

The Senate

Finance and Public Administration
Legislation Committee

Government Advertising (Accountability)
Bill 2011

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43rd Parliament

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Participating Members for this inquiry

Senator Nick Xenophon	IND, South Australia
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Chapter 1

Government Advertising (Accountability) Bill 2011

Introduction

1.1 The Government Advertising (Accountability) Bill 2011 (the bill) was introduced into the Senate by Senator Xenophon on 21 June 2011. On 7 July 2011, the Senate, on the recommendation of the Selection of Bills Committee, referred the bill to the Finance and Public Administration Legislation Committee for inquiry and report by 21 September 2011.

Conduct of the inquiry

1.2 The committee advertised the inquiry on the Internet and in *The Australian* and invited submissions from interested organisations and individuals. The committee received four public submissions. The list of public submissions received is at Appendix 1. Submissions can be accessed through the committee's website at: http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

1.3 The committee agreed not to hold a public hearing for this inquiry.

The bill

1.4 The bill seeks to amend the *Financial Management and Accountability Act 1997* (FMA Act) by repealing the existing section 14, and inserting a new section 14, so that the use of taxpayers' money by the government to fund advertising of a policy not yet enacted in legislation, would be in breach of the FMA Act. This would ensure that public funds are not spent on advertising government policies that are not approved by the Parliament.

1.5 Proposed section 14 reintroduces the provision relating to the misapplication or improper use of money by an official or Minister and provides for a further improper use in relation to government advertising. Pursuant to proposed section 14, it is an improper use of public money if it is used for advertising for a government policy, unless:

- the policy has been enacted in legislation; or
- a resolution has been passed by both Houses of Parliament, agreeing to the expenditure of the money for the purpose of advertising a particular policy; or

- in the event of a national emergency, the Minister has obtained consent from the Leader of the Opposition to spend public money for the purpose of advertising a particular policy.¹

1.6 In relation to the definition of a national emergency, the bill's Explanatory Memorandum states:

A 'national emergency' is considered to be events such as urgent health issues, natural disasters, defence issues, critical issues of public safety and importance and the like. Under this subsection, it would be up to the discretion of the Leader of Opposition to provide consent, and in doing so, decide whether he or she considers the event to be an emergency.²

1.7 Proposed section 14 reapplies the penalty for a breach of the section as imprisonment for 7 years.

1.8 In the second reading speech, Senator Xenophon outlined the objective of the bill:

There is an important principle of accountability here—taxpayer funds should not be spent promoting a policy that has not been authorised by the Parliament...If passed...you can only use taxpayer dollars to explain how a policy which has become law will affect people.

But you can't use tax-payer dollars to try and build support for an idea that the Government wants to become law.³

1.9 Further, Senator Xenophon stated that the Prime Minister's profile generated enough exposure to be able to inform the Australian population of new government policies without spending taxpayers' money on advertising.⁴

Background

Current guidelines on government advertising

1.10 Government advertising is currently subject to the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies* (the guidelines) which were introduced in 2008 and updated in March 2010. These guidelines set out the principles for information and advertising campaigns undertaken by FMA Act bodies. The guidelines were introduced to promote transparency and accountability and ensure that:

1 Government Advertising (Accountability) Bill 2011, Explanatory Memorandum, p. 1.

2 Government Advertising (Accountability) Bill 2011, Explanatory Memorandum, p. 1.

3 Senator Nick Xenophon, *Senate Hansard*, 21 June 2011, p. 3418.

4 Senator Nick Xenophon, *Senate Hansard*, 21 June 2011, p. 3418.

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- members of the public have equal rights to access comprehensive information about government policies, programs and services which affect their entitlements, rights and obligations;
 - governments may legitimately use public funds to explain government policies, programs or services, to inform members of the public of their obligations, rights and entitlements, to encourage informed consideration of issues or to change behaviour; and
 - government campaigns must not be conducted for party political purposes.⁵

1.11 The guidelines distinguish between advertising campaigns and information campaigns. An advertising campaign generally involves 'paid media placement and is designed to inform, educate, motivate or change behaviour'. Whereas an information campaign usually 'appears only once or twice, contains factual statements and typically has a low creative content'.⁶

1.12 The guidelines provide for five principles that set out the context in which government advertisements should be conducted, they are:

- Principle 1: Campaigns should be relevant to government responsibilities;
- Principle 2: Campaign materials should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign;
- Principle 3: Campaign materials should be objective and not directed at promoting party political interests;
- Principle 4: Campaigns should be justified and undertaken in an efficient, effective and relevant manner; and
- Principle 5: Campaigns must comply with legal requirements and procurement policies and procedures.

