian Government Information Activities: Principles and Procedures*, February 1995 [updated only to reflect changes in titles and names], p. 1.

15 Dr Richard Grant, *Research Note No.62*, Parliamentary Library, 21 June 2004, p. 2.

16 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 [hereafter, Political Honesty Report], p. 100.

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

18 Senate Finance and Public Administration Legislation Committee, Political Honesty Report, p. 101.

19 Dr Richard Grant, *Research Note No.62*, Parliamentary Library, 21 June 2004, p. 1.

1.37 Dr Graeme Orr, senior lecturer in law at Griffith University, said in his submission that:

No one suggests that governments should not advertise, or that they should not employ mass media forms and modern PR techniques. In an age saturated with information and images, public services need to be explained and promoted in ways that keep them accessible and relevant. There is nothing inherently wrong in using 'sexy' media to convey a message, provided the message is: (a) inherently justified on public service principles and (b) when taken in context with other mass media campaigns at the time, and against the backdrop of partisan contention [sic] issues, is not immodest in size, cost or tenor.²⁰

1.38 The problem with government advertising arises when the distinction between legitimate government advertising for public policy purposes and political advertising for partisan political advantage is blurred. In other words, the problem arises when governments use or are perceived to use taxpayer funds to gain political advantage through promoting themselves, rather than to meet the genuine information needs of citizens.

1.39 Over a number of years, concern has been expressed by members and Senators on all sides of politics that incumbent governments have succumbed to this temptation.

1.40 In 1995, the then Leader of the Opposition, the Hon. John Howard MP criticised the Keating Labor government for its pre-election advertising program, saying that 'there is clearly a massive difference between necessary Government information for the community and blatant Government electoral propaganda'.²¹ In a press release, Mr Howard stated that the Shadow Cabinet had agreed that 'in Government, we will ask the Auditor-General to draw up new guidelines on what is an appropriate use of taxpayers' money in this area'.²² Despite being in government for over 9 years, this has not occurred.²³

1.41 In turn, the Howard government has been criticised by the Labor party for its use of taxpayer funded advertising of programs or policies such as the goods and services tax.²⁴ A number of inquiries in the last ten years have recommended reforms

20 Dr Graeme Orr, *Submission 2*, p. 6.

21 Press Release (Hon. John Howard MP), *Auditor-General to examine Government advertising*, 5 September 1995.

22 Press Release (Hon. John Howard MP), *Auditor-General to examine Government advertising*, 5 September 1995.

23 Dr Sally Young, *Submission 3*, p. 8.

24 Senator the Hon. John Faulkner, *Senate Hansard*, 29 June 2000, p. 16140.

to the guidelines on government advertising, in light of concerns about particular campaigns.²⁵

1.42 The Committee notes then that there are two aspects to this inquiry. The first is whether in fact the distinction between government advertising for public policy purposes and political advertising for partisan political advantage has been blurred, particularly by the Commonwealth government since 1996, and if so, what can be done about it. The second is whether the guidelines and accountability framework for government advertising are sufficiently robust to protect against this kind of misuse, or even minimise the potential for abuse or misuse.

Nature of Commonwealth government advertising since 1996

1.43 There was dispute before the Committee about whether there had in fact been misuse of government advertising at the Commonwealth level since 1996.

1.44 The majority of submissions made to the inquiry expressed the view that there is a 'problem' with the use of government advertising by both state and Commonwealth governments.²⁶ The misuse of government advertising was said to have occurred on both sides of politics, with the trend escalating over the past decade.

1.45 Dr Sally Young, lecturer, Media and Communications Program at the University of Melbourne argued that:

incumbent Australian governments – both state and federal – are increasingly using government advertising as pseudo-political advertising to shore up their re-election chances.²⁷

1.46 Mr Harry Evans, Clerk of the Senate, remarked that:

There is a widespread perception that government advertising campaigns are employed for party-political and electoral advantage. The perception is that the party in government uses taxpayer-funded government advertising campaigns as a supplement to party-political advertising to achieve favourable perception of the party in the electorate, and favourable election results.²⁸

25 Auditor-General, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12, 29 October 1998; Joint Committee of Public Accounts and Audit, *Guidelines for Government Advertising (Report 377)*, September 2000; Senate Finance and Public Administration Legislation Committee, Political Honesty Report, August 2002.

26 See Public Health Association, *Submission 1*; Dr Graeme Orr, *Submission 2*; Dr Sally Young, *Submission 3*; Professor Charles Sampford, *Submission 4*; Mr Harry Evans, *Submission 6*; Professor Stephen Bartos, *Submission 7*; and Professor Tony Harris, *Submission 8*.

27 *Submission 3*, p. 3.

28 *Submission 6*, p. 2.