1.13 Principle 1 of the guidelines ensures advertising campaigns are within the scope of the government's responsibilities. This principle states that government advertising campaigns must be relevant to government responsibilities and that 'only policies or programs underpinned by:

- legislative authority; or
- appropriation of the Parliament; or
- a Cabinet Decision which is intended to be implemented during the current Parliament should be the subject of a campaign'.⁷

5 *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*, March 2010, p. 1.

6 *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*, March 2010, p. 2.

7 *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*, March 2010, p. 3.

1.14 The guidelines state, therefore, that the government must have legislative authority to carry out an advertising campaign. However, the final requirement provides the government with the flexibility to advertise a policy which it intends to introduce during the current Parliament.

1.15 The guidelines were updated in 2010, following the release of the Government commissioned *Independent Review of Government Advertising Arrangements* (the Hawke review). This review provided eight recommendations to the government, including the abolition of the Auditor-General's role in reviewing proposed advertising campaigns.

1.16 The Government accepted six of the recommendations outright and accepted another two in part. As a result, the Independent Communications Committee (ICC) was established as an independent review panel to take over the Auditor-General's role to ensure government advertising campaigns comply with the guidelines.

1.17 The Independent Communications Committee plays a key role in the accountability regime of government advertising in reviewing compliance with the guidelines. The ICC is independent of government and the membership is made up of three former public servants.

1.18 Where advertising campaigns (not information campaigns) are valued at more than \$250 000, the ICC considers the campaign and provides advice to the agency's Chief Executive on compliance with Principles 1 – 4 of the guidelines. The agency is then responsible for providing a report to the Chief Executive on compliance with Principle 5.

1.19 The Chief Executive must receive and consider the report on campaign compliance from the ICC before it is able to certify that the campaign complies with the principles as set out in the guidelines. The certification is then provided to the relevant Minister to launch or approve the launch of the advertising campaign.

1.20 After the campaign has been launched, the ICC's conclusions relating to the campaign are published on the website of the Department of Finance and Deregulation and the Chief Executive's certification of the campaign is published on the relevant agency or department's website.

1.21 As part of this process, the Government is also required to provide reports to the Parliament (currently biannually) that detail expenditure on all campaigns (advertising and information) of FMA Act agencies with expenditure in excess of \$250 000.

Previous committee inquiries into government advertising

1.22 In recent years, the committee has carried out several inquiries relating to public spending on government advertising and the administration of the campaign advertising guidelines. In addition, the committee has questioned extensively the portfolios of the Prime Minister and Cabinet and Finance and Deregulation during the

estimates process in relation to public spending on government advertising. The committee's inquiries that are most pertinent to the bill are discussed below.

Inquiry into Preventing the Misuse of Government Advertising Bill 2010

1.23 One of the committee's most recent reports on government advertising examined the Preventing the Misuse of Government Advertising Bill 2010. This bill was introduced 'to establish a legislative framework for accountability of expenditure on information and advertising campaigns undertaken by Australian government departments and agencies'.⁸ The bill provided, along with other reforms, that the Auditor-General be reinstated with the powers and functions to review and report on government information and advertising campaigns.

1.24 The committee recommended that the bill not be passed as 'the 2010 guidelines meet the requirements of transparency and rigour with regard to the oversight of proposed government advertising'.⁹ This bill lapsed at the end of the previous Parliament and was reintroduced into the Senate following the 2010 federal election. It is currently before the Senate.

Inquiry into Government advertising and accountability

1.25 In 2005, the Finance and Public Administration References Committee tabled its report *Government advertising and accountability*. The report also addressed the issue of the Government advertising policies before being passed by the Parliament. The report stated:

...no expenditure of public money for mass media advertising should be undertaken until the government has obtained passage of the legislation giving it authority to implement the relevant policy, program or service. Where a proposed public information or education campaign covers a matter which does not require legislation, an appropriation for the specific purpose of the campaign must be obtained. The requirement should not be enforced in situations where major issues of public health, safety or public order have arisen at short notice.¹⁰

1.26 The report recommended these requirements be included in the Joint Committee of Public Accounts and Audit (JCPAA) draft guidelines and the Government adopt the amended guidelines.

1.27 A matter discussed in the report was the High Court judgement in *Combet v Commonwealth*, which dealt with the constitutionality of government spending on

8 Senate Finance and Public Administration Legislation Committee, *Preventing the Misuse of Government Advertising Bill 2010*, June 2010, p. 1.

9 Senate Finance and Public Administration Legislation Committee, *Preventing the Misuse of Government Advertising Bill 2010*, June 2010, p. 20.

10 Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 84.

advertising of a particular policy not specifically authorised by the Parliament. The case related to the WorkChoices advertising campaign conducted by the Department of Employment and Workplace Relations. The report noted that:

In the action they brought against the Commonwealth government in the High Court, the ACTU and the ALP (the plaintiffs) assert 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) 2005-06*.¹¹

The High Court ruled that the campaign was lawful, and that the money appropriated for the department could be used for such campaigns.

1.28 In a paper by former Clerk of the Senate, Mr Harry Evans, the following comments relating to the case were made:

The judgment reinforced the point that annual appropriations are now in such a form that there is very little limitation on the purposes for which the money may be spent. The effect of the judgment is that the court will not correct this situation. It is Parliament's responsibility to ensure that expenditure is appropriate.¹²

1.29 The bill has a similar intention to Mr Evans' comments, requiring that the Parliament has a greater role in approving public expenditure. Mr Evans went on to state 'It is now clear that control of expenditure must be undertaken by Parliament or it will not be undertaken at all'.¹³

1.30 In addition, the report recommended that the Government adhere to the Senate order of continuing effect of 29 October 2003¹⁴ which relates to agency advertising and public information projects. It requires that the Minister of the agency undertaking advertising or public information projects, table in the Senate a statement indicating, among other requirements, the purpose and nature of the project and its compliance with the Auditor-General's and the JCPAA's guidelines.¹⁵

11 Senate Finance and Public Administration References Committee, *Government advertising and accountability*, December 2005, p. 39.

12 Harry Evans, 'Parliamentary Control of Finance: Bringing back the Revolution', *The Table*, vol. 75, 2007, p. 13.

13 Harry Evans, 'Parliamentary Control of Finance: Bringing back the Revolution', *The Table*, vol. 75, 2007, p. 15.

14 The Senate, *Procedural orders and resolutions of the Senate of continuing effect*, June 2009, SO 12.

15 These guidelines are set-out in Australian National Audit Office, *Taxation Reform: community education and information programme*, Audit Report no. 12, 1998-99 and Joint Committee of Public Accounts and Audit, *Guidelines for government advertising*, report no. 377, October 2000. The guidelines set out in these reports were used to form the basis of the Government's current guidelines on advertising campaigns.

1.31 The Government Response to this report was provided on 8 September 2011. The response accepted in principle the majority of the 13 recommendations contained in the report and noted that 'all of the substantive issues raised by the Committee have been overtaken by considerable reforms aimed at improving the governance, transparency and accountability processes for campaign advertising'.¹⁶

1.32 In relation to the specific recommendations outlined above, the response accepted both in principle, stating that the 'current *Guidelines on Information and Advertising Campaigns* retain the key features of the draft guidelines as proposed by the JCPAA in 2000' and in relation to the Senate order of continuing effect 'the Government is satisfied that its framework of biannual reporting provides timely disclosure, transparency and accountability in relation to campaign advertising'.¹⁷

Report by the Joint Committee of Public Accounts and Audit

1.33 In March this year, the Joint Committee of Public Accounts and Audit tabled its report entitled *The role of the Auditor-General in scrutinising government advertising*. While the report focussed on the role of the Auditor-General in scrutinising government advertising, it also reported on the processes involved in agencies' compliance with the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*.

1.34 In relation to the role of the Auditor-General, the committee stated:

...it is important to note that by the end of this inquiry process, all Committee members agreed that being involved in the scrutiny of proposed advertising campaigns was not an appropriate role for the Auditor-General. They considered that it blurred the boundary between executive decision-making and audit review.