1.47 In a similar vein, Dr Graeme Orr,²⁹ Professor Charles Sampford,³⁰ and Professor Stephen Bartos³¹ all commented on the 'spike' in government advertising in election years which, according to Dr Orr, 'is the most damning circumstantial evidence imaginable of the fact that advertising campaigns are being used for political effect'.³²

1.48 By contrast, Senator Abetz strongly disputed the views expressed by these witnesses to the inquiry. He rejected both the claims, at least as they pertain to the current government, that some government advertising is party political and that there is a spike in government advertising before elections.³³

1.49 He argued that the campaigns run by the Coalition government since 1996 have been very similar to the campaigns run by the federal Labor government in the eight years prior to 1996. He said:

It is notable that critics of the Government's current information program have been loathe to actually nominate campaigns that they would eliminate if they were in a position of power to do so. On the contrary, they have been at pains to state that Government advertising is important. Yet the apparent contradiction between their 'in principle' support and their opposition to the practical application of that support remains unresolved.³⁴

Adequacy of accountability framework

1.50 As noted earlier, the Committee considers that any justification of the need for reform of the accountability framework does not depend upon establishing absolutely that there has been misuse of government advertising for party political purposes by the current federal government.

1.51 The question is rather whether the current guidelines and decision making practices are suitable for modern practices and are sufficiently robust to prevent misuse by any incumbent government. This is a question which can be resolved as a matter of good public administration and integrity, independently of proven instances of misuse.

1.52 Again, evidence to the Committee conflicted on the question of the adequacy of the existing accountability framework for government advertising.

29 *Submission 2*, p. 4.

30 *Submission 4*, p. 1.

31 *Submission 7*, p. 3.

32 *Submission 2*, p. 4.

33 Senator the Hon. Eric Abetz, *Committee Hansard*, 19 August 2005, p. 78.

34 Senator the Hon. Eric Abetz, *Submission 9*, p. 2.

1.53 The majority of submissions argued that a number of features of current practice give rise for concern about accountability in this area. These features include the extent of disclosure of expenditure and Parliamentary control over appropriations, the comprehensiveness of guidelines for government information activities, and the enforceability of those guidelines.

1.54 For example, Dr Sally Young and The Agency Register commented on the difficulty of establishing with any certitude what the government has spent on advertising in any given financial year.³⁵ Mr Harry Evans noted that the controversy over the government's advertising campaign for its industrial relations changes, the WorkChoices campaign, has highlighted the limits of parliamentary control over how much money is available for particular purposes or the purposes for which money is to be spent.³⁶ This indicates that the appropriations process itself may provide little restraint on government spending on advertising. And finally, a number of submissions commented upon the need to adopt stricter guidelines for government advertising, with monitoring of those guidelines by an independent body or the Auditor-General.³⁷

1.55 Senator Abetz, however, rejected the view that there are areas of concern in the current accountability framework covering government advertising. He maintained that current levels of disclosure of information about the nature of and expenditure on government advertising campaigns are sufficient, and that the current guidelines are adequate and proposed alternatives 'unworkable'.³⁸

Structure of the Report

1.56 In the next two chapters of the report, the Committee outlines expenditure on government advertising and the nature of the campaigns run since 1996. Chapter 2 attempts to calculate total expenditure on government advertising in the period 1996-97 to 2003-04. The difficulty of making this calculation highlights potential problems with the current disclosure and reporting of that expenditure. In Chapter 3, the Committee outlines the nature of the advertising campaigns run since 1996. It considers what threshold questions would need to be satisfied in order to justify the considerable expenditure of public funds on these activities.

1.57 In Chapter 4, the Committee considers the process of appropriating funds for expenditure on government advertising in the context of the recent WorkChoices campaign and the High Court challenge to its legality. This chapter highlights two major issues. The first is the whole question of Parliamentary control over government

35 Dr Sally Young, *Submission 3a*; The Agency Register, *Submission 10a*.

36 Mr Harry Evans, *Submission 6b* and *Submission 6c*.

37 See, for example, Dr Graeme Orr, *Submission 2*; Dr Sally Young, *Submission 3*; Professor Charles Sampford, *Submission 4*; Mr Tony Harris, *Submission 8*.

38 Senator the Hon. Eric Abetz, *Submission 9*.

expenditure, and how the current appropriations process contributes to the overall weakness in the accountability framework for government advertising. The second is the extent to which this government is prepared to use taxpayer's money to fund advertising widely perceived to be blatantly political.

1.58 In Chapter 5, the Committee outlines the administrative processes for decision-making on Commonwealth government advertising and highlights the roles respectively of the Government Communications Unit within the Department of the Prime Minister and Cabinet and the Ministerial Committee on Government Communications.

1.59 The question of the adequacy of the current guidelines for government advertising, the 1995 *Guidelines for Australian Government Information Activities: Principles and Procedures*, is examined in Chapter 6. The Committee analyses suggested revised guidelines and principles issued by the Auditor-General in 1998, and the Joint Committee of Public Accounts and Audit in 2000.

1.60 In Chapter 7, the Committee considers the question of the enforceability of any revised guidelines and examines other proposals for strengthening the accountability framework, including caps on expenditure on government advertising and improved disclosure provisions. In that context, the Committee discusses the order of the Senate of 29 October 2003 and the new accountability framework adopted in Canada, and makes recommendations for strengthening the transparency and accountability of the system.