As mentioned previously, some Committee members had concerns that a positive review report by the Auditor-General could be seen to be publically endorsing government policy.¹⁸

1.35 Further, the JCPAA stated that it:

...is pleased that the ANAO has agreed to undertake a conventional performance audit on at least one campaign per year or the administration of the campaign advertising framework. The Committee has a statutory

16 Australian Government, *Final Government response to the Senate Finance and Public Administration References Committee Report – Government Advertising and Accountability, December 2005*, September 2011, p. 1.

17 Australian Government, *Final Government response to the Senate Finance and Public Administration References Committee Report – Government Advertising and Accountability, December 2005*, September 2011, pp 3-4.

18 Joint Committee on Public Accounts and Audit, *The role of the Auditor-General in scrutinising government advertising*, March 2011, p. 49.

duty to examine all Auditor-General's reports on behalf of the Parliament and will do so on all advertising reports.¹⁹

1.36 This ensures that the Parliament, through the JCPAA, is involved in the review process of campaign advertising as well as reviewing the administration of campaign advertising. This conclusion also provided clarity on the revised role of the Auditor-General in campaign advertising.

1.37 Further, the Auditor-General's next report on the administration of government advertising campaigns is due to be provided to the Parliament in Spring 2011. The audit will examine the administration of the government advertising guidelines, compliance by agencies and departments with the guidelines and the process for exempting campaigns.

Issues

1.38 Much of the evidence received in relation to the bill (and previous inquiries) acknowledged the importance of government advertising in providing information to the Australian population. However, concern was expressed about the possible abuses of power relating to government advertising. The Accountability Round Table (ART) stated that 'government public information advertising should be reserved for the provisions of information in the public interest and should not be used by the Executive in the interests of its political party or coalition'.²⁰ Other submitters shared this view and noted that while government advertising is important for disseminating information to the public there are possible abuses of power associated with it.

1.39 Submitters supported the introduction of further regulations to enhance transparency of government spending on advertising. ART, for example, submitted:

...the use of government funds for public advertising should be codified and legislated so as to put its interpretation and implementation on a secure basis, in which it would be free from risks that the Executive could use prerogative powers to circumvent, subvert or overturn the principle for incumbent party advantage.²¹

1.40 Professor Charles Sampford, in his submission to the inquiry into the Preventing the Misuse of Government Advertising Bill 2010 commented on the possible abuses of power associated with government advertising and the need for transparency mechanisms. He stated:

19 Joint Committee on Public Accounts and Audit, *The role of the Auditor-General in scrutinising government advertising*, March 2011, p. 49.

20 Accountability Round Table, *Submission 3*, p. 1.

21 Accountability Round Table, *Submission 3*, p. 1.

The whole point of good governance is to try to create institutions that do not need saints to run them and can inspire public confidence despite the fact that they are run by mere mortals.²²

1.41 Dr Graeme Orr noted that while the guidelines for government advertising have been adopted, they do not go far enough to 'address deeper problems with the size and selectivity of campaigns from a whole of government perspective'.²³

1.42 The intention in the bill, to legislate the Parliament's role in allowing public money to be used for government advertising, was generally supported by submitters as an appropriate check and balance mechanism of government spending, particularly when that advertising takes place prior to parliamentary consideration. Dr Orr provided evidence to the committee's previous inquiry into government advertising, and commented on this issue:

Such campaigns by definition become advocacy campaigns: there are after all no legal obligations, rights or mechanisms yet in place to explain. Such campaigns may be completely wasteful if the policy changes or is rejected by Parliament.²⁴

He recommended that if these campaigns were completely necessary that there should be two options available to the government of the day if they wished to advertise certain policies before the policy was considered by Parliament: first, to 'cap expenditure on each and every such campaign'; and secondly, to 'borrow the referendum model, in which pro and con campaigns would be run'.²⁵

1.43 At the budget estimates hearings in May 2010, the Auditor-General also commented on government advertising and put a different view in relation to use of taxpayers' money to promote a policy that may not necessarily be passed by the Parliament. The Auditor-General commented:

Without having given deep consideration to the issue, there will be circumstances where legislation will not be applicable, in a sense, other than the standard existing agency appropriations to allow the matter to be funded. So I am not sure that a legislative basis will always be the right answer. It may be unduly constraining.²⁶

22 Professor Charles Sampford, *Submission 4*, p. 1, Senate Finance and Public Administration Legislation Committee, *Preventing the Misuse of Government Advertising Bill 2010*, June 2010.

23 Dr Graeme Orr, *Submission 1*, p. 1.

24 Dr Graeme Orr, *Submission 1*, pp 2–3, Senate Finance and Public Administration Legislation Committee, *Preventing the Misuse of Government Advertising Bill 2010*, June 2010.

25 Dr Graeme Orr, *Submission 1*, pp 2–3, Senate Finance and Public Administration Legislation Committee, *Preventing the Misuse of Government Advertising Bill 2010*, June 2010.

26 Mr Ian McPhee, *Committee Hansard*, 25 May 2010, p. 21.

1.44 While generally supporting the need for greater accountability in relation to government advertising, submitters raised issues in relation to the scope of the bill including the possible extension to all advertising campaigns.

1.45 Dr Orr commented on the breadth of the bill and stated that it did not target the specific issue of governments using 'large scale campaigns to sell contentious *legislative* policy prior to parliamentary consideration'. He noted that there are a range of situations where governments are able to introduce new or modified policies without being required to pass legislation. In such circumstances, the provisions of the bill would not apply.²⁷

1.46 Professor Sampford held a similar view stating that he had reservations about the bill due to the fact that 'much government policy does not require legislation – either because it is part of the prerogative incorporated into the Federal Executive power or because it falls within executive powers granted by legislation'.²⁸ Similarly, ART commented that 'there is nothing proposed in the Bill to stop a government engaging in blatant party political promotion of policies that have been enacted'.²⁹

1.47 On the other hand, advertising campaigns of policies that are not controversial and serve the purpose of providing information to the community could be captured by the bill and place unnecessary burden on the Parliament. To avoid this situation, Dr Orr recommended that the term 'advertising' be defined in the legislation and 'campaign' apply only past a certain level of expenditure. This could avoid the Parliament having to approve excessive numbers of advertising campaigns.³⁰

1.48 Similar to the issues raised by Dr Orr, the Auditor-General stated that the bill could potentially cover all advertising campaigns, including recruitment advertising, regardless of expenditure or function. The Auditor-General commented that if the bill is passed, amendments or guidance are required to provide 'exclusions for the business as usual functions of agencies'.³¹

1.49 ART also recommended that the bill address the issue of truthfulness in government advertisements, 'otherwise it would be possible for governments to publish misleading advertisements'.³² Further, Professor Sampford stated that one of the current problems with advertised policy debate that still needs to be addressed is 'the use of misleading and deceptive statements'.³³

27 Dr Graeme Orr, *Submission 1*, p. 2.

28 Professor Charles Sampford, *Submission 4*, p. 1.

29 Accountability Round Table, *Submission 3*, p. 2.

30 Dr Graeme Orr, *Submission 1*, p. 2.

31 Australian National Audit Office, *Submission 2*, p. 2.

32 Accountability Round Table, *Submission 3*, p. 6.

33 Professor Charles Sampford, *Submission 4*, p. 2.

1.50 The Auditor-General stated that to ensure transparency surrounding the use of public money for government advertising purposes, the bill could specify the reporting requirements expected of campaigns or refer to administrative policies as currently exists in the government advertising guidelines.³⁴

1.51 A further matter raised related to the penalty of 7 years imprisonment. Professor Sampford submitted that the criminal sanctions were 'unnecessary and likely to be seen as over the top'. Professor Sampford commented that a better approach to breaches of the bill would be for the official or the political party that authorised the advertisement to pay back the misapplied public money.³⁵

1.52 Submitters also addressed the issue of regulating public debate of proposed government policies. In relation to the approach of the bill and this issue, Professor Sampford stated:

...I have severe reservations about this measure, particularly if pursued in isolation from other reforms to ensure a level playing field in which policy is debated with achievable levels of integrity.³⁶

1.53 Professor Sampford went on to state that:

The most fundamental, and systemic, problem with government advertising has been the possibility of governments gaining an advantage in an unbalanced debate on policy...However, playing fields can be skewed from both sides and the risks from the corporate end are at least as great.³⁷

1.54 Dr Orr and ART expressed similar sentiments, and Dr Orr noted

...if governments do the right thing and announce policy proposals early with a view to wide consultation, it is unfair for them to be nakedly exposed to advertising retaliation by deep-pocket interest groups.³⁸

1.55 ART also stated 'any regulation must not leave government handicapped in defending the public interest against special interests' and that compliance with advertising guidelines should enhance the credibility of government campaigns. Further, the government should have the opportunity to respond to any 'false or misleading statements by those campaigning against the policy proposals of the government'.³⁹

1.56 Professor Sampford and ART proposed mechanisms to address this issue. ART proposed that government advertising must:

34 Australian National Audit Office, *Submission 2*, p. 2.

35 Professor Charles Sampford, *Submission 4*, p. 1.

36 Professor Charles Sampford, *Submission 4*, p. 1.

37 Professor Charles Sampford, *Submission 4*, p. 1.

38 Dr Graeme Orr, *Submission 1*, p. 1.

39 Accountability Round Table, *Submission 3*, p. 6.

- be directly relevant to Government responsibilities and functions;
- be in the public interest;
- only occur in relation to matters affecting the public interest and within the powers of government and:
 - after Government has applied existing policy or adopted new or amended policy, &/or
 - after government policy has been adopted under existing powers, &/or
 - where those powers are inadequate, legislated for by parliament;
- provide objective, factual and explanatory information, free from partisan promotion of government policy; and
- not be designed to promote the policies, past performance, achievements or intentions of a program or the government with a view to advancing or enhancing a political party's reputation rather than informing the public.⁴⁰

1.57 ART also proposed the establishment of an Independent Advertising Reviewer responsible for examining government campaigns with expenditure over \$250 000. In the ART proposal, campaigns can only proceed once the Campaign Advertising Reviewer has certified that the campaign, including in emergencies, complies with the provisions of the Act. The Independent Reviewer would be appointed on the recommendation of the Joint Committee on Electoral Matters with the recommendation supported by at least a two-thirds majority of the committee's membership.⁴¹

1.58 Professor Sampford went further and recommended that advertising by governments and corporations should be regulated by the same independent review body to avoid an unbalanced public debate. He stated that 'corporations claim deductions for corporate advertising and are, in a sense, spending public money'.⁴² Professor Sampford proposed that:

Government campaigns should be subject to independent vetting with no exceptions (though there may be speedier processes for emergencies). So should those by corporations, unions and NGOs. This should either be through applying the same vetting process as government advertising, a similar vetting process or by changes to the Competition and Consumer Act 2010 (CCA) and reporting rules to subject 'political' statements to the same legal scrutiny as statements made in ordinary commerce.⁴³

40 Accountability Round Table, *Submission 3*, p. 5.

41 Accountability Round Table, *Submission 3*, p. 5.

42 Professor Charles Sampford, *Submission 4*, p. 3.

43 Professor Charles Sampford, *Submission 4*, p. 2.

1.59 ART also raised the issue of reviewing government advertising in election campaigns. While the bill does not specifically refer to this matter, ART recommended these campaigns be subject to independent reviewing. Further, the current provisions in the Electoral Act do not go far enough to protect the truth in political debates and that:

...the rule used in the Trade Practices Act, that applies to corporations in their advertising and conduct, should equally be used in politics. That is political parties, candidates and other organizations should not "engage in conduct that is misleading or deceptive or is likely to mislead or deceive." The role of adjudicating such decisions should be referred to an independent body such as the Australian Competition and Consumer Commission (ACCC) or the Australian Electoral Commission (AEC).⁴⁴

Comments and conclusion

1.60 The committee considers that the current guidelines for government advertising adequately cover many of the issues raised by submitters relating to government advertising. While the committee acknowledges that government advertising has the potential to be abused, the current guidelines adequately combat the improper use of public funds for government advertising by Ministers and officials.

1.61 The committee is also of the view that the bill, as drafted, does not provide adequate flexibility for the government to be able to advertise campaigns in the public interest, such as health and well-being campaigns. In addition, the bill appears to capture all government advertising campaigns and as a consequence would lead to an overly burdensome process not only for the government, but also for the Parliament.

Recommendation 1

1.62 The committee has considered the Government Advertising (Accountability) Bill 2011 and recommends that the bill not be passed.

Senator Helen Polley
Chair

44 Accountability Round Table, *Submission 3*, pp 7-8.

COALITION SENATORS' REPORT

BACKGROUND AND PAST INQUIRIES

This issue has been considered by the Senate previously in recent times, notably in June last year in the inquiry by this committee into the *Preventing the Misuse of Government Advertising Bill 2010*.

It was also the subject of an inquiry by the Finance and Public Administration References Committee in 2005.

Coalition Senators have previously opposed proposals to place the Auditor-General at the centre of decisions regarding Government advertising. Amongst other issues, the main reasons for this view are twofold:

1. Placing the Auditor-General in a position to approve or otherwise advertising campaigns would potentially put the Auditor-General in a conflicted position – having to both approve decisions, then to be responsible for their examination and audit.
2. Placing the Auditor-General in this position would not necessarily guarantee the outcomes desired by the supporters of this proposal.

Both of these positions are expounded further in other reports of this Committee and of the Joint Committee on Public Accounts and Audit earlier this year.

The Government accepted this position after it commissioned the *Independent Review of Government Advertising Guidelines* (the Hawke Review) in early 2010.

However, as the passage of time was to illustrate, the guidelines subsequently adopted by the Government were to prove nothing more than a charade to facilitate the further expenditure of public funds on advertising to support Labor's political agenda.

LABOR'S 2010 BACKFLIP

Public concern regarding the role of Government advertising has reached new heights since the Labor Government so spectacularly back-flipped and circumvented their own guidelines in 2010. This is demonstrated by a simple timeline of events in 2010.

In the months prior to the release of the *Henry Review* in May 2010, the Labor Government commissioned a research company to undertake work to determine the level of community understanding of tax reform.

On 21 April 2010 the so-called Independent Communications Committee established as a result of the Hawke Review was provided with a communications strategy for a proposed campaign. The ICC approved the strategy and a number of advertising agencies were briefed.

Following the release of the Henry Review, the Treasurer almost immediately sought an exemption from the guidelines established following the Hawke Review, on 10 May 2010.

That same day agencies were scheduled to present their creative proposals to officials at The Treasury. The following day, in the Budget, the Treasurer announced that a so-called 'communications campaign' would proceed, with an appropriation of \$38.5 million.

On 14 May 2010, the Department of Finance provided a brief to the Cabinet Secretary which included a draft letter to the Treasurer and a draft Statement to Parliament. This was not released for ten days.

On 24 May 2010, the Cabinet Secretary approved the Treasurer's request for an exemption from the advertising guidelines, citing 'extreme urgency' and 'compelling reasons.'

Despite this, the notification to Parliament was delayed by a further four days – finally being tabled on 28 May.

Of particular note is the fact that this was the day after Senate Estimates hearings into government advertising had concluded.

This timeline of events with respect to the Labor Government's failed mining tax advertising campaign illustrates just how hollow Labor rhetoric has been on this subject.

Labor's subsequent behaviour with respect to advertising its carbon tax legislation demonstrates that hypocrisy continues.

LABOR'S CARBON TAX HYPOCRISY

Public concern about government advertising has escalated further in response to Labor's misleading campaign regarding the carbon tax.

The \$25 million dollars dedicated to the carbon tax advertising campaign has provoked outcry about both the notion that the Government should use public funds to advocate a hotly contentious political topic, even more so given the Government's dishonesty regarding the carbon tax prior to the 2010 election.

Furthermore, questions have arisen about the honesty of the Labor Government's advertising campaign – in particular the notion that the carbon tax would reduce

Australia's emissions when the truth is taxpayers' funds will be used to purchase abatement from overseas.

Labor's hypocrisy regarding using public funds for political government advertising can be illustrated with their own words.

In the 2005 inquiry by the Finance & Public Administration References Committee *Government Advertising and Accountability*, Labor Senators stated:

*First, the Committee considers that no expenditure of public money for mass media advertising should be undertaken until the government has obtained passage of the legislation giving it authority to implement the relevant policy, program or service.*¹

They went on to say that:

*'material should not be directed at promoting party political interests'.*²

In their conclusion to Chapter 6 of the 2005 report, Labor Senators also stated that

*No expenditure of public money should be undertaken on mass media advertising, telephone canvassing or information services, online services, direct mail or other distribution of unsolicited material until the government has obtained passage of legislation giving it authority to implement the policy, program or service described in the public information or education campaign.*³

And:

*The only exclusions to these requirements are where major issues of public health, public safety or public order may arise at short notice.*⁴

It is immediately apparent that the current carbon tax advertising campaign does not meet any of these hurdles.

Labor has no credibility on this issue. Labor's record speaks for itself.

1 Senate Finance & Public Administration References Committee, *Government Advertising and Accountability*, (Majority Report), paragraph 6.68, December 2005.

2 Ibid, paragraph 6.69.

3 Ibid, paragraph 6.72 (a).

4 Ibid, paragraph 6.72 (d).

CONCLUSION

Coalition Senators do not agree with the conclusion of Labor Senators that the current guidelines for government advertising adequately address the concerns raised by submitters given the behaviour by the Labor Government in this regard. This is demonstrated by the current scandal of the carbon tax advertising campaign.

However, the bill as proposed does not provide for adequate flexibility for legitimate public information campaigns.

Accordingly, Coalition Senators agree with the recommendation that this bill not be passed.

Senator Scott Ryan
Senator for Victoria

Senator Sean Edwards
Senator for South Australia

Dissenting Report by Senator Xenophon

'Ads Nauseum – the need for legislative reform of Government advertising'

- 1.1 The Government Advertising (Accountability) Bill 2011 was introduced following the Government's announcement that it was going to spend \$12 million of taxpayers' money on an advertising campaign about their plans to price carbon, well before the legislation had been introduced into Parliament, let alone passed into law.
- 1.2 This Bill represents community frustration about the use of taxpayer funds on party policies that are not yet legislated for; from the GST and WorkChoices ad campaigns under the Howard Government, to the mining tax and carbon price plan more recently.
- 1.3 Indeed, this Bill mirrors comments made in 2005 in the Senate Finance and Public Administration References Committee Report, *Government advertising and accountability*, which stated that:

"... no expenditure of public money for mass media advertising should be undertaken until the government has obtained passage of the legislation giving it authority to implement the relevant policy, program or service. Where a proposed public information or education campaign covers a matter which does not require legislation, an appropriation for the specific purpose of the campaign must be obtained. The requirement should not be enforced in situations where major issues of public health, safety or public order have arising at short notice".
- 1.4 In its submission to the Inquiry, the Accountability Round Table said:

"Government public information advertising should be reserved for the provisions of information in the public interest and should not be used by the Executive in the interests of its political party or coalition".
- 1.5 It is noted that Government advertising is currently subject to the *Guidelines on Information and Advertising Campaigns by Australian Government Departments and Agencies*, which was introduced in 2008.
- 1.6 These guidelines are designed to ensure that:

* members of the public have equal rights to access comprehensive information about government policies, programs

and services which affect their entitlements, rights and obligations;

*governments may legitimately use public funds to explain government policies, programs or services, to inform members of public of their obligations, rights and entitlements, to encourage informed consideration of issues or to change behaviour; and

* government campaigns must not be conducted for party political purposes.

- 1.7 There is a distinct difference between Government's spending taxpayer funds on advertising policies which are initiatives that are underway, as opposed to those which are party specific, such as in the case of the carbon price.
- 1.8 Under this Bill, Governments will be banned from using taxpayer funds to advertise policy, unless the policy has been enacted in legislation, except in particular circumstances such as by resolution of the Parliament or with the consent of the Leader of the Opposition in the event of a national emergency.
- 1.9 This Bill will strengthen the transparency of government expenditure on advertising and ensure that millions of dollars of taxpayer funds aren't spent on policies that are not yet passed into law.

Recommendation

That the Bill be passed.

NICK XENOPHON
Independent Senator for South Australia

APPENDIX 1

Submissions and Additional Information received by the Committee

- 1 Dr Graeme Orr
- 2 Australian National Audit Office (ANAO)
- 3 Accountability Round Table
- 4 Prof. Charles Sampford